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14
 15 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

16	FEDERAL TRADE COMMISSION,)	Case No. 2:09-CV-01349-PMP-RJJ
17)	
18	Plaintiff,)	
19)	
20	v.)	
21)	
22	GRANT CONNECT, LLC, et. al.)	
23)	
24	Defendants.)	
25)	

22 **PLAINTIFF FEDERAL TRADE COMMISSION'S MEMORANDUM OF POINTS AND**
 23 **AUTHORITIES IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION¹

Plaintiff Federal Trade Commission (“FTC”) moves this Court for summary judgment on all counts alleged against all of the Defendants for their violations of: (1) Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), which prohibits deceptive acts or practices in or affecting commerce; (2) Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics; and (3) both Section 907(a) of the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), which together regulate preauthorized electronic fund transfers from consumers’ bank accounts.

There is no genuine dispute as to the fact that Rachael A. Cook, James J. Gray, Michael L. Henriksen, Jr., Steven R. Henriksen, Tasha Jn Paul, Juliette M. Kimoto, Kyle R. Kimoto, Randy D. O’Connell, and Johnnie Smith (collectively, the “Individual Defendants”) collaborated in the creation, marketing and selling of a slew of deceptive Internet offers to hundreds of

¹ This brief references multiple exhibits contained in the 16 volumes of exhibits [D.E. 9-14, 65-74, 144-145] the FTC submitted in support of its requests for temporary restraining orders and preliminary injunctions against the Defendants. In connection with the filing of this brief, the FTC submits 31 additional volumes of exhibits [D.E. 234-264]. The FTC’s exhibits are marked beginning with Plaintiff’s Exhibit 1 and cited with the abbreviation “Px.” followed by the exhibit number. Exhibits that are comprised of declarations also include a citation to the paragraph number where the relevant testimony occurs. Attachments to declarations are cited by attachment letter. Some of the declarations, including the Declaration of FTC Investigator Carol Jones, do not have attachments and, instead, make reference to exhibits contained in the FTC’s exhibit volumes. Additionally, the FTC’s exhibit volumes have been Bates numbered consecutively beginning with FTC-0000001 and, where appropriate, exhibits are cited by exhibit number and Bates number (leading zeros are omitted). Plaintiff’s Exhibits 1-7 & 578-79 are attached to the FTC’s Amended Complaint and are also included in the FTC’s exhibit volumes for the Court’s convenience.

1 thousands of consumers throughout the United States. These deceptive offers included, among
2 others, (1) Grant Connect, an Internet-based computer program that purportedly gets consumers
3 easy access to free government or other grant money; (2) First Plus Platinum, an online shopping
4 club masquerading as a general purpose line of credit; (3) One Hour Wealth Builder, a purported
5 work-from-home business opportunity; and (4) Acai Total Burn, a dietary supplement.

6 The Individual Defendants marketed and sold these deceptive Internet offers through an
7 interconnected maze of entities, including Acai, Inc., Allclear Communications, Inc.
8 (“Allclear”), Consolidated Merchant Solutions, LLC (“CMS”), Dragon Group, Inc. (“Dragon
9 Group”), Elite Benefits, Inc., Global Fulfillment, Inc., Global Gold, Inc. (“Global Gold”), Global
10 Gold Limited, Grant Connect, LLC (“Grant Connect LLC”), Healthy Allure, Inc., Horizon
11 Holdings, LLC (“Horizon Holdings”), Juliette M. Kimoto Asset Protection Trust, MSC Online,
12 Inc., O’Connell Gray, LLC (“O’Connell Gray”), OS Marketing Group, LLC, (“OS”), Paid To
13 Process, Inc., Pink, L.P., Premier Plus Member, Inc., Total Health, Inc., Vantex Group, LLC
14 (“Vantex”), Vcomm, Inc., and Vertek Group, LLC (“Vertek”) (collectively, the “Corporate
15 Defendants”).

16 Defendants’ business practices violated the FTC Act and the EFTA by: (1)
17 misrepresenting the likelihood that consumers would get grants and/or “free money” using Grant
18 Connect; (2) deceptively marketing their “line of credit” offers, including First Plus Platinum, by
19 making false claims and failing to disclose material facts about the limitations of this credit line;
20 (3) making false and unsubstantiated earnings claims regarding Defendants’ work-from-home
21 offers, including One Hour Wealth Builder; (4) making unsubstantiated claims regarding the
22 health qualities of Acai Total Burn; (5) using phony testimonials and celebrity endorsements; (6)
23 failing to disclose, or disclose adequately, that consumers who signed up for Defendants’
24 products or services would be enrolled in multiple membership programs and would have to
25 cancel the programs within a limited time period to avoid costly recurring monthly charges; and

1 (7) debiting consumers' bank accounts on a recurring basis without obtaining the written
2 authorization required by EFTA.

3 Accordingly, the FTC respectfully requests the entry of summary judgment and a final
4 order, including provisions permanently enjoining Defendants' deceptive practices, converting
5 the receiver into a liquidating receiver, and awarding monetary relief to redress consumer injury
6 in the amount of \$29,916,533.58, plus prejudgment interest.

7 **II. LOCAL RULE 56-1 STATEMENT OF FACTS**

8 Pursuant to Local Rule 56-1, the FTC submits the following concise statement of material
9 facts not genuinely in dispute, citing the particular portions of the pleadings, declarations,
10 depositions, interrogatory answers, admissions, business records – including electronically stored
11 information (“Access ESI”) – obtained from Defendants pursuant to Section XX (Access to
12 Business Office and Records) of the temporary restraining order (“TRO”) [D.E. 18], the
13 Preliminary Injunction Orders [D.E. 48 & D.E. 83] entered in this case,² and other evidence upon
14 which the FTC relies.

15 **A. DEFENDANTS' BUSINESS PRACTICES**

16 Prior to the entry of the TRO in this matter, Defendants were involved in the deceptive
17 marketing and selling of a variety of products and services including, among others: (1) Grant
18 Connect, an Internet-based computer program that purportedly gets consumers easy access to
19

20
21 ² Px. 399 (Second Jones Dec.), ¶¶ 2-9 (authenticating paper documents found at the Vantex
22 offices); Px. 480 (Vera Dec.), ¶¶ 2-7 (authenticating paper documents found at the Global Gold
23 offices); Px. 527 (Pisano Dec.), ¶¶ 10-30 & 34 (authenticating Access ESI); Px. 573 (Berfield
24 Dec.), ¶¶ 2-3 (authenticating Access ESI maintained on the AWARE system); Px. 907 (Second
25 Berfield Dec.) ¶¶ 2-7 (authenticating Access ESI maintained on the AWARE system); Px. 832
(Second Pisano Dec.), ¶¶ 5-20 (authenticating Access ESI); Px. 800 (Bredehorst Dec.), ¶¶ 4-14
& Ex. A (authenticating Access ESI).

1 free government or other grant money; (2) First Plus Platinum, an online shopping club
 2 masquerading as a general purpose line of credit; (3) One Hour Wealth Builder, a purported
 3 work-from-home business opportunity; (4) Acai Total Burn, a dietary supplement; and (5)
 4 VcommUnlimited/Vcomm300 (together, “Vcomm”), a long distance calling service.³ In
 5 numerous instances, Defendants deceptively bundled and cross-sold two or more of these
 6 products together, causing consumers to purchase products they did not wish to buy.⁴
 7 Defendants structured most, if not all, of their products as continuity plans, or “memberships,”
 8 charging consumers recurring monthly “membership fees” that continued until they canceled.⁵

9 **1. Defendants’ Misrepresentations About Grant Connect**

10 Defendants marketed Grant Connect in a variety of ways, including through their Internet
 11 websites, www.grantconnectoffer.com (the “Grant Connect Offer Site”) and
 12 www.grantsourceamericaoffer.com (the “Grant Source America Offer Site”), and through a
 13 network of affiliated websites and blogs.⁶ Defendants designed their advertising to give
 14

15 ³ See, e.g., Px. 4, FTC-9-10; Px. 6; Px. 7, FTC-25-27; Px. 12 (Jones Dec.), ¶¶ 6-7, 10, 35-46 &
 16 69; Pxs. 13-14, 42-45, 62, 331-64; Px. 391 (Tingley Dec.), ¶¶ 3-12 (consumer declaration); Px.
 17 395 (Eckelberry Dec.) (declaration of Sunbelt Software CEO), ¶¶ 4-7, Att. A-D.

18 ⁴ See, e.g., Px. 4, FTC-9-10; Px. 7, FTC-25-27; Px. 12 (Jones Dec.), ¶¶ 6-7, 10, 35-51 & 69; Pxs.
 19 13-14, 17, 42-45, 48-52. See also consumer declarations: Px. 376 (Berry Dec.), ¶ 5; Px. 377
 20 (Drake Dec.), ¶ 10; Px. 378 (Westrich Dec.) ¶¶ 5-6; Px. 379 (Nobles Dec.) ¶ 7; Px. 380 (Wall
 21 Dec.), ¶ 7; Px. 381 (Hicks Dec.), ¶ 9; Px. 382 (Zvolensky Dec.), ¶ 11; Px. 383 (Loiseau Dec.), ¶
 22 5, Att. A; Px. 385, (Fields Dec.), ¶ 4; Px. 386 (Rauscher Dec.), ¶ 8; Px. 387 (Lange Dec.), ¶ 17;
 Px. 388 (Centeno Dec.), ¶ 7; Px. 389 (Westmoreland Dec.), ¶¶ 6, 8 & 11; Px. 390 (Walker Dec.),
 ¶ 7; Px. 391 (Tingley Dec.), ¶¶ 3-12; Px. 392 (Barlow Dec.), ¶ 5; Px. 395 (Eckelberry Dec.), ¶¶
 4-7, Att. A-D; Px. 396 (Kampff Dec.), ¶ 4.

23 ⁵ See, e.g., Px. 4 (Grant Connect website); Px. 7 (First Plus Platinum website); Px. 12 (Jones
 24 Dec.), ¶¶ 14, 27, 39, 44-45, & 69; Pxs. 21 (Grant Connect website), 35 (Grant Source America
 website), 46 (First Universal Platinum website).

25 ⁶ See, e.g., Pxs. 1-2; Px. 8 (Himelfarb Dec.), ¶¶ 3-6; Px. 12 (Jones Dec.), ¶¶ 6-8 & 69; Pxs. 10-
 11, 13-15 (Grant Connect); Pxs. 31-34 & 36 (Grant Source America).

1 consumers the impression that they would likely obtain free money from government or other
2 grants if they signed up for Grant Connect.⁷

3 For example, the headline displayed at the top of the Grant Connect Offer Site read
4 “Grant Connect – \$15 Billion of FREE Money Available.”⁸ Additional representations typically
5 found on this website included:

- 6 • “Over \$10 Billion Issued in 2009 Already!”⁹
- 7 • “\$15 Billion of Grant Money Available.”¹⁰
- 8 • “EASY TO USE PROGRAM:
9 Instantly find the Grant that’s right for you!
10 Receive your government funds!”¹¹
- 11 • “Get Grant Connect Today!
12 Billions of dollars are being spent every month by the government trying to help
13 stabilize the economy. With billions more on the way, it’s time for you to get your
14 cut! Grants are FREE MONEY given by foundations or the government to help you
15 with your financial situation. Not only is this money non-taxable and interest-free,
16 but most of the time you don’t even have to pay it back!”¹²
- 17 • “The Grant Connect Advantage

17 ⁷ See, e.g., consumer declarations: Px. 376 (Berry Dec.), ¶¶ 2, 8; Px. 377 (Drake Dec.), ¶ 3; Px.
18 378 (Westrich Dec.), ¶ 3; Px. 379 (Nobles Dec.), ¶ 3; Px. 380 (Wall Dec.), ¶ 3; Px. 381 (Hicks
19 Dec.), ¶ 3, 5-6; Px. 383 (Dec. Loiseau), ¶ 2; Px. 385 (Fields Dec.), ¶ 3; Px. 386 (Rauscher Dec.),
20 ¶ 3; Px. 388 (Centeno Dec.) ¶ 3; Px. 389 (Westmoreland Dec.), ¶ 3; Px. 390 (Walker Dec.), ¶ 2-
3; Px. 393 (Shea Dec.), ¶¶ 2-3; Px. 396 (Kampff Dec.), ¶¶ 2-3.

21 ⁸ Px. 8 (Himelfarb Dec.), ¶ 5; Px. 11 (see representation next to URL); Px. 12 (Jones Dec.), ¶¶ 8
& 69; Px. 15 (see representation above URL).

22 ⁹ Px. 1.

23 ¹⁰ Px. 8 (Himelfarb Dec.), ¶ 5; Px. 11.

24 ¹¹ Px. 2.

25 ¹² Px. 12 (Jones Dec.), ¶¶ 9 & 69; Px. 16.

1 Why spend days searching through government databases, when you could have our
2 program do it for you? This is the Grant Connect difference. Our program makes the
3 process FAST and EASY, so all you have to worry about is where to spend your
4 money!”¹³

5 In numerous instances, the Grant Connect Offer Site even claimed that grant money was
6 available for: “Home Purchase,” “Child Care,” “Debt Consolidation,” “Small Business,”
7 “Medical Expenses,” and “Personal Grants.”¹⁴

8 The Grant Connect Offer Site also featured “testimonials,” including photographs, of
9 individuals who purportedly were able to obtain grant money through Grant Connect. For
10 example, purported Grant Connect customer Tahani Hanania exclaimed: “It’s just so easy! I got
11 my first grant for \$330,000! All I have to do is search and click!”¹⁵ Similarly, purported Grant
12 Connect customer Catherine Roberts proclaimed: “I received \$850,000 for my business. I’m not
13 very experienced with computers and your service made everything so simple for me. I don’t
14 know why anybody would use any other program!”¹⁶ The same testimonials appeared on the
15 Grant Source America Offer Site.¹⁷

16 In many instances, Defendants bolstered these claims by using images of President
17 Obama and Vice President Biden. For example, beginning on or about January 20, 2009, and
18 continuing until at least March 3, 2009, the Grant Connect Offer Site featured a picture of
19 President Obama and Vice President Biden standing together in front of a waving American flag,
20 and next to the Grant Connect logo, with a caption in large blue and red letters which read:

21 ¹³ Px. 2.

22 ¹⁴ Pxs. 11; Px. 8 (Himelfarb Dec.), ¶ 5; FTC-35; Px. 374 (Johnston Dec.), ¶ 8, Att. B, FTC-881,
23 FTC-896 & FTC-911.

24 ¹⁵ Pxs. 1, 2 & 15.

25 ¹⁶ *Id.*

¹⁷ Px. 12 (Jones Dec.), ¶¶ 21 & 69; Px. 30.

1 “CHANGE Is Here! \$15 BILLION in FREE Government MONEY for you!”¹⁸

2 The Grant Connect Offer Site also prominently displayed purported quotations by
3 popular news sources such as NBC, Fox News, and CBS News. These quotations referenced
4 billions of dollars that the federal government was planning to spend through government grants,
5 and implied that a great deal of this money was available to consumers. One such quotation
6 stated: “More significant sums of money may be out there for your taking, you just need to find
7 it.”¹⁹

8 In addition to catchy and deceptive representations, Defendants used pop-ups and chat
9 boxes designed to discourage consumers from leaving the Grant Connect Offer Site. In many
10 instances, when consumers attempted to leave the site, a confirmation box would pop up on the
11 screen, urging them not to do so.²⁰ In addition, a chat box featuring a chat agent attempted to
12 convince the consumer to sign up for Grant Connect.²¹ Defendants used the chat boxes to
13 interact directly with consumers by exchanging text messages with them in real-time. Typical
14 representations made by Grant Connect chat agents included the following:

- 15
- 16 • “Hi and thanks for chatting with me! Because you’ve come this far we’d like to give
17 you our Grant Connect program for only a .99 cent processing fee today. CLICK
18 HERE to get this special offer!”
 - 19 • “How surprised will you be to know there is a lot of money out there for people just
20 like you and our program will show you how to get it!! Because this is a special
21 promotion you need to act right away!”

22 ¹⁸ Px. 2; Px. 8 (Himelfarb Dec.), ¶ 4.

23 ¹⁹ Px. 1 at FTC-1.

24 ²⁰ See, e.g., Px. 3 at FTC-6-7; Px. 12 (Jones Dec.), ¶¶ 15 & 69.

25 ²¹ *Id.*

- “Are you ready to give it a try and get your Free Grant Money?”²²

The claims in Defendants’ advertising, suggesting an almost guaranteed success for consumers seeking grants, were unsubstantiated and false. First, there are few, if any, grants actually available for the average consumer,²³ and the process for obtaining these grants can be complex.²⁴ Second, Grant Connect failed to provide consumers with a product or service that was likely to result in the successful procurement of a grant.²⁵

Grants for individuals are relatively rare.²⁶ In most cases, applicants must meet strict eligibility requirements before their grant application will even be considered.²⁷ Even when an applicant meets these requirements, successful grant seeking is not quick and easy as Defendants advertised.²⁸ Rather, to be successful, grant applicants must carefully research suitable opportunities, and initiate the proposal process months, or even a year, before the deadline.²⁹ Additionally, few grants are available for businesses, including small businesses, involved in profit-making projects.³⁰ Instead, the bulk of grants are awarded to colleges, universities, and

²²; Px. 3 at FTC-7.

²³ Px. 397 (Davis Dec.), ¶ 8 (declaration of the Deputy Program Manager of the Catalog of Federal Domestic Assistance); Px. 398 (Bauer Dec.), ¶ 14 (declaration of an expert in the field of resource development and grant seeking).

²⁴ Px. 398 (Bauer Dec.), ¶¶ 15-18.

²⁵ *Id.* ¶¶ 2, 19, 33, 37-38, 40, 42, 50 & 63-64.

²⁶ Px. 397 (Davis Dec.), ¶ 8; Px. 398 (Bauer Dec.) ¶ 14.

²⁷ *Id.*, ¶ 11; Px. 398 (Bauer Dec.) ¶ 15.

²⁸ Px. 398 (Bauer Dec.), ¶ 15.

²⁹ *Id.*, ¶ 18.

³⁰ Px. 397 (Davis Dec.), ¶¶ 8-10; Px. 398 (Bauer), ¶¶ 11 & 13-14.

1 other nonprofit organizations.³¹

2 In evaluating Grant Connect, the FTC enlisted the services of David Bauer, an expert in
3 the field of resource development and grant seeking.³² Bauer performed an in-depth analysis of
4 Grant Connect.³³ He reviewed the advertising claims found on the Grant Connect Offer Site and
5 the Grant Source America Offer Site, and used Grant Connect as though he were a consumer.³⁴
6 He searched for grants for an auto salvage business,³⁵ as well as other types of grants likely to be
7 of interest to consumers in light of Defendants' advertising, such as grants to pay personal
8 expenses.³⁶ Upon gaining access to, reviewing, and performing multiple searches on the
9 password-protected site, Bauer found no grants available to consumers with small businesses, or
10 for individuals in general.³⁷ Further, he discovered that much of Grant Connect's data was
11 outdated, with the majority of grantor information dating back to the years 2002 to 2006.³⁸ In
12 addition, Bauer tested Grant Connect's Live Chat Support to try to obtain assistance in finding a
13 grant from a Grant Connect representative.³⁹ According to Bauer, the representative provided
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17 ³¹ Px. 397 (Davis Dec.), ¶ 8; Px. 398 (Bauer Dec.), ¶ 14.

18 ³² Px. 398 (Bauer Dec.), ¶¶ 3-8.

19 ³³ *Id.*, ¶¶ 19-20.

20 ³⁴ *Id.*, ¶ 31.

21 ³⁵ *Id.*, ¶ 31.

22 ³⁶ *Id.* (Bauer Dec.), ¶ 48.

23 ³⁷ *Id.*, ¶¶ 36-37, 41-42 & 44-50.

24 ³⁸ *Id.*, ¶ 28.

25 ³⁹ *Id.*, ¶ 31.

1 false information about the availability of grants.⁴⁰ For example, the representative stated that
2 85-90% of Grant Connect’s customers are approved for grants to pay off their mortgage.⁴¹
3 Bauer, however, found no such grants during his review of Grant Connect.⁴²

4 Bauer found the Grant Connect Offer Site to be misleading and deceptive.⁴³ He noted
5 that, while the Grant Connect Offer Site emphasized grant money available for individual needs,
6 the actual grants he found using Grant Connect’s search tools were to support public purposes.⁴⁴
7 This was unsurprising as that is what grants are for. Bauer expressed serious doubt regarding the
8 testimonials of “satisfied customers” who used Grant Connect.⁴⁵ He found it doubtful that any
9 consumer using Grant Connect would be able to secure a grant for hundreds of thousands of
10 dollars.⁴⁶ Further supporting his assessment that these testimonials were false was the fact that
11 Defendants used the same testimonials for Grant Source America, which they had only begun
12 marketing shortly before Bauer conducted his review.⁴⁷ Overall, Bauer concluded that
13 consumers were unlikely to obtain a grant by purchasing Grant Connect.⁴⁸

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17 ⁴⁰ *Id.*, ¶¶ 33-34.

18 ⁴¹ *Id.*, ¶¶ 32 & 34.

19 ⁴² *Id.*, ¶¶ 33-34.

20 ⁴³ *Id.*, ¶ 1.

21 ⁴⁴ *Id.*, ¶ 22.

22 ⁴⁵ *Id.*, ¶ 27.

23 ⁴⁶ *Id.*, ¶ 27.

24 ⁴⁷ Compare Px. 2 with Px. 30.

25 ⁴⁸ Px. 398 (Bauer Dec.), ¶ 2, 33-34, 37, 40 & 50.

2. Defendants' Deceptive "Line of Credit" Offers

Defendants also marketed "line of credit" products or services, including First Plus Platinum, through multiple Internet websites, including www.firstplusplatinumoffer.com (the "First Plus Platinum Offer Site"), and through a variety of channels, including affiliated websites and blogs.⁴⁹ In their advertising, Defendants represented to consumers that if they applied and paid a modest processing fee, they would receive a general purpose unsecured credit card or line of credit with a credit limit between \$5,000 and \$10,000 at 0% interest for 12 full months.⁵⁰

Typical representations made on the First Plus Platinum Offer Site included the following:

- "\$7,500 CREDIT LINE"
- "Would You Like a Guaranteed \$7,500 Unsecured Credit Line & 0% Interest For the First 12 Months!"
- "FINALLY... YOUR APPROVAL IS GUARANTEED!
Are you tired of being turned down for credit accounts?
There is hope, we believe in giving everyone a chance..."
- "Activate today and receive...
0% INTEREST FOR 12 FULL MONTHS!"
- "We understand that sometimes it may be very difficult to get approved for credit. That is why we have come up with this **LIMITED TIME OFFER**. Take this opportunity to treat yourself or your family and friends to something nice. With your **\$7,500 Credit Line** you can purchase many of the things you have always wanted."

⁴⁹ Px. 6 (a screen print of the homepage of the First Plus Platinum Offer Site); Amended Complaint for Permanent Injunction and Other Equitable Relief [D.E. 112] ("Am. Compl.") ¶ 49; Answer to Am. Comp. by Defendant Steven Henriksen, et al. ("S. Henriksen's Answer") [D.E. 163], ¶ 49 (admitting that Global Gold and "certain other defendants" marketed line of credit products). The line of credit offer was marketed under approximately ten different names/brands (also known as "skins"), e.g., Global Gold, First Plus Platinum, First Universal Platinum, but – as explained by Global Gold's President Steven Henriksen – "the product itself was the same product, same back end" and consumers who signed up for the various skins had access to "the same store, exact same, products, same everything else." Px. 807 (S. Henriksen Dep.), FTC-6454 (197:10-198:1).

⁵⁰ See, e.g., Am. Compl. ¶ 50; Pxs. 6, 44 & 727-29.

- 1 • “Don’t be fooled by other credit offers that lure you in with a low interest rate for
2 only a short amount of time. Take advantage of this great offer now, **APPROVAL**
3 **IS GUARANTEED!** What are you waiting for?”
- 4 • “No Credit Checks”
- 5 • “No Employment Verification”
- 6 • “Bankruptcy? No Problem!”
- 7 • “Bad Credit? No Credit? No Problem!”⁵¹

8 Defendants’ advertising also featured testimonials from purported consumers who
9 appeared to be pleased with their line of credit. For example, purported First Plus Platinum
10 customer A. Harris stated:

- 11 • “I just wanna say thank you for my \$7,500.00 line of credit...that’s unbelievable!!! I,
12 like many people these days, don’t have the best credit in the world and was turned
13 down quite a few times for credit. You guys gave me and my family a second chance.
14 It’s great to purchase the products I want with no interest for the first year...thanks
15 again.”⁵²

16 In addition, the landing pages portrayed purported media quotations, such as:

- 17 • “Forbes [:] ‘The easiest way to improve your credit’”
- 18 • “CBS [:] ‘The more available credit you have the better it is for you’”
- 19 • “Fox Business [:] ‘Living with no credit can be severely limiting.’”⁵³

20 In many instances, Defendants reinforced the impression that consumers would receive a

21 ⁵¹ Am. Compl. [D.E. 112] ¶ 51; S. Henriksen’s Answer [D.E. 163] ¶ 51; Px. 6; Px. 44, Pxs. 727-
22 29; Ex. E to Defendants Global Gold and Steven R. Henriksen’s Opp. to Mo. for Pre. Injunction
23 [D.E. 59-2] (“S. Henriksen’s Presentation”) at 6 (a Power Point presentation about the First Plus
24 Platinum website).

25 ⁵² Am. Compl. [D.E. 112] ¶ 52; S. Henriksen’s Answer [D.E. 163] ¶ 52; Px. 6 at FTC-18; Px. 44
at FTC-186. The same purported A. Harris “testified” with respect to multiple skins and credit
amounts. *E.g.*, compare Px. 6 (First Plus Platinum – \$7500) with Henriksen’s Presentation at 8
(First Universal Platinum – \$9500).

⁵³ See Px. 6 at FTC-18; Px. 44 at FTC-186; Px. 728 at FTC-4284; Px. 729; Henriksen’s
Presentation at 8.

1 general purpose unsecured credit card or line of credit by prominently displaying pictures of
2 what appeared to be credit cards in their advertising.⁵⁴

3 Consumers who signed up for Defendants' line of credit offers did not receive a general
4 purpose unsecured credit card or line of credit.⁵⁵ Instead, Defendants deceptively enrolled
5 consumers in a costly online shopping club, where consumers could only purchase certain items
6 exclusively from Defendants,⁵⁶ and only by putting money down for virtually every purchase, in
7 some instances up to 50% or more, prior to shipping.⁵⁷ In addition, Defendants failed to
8 adequately disclose additional fees associated with the membership.⁵⁸

9 The deceptive nature of the line of credit offers was further enhanced by the fact that
10 consumers first saw, or gained the ability to see, Defendants' shopping club only after signing up
11 and paying a fee.⁵⁹ Tellingly, Defendants' line of credit advertisements were devoid of terms

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13 ⁵⁴ Am. Compl. ¶ 53; Henriksen's Presentation at 3, 6 & 7; Pxs. 6; Px. 44; Px 727-729.

14 ⁵⁵ See Am. Compl. ¶ 54; Michael Henriksen Answer to Am. Compl. [D.E. 156], ¶ 54.

15 ⁵⁶ Buried in the lengthy, fine print of the line of credit's Terms and Conditions was language that
16 restricted consumer's credit to items offered exclusively through Defendants' online shopping
17 club. See Px. 727 at FTC-4275, ¶ 9 ("The line of credit can only be used for purchases on First
18 National Gold website"); Px. 728 at FTC-4286, ¶ 9 ("The line of credit can only be used for
purchases on Global Gold Credit Services website.").

19 ⁵⁷ See Px. 829 (Dacko Dep.), FTC-8979 (153:15-21) (Global Gold's Director of Customer
20 Relations testified that "most products have a down payment"); Px. 725 (Defendants' "status
21 report" listing consumers' orders from the shopping club demonstrates that circa 90% of the
orders required substantial down-payments).

22 ⁵⁸ Buried in the lengthy, fine print of the line of credit's Terms and Conditions was language that
23 provided that the offer involved a \$39.95/month membership fee. See Am. Compl. ¶ 54; Px. 728
at FTC-4285-86; Px. 7 at FTC-21. Similar fine print language also appeared in the order page of
the line of credit offer. See, e.g., Px. 45 at FTC-190; Henriksen's Presentation at 12.

24 ⁵⁹ See, e.g., Px. 814 (Lujan Dep.), FTC-7441 (67:17-20) (Global Gold's Manager of Customer
25 Relations testified that consumers could not view the store prior to signing to the line of credit
offer).

1 such as “store,” “shop,” “shopping club,” “catalog,” etc.⁶⁰

2 The evidence demonstrates that Defendants’ line of credit offers were deceptive.
3 Multiple consumers have indicated that they were under the false impression that they were
4 signing up for a traditional credit card when they applied for the line of credit offers.⁶¹ These
5 consumers were frustrated and angry when they learned that, instead of getting a general purpose
6 credit card, they were enrolled in a costly online shopping club with recurring monthly
7 membership fees, and were also enrolled in multiple additional memberships for other products
8 and services they had never heard of and never agreed to purchase.⁶² Audio recordings of
9 consumer calls to Defendants’ customer service centers further confirm that consumers were
10 deceived by Defendants’ advertising and vividly demonstrate how frustrating and difficult it was
11 for consumers to cancel and disentangle themselves from the various memberships Defendants
12 had enrolled them in without authorization.⁶³

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14 ⁶⁰ See, e.g., Pxs. 6, 42, 44 & 727-29; Henriksen’s Presentation at 3, 6-9,

15 ⁶¹ See, e.g., Px. 382 (Zvolensky Dec.), ¶ 5 (“when I was approved for the credit card I learned
16 that what I obtained was not a Visa card [but] a card that was only good for purchasing items
17 from an online store”); Px. 391 (Tingley Dec.), ¶ 7 (“I was disappointed to learn that First Plus
18 Platinum is not a traditional credit card [but] a line of credit that can only be used to purchase
19 merchandise exclusively at the First Plus Platinum online store”); Px. 375, (Campbell Dec.), Att.
20 C at FTC-976, 978, 980, 990, 1004, 1007, 1010, 1014, 1028, 1055, 1064 (consumers complained
to the Better Business Bureau about being lured to believe that they were receiving a credit card,
but instead receiving membership in an online shopping club); Px. 441 at FTC-1456 (Global
Gold’s customer service manual anticipated consumer confusion about the nature of the offer).

21 ⁶² See *id.* Defendants imposed several separate charges/fees on consumers who signed up for
22 their line of credit offers. First, for the line of credit (the primary product); second, for activation
and/or processing fee; and third – and often fourth – for one or more secondary add-ons. See,
23 e.g., Px. 42 at FTC-180 (the order page of First Plus Platinum listed, in small print, the various
applicable fees); Px. 45 at FTC-189-90 (the order page of First Universal Platinum listed, in
24 small print, the various applicable fees); Henriksen’s Presentation at 12 (same).

25 ⁶³ See, e.g., Px. 564 (customer service file including recordings of customer service calls by
frustrated consumer Rhonda Clark regarding First Plus Platinum and add-on product Vcomm).

1 Data extracted from Defendants' customer relationship management database and
2 gathered from their payment processors further demonstrate that the line of credit offers were a
3 sham.⁶⁴ Of the 500,604 line of credit memberships sold by Defendants from June 22, 2007 to
4 July 30, 2009, only 6%, or 30,331 of these customers were still active members of the shopping
5 clubs as of July 30, 2009, when the court-appointed Receiver took control of Defendants'
6 business operations.⁶⁵ The remaining 470,273, or 94%, of the consumers who originally signed
7 up had cancelled prior to the time when this lawsuit became public.⁶⁶

8 In addition to a high cancellation rate, the merchant accounts associated with the line of
9 credit offers had excessive chargeback rates, which caused both Visa and MasterCard to place
10 Global Gold in their respective chargeback/fraud monitoring programs. The line of credit offers
11 had chargeback rate problems even though the line of credit offers' sales transaction structure
12 artificially reduced the offers' chargeback rate.⁶⁷ According to a report filed by the Receiver, the
13 chargeback/refund rate for the merchant accounts associated with line of credit offers was
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17 ⁶⁴ Px. 527 (Pisano Dec.), ¶¶ 25, 31. Pursuant to the TRO issued by this Court on July 28, 2009
18 [D.E. 18], the FTC raided and froze Defendants' operation on July 30, 2009. The FTC gained
19 access to Defendants' customer relationship management software, AWARE, which recorded the
20 membership information for Defendants' various offers, including the line of credit offers. *See*
21 *id.* at ¶ 25; Px. 829 (Dacko Dep.), FTC-8935 (109:1-15) (Global Gold's Director of Customer
22 Relations on AWARE's membership tracking function); Px. 807 (S. Henriksen Dep.), FTC-6429
23 (172:19-21) (Global Gold's President on AWARE).

24 ⁶⁵ *See* Px. 527 (Pisano Dec.), ¶¶ 25, 31.

25 ⁶⁶ *See id.*

⁶⁷ *See* Px. 910 (Chen Dec.), ¶¶ 34-47 (Visa); Px. 833 (Davidson Dec.), ¶¶ 12-14 (MasterCard).
Defendants imposed several separate fees on consumers who signed up for their line of credit
offers: first, for the line of credit offer; second, for activation and/or processing fee; and third –
and often fourth – for add-ons. *See, e.g.*, Px. 42 at FTC-180. Such structure artificially reduces
the merchant's chargeback rate. *See* Px. 910 (Chen Dec.), ¶¶ 23-26.

1 15.54%.⁶⁸ As a benchmark, chargeback rates of 1% or greater are considered excessive by both
2 Visa and MasterCard.⁶⁹ Defendant Dragon Group, Global Gold’s parent company, even had an
3 employee designated as the “Chargeback Queen.”⁷⁰

4 Only a tiny fraction of those consumers who activated their membership, 135 to 400,
5 ordered products from Defendants’ online store at any given month.⁷¹ The Vantex accountant
6 who handled Global Gold’s QuickBooks testified that the online store had “minimal” activity
7 and generated “minimal” revenue in comparison to the revenue generated through membership
8 fees.⁷² Indeed, while Defendants publicly reported extending hundred of thousands of \$5,000 to
9 \$10,000 line of credits, they had no more than \$1,000,000 to finance those credit lines.⁷³ Such
10 low financing could not mathematically support hundreds of thousands of credit lines at the
11 offered range. This fact strongly suggests that Defendants were well aware that consumers did
12 not understand that they were signing up for a costly shopping club, as opposed to a general
13 unsecured credit card/line, and were unlikely to order products from Defendants’ store.

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16 ⁶⁸ See Ex. A to the Amended Report of Receiver’s Activities [July 29, 2009 through August 31,
17 2009] [D.E. 82-2] at Tab 4, p.56 (summarizing the refund/chargeback rate for Global Gold).

18 ⁶⁹ See Px. 910 (Chen Dec.), ¶ 14 (Visa); Px. 833 (Davidson Dec.), ¶¶ 6-7 (MasterCard).

19 ⁷⁰ Px. 520 (Dragon Group’s organizational chart, Cynthia Granada from “Accounting” is referred
20 to as “Chargeback Queen”); Px. 803 (Granada Dep.), FTC-5496 (53:10-20).

21 ⁷¹ See Px. 725 (Defendants’ “Status Report” lists consumer orders by month).

22 ⁷² Px. 813 (Logbicho Dep.), FTC- 7339 (130:4-12).

23 ⁷³ See Px. 808 (S. Henrikes Dep.), FTC- 6559-60 (301:16-302:12) (Global Gold’s President’s
24 testimony on financing the line of credits with roughly \$1,000,000); Px. 375 at FTC-939 (Global
25 Gold January 30, 2009 report to the Better Business Bureau stated: “more than 400,000
customers have signed up for the program, and it has become the largest unsecured line of credit
offer on the Web.”); Px. 729 (Global Gold’s offer site stated: “Over 400,000 people have signed
up and enjoyed the benefits of Global Gold Credit so far.”).

1 **3. Defendants’ Work From Home Schemes**

2 Defendants also marketed multiple work-from-home opportunities, including Domain
3 Processing, My Search Cash, and One Hour Wealth Builder, through multiple Internet websites,
4 including www.onehourwealthbuilderoffer.com (the “One Hour Wealth Builder Offer Site”) and
5 www.mysearchcashoffer.com (the “My Search Cash Offer Site”), and through a variety of
6 channels, including affiliated websites and blogs.⁷⁴

7 In their advertising, Defendants represented to consumers that if they purchased their
8 work-from-home programs, they would earn substantial income quickly and easily while
9 working from home.⁷⁵ Defendants marketed Domain Processing and One Hour Wealth Builder
10 as “a certified, proven method [] that provides the tools and knowledge to identify valuable
11 [Internet] domains, process them, and make a fortune, all from the comfort of your home.”⁷⁶
12 They marketed My Search Cash as an “easy to use system” that would teach consumers the
13 “Google and eBay Money Making Secrets.”⁷⁷

14 On the Vantex website, Defendants described One Hour Wealth Builder as:

- 15 • “the hot new BizOp offer giving consumers instant access to a robust home based
16 business program by signing up for a 7 day, risk-free trial offer for only \$2.78. In
17 addition to valuable information, users will have access to helpful training videos,
step-by-step tutorials and articles on how to make \$1,000’s [sic] per month on the
Internet flipping domain names.”⁷⁸

18 Typical representations made on the One Hour Wealth Builder Offer Site included the
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21 ⁷⁴ Px. 578 (a screen print and printouts of the homepage of the One Hour Wealth Builder Offer Site); Px. 834 (a print out of the My Search Cash Offer Site).

22 ⁷⁵ *Id.*

23 ⁷⁶ Px. 578, FTC-3296.

24 ⁷⁷ Px. 834, FTC-9057

25 ⁷⁸ Px. 13, FTC-64.

1 following:

- 2 • “Try it Now Risk Free!
3 Work From Home for Just 1 Hour a Day!”
- 4 • “You can begin earning hundreds to thousands of dollars a day in just a few easy
5 steps...”
- 6 • “Making Money is as Easy as 1,2,3”
- 7 • “Work from home, be your own boss, work whenever you like and **make as much
8 money as you want!** With rising gas prices, **you can make more money by staying
9 at home.** One Hour Wealth Builder is the key to unlimited wealth, unlimited free
10 time to spend with your family and friends, and independence from the confines of an
11 office job.”
- 12 • “Remember, **ANYONE** can do this. With our proven method, you can immediately
13 begin earning hundreds to thousands of dollars a day, in just a few minutes of your
14 spare time—all from the comfort of your own home!”
- 15 • “With our method, processing a single domain takes only 15 minutes out of your day.
16 Making at least \$45 per domain, you can process four or more domains in an hour
17 and make more than \$180! That means in just a few hours a day you can make a
18 week’s salary, and in a full work-week you can earn more than what most people
19 make in a month! Follow our earnings chart to see examples of how much you can
20 make:

21 Domains You 22 Process Per Day	23 Money You 24 Make Per Day	25 Money You Make Per Week	Money You Make Per Month	Money You Make Per Year
6 (\$45 each)	\$270.00	\$1,350.00	\$5,805.00	\$69,660.00
8 (\$45 each)	\$360.00	\$1,800.00	\$7,740.00	\$92,880.00
10 (\$45 each)	\$450.00	\$1,935.00	\$8,320.50	\$99,846.00
12 (\$45 each)	\$540.00	\$2,700.00	\$11,610.00	\$139,320.00
15 (\$45 each)	\$675.00	\$3,375.00	\$14,512.50	\$174,150.00 ⁷⁹

⁷⁹ Px. 578; *see also* Am. Compl. [D.E. 112] ¶ 58; S. Henriksen’s Answer [D.E. 163] ¶ 58.

1 Similarly, the My Search Cash Offer Site and advertisements promised consumers
2 substantial income through representations, such as:

- 3 • “Hurry, Big money waiting!”⁸⁰
- 4 • “Make BIG money through Google and eBay Today”⁸¹
- 5 • “Be in charge of your financial future with the My Search Cash wealth builder
6 system!”⁸²
- 7 • “Your money worries are over!”⁸³
- 8 • “Riches range from a few hundred dollars a month to \$50,000 or more a year!”⁸⁴

9 Defendants’ work-from-home advertisements also featured testimonials from consumers
10 making earnings claims. For example, purported One Hour Wealth Builder customer Charles
11 Puckett claimed: “I can’t believe it. In 2 days I made **\$500** AND it was my very first
12 transaction. I must tell you, I still can’t believe how easy it was. Thanks, Matt, for all the great
13 training materials.”⁸⁵ Similarly, Don Waddington proclaimed: “On my very first processing
14 experience, I made \$1,000 in a week!! Since then, I made another **\$995** in profits free and clear
15 ... I never really made money this easily before.”⁸⁶ My Search Cash featured a testimonial
16 which stated: “I saw enough of my friends making money online I finally took the leap and
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19 ⁸⁰ Px. 625 at FTC-3771.

20 ⁸¹ *Id.*

21 ⁸² *Id.* at FTC-3772.

22 ⁸³ *Id.*

23 ⁸⁴ Px. 834.

24 ⁸⁵ Am. Compl. [D.E. 112] ¶ 59; S. Henriksen’s Answer [D.E. 163] ¶ 59; Px. 578.

25 ⁸⁶ *Id.*

1 learned the My Search Cash Process. Now I'm making thousands."⁸⁷ Another exclaimed: "I
2 earned almost \$549.00 a day when I started working from HOME!"⁸⁸

3 Defendants' earnings claims with regard to their work-from-home offers were baseless
4 and unsubstantiated. Rachael McKinnon, Vantex's Compliance Officer and the individual
5 charged with reviewing and approving the advertisements, testified that she was unaware of any
6 data that substantiate the earnings claims on the One Hour Wealth Builder Offer Site.⁸⁹ She
7 further testified that Roumen Todorov, Vantex's Organizational Manager, was the Vantex
8 employee with knowledge as to whether Defendants had any support for the earnings claims.⁹⁰
9 Mr. Todorov subsequently testified that Vantex had no such supporting data.⁹¹ And Jason Soto,
10 the Marketing Director of Vantex and the Dragon Group, testified that it was unlikely that
11 common consumers could have earned the sums listed in the earnings chart on the One Hour
12 Wealth Builder Offer Site.⁹²

13 In written discovery and depositions, the FTC asked Defendants and their employees to
14 provide any data that may substantiate the earnings claims in their work-from-home offers.
15 Defendants were unable to provide such data. In its relevant interrogatory response, Defendant
16 Paid to Process, the owner of Domain Processing and One Hour Wealth Builder, stated that it

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18 ⁸⁷ Px. 834.

19 ⁸⁸ Px. 625, FTC-3776.

20 ⁸⁹ Px. 817 (McKinnon Dep.), FTC- 7579-80 (93:24-94:9) (testifying regarding the earnings table
21 in Px. 578 at FTC-3298).

22 ⁹⁰ *Id.*

23 ⁹¹ Px. 824 (Todorov Dep.), FTC- 8296-97 (104:21-105:14) (testifying regarding the earnings
24 table in Px. 578 at FTC-3298).

25 ⁹² Px. 823 (Soto Dep., Vol. III), FTC-8147 (221:1-6) (testifying regarding the earnings table in
Px. 578 at FTC-3298).

1 was “not in possession of documents and material which may contain information responsive to
2 the instant request [, but] the Court appointed Receiver may be in possession of documents and
3 material which may provide information responsive to the instant request.”⁹³ The Receiver,
4 however, searched the relevant files and found no data that substantiate the earnings claims.⁹⁴
5 The Receiver also found no evidence that any of the testimonials that Defendants used in
6 marketing their work-from-home opportunities were genuine.⁹⁵

7 Unsurprisingly, the vast majority of consumers who signed up for Defendants’ work-
8 from-home programs cancelled their membership shortly after signing up. Of the 84,245 work-
9 from-home memberships Defendants sold from March 12, 2008 to July 30, 2009, only 37%, or
10 31,252 customers, were still active as of July 30, 2009, when the Receiver took control of
11 Defendants’ business operations.⁹⁶ Many of the consumers tried to get their money back.
12 According to a report filed by the Receiver, the chargeback/refund rate for the merchant accounts
13 associated with One Hour Wealth Builder and Domain Processing (fictitious names for Paid to
14 Process, Inc.) was 25.99%, and the chargeback/refund rate for My Search Cash (fictitious name
15 for MSC Online, Inc.) was 8.74%.⁹⁷

16 In short, the undisputed evidence shows that Defendants had absolutely no genuine data
17 to support the earnings claims they used in the marketing of their work-from-home opportunities.

19 ⁹³ Defendant Paid to Process, Inc’s Responses to Plaintiff FTC’s First Set of Interrogatories
20 [D.E. 265], Response to Interrogatory No. 7.

21 ⁹⁴ See Px. 831 (Miller Dec.), ¶ 6.

22 ⁹⁵ See *id.* at ¶ 7.

23 ⁹⁶ See Px. 832 (Second Pisano Dec.), ¶¶ 25, 31.

24 ⁹⁷ See Ex. A to the Amended Report of Receiver’s Activities [July 29, 2009 through August 31,
25 2009] [D.E. 82-2] at Tab 4, p.56 (summarizing the refund/chargeback rate for Paid to Process
and MSC Online).

1 **4. Defendants’ Misrepresentations About Acai Total Burn**

2 Defendants also marketed various purported nutraceuticals, including Acai Total Burn,
3 through multiple Internet websites, including www.acaitotalburnoffer.com (the “Acai Total Burn
4 Offer Site”), and through a variety of channels, including affiliated websites and blogs.⁹⁸

5 In their advertising, Defendants represented to consumers that, if they used Acai Total
6 Burn, they would build muscle, increase their metabolism, lose weight, gain energy, diminish
7 their fatigue, and slow down the aging process.⁹⁹ For example, typical representations made on
8 the Acai Total Burn Offer Site included the following:

- 9 • “Discover the Weight Loss Secrets of the Rainforest
10 Acai is the number one superfood in the world and now we’re making it available to
11 you!”
- 12 • “Why Use Acai Total Burn?”
- 13 ❖ Highest Antioxidants of any Food!
 - 14 ❖ #1 Weight Loss Supplement of 2008!
 - 15 ❖ Oprah and Rachael Ray Approved
 - 16 ❖ Helps Increase Your Metabolism
 - 17 ❖ Fight Fatigue & Increase Energy
 - 18 ❖ Slows down the aging process”
- 19 • “Acai Berry is filled with vitamins and minerals that can aid in weight loss, building
20 muscle and increase overall energy and is rich in antioxidants, fatty acids, fiber and
21 plant compounds that can increase your health. It will be easier to reach your perfect
22 weight! Get Started Today!
- 23 • “Discover the Secret Celebrities have been using for years! Acai is used by
24 celebrities like Brad Pitt, Kate Hudson, Denise Richards and more. To keep them

24 ⁹⁸ Px. 579 (a screen print of the homepage of the Acai Total Burn Offer Site); Am. Compl. [D.E.
25 112] ¶ 61; S. Henriksen’s Answer [D.E. 163], ¶ 61.

⁹⁹ Px. 579, FTC-3300.

1 looking young and feeling energized.”¹⁰⁰

2 Defendants also stated in their advertisements that a study from the University of Florida
3 found that acai berry extracts killed leukemia cells, implying that consumers might ward off
4 disease by taking Acai Total Burn.¹⁰¹

5 Defendants’ claims about the health qualities of Acai Total Burn were completely
6 baseless. During her deposition, Rachael McKinnon, Vantex’s Compliance Officer, testified that
7 the only work done by Defendants to support their health claims about Acai Total Burn consisted
8 of some Internet browsing she conducted.¹⁰² Ms. McKinnon further testified that she was not
9 qualified for her job and did not have a college degree, let alone a science background.¹⁰³ The
10 study that Defendants cited was discovered online by one of their web designers.¹⁰⁴ Defendants
11 consulted no scientists or nutritionists to support their claims regarding the health qualities of
12 Acai Total Burn.¹⁰⁵ Rather, Defendants were working on including statements from the doctor
13 of Vantex’s Marketing Director, Jason Soto, about the benefits of acai.¹⁰⁶ Jason Soto testified
14 that it was his understanding that his doctor never published any articles on acai and that “[i]t
15 was not his primary focus.”¹⁰⁷

16
17 ¹⁰⁰ *Id.*; see also Am. Compl. [D.E. 112] ¶ 64; Henriksen’s Answer [D.E. 163], ¶ 64.

18 ¹⁰¹ See Px. 579, FTC-3301.

19 ¹⁰² See Px. 817 (McKinnon Dep.), FTC-7569-72 (83:5-86:14).

20 ¹⁰³ See *id.* at FTC- 7497-98, FTC-7659 (11:8-12:4, 173:9-174:1).

21 ¹⁰⁴ See *id.* at FTC- 7572 (86:4-21).

22 ¹⁰⁵ See *id.* at FTC-7572 (86:25-87:8).

23 ¹⁰⁶ Px. 823 (Soto Dep. Vol. 3), FTC- 8168-71 (242:13-245:20); see also Px. 642; Px. 643
24 (Vantex e-mail communication regarding testimonials from Jason Soto’s doctor).

25 ¹⁰⁷ Px. 823 (Soto Dep. Vol. 3), FTC- 242:13-245:20.

1 Dr. Edward Blonz, a nutritional scientist hired by the FTC to review Defendants' Acai
2 Total Burn offer, confirmed that there was no scientific evidence to support any of the health
3 claims made by the Defendants with regard to the acai berry or Acai Total Burn.¹⁰⁸ Specifically,
4 there were no studies examining the ability of the acai berry to build muscle, increase energy, or
5 aid in weight loss.¹⁰⁹ Dr. Blonz reviewed the study cited by Defendants, which used extracts of
6 acai berries on leukemia cells in a cultured medium.¹¹⁰ He explained that such an experiment did
7 not, in any way, demonstrate the efficacy of acai berries or Acai Total Burn on human beings for
8 any purpose.¹¹¹ He also found that Defendants' claims that Acai Total Burn would slow the
9 aging process or eliminate toxins had zero scientific support.¹¹² Finally, Dr. Blonz also
10 concluded that none of the other ingredients in Acai Total Burn would result in the health
11 benefits that Defendants promised.¹¹³

12 In sum, Defendants claims about the health qualities of Acai Total Burn were completely
13 groundless and unsubstantiated.

14 **5. Defendants' Failure to Disclose Material Terms Regarding Their Offers**

15 In addition to the misrepresentations described above, in making their various offers –
16 including, but not limited to, Grant Connect, First Plus Platinum, One Hour Wealth Builder and
17 Acai Total Burn – Defendants failed to disclose material terms, such as:

18
19
20 ¹⁰⁸ Px. 796 (Blonz Dec.), ¶¶ 15-20.

21 ¹⁰⁹ *Id.* at ¶ 43.

22 ¹¹⁰ *Id.* at ¶ 44.

23 ¹¹¹ *Id.*

24 ¹¹² *Id.* at ¶¶ 39-42.

25 ¹¹³ *Id.* at ¶¶ 24-25, 31 & 34-36.

- 1) that consumers who signed up for one of the Defendants' products or services would be enrolled in a membership program for the product or service and would have to cancel the program within a limited time period to avoid additional charges;
- 2) that consumers who signed up for one of the Defendants' products or services would be charged for additional unrelated products or services unless consumers took affirmative action to avoid the charges; and
- 3) the amounts of such charges.

Defendants lured consumers with eye-catching banners and e-mails that completely failed to disclose the true nature of the relevant offer. For example, the e-mails and banners that promoted Defendants' line of credit offers typically displayed pictures of what appeared to be credit cards and, in bolded large print, made representations, such as "CLAIM YOUR \$7,500 UNSECURED LINE OF CREDIT" and "YOU'RE APPROVED!."¹¹⁴ They provided no indication about the true and limited nature of the line of credit offer – a costly membership in a shopping club involving significant down-payments.

The websites of the various offers also failed to disclose, or disclose adequately, material information about the true nature of the offers. For example, Defendants induced consumers to sign up for Grant Connect by offering it at a very low cost, ranging from \$0.99 to \$2.78, which they framed as a "processing" fee.¹¹⁵ Consumers who signed up for Grant Connect went through a two-step process.¹¹⁶ The first step began on the homepage of the Grant Connect Offer Site.¹¹⁷

¹¹⁴ Ex. E to Defendants Global Gold and Steven R. Henriksen's Opp. to Mo. for Pre. Injunction at 3 (line of credit banners); Tr. of 9/11/09 Pre. Injunction Hearing at 52:8-18 (defense counsel description of banners and e-mails); Ex. 395 at FTC-1189, FTC-1192 (Att. A to Eckelberry Dec.) (banner that consumer Exkelberry received and reviewed online).

¹¹⁵ See Px. 396 (Kampff Dec.), ¶ 3; Px. 389 (Westmoreland Dec.), ¶ 4. Similar representations were made with respect to the other offers at issue in this matter. See, e.g., Px. 17, FTC-75 (Grant Source America); Px. 382, (Zvolensky Dec.), ¶¶ 3-4 (First Universal Platinum); Px. 391, Tingley, ¶ 5 (First Plus Platinum).

¹¹⁶ See Px. 817 (McKinnon Dep.), FTC- 7584-85 (98:16-99:8) (testifying on the two-steps process for consumers who signed up through the Grant Connect and line of credit offer sites).

1 In addition to the representations described above, this part of the website invited consumers to
 2 “Get Started Today!” by disclosing their name, address, email, and phone number on a form and
 3 clicking on the green “Get Access Now!” or “Find My Money!” buttons.¹¹⁸ No fees or costs
 4 were mentioned in this part of the website.¹¹⁹ Instead, consumers were asked to check a box next
 5 to text stating, “I have Read & Agree with the Privacy Policy,” before they could proceed.¹²⁰
 6 There was also a tiny disclaimer at the very bottom of the homepage, which required significant
 7 scrolling to reach, that stated, “Users submitting this form acknowledge their acceptance of the
 8 Privacy Policy / Terms and Conditions of this Web Site.”¹²¹ To actually view the Terms and
 9 Conditions from the homepage, a consumer would have had to notice and click on the phrase
 10 “Terms and Conditions” in small disclaimer at the bottom of the page.¹²²

11 Consumers who completed step one arrived at step two, a second page on the Grant
 12
 13

14 *See also* Px. 1, FTC-1 (step one in the Grant Connect Offer Site); Px. 2 (same); Px. 11, FTC-35
 15 (same); Px. 15 (Grant Source America). The line of credit offer sites also involved a two-step
 16 process. *See, e.g.*, Px. 6 (step one – First Plus Platinum); Px. 811 (Kimoto Dep.), FTC- 7041-42
 (83:21-84:17) (testifying on the line of credit offer sites’ two-step process).

17 ¹¹⁷ *See, e.g.*, Px 1 and Px. 11.

18 ¹¹⁸ *See, e.g.*, Px. 1, FTC-1; Px. 2, FTC-4; Px. 11, FTC-35; Px. 15, FTC-74.

19 ¹¹⁹ *See, e.g.*, Px. 1; Px. 2; Px. 11; Px. 15; McKinnon Dep. 98:16-99:8; 69:17-70:8. The same
 20 process applied in other offers, such as line of credit and work-from-home opportunities. *See,*
 21 *e.g.*, Px. 6 (First Plus Platinum); Px. 44 (First Universal Platinum); Px. 578 (One Hour Wealth
 Builder).

22 ¹²⁰ *See, e.g.*, Px. 1, FTC-1; Px. 2, FTC-4; Px. 11, FTC-35; Px. 15, FTC-72; Px. 817 (McKinnon
 23 Dep.), FTC- 7584-85 (98:16-99:8). The same process applied in other offers, including the line
 of credit offer. *See, e.g.*, Px. 6, FTC-17 (First Plus Platinum); Px. 44, FTC-185 (First Universal
 Platinum).

24 ¹²¹ *See, e.g.*, Px. 1, FTC-3; Px. 2, FTC-5; Px. 15, FTC-73.

25 ¹²² *See, e.g., id.*

1 Connect Offer Site where they could complete the sign-up process.¹²³ This page of the website
 2 was substantially similar to the Grant Connect Offer Site homepage. It featured the same
 3 graphics, testimonials, and representations regarding the likelihood of obtaining grants using
 4 Grant Connect, and a similar layout.¹²⁴ The form with the information provided by the consumer
 5 was still displayed; however, it also contained fields for consumers to enter their credit or debit
 6 card type, number, expiration date, and authorization code.¹²⁵ In addition, the form in the second
 7 step contained text at the top, which read either, “Limited Time: \$2.78 Today Only!” or “Limited
 8 Time: \$.99 Today Only!”¹²⁶

9 In some instances, consumers also were asked to check a box next to new text stating, “I
 10 have Read & Agree with the Terms and Conditions, Privacy Policy, and Offer Details below”
 11 before they could proceed.¹²⁷ This checkbox appeared only during step two of the signup
 12 process.¹²⁸ In some instances, there was also a tiny disclaimer at the bottom of the page that
 13 states, “Users submitting this form acknowledge their acceptance of the Privacy Policy / Terms
 14 and Conditions of this Web Site.”¹²⁹ To actually view the Terms and Conditions from the
 15

16
 17 ¹²³ See, e.g., Px. 5; Px. 17; Px. 817 (McKinnon Dep.), FTC-584-55 (98:16-99:8). The same
 process applied in other offers, including the line of credit offer. See, e.g., Px. 42; Px. 45.

18 ¹²⁴ Compare Px. 1 and Px. 5; Px. 15 and Px. 17; see also line of credit offer sites: Px. 6 and Px.
 19 42; Px. 44 and Px. 45.

20 ¹²⁵ See, e.g., Px. 5 and Px. 17; see also line of credit offers sites: Px. 42 and Px. 45.

21 ¹²⁶ See, e.g., Px. 5; Px. 17; see also Px. 42 (line of credit text read “Rush Activation \$2.78 Today
 22 Only!”); Px. 45 (same).

23 ¹²⁷ See, e.g., Px. 5 and Px. 17; see also line of credit offer sites: Px. 42 and Px. 45.

24 ¹²⁸ Compare Px. 1, FTC-1 and Px. 5, FTC-13; Px. 15, FTC-72 and Px. 17, FTC-76; see also line
 of credit offer sites: Px. 6, FTC-17 and Px. 42, FTC-179; Px. 44, FTC-185 and Px. 45, FTC-189.

25 ¹²⁹ Px. 5 and Px. 17; see also line of credit offer sites: Px. 42 and Px. 45.

1 second page of the Grant Connect Offer Site, a consumer would have had to notice and click on
 2 the phrase, “Terms and Conditions,” contained in the text next to the checkbox or in the
 3 disclaimer at the bottom the page.¹³⁰

4 In numerous instances, Defendants deceptively enrolled consumers in a costly
 5 membership program for Grant Connect and charged consumers’ credit cards or debited their
 6 bank accounts on a recurring monthly basis unless the consumers canceled their memberships
 7 within seven days of enrollment.¹³¹ Defendants charged or debited consumers \$39.95 per month
 8 if they did not cancel their membership within the seven day period.¹³²

9 In numerous instances, Defendants also deceptively enrolled consumers in, and charged
 10 their credit cards or debit their bank accounts for, additional products and services, including, but
 11 not limited to: ID Pro Alert (described by Defendants as “identity theft protection”), ID Lock On
 12 (also described by Defendants as “identity theft protection”), MemberLegalNet. (described by
 13 Defendants as “a team of legal experts to help anytime you need them!”), and/or SmartHealth
 14
 15
 16

17
 18 ¹³⁰ Px. 5; Px. 17; *see also* line of credit offers: Px. 42 and Px. 45.

19 ¹³¹ *See* Am. Compl. [D.E. 112], ¶ 71; Michael Henriksen’s Answer to Am. Compl. [D.E. 156], ¶
 20 71 (admitting that consumers were enrolled in membership program and charged on a monthly
 21 basis until they cancelled); Px. 376 (Berry Dec.), ¶¶ 4,6; Px. 377 (Drake Dec.), ¶¶ 5, 9; Px. 378,
 22 (Westrich Dec.), ¶¶ 3, 5; Px. 379 (Nobles Dec.), ¶¶ 4, 10; Px. 380, (Wall Dec.), ¶¶ 3, 6-7, 9; Px.
 23 381, (Hicks Dec.), ¶¶ 7-8; Px. 383, (Loiseau Dec.), ¶¶ 4, 10; Px. 385 (Fields Dec.), ¶¶ 3-4; Px.
 386 (Rauscher Dec.), ¶¶ 4, 7-8; Px. 387 (Lange Dec.), ¶¶ 6, 12-13; Px. 389 (Westmoreland
 Dec.), ¶¶ 4, 6-7; Px. 390 (Walker Dec.), ¶¶ 4, 6; Px. 393 (Shea Dec.) ¶¶ 3, 5-6; Px. 396
 (Kampf), ¶¶ 3-5.

24 ¹³² *See* Px. 376 (Berry Dec.), ¶ 5; Px. 377 (Drake Dec.), ¶ 9; Px. 378, (Westrich Dec.), ¶ 5; Px.
 25 379 (Nobles Dec.), ¶ 10; Px. 380 (Wall Dec.), ¶ 7; Px. 381 (Hicks Dec.), ¶ 8; Px. 383 (Loiseau
 Dec.), ¶ 10; Px. 386 (Rauscher Dec.), ¶ 7; Px. 387 (Lange Dec.), ¶ 12; Px. 389 (Westmoreland
 Dec.), ¶ 6; Px. 390 (Walker Dec.), ¶ 6.

1 Gold (described by Defendants as “quality, affordable health benefits”).¹³³ These products,
 2 typically unrelated to the offer Defendants’ marketed, were generally unwanted by consumers,
 3 and had very little value, if any. For example, Vcomm, purportedly a long-distance calling
 4 service, was a common add-on to, among other offers, Defendants’ line of credit offers.¹³⁴ In
 5 2008, Defendants charged consumers for \$5.2 million worth of memberships to Vcomm, but
 6 spent only \$2,000 in fulfillment costs for telecommunication services.¹³⁵ Unsurprisingly,
 7 Vcomm was subject to Visa’s and MasterCard’s respective chargeback/fraud monitoring
 8 programs due to excessive chargebacks.¹³⁶

9 Premier Plus, an add-on described as a “personalized desktop with free e-mail and SMS
 10 sending,”¹³⁷ was used by “very few” customers according to Vantex’s Compliance Officer.¹³⁸

11 When asked why usage of the product was so low, she responded that “[i]t’s probably just
 12
 13

14 ¹³³ See Px. 5, FTC-14; Px. 458 (list of various upsells/add-ons from Vantex’s Compliance
 15 Officer’s compliance binder); Px. 817 (McKinnon Dep.), FTC-7542, 7609, 7612-13, 7626
 16 (56:13-21, 123:8-22, 126:15-127:5, 140:13-16); Px. 376, (Berry Dec.), ¶¶ 4,7; Px. 377, (Drake
 17 Dec.), ¶¶ 5, 10; Px. 378 (Westrich Dec.), ¶¶ 3, 6, 10-11; Px. 379 (Nobles Dec.), ¶¶ 4, 7, 9; Px.
 18 380 (Wall Dec.), ¶¶ 3, 6-8; Px. 381, (Hicks Dec.), ¶¶ 7-8; Px. 382, (Zvolensky Dec.), ¶¶ 9, 11-12;
 19 Px. 383 (Loiseau Dec.), ¶¶ 4-5, 8-9; Px. 385 (Fields Dec.), ¶¶ 3-4; Px. 386 (Rauscher Dec.), ¶¶ 4,
 7-9; Px. 387 (Lange Dec.), ¶¶ 6, 12, 17, 20; Px. 389 (Westmoreland Dec.), ¶¶ 4, 6-10; Px. 390
 (Walker Dec.), ¶¶ 4, 6-7; Px. 391 (Tingley Dec.), ¶¶ 9-10; Px. 392 (Barlow Dec.), ¶¶ 3, 5; Px.
 396, (Kampff Dec.), ¶¶ 3-4; Px. 792 (Johnson Dec.), ¶ 6.

20 ¹³⁴ See, e.g., Px. 45 at FTC-190; Px. 42, FTC-180 (Vcomm sold as an upsell/add-on to First
 21 Universal Platinum and First Plus Platinum).

22 ¹³⁵ Px. 813 (Logbicho Dep.), FTC- 7341-43 (132:23-133:21) (Vantex’s accountant on Vcomm);
 Px. 656, FTC-3981 (accounting report re Vcomm by Vantex’s accountant).

23 ¹³⁶ Px. 910 (Chen Dec.), ¶¶ 48-55 (Visa); Px. 833 (Davidson Dec.), ¶¶ 16-18 (MasterCard).

24 ¹³⁷ Px. 42, FTC-180; Px. 490; see also Px. 824 (Todorov Dep.), FTC-8324 (132:6-20).

25 ¹³⁸ Px. 817 (McKinnon Dep.), FTC- 7599 (113:18-20)..

1 something nobody needs.”¹³⁹ And while none of the Defendants were licensed to practice law in
2 Nevada or elsewhere, MemberLegalNet.– a purported “Discount Legal Services”¹⁴⁰ – was a
3 common add-on to their Grant Connect offer.¹⁴¹

4 Charges for Defendants’ offers and add-ons were not adequately disclosed.¹⁴² In some
5 instances, the following inadequately disclosed language appeared, in small densely packed text,
6 below the “Get Access Now!” button on the second page of the Grant Connect Offer Site:

7 OFFER DETAILS: By clicking “Submit” I am authorizing Grant Connect to
8 charge my credit or debit card a \$2.78 processing fee for my 7 days trial
9 membership. After the 7 day trial, if I do not call customer service to cancel, the
10 account I provided here will be charged \$39.95 each month thereafter. I may
cancel by calling the customer service number of Grant Connect listed in the
Terms and Conditions.

11 As an additional bonus, you will also receive a 14 day trial of SmartHealth Gold
12 medical and lifestyle benefits for a processing fee of \$1.65. Unless you cancel,
13 SmarthHealth Gold will bill your account \$19.95 for the services each month
thereafter. You have the right to cancel by calling the number listed at
smarthealthgold.com.

14 As an additional bonus, I agree to receive a 14 day trial to MemberLegalNet.
15 After the trial period, unless I cancel, MemberLegalNet will charge my account
16 \$12.95 a month thereafter. I may cancel by calling the toll free number located at

17
18
19
20 ¹³⁹ *Id.* at 113:18-23.

21 ¹⁴⁰ Px. 353 (Nevada Certificate of Business Fictitious Firm Name for Member Legal Net).

22 ¹⁴¹ *See, e.g.*, Px. 17. FTC-77 (MemberLegalNet as an add-on to Grant Source America). In
23 *Pioneer Title v. State Bar*, 74 Nev. 186, 326 P.2d 408 (1958), the Nevada Supreme Court held
24 that only lawyers who are licensed to practice law in Nevada may engage in the marketing and
selling of legal services in the State. In any event, selling legal services through a hidden upsell
25 does not conform to the language and spirit of the Nevada Rules of Professional Conduct.

¹⁴² Am. Compl. [D.E. 112] ¶ 73; *see* Px. 817 (McKinnon Dep.), 98:16-99:8.

1 memberlegalnet.com.¹⁴³

2 The inconspicuous Grant Connect “Offer Details” and “Terms and Conditions” failed to
3 adequately inform consumers that they would be enrolled in and charged for a membership
4 program if they failed to cancel within seven days, and that they would be enrolled in and
5 charged for additional products or services, especially in light of Defendants’ more prominent
6 representations that consumers would receive Grant Connect at a very low cost ranging from
7 \$0.99 to \$2.78.¹⁴⁴ In numerous instances, consumers learned that Grant Connect was a costly
8 membership program, and that they had been enrolled for one or more additional products or
9 services only after their accounts had been charged.¹⁴⁵

10 Defendants also used websites that promoted non-grant related products or services to
11 enroll consumers in the Grant Connect membership program and to charge their credit cards or
12 debit their bank accounts.¹⁴⁶ For example, on the First Plus Platinum Offer Site Defendants
13 failed to disclose, or to disclose adequately, to consumers who applied for First Plus Platinum
14 cards that they would be enrolled in, and that their credit or debit card would be charged for,
15 membership programs, including a costly shopping club and additional products or services, such
16
17

18 ¹⁴³ Px. 5; Px. 17. Similar language appeared on the websites of other offers. *See, e.g.*, Px. 42,
19 FTC-180 (First Plus Platinum); Px. 45 (First Universal Platinum); Px. 579 (Acai Total Burn).

20 ¹⁴⁴ *See, e.g.*, Px. 5, Px. 17 & Px. 18.

21 ¹⁴⁵ Px. 376 (Berry Dec.), ¶ 6; Px. 377 (Drake Dec.), ¶ 9; Px. 378 (Westrich Dec.) ¶ 5; Px. 379
22 (Nobles Dec.), ¶¶ 7 & 10; Px. 380 (Wall Dec.), ¶ 6-8; Px. 381 (Hicks Dec.), ¶¶ 8-9; Px. 382
23 (Zvolensky Dec.), ¶¶ 9, 11-12; Px. 385 (Fields Dec.), ¶ 4; Px. 386 (Rauscher Dec.), ¶ 7; Px. 387
24 (Lange Dec.), ¶ 12; Px. 388 (Centeno Dec.), ¶ 7; Px. 389 (Westmoreland Dec.), ¶¶ 6-7; Px. 390
25 (Walker Dec.), ¶ 6; Px. 391 (Tingley Dec.), ¶¶ 9-10; Px. 392 (Barlow Dec.) ¶¶ 5-6; Px. 791
(Haydn Dec.), ¶ 4; *see also* Px. 792 (Johnson Dec.), ¶ 6 (similar circumstances, but with respect
to the work-from-home offer Domain Processing).

¹⁴⁶ *See* Am. Compl. [D.E. 112] ¶ 77; S. Henriksen’s Answer [D.E. 163], ¶ 77.

1 as Grant Connect.¹⁴⁷ In some instances, fine print at the bottom of the First Plus Platinum Offer
2 Site stated:

3 Offer Details: By submitting this order you give First Plus Platinum Credit
4 authorization to charge your debit or credit card a processing fee of \$2.78 for the
5 7 day trial membership. The \$7,500 credit account is for use toward thousands of
6 our merchandise items only. After the 7 day trial, unless you cancel, we will
7 automatically bill the account your provided us today for \$39.95, and each month
8 thereafter. All monthly fees will be applied to any outstanding line of credit
9 balance. This charge will appear as debit by "Credit Line" on your statement.
10 You have the right to cancel any time by calling the toll-free number provided in
11 the Terms and Conditions.

9 You also agree to receive a 15 day FREE trial membership for Grant Connect
10 where you can get easy access to free government money. After the 15-day trial,
11 unless you cancel, Grant Connect will charge your account \$19.95 each month
12 thereafter. You have the right to cancel any time by calling the toll-free number
13 located at grantconnect.com.

12 As an additional bonus, you will also receive a FREE 10 day trial of Vcomm300
13 International and Long Distance Calling Service. Unless you cancel, Vcomm300
14 will bill your account \$14.95 for the services each month thereafter. You have
15 the right to cancel anytime by calling the toll-free number located at
16 vcomm300.com.¹⁴⁸

16 Buried in paragraph 23 of First Plus Platinum's eight pages, single spaced Member
17 Agreement was the following language:

18 PROMOTIONAL OFFERS: As the First Plus Platinum Offer Terms and
19 Conditions and web site indicated, I accepted enrollment for up to 2 additional
20 promotional product offers using the relevant data I entered for the First Plus
21 Platinum Offer. The following are links to Terms of all our affiliated third party
22 promotional offers: Grant Connect, Vcomm300, VCommUnlimited, CarExpress,
23 Premier Plus Member. For additional information regarding the offers I signed

23 ¹⁴⁷ See, e.g., Px. 395 (Eckelberry Dec.), ¶ 7 & Att. D, FTC-1194 (declaration of the CEO of
24 Sunbelt Software).

25 ¹⁴⁸ See Px. 395 (Eckelberry), ¶ 7 & Att. D, FTC-1194; Am. Compl. [D.E. 112] ¶ 79; S.
Henriksen's Answer [D.E. 163], ¶ 79.

1 up for, I can refer to the website where I signed up, or I can call Customer
2 Service at 1-800-595-5110.¹⁴⁹

3 In numerous instances, consumers learned they had been enrolled in Defendants'
4 membership programs only after their accounts had been charged monthly fees.¹⁵⁰

5 **6. Defendants' Unauthorized Debiting Of Consumers' Bank Accounts**

6 In numerous instances, Defendants debited consumers' bank accounts on a recurring
7 basis without providing a copy of a written authorization signed, or similarly authenticated by
8 the consumer, for preauthorized electronic fund transfers from the consumer's account.¹⁵¹

9 **7. Defendants' Phony Testimonials**

10 In marketing many of their products and services, including Grant Connect, One Hour
11 Wealth Builder and Acai Total Burn, Defendants often used phony testimonials and
12 endorsements. For example, Defendants used testimonials allegedly obtained from consumers
13 who used their products or services.¹⁵² A purported Grant Connect user claimed to have
14 obtained a grant for \$330,000.¹⁵³ A purported customer of My Search Cash, one of Defendants'
15 work-from-home products, boasted of making "thousands."¹⁵⁴ In many, if not all, instances

16 ¹⁴⁹ Px. 7.

17 ¹⁵⁰ Px. 376, (Berry Dec.) ¶ 6; Px. 377 (Drake Dec.), ¶ 9; Px. 378 (Westrich Dec.), ¶ 5; Px. 379
18 (Nobles Dec.), ¶¶ 7 & 10; Px. 380 (Wall Dec.) ¶ 6-8; Px. 381 (Hicks Dec.), ¶¶ 8-9; Px. 382
19 (Zvolensky Dec.), ¶¶ 9, 11-12; Px. 385 (Fields Dec.), ¶ 4; Px. 386 (Rauscher Dec.), ¶ 7; Px. 387
20 (Lange Dec.), ¶¶ 12; Px. 388 (Centeno Dec.), ¶ 7; Px. 389 (Westmoreland Dec), ¶¶ 6-7; Px. 390
21 (Walker Dec.), ¶ 6; Px. 391 (Tingley Dec.), ¶¶ 9-10; Px. 392 (Barlow Dec.), ¶¶ 5-6; Px. 791
(Haydn Dec.), ¶ 4; Px. 792 (Johnson Dec.), ¶ 6.

22 ¹⁵¹ See, e.g., Px. 382 (Zvolensky Dec.), ¶ 6; Px. 383 (Loiseau Dec.), ¶ 13; Px. (Fields Dec.), ¶ 6;
Px. 390 (Walker Dec.), ¶ 6.

23 ¹⁵² See, e.g., Px. 1, FTC-2; Px. 2, FTC-4; Px. 6, FTC-18; Px. 44, FTC-186.

24 ¹⁵³ Px. 1, FTC-2; Px. 2, FTC-4.

25 ¹⁵⁴ Px. 834, FTC-9058.

1 these testimonials were completely fabricated. For example, Defendants collected testimonials
 2 for Grant Connect from a third party before any customers had even started using the product.¹⁵⁵
 3 Similarly, with regard to Defendants' work-from-home offers, the Receivers searched, but could
 4 find no evidence in Defendants' business records that the purported customer testimonials were
 5 genuine.¹⁵⁶ And Vantex's own Compliance Officer, McKinnon, admitted that she had never
 6 spoken to any consumer who had ever used any of Defendants' products and services.¹⁵⁷

7 Defendants also represented, expressly or by implication, that celebrities such as Oprah
 8 Winfrey and Rachael Ray used, and were pleased, with their products. For example, Defendants
 9 claimed that Acai Total Burn was approved by Oprah Winfrey and Rachael Ray.¹⁵⁸ These
 10 claims were false, which Defendants realized, yet purposefully ignored.¹⁵⁹ Neither Ms. Winfrey
 11 nor Ms. Ray endorses any acai related products.¹⁶⁰ In fact, the Oprah Winfrey Show has sued
 12 numerous acai vendors for infringing on her trademark and right of publicity, and has been
 13
 14

15
 16 ¹⁵⁵ See Px. 566 (Gray Dec.), ¶¶ 15-16 (Defendant Gray declared that none of the Grant Connect testimonials came from consumers who used Grant Connect).

17 ¹⁵⁶ Px. 831 (Miller Dec.), ¶ 7.

18 ¹⁵⁷ Px. 817 (McKinnon Dep.), FTC-7545-46 (59:16-60:22). Tellingly, Defendants did not obtain
 19 a single consumer testimonial for their products after the Compliance Officer arrived in May
 20 2008; instead, they used the same testimonials that were "on file." *Id.* at FTC-7546-47 (60:20-
 61:15).

21 ¹⁵⁸ See, e.g., Px. 579, FTC-3300 (purported endorsements on the Acai Total Burn Offer Site).

22 ¹⁵⁹ See Px. 824 (Todorov Dep.), FTC- 8301-02 (108:10-110:5) (testimony of Vantex's
 23 Operations Manager); Px. 772 (e-mail exchange discussing the misuse of Oprah's name in
 connection with acai).

24 ¹⁶⁰ See Px. 787 (Pattison Dec.), ¶¶ 9-10 (declaration of the CFO of Harpo, Inc., which owns the
 25 trademark OPRAH); Px. 788 (Ray Dec.), ¶ 7 (declaration of Rachel Ray); Px. 817 (McKinnon
 Dep.), (84:17-85:6) (testimony of Vantex's Compliance Officer).

1 cooperating with state regulators and the FTC with respect to that matter.¹⁶¹

2 **8. Consumer Injury**

3 According to data extracted from Defendants' customer relationship management
4 database, consumer injury stemming from Defendants' various offers and related add-ons/upsells
5 exceeded \$29.7 million.¹⁶²

6 Defendants generated the most revenue through their deceptive line of credit offers.
7 Defendants enrolled over 500,000 consumers in the line of credit offers from June 22, 2007 to
8 July 30, 2009, while generating sales of approximately \$21.5 million before refunds.¹⁶³ During
9 the same period, Defendants issued refunds totaling approximately \$2.7 million or 13% of the
10 total billed.¹⁶⁴ Thus, Defendants' gross sales after returns during the life of the line of credit
11 scam totaled approximately \$18.7 million.¹⁶⁵

12 Defendants often bundled the line of credit offers with Vcomm, a telecommunications
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16 ¹⁶¹ See Px. 787 (Pattison Dec.), ¶ 12.

17 ¹⁶² Px. 830 (Dale Dec.) ¶¶ 3-9, Att. A, FTC-9030 (FTC Data Analyst's summary of billing data
18 extracted from the AWARE System, Defendants' customer relationship management database,
19 and sales and refund data for Vcomm received from the Court-appointed Receiver). See also,
20 Px. 573 (Berfield Dec.) ¶¶ 2-3 (describing the AWARE System and how the billing data for
21 Grant Connect and the Line of Credit offers was supplied to the FTC); Px. 907 (Berfield Dec. 2)
22 ¶¶ 2-7 (describing the AWARE System and how the billing data for all Defendants' offers,
23 except Vcomm, was supplied to the FTC); Px. 527 (Pisano) ¶¶ 25-30 Atts. A (FTC Technical
24 Forensic Examiner who received the AWARE data from Berfield and preserved it); Px. 832
25 (Pisano 2) ¶¶ 25-30 (FTC Technical Forensic Examiner who received additional AWARE data
from Berfield and preserved it);

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

1 service that was sold primarily as an add-on,¹⁶⁶ and thereby generated additional sales in excess
2 of \$8.2 million before refunds from January 2008 to June 2009.¹⁶⁷ During the same period,
3 Defendants' refunds and chargebacks totaled \$986,812.24 or 12% of the total billed for Vcomm.
4 ¹⁶⁸ Thus, Defendants' gross sales after returns for Vcomm exceeded \$7.2 million. ¹⁶⁹

5 Defendants generated millions of dollars through their grant offers. From October 2008
6 to July 30, 2009, Defendants enrolled over 52,379 consumers in their grant offers, while
7 generating sales of approximately \$2.76 million before refunds.¹⁷⁰ During the same period,
8 Defendants issued refunds totaling approximately \$500,164.47 or 18% of the total billed.¹⁷¹
9 Thus, Defendants' gross sales after returns during the life of the grant offers totaled
10 approximately \$2.26 million.¹⁷²

11 Consumer injury stemming from the Defendants' work-from-home opportunities was also
12 significant. Defendants enrolled over 84,000 consumers from March 12, 2008 to July 30, 2009
13
14
15

16 ¹⁶⁶ See, e.g., Px. 45 at FTC-190; Px. 42, FTC-180 (Vcomm sold as an upsell/add-on to First
17 Universal Platinum and First Plus Platinum); Px. 375 (Cambell Dec.) ¶¶ 9-10 Att. C-D (Better
18 Business Bureau consumer complaints and response letters regarding Global Gold and showing
that Vcomm was often an upsell).

19 ¹⁶⁷ Px. 830 (Dale Dec.) ¶¶ 3-9, Att. A, FTC-9030; Amended Report of Receiver's Activities
20 [July 29, 2009 through August 31, 2009] With Redacted Tab 10 [D.E. 82-2 at 55].

21 ¹⁶⁸ *Id.*

22 ¹⁶⁹ *Id.*

23 ¹⁷⁰ Px. 830 (Dale Dec.) ¶¶ 3-9, Atts. A & D, FTC-9030 & FTC-9038; Px. 527 (Pisano), ¶¶ 32-33
and Att. B, FTC-2543.

24 ¹⁷¹ *Id.*

25 ¹⁷² *Id.*

1 while generating sales of approximately \$1.8 million before refunds.¹⁷³ During the same period,
2 Defendants issued refunds totaling approximately \$366,737.37 or 20% of the total billed.¹⁷⁴
3 Thus, Defendants' gross sales after returns during the life of the work-from-home scams totaled
4 approximately \$1.4 million.¹⁷⁵

5 Defendants' first sale of Acai Total Burn took place sometime in June 2009, and sales
6 ceased on or about July 30, 2009 when the court-appointed Receiver took control of Defendants'
7 business operations.¹⁷⁶ As a result, Defendants only managed to enroll approximately 673
8 consumers in a continuity program that included monthly shipments and recurring charges for
9 Acai Total Burn and Total Cleanse, a colon cleanser.¹⁷⁷ While sales for Acai Total Burn were
10 limited to approximately \$8,749.45 during this brief period of time,¹⁷⁸ Defendants were ramping
11 up their effort to market Acai Total Burn and other nutraceuticals when their activities were
12 disrupted by this lawsuit.¹⁷⁹

13 **B. THE DEFENDANTS**

14 Defendants were a team of nine individuals who owned, managed and/or directly
15 participated in a common enterprise of twenty-two business entities that created, marketed and
16

17 ¹⁷³ Px. 830 (Dale Dec.) ¶¶ 3-9, Atts. A & C, FTC-9030 & FTC-9036; Px. 832 (Pisano 2), ¶ 17
18 and Att. D, FTC-9048.

19 ¹⁷⁴ *Id.*

20 ¹⁷⁵ *Id.*

21 ¹⁷⁶ Px. 830 (Dale Dec.) ¶¶ 3-8 & 11, Atts. A & E, FTC-9030 & FTC-9039; Px. 832 (Pisano 2), ¶
22 18 and Att. E, FTC-9049.

23 ¹⁷⁷ *Id.*

24 ¹⁷⁸ *Id.*

25 ¹⁷⁹ Px. 558, 5/14/09 email re: "Updates – long but important please read" (showing that
Defendants were getting ready to launch Acai).

1 sold Grant Connect, First Plus Platinum, One Hour Wealth Builder, Acai Total Burn and other
 2 products and services to thousands of consumers throughout the United States. While
 3 Defendants have attempted to disassociate themselves from each other since the filing of this
 4 lawsuit, they were once proud of their “collective enterprise.”¹⁸⁰ In an email to co-defendants
 5 Michael Henriksen, Johnnie Smith, Randy O’Connell, Tasha Jn Paul and Steven Henriksen
 6 regarding the grant and line of credit offers, Defendant Gray wrote, “First, let me say that I like
 7 the word ‘Team’ when I describe our collective enterprise because I think it is an apt description
 8 how we operate together.”¹⁸¹

9 **1. The Las Vegas Defendants**

10 Defendant **Kyle R. Kimoto** (“Kyle Kimoto”) was the architect of Defendants’ schemes.
 11 Until recently, he was married to defendant Juliette Kimoto.¹⁸² Prior to his incarceration in 2008,
 12 Kyle Kimoto lived in Las Vegas, Nevada.¹⁸³

13 This is not the first time the FTC has sued Kyle Kimoto and/or companies controlled by
 14 him. On August 8, 2002, the FTC sued Zentel Enterprises, Inc. (“Zentel”), one of Kyle Kimoto’s
 15 companies, in *FTC v. Capital Choice Consumer Credit, Inc.*, Civ No. 02-21050 (S.D. Fla. 2002)
 16 (the “Capital Choice Case”), alleging deceptive marketing of advance fee credit cards and unfair
 17 debiting of consumer bank accounts for upsells.¹⁸⁴ On May 21, 2003, the Court in the Capital

19 ¹⁸⁰ Px. 680-681, FTC-4028 & FTC-4031 (1/28/09 e-mail chain re “New Co-Brand Partner for
 20 Grant Connect and LOC); Px. 804 (Gray Dep.), FTC-5766 (225:5-23).

21 ¹⁸¹ *Id.*

22 ¹⁸² Px. 811 (K. Kimoto Dep.), FTC-6967 (9:11-19); Am. Compl. [D.E. 112] ¶ 34; Michael
 23 Henriksen Answer to Am. Compl. [D.E. 156], ¶ 34.

24 ¹⁸³ Px. 811 (K. Kimoto Dep.), FTC-6967 (9:4-6).

25 ¹⁸⁴ Px. 598, Final Judgment in *FTC v. Capitol Choice*, FTC-3514, ¶ 7 (referencing that the
 Second Amended Complaint adding Zentel Enterprises, Inc.) & FTC-3540, ¶ 74 (“the Capital

1 Choice Case issued a Stipulated Final Judgment and Order as to Zentel and other defendants (the
2 “Zentel Order”).¹⁸⁵ Kyle Kimoto signed the Zentel Order as President of Zentel.¹⁸⁶ On February
3 4, 2003, the FTC sued Kyle Kimoto in *FTC v. Assail, Inc., et al.*, Case No. 6:03-CV-7 (W.D.
4 Tex.)(the “Assail Case”), a case arising out of an advance fee credit card scam very similar to the
5 “line of credit” scam alleged in the amended complaint (the “Assail Scheme”). On September
6 22, 2003, the FTC obtained a permanent injunction banning Kyle Kimoto and Assail, Inc. from
7 telemarketing.¹⁸⁷ On September 24, 2004, the FTC obtained an order imposing a monetary
8 judgment in the amount of \$105,706,000.00 against Kyle Kimoto and Assail, Inc., jointly and
9 severally, with the court lifting the previously entered suspended judgment in light of its finding
10 that Kyle Kimoto lied on his financial statements to the FTC and transferred hidden assets.¹⁸⁸

11 On September 5, 2008, Kyle Kimoto was sentenced to a term of imprisonment of 350
12 months and was ordered to pay restitution in the amount of \$34,915,321.31 for his role in various
13 offenses arising out of the Assail Scheme, which victimized over 300,000 consumers throughout
14 the United States.¹⁸⁹

15
16 Choice Defendants contracted with Defendant Zentel, Kyle Kimoto’s company, to market the
17 upsales...”).

18 ¹⁸⁵ *Id.* at FTC-3516, ¶ 13; *see also FTC v. Capital Choice Consumer Credit, Inc.*, No. 1:02-cv-
21050-UU (S.D. Fla. 2002) [D.E. 260].

19 ¹⁸⁶ *FTC v. Capital Choice Consumer Credit, Inc.*, No. 1:02-cv-21050-UU (S.D. Fla. 2002) [D.E.
20 260 at 18].

21 ¹⁸⁷ *FTC v. Assail, Inc., et al.*, Case No. 6:03-CV-7 (W.D. Tex.) [D.E.162]. *See also FTC v.*
22 *Assail*, 410 F.3d 256, 260 (5th Cir. 2005); *U.S. v. Kyle Kimoto*, 588 F.3d 464, 476 (7th Cir.
2009).

23 ¹⁸⁸ Px. 595, Amended Order in *FTC v. Assail*, FTC-3483.

24 ¹⁸⁹ *U.S. v. Kimoto*, No. 3:07-cr-30089-MJR (S.D. Ill. Oct. 14, 2008) [D.E. 116]; *U.S. v. Kimoto*,
25 588 F.3d 464, 495 (7th Cir. 2009); The United States Attorney Southern District of Illinois News
Release, *Nevada Resident Sentenced For Role In Fraudulent Telemarketing Scheme* (Sept. 8,

1 Kyle Kimoto set up corporate defendant Vertek for his then wife, Defendant Juliette
 2 Kimoto.¹⁹⁰ Prior to entering prison, Kyle Kimoto held a leadership position with Vertek.¹⁹¹ He
 3 was involved in every aspect of Defendants' deceptive schemes, including product
 4 development,¹⁹² marketing,¹⁹³ customer service, and the setting up of merchant accounts.¹⁹⁴

5
 6 2008) at
 7 http://www.justice.gov/usao/ils/press/2008/September/09082008_Kimoto_press%20release.htm
 8 (last visited Dec. 22, 2010).

9 ¹⁹⁰ See Px. 829 (Dacko Dep.), FTC-8855-56 (29:18-30:9).

10 ¹⁹¹ See Px. 601 (J. Kimoto Aff.), ¶ 2 (“In early 2008, while my ex-husband, Kyle R. Kimoto, was
 11 preparing for his criminal trial, Defendant Johnnie Smith was placed in charge of the day-to-day
 12 business operations of Vantex.” This more than suggests that Kyle Kimoto was in charge before
 13 Smith took over.); Px. 624, 6/3/10 letter from Jn Paul to the Court, FTC-3748 (“Initially [Jn
 14 Paul] reported directly to Kyle Kimoto and after he was no longer associated with the company
 15 [Jn Paul] reported to Johnnie Smith.”).

16 ¹⁹² See Px. 565 (O’Connell Dec.), ¶¶ 9-12 (Kyle Kimoto approached O’Connell and Gray to
 17 develop the grant program that would become Grant Connect); Px. 566 (Gray Dec.), ¶¶ 9-13
 18 (“Mr. Kimoto introduced Mr. O’Connell and I [sic] to the grant opportunity”) & 18
 19 (authenticating Px. 572); Px. 572 (2/21/08 email from Gray to Kenn Palm re “Introduction to the
 20 Vertek Group,” stating: “you will mostly likely be interfacing with Kyle Kimoto who heads up
 21 product development and publisher relations.”) Px. 695, (12/4/06 email communication from
 22 Gray to Kyle Kimoto regarding the components of a competing grant offer and requesting that
 23 “Tasha [Jn Paul] spend some serious time clicking through each component of these products);
 24 Px. 677 (11/10/06 email from Gray to Kyle Kimoto re: “Catalogue Model,” encloses projections
 25 for catalogue venture that would become the Global Gold line of credit offers and negotiating the
 contract terms that would ultimately be included in the Services Agreement between OS
 Marketing and Global Gold, see Px. 567 at FTC-2707-08); Px. 678 (11/14/06 email from Gray to
 Kyle Kimoto attaching draft letters of intent for both the “Catalogue Venture” that would
 become the Global Gold line of credit offers, and the “Gov’t Grant Venture” that would become
 Grant Connect); Px. 818 (O’Connell Dep.), FTC-7734-36 (49:21-51:16) (describing initial
 discussions with Kyle Kimoto regarding the catalogue card program that became Global Gold).

¹⁹³ See Pxs. 902-05 (2/8/08 emails showing Kyle Kimoto working with others at Vertek on text
 and “[n]ew design of landing pages and creatives” for Paid to Process/Domain Processing); Px.
 569 (2/18/08 email chain copying Kyle Kimoto attaches testimonials for Grant Connect); Px.
 778, FTC-4617-19 (3/19/08 email from Smith to Kyle Kimoto attaching draft advertisement for
 Domain Processing); Px. 773 (1/9/08 email reflects planning of testimonial contest for the line of
 credit offers and copies Kyle Kimoto); Px. 824 (Todorov Dep.), FTC-8224-25 (32:19-33:23)

1 Defendant Vertek paid at least \$30,079 for jury consulting in connection with the Kyle Kimoto's
2 criminal defense.¹⁹⁵

3 Defendant **Juliette M. Kimoto** ("**Juliette Kimoto**") lives in Las Vegas, Nevada and was
4 the General Partner in Corporate Defendant **Pink, L.P.** ("**Pink**"), a Nevada limited partnership
5 formed on or about May 6, 2004, with an office located at 6060 W. Elton Avenue, Suite A, Las
6 Vegas, Nevada.¹⁹⁶ Pink was the sole member of Corporate Defendant Vertek.¹⁹⁷ Juliette Kimoto
7 was the Investment Trustee of Corporate Defendant **Juliette M. Kimoto Asset Protection Trust**
8 ("**Kimoto Trust**"), a trust established under the laws of Nevada.¹⁹⁸ The Kimoto Trust was the
9 sole member of Corporate Defendant Vantex.¹⁹⁹ Juliette Kimoto was a signatory on several
10
11

12 (Kyle Kimoto was present at Vertek meetings involving on-line development, on-line design,
13 offer details, operations, web design, communication with different partners and suppliers). *See*
14 *also* Px. 835 (1/21/08 email corroborating testimony that Kyle Kimoto booked and paid for
15 Justin Lund of Virgin Offers Media, the affiliate network/publisher that helped generating the
most sales for Defendants' offers, to go to the Super Bowl in Phoenix, Arizona); Px. 912 (Lund
Dep.) FTC-9320-25 (46:22-51:1) (testimony regarding same).

16 ¹⁹⁴ *See* Px. 576 (1/31/08 Email from Kyle Kimoto discussing desired descriptor for Global
17 Gold's merchant account).

18 ¹⁹⁵ *See* Px. 12 (Jones Dec.) ¶¶ 67 & 69; Pxs. 176-77 (Wells Fargo Decl.); Pxs. 269-70 & 272
(checks from Vertek to Kyle Kimoto's Jury Consultant).

19 ¹⁹⁶ *See* Px. 328 (Pink filings with Nevada Secretary of State); Complaint [D.E. 1], ¶ 12; Vantex
20 and Vertek Answer to Complaint [D.E. 55], ¶ 12; J. Kimoto and Pink Answer to Complaint
21 [D.E. 56], ¶ 12, 16; J. Kimoto Aff., ¶¶ 2-3 [D.E. 62-2]; Px. 12 (Jones Dec.), ¶¶ 68-69. *See also*
22 Px. 535, FTC-2560 (4/15/08 email chain attaching letter explaining "WHO OWNS VERTEK
GROUP, LLC...").

23 ¹⁹⁷ *See* J. Kimoto Aff., ¶ 4 [D.E. 62-2]; Px. 330 (Vertek Filings with Nevada Secretary of State),
FTC-797.

24 ¹⁹⁸ J. Kimoto Aff., ¶ 8 [D.E. 62-2].

25 ¹⁹⁹ *Id.*

1 Vertek bank accounts and was listed as its owner in bank records.²⁰⁰ She was also listed as
 2 Vantex's contact person in connection with its domain registration for the associated domains
 3 vantexgroup.com and vantexgroup.net.²⁰¹ Interestingly, the email address provided by Vantex to
 4 the domain registrant belonged to defendant Steven Henriksen.²⁰²

5 Juliette Kimoto derived significant compensation from Vertek and Vantex, regularly
 6 taking anywhere from \$15,000 to as much as \$60,000 a month from the companies.²⁰³ From
 7 November 4, 2008 to April 30, 2009, Kimoto received at least \$152,800 in direct compensation
 8 from Vantex.²⁰⁴ In addition, Vantex often paid for Juliette Kimoto's personal expenses such as
 9 plumbing, pool repair, maintenance, and service at Kimoto's homes, including her "Hawaii
 10 House."²⁰⁵

11 Defendant **Michael L. Henriksen, Jr. ("Michael Henriksen")**, the Director of
 12 Accounting for Corporate Defendants Global Gold and Vantex, was another key participant in

14 ²⁰⁰ Px. 12 (Jones Dec.), ¶¶ 66-67 & 69; Px. 119; Pxs. 176-77 (Wells Fargo Decls.); Px. 189,
 15 FTC-493 (Vertek Group Business Account Application which lists Juliette Kimoto as the owner
 16 of Vertek Group).

17 ²⁰¹ See Px. 12 (Jones Dec.), ¶ 54 & 69; Px. 55, 3/25/09 letter from counsel for 1&1 Internet, Inc.,
 18 the domain registrant for vantexgroup.com and vantexgroup.net.

19 ²⁰² Compare email address listed in Px. 55 with the email address supplied by Steven Henriksen
 on his Wells Fargo Bank Business Account Applications, Pxs. 178-82.

20 ²⁰³ See Px. 806 (M. Henriksen Dep.), FTC-6101 (140:10-141:18); Px. 828 (Cook Dep.), FTC-
 21 8757-58 (62:6-63:19); Pxs. 147-59, 283-84 (Transaction Detail Reports showing wire transfers
 22 from Vantex to Juliette Kimoto); Px. 533 (11/17/08 email re wire transfers to Juliette Kimoto);
 Px. 534 (12/19/08 email re wire transfer to Juliette Kimoto).

23 ²⁰⁴ See Pxs. 147-59 (Transaction Detail Reports showing wire transfers from Vantex to Juliette
 Kimoto); Px. 533 (11/17/08 Vantex email re transfer money to Juliette Kimoto).

24 ²⁰⁵ See Pxs. 160-63 (copies of checks evidencing payments from Vantex for Juliette Kimoto
 25 personal expenses); Pxs. 262-68 (copies of checks evidencing payments from Vertek for Juliette
 Kimoto personal expenses); Px. 828 (Cook Dep.), FTC-8799-8801(104:25-106:2).

1 Defendants' scheme.²⁰⁶ The older brother of Defendants Steven Henriksen and Rachael Cook,²⁰⁷
2 Michael Henriksen is also under a permanent injunction and telemarketing ban for his
3 participation with defendant Kyle Kimoto (his best friend since childhood),²⁰⁸ in the Assail
4 Scheme, in which he was the company's Chief Financial Officer.²⁰⁹

5 In late 2008, Michael Henriksen relocated to Hamilton, New Zealand where he managed
6 corporate defendant Global Gold Limited and continued working for Vantex and Global Gold
7 Defendants remotely.²¹⁰ On November 18, 2008, Steven Henriksen wrote a letter, on Global
8 Gold letterhead, to Immigration New Zealand in support of Michael Henriksen's request for a
9
10

11 ²⁰⁶ See Michael Henriksen Answer to Am. Compl. [D.E. 156], ¶ 30 (admitting he is Director of
12 Accounting for Vantex); Pxs. 517-19 (Vantex Organizational Charts identifying Michael
13 Henriksen as head of Accounting at Vantex); Px. 589 (11/14/08 letter from Steven Henriksen to
14 the immigration authorities in New Zealand, stating that Michael Henriksen is Global Gold's
15 Director of Accounting); Px. 657 (5/20/09 email showing that Michael Henriksen was
overseeing accounting for Steven Henriksen owned companies); Px. 527 (Pisano Dec.), ¶ 22
(Global Gold's accounting records were maintained at Vantex's offices); Px. 528 (same).

16 ²⁰⁷ Px. 806 (M. Henriksen Dep.), FTC-5992 (33:12-20); Px. 827 (Cook Dep.), FTC-8701-02
17 (13:18-14:6).

18 ²⁰⁸ See Px. 594 (Federal Bureau of Prison Visitor Information Form signed by Michael
19 Henriksen stating that Michael Henriksen is one of Kyle Kimoto's closest friends, having known
Kyle Kimoto since they were both 12 years old); Px. 829 (Dacko Dep.), FTC-8881 (55:4-7).

20 ²⁰⁹ See Px. 597 (Stipulated Order for Permanent Injunction and Monetary Judgment as to
21 Defendant Michael Henriksen in *FTC v. Assail*). See also Px. 596 (FTC Application for Order to
22 Show Cause Why Defendant Michael Henriksen Should Not Be Held In Contempt in *FTC v.*
Assail).

23 ²¹⁰ See Px. 829 (Dacko Dep.), FTC-8898-99 (72:19-73:20); Px. 589 (11/14/08 letter from Steven
24 Henriksen to Immigration New Zealand, stating that Michael Henriksen's duties for Global Gold
include "managing the accounting department, financial reporting, merchant account
25 communication reflecting Michael Henriksen's continued involvement in running Vantex's and
Global Gold's business while overseas).

1 work permit.²¹¹ In the letter, Steven Henriksen confirmed Michael Henriksen’s “ongoing
2 employment” as Global Gold’s Director of Accounting.²¹² According to the letter, Michael
3 Henriksen’s duties included “managing the accounting department, financial reporting, merchant
4 account management, etc.”²¹³ Additionally, Steven Henriksen described Michael Henriksen as
5 “very knowledgeable in marketing” and “well versed in the type of products and services [Global
6 Gold] [was] planning to develop.”²¹⁴

7 Michael Henriksen had significant control over Corporate Defendants’ financial
8 operations, and coordinated, oversaw, and participated in Defendants’ schemes.²¹⁵ He directed
9 the activities of individuals across multiple companies and product lines, including Grants, Acai,
10 the Line of Credit offers, and Domain Processing.²¹⁶ He negotiated and reviewed contracts for

11
12 ²¹¹ Px. 589.

13 ²¹² *Id.*

14 ²¹³ *Id.*

15 ²¹⁴ *Id.*

16 ²¹⁵ See Px. 601 (J. Kimoto Aff.) ¶ 2 (Michael Henriksen “was responsible for the financial
17 operations of Vantex and Vertek”); Px. 731 (7/18/08 email describing Michael Henriksen’s role
18 in discussing a legal hurdle involving one of Defendants’ line of credit offers); Px. 732
19 (Microsoft Outlook scheduler listing Michael Henriksen as a required attendee for a management
20 meeting involving marketing strategies for increasing sales on Defendants’ offers); Px. 733
21 (6/9/2009 email re: “LOC” includes Michael Henriksen in a discussion regarding the strategic
22 positioning of the line of credit offers); Px. 735 (7/15/09 email re “MSC” includes Michael
23 Henriksen in a discussion with Justin Lund of Virgin Offers Media regarding sales of
24 Defendants’ My Search Cash offer); Px. 768 (7/10/08 email includes Michael Henriksen in a
25 discussion regarding the termination of one of Global Gold’s merchant accounts); Px. 842
(12/18/08 management email exchange includes Michael Henriksen in a discussion regarding the
marketing of Defendants’ grant offers); Px. 843 (same).

²¹⁶ Px. 558, 5/14/09 Email chain re "FW: updates - long but important"; Px. 560, 5/27/09 Email
chain re: "updated list May 26, 2009" (evidences Michael Henriksen giving direction on a variety
of fronts, including Grants, Acai, My Search Cash, Global Gold, Vcomm, Allclear
Communications and other offers) ; Px. 766, 7/21/09 email from Michael Henriksen re:

1 Defendants' companies,²¹⁷ made use of the Vantex corporate credit card (for which he was listed
2 as an authorized cardholder),²¹⁸ and was the signatory on at least one of Vertek's bank
3 accounts.²¹⁹ When high-level issues or concerns arose about Defendants' products, employees,
4 or sales, Michael Henriksen was part of the discussion and decision making group.²²⁰

5 Michael Henriksen was also aware of consumer complaints and the numerous
6 chargebacks initiated by consumers when they realized they were the victims of a scam.²²¹ For
7 example, both he and defendant Johnnie Smith were the recipients of an email from one of their

8
9 "Merchant Accounts updated July 21, 2009"; Px. 844, FTC-9076 (Michael Henriksen tells their
10 primary affiliate network that "Tasha is 100% clear" that getting a particular grant website up is
11 a "super priority" and to "let [him] know if [the affiliate is] encountering any roadblocks"); Px.
12 854, FTC-9094; *See also* Px. 737; Px. 849; Px. 850.

11 ²¹⁷ Bieler Dep., 165:9-166:9; Px. 558; Px. 560, 5/27/09 Email re: "updated list May 26, 2009",
12 FTC-2647, FTC-2648.

13 ²¹⁸ Px. 445, 6/10/2009 American Express Business Centurion Card Statement; Px. 452,
14 7/10/2009 American Express Business Centurion Card statement.

15 ²¹⁹ Px. 189, Vertek Group Business Account Applications.

16 ²²⁰ *See, e.g.*, Px. 612 (1/20/09 email chain re "direction and focus of the company" includes
17 email from Michael Henriksen to Smith where he writes, in relevant part, "we are having and
18 trying to figure out some solutions of how to take our business to the next level. You obviously
19 play a big part in that!"); Px. 733, FTC-4300 (Justin Lund of Virgin Offers Media, Defendants'
20 key affiliate marketer emails Michael Henriksen and Steve Henriksen to discuss problems with
21 the conversion rates – *i.e.*, sales resulting in commissions – for the line of credit offer and
22 recommends that "we all coordinate (Reno, Utah, Vegas) toward the common goal of
23 resolution"); Px. 735 (email from same affiliate marketer to Michael Henriksen and Steve
24 Henriksen about issues with My Search Cash); Px. 737 (email from same key affiliate, originally
sent only to Michael Henriksen, about how to "mold" Vantex's Marketing Director); Px. 842,
FTC-9071 (same key affiliate asks Michael Henriksen to "have the troops around your office in
Vegas lay low on the grant stuff"); Px. 849 (an email from same key affiliate to Michael
Henriksen, copying Steve Henriksen, seeking approval on how to handle a situation with a
publisher); Px. 844, FTC-9076 (Michael Henriksen assures same affiliate that grant website be up
soon and says to let him know if there are any problems).

25 ²²¹ *See, e.g.*, Pxs. 529, 536, 539, 547, 554 (FTC-2624), 555 (FTC-2628), 556 (FTC-2632-36),
558, 592 (email correspondence re consumer complaints, refunds and chargeback issues).

1 affiliate marketers alerting them that a publisher had refused to market Defendants' line of credit
2 product due to inadequately disclosed negative options.²²²

3 Defendant **Steven R. Henriksen** ("Steven Henriksen") lives in Las Vegas, Nevada and
4 was the President, Secretary, Treasurer, and sole owner of Corporate Defendant Global Gold,²²³
5 and the Director of Corporate Defendant Global Gold Limited.²²⁴ He was also the President and
6 Director of Corporate Defendants Acai, AllClear, Dragon, Elite, Global Fulfillment, Healthy
7 Allure, MSC, Paid To Process, PPM, Total Health, and Vcomm.²²⁵ He admits that he fully
8 controlled each of these companies.²²⁶

9 Steven Henriksen was a signatory on many of Global Gold's accounts.²²⁷ From February
10 1, 2008 to April 3, 2009, he received at least \$93,580.90 in direct compensation from Global
11 Gold,²²⁸ which does not include payments made to other companies owned and controlled by
12 Steven Henriksen or any cash he may have withdrawn from Global Gold's corporate accounts.

13 Steven Henriksen is no stranger to the FTC. On October 20, 2003, the Court in *Assail*
14 entered an Order finding that Steven Henriksen, who was not named a party in the *Assail* case,
15 had violated a preliminary injunction for his role in dissipating receivership estate assets in active

17 ²²² See Px. 457 (8/4/2008 email chain re: "FNG compliancy issue").

18 ²²³ Px. 807 (S. Henriksen Dep.), FTC-6299 (42:5-9); Henriksen's Answer [D.E. 163], ¶ 31.

19 ²²⁴ Px. 807 (S. Henriksen Dep.), FTC-6311 (54:14-16); Px. 588, FTC-3459.

20 ²²⁵ Px. 807 (S. Henriksen Dep.), FTC- 6304-17.

21 ²²⁶ *Id.* at FTC-6322 (65:4-16).

22 ²²⁷ See Px. 12 (Jones Dec.), ¶¶ 65, 67 & 69; Px. 109 (Bank of the West Cert.); Px. 111; Pxs. 176-
23 77 (Wells Fargo Decl.); Px. 178, FTC-464; Pxs. 179, 180 (FTC-469), 181(FTC-473), 182-83.

24 ²²⁸ See Px. 12 (Jones Dec.), ¶¶ 67, 69; Pxs. 176-77 (Wells Fargo Decl.); Pxs. 212-60. This
25 amount was derived from what appear to be copies of payroll checks and likely does not capture
the full scope of Steven Henriksen's compensation package.

1 concert and participation with *Assail* defendants Kyle Kimoto and Michael Henriksen, Steven
 2 Henriksen's older brother.²²⁹ Steven Henriksen sat in jail for approximately three weeks before
 3 the Court found that he did not have the means to repay the *Assail* receiver.²³⁰

4 Defendant **Rachael A. Cook** ("Cook") lives in Las Vegas, Nevada and was the Manager
 5 of Vantex and Vertek.²³¹ She is Steven Henriksen and Michael Henriksen's younger sister.²³²
 6 As Manager, Cook regularly signed contracts and other documents on behalf of the
 7 companies.²³³ She was a signatory on several of Vantex and Vertek's bank accounts.²³⁴ She also
 8 frequently assisted Defendants in setting up numerous merchant accounts which they used in a
 9 failed attempt to minimize their excessive chargeback rates and thereby thwart credit card
 10 monitoring systems.²³⁵

11
 12 ²²⁹ Certification of Roberto Anguizola Pursuant to Federal Rule Of Civil Procedure 65(B)(1)(B)
 13 In Support Of Plaintiff Federal Trade Commission's Ex Parte Emergency Motion For A
 14 Temporary Restraining Order and Preliminary Injunction With Other Equitable Relief and
 15 Plaintiff's Motion For Order Temporarily Sealing Entire File [D.E. 5-2], ¶¶ 8, 10a. & Atts. A-C;
 16 *see also, Assail*, 410 F.3d at 261.

17 ²³⁰ *Id.*

18 ²³¹ *See* Px. 330, FTC-797 (certified copies of Vertek's filings with Nevada Secretary of State's
 19 Office); Vantex and Vertek Answer to Complaint [D.E. 55], ¶¶ 13; J. Kimoto and Pink Answer
 20 to Complaint [D.E. 56], ¶ 13; Michael Henriksen Answer to Am. Compl. [D.E. 156], ¶ 28.

21 ²³² Px. 827 (Cook Dep.), FTC- 8701-02 (13:18-14:6).

22 ²³³ *See, e.g.*, Px. 604, FTC-3664; Px. 451, FTC-1552; Px. 460, FTC-1599; Px. 828 (Cook Dep.
 23 Vol. II) FTC- 8753 (58:8-18).

24 ²³⁴ *See* Px. 828 (Cook Dep. Vol. II) FTC- 8739 (44:9-18); Px. 12 (Jones Dec.), ¶¶ 66-67 & 69;
 25 Pxs. 116-18; Pxs. 176-77 (Wells Fargo Decls.); Px. 189; Px. 261 (check from Vertek Group to
 Nevada Secretary of State); Px. 272 (check from Vertek Group to Cathy E. Bennett &
 Associates); Px. 273 (check from Vertek Group to Nona Dodson); Pxs. 274-278 (wire transfers
 from Rachael Cook to Vertek Group).

²³⁵ *See, e.g.*, Px. 558, FTC-2638-40 (email correspondence re merchant account involving
 Michael Henriksen, Steven Henriksen and Rachel Cook; Px. 713, FTC-5156-57 (merchant

1 Defendant **Johnnie Smith** (“**Smith**”), the Executive Director of defendant Vantex,²³⁶
 2 was also an active participant in Defendants’ schemes. He was one of the heads of the Vantex
 3 office, relatively equal in position to Michael Henriksen.²³⁷ According to Defendant Juliette
 4 Kimoto, Smith was placed in charge of Vantex’s day-to-day operations in early 2008 when Kyle
 5 Kimoto was preparing for his criminal trial.²³⁸ Although he lived primarily in Florida, Smith
 6 was actively involved in Defendants’ operations on an almost daily basis.²³⁹ Smith oversaw
 7 activities at Vantex and worked extensively to market and sell Defendants’ phony products and
 8 services.²⁴⁰ He regularly received drafts of the marketing pages for Defendants’ offers and even
 9 edited the language of the terms and conditions.²⁴¹ He received regular reports on Corporate
 10 Defendants’ activities and had the authority to make specific requests of employees, which he

11 accounts correspondence involving Michael Henriksen, Rachel Cook and Defendants’ payment
 12 processor ePayData); Px. 849, FTC-9086 (line of credit discussion with key affiliate/publisher
 13 Virgin Offers Media, involving Rachel Cook, Michael Henriksen and Steven Henriksen); Px.
 14 828 (Cook Dep. Vol. II), FTC- 8771 (76:9-20).

15 ²³⁶ Pxs. 430, 517-519 (Vantex Organizational Charts).

16 ²³⁷ See Px. 829 (Dacko Dep.), FTC- 8881-82 (55:10-56:24); Px. 817, (McKinnon Dep.), FTC-
 17 7656-57 (170:24-171:1); Px. 601 (J. Kimoto Dec.), ¶ 2. See also Pxs. 600 (Vantex’s Director of
 18 Marketing provides Smith an update re Grants) and 611 (Rachel Cook discuss change of title for
 19 a senior Vertek employee with Smith).

20 ²³⁸ Px. 601 (J. Kimoto Dec.), ¶ 2.

21 ²³⁹ See Px. 829 (Dacko Dep.), FTC-8889 (63:17-25); see also Pxs. 609-11 and Px. 613.

22 ²⁴⁰ See Px. 779, FTC-4622; Px. 824 (Todorov Dep.), FTC- 8261 (69:6-70:6); Px. 436; Px. 774,
 23 FTC-4609; Px. 842, FTC-9071; Px. 854, FTC-9094.

24 ²⁴¹ See Px. 824 (Todorov Dep.), FTC- 8261 (69:6-70:6); Px. 399 (Jones Dec.), ¶ 8; Pxs. 406-410
 25 (Grant Connect marketing drafts found in Smith’s office at Vantex); Pxs. 411- 412 (line of credit
 marketing drafts found in Smith’s office at Vantex); Px. 416 (Paid to Process Inc. Domain
 Processing Customer Service Training Manual found in Smith’s office at Vantex); see also Pxs.
 495 (discussion change to offer’s terms and conditions); Px. 437 (Jn Paul provide Johnnie Smith
 a “Marketing Updates”); Px. 738 (Vantex’s Marketing Director provides Smith an update re
 marketing issues); Pxs. 774-75, 779; Px. 904, FTC-9185.

1 used in at least one instance to obtain a summary of recent FTC caselaw.²⁴²

2 Smith knew that consumers were deceived by Defendants' advertising, and assisted
3 Defendants in their efforts to evade detection.²⁴³ Smith received the same email as Michael
4 Henriksen detailing why a publisher refused to market products that Defendants sold through
5 inadequately disclosed negative options.²⁴⁴ He also knew that Defendants were providing partial
6 refunds to avoid "consumers calling their banks to chargeback (especially multiple charged
7 customers)."²⁴⁵

8 Smith is a recidivist already known to the FTC and is under a permanent injunction in
9 *FTC v. Capital Choice*, a lawsuit arising from his activities in the deceptive sale and marketing
10 of advance fee credit cards – a scam very similar to the "line of credit" scam at issue here.²⁴⁶

11 Defendant **Tasha Jn Paul**, Vantex and Vertek's Operations Manager and a member of
12 Kyle Kimoto's inner circle, lived in Las Vegas before moving to the Philippines in July 2009.²⁴⁷

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16 ²⁴² See Px. 542 (7/6/09 email re "FTC Case Findings"); Px. 437; Px. 829 (Dacko Dep.), FTC-
17 8879 (53:5-15); Px. 591 (3/19/09 email re "Marketing Department Status Report" from Vantex's
18 Marketing Director to Smith); Pxs. 772, 774-75 and 779.

19 ²⁴³ See, e.g., Px. 592 (6/9/2008 email chain re Global Gold's chargeback issues); Px. 593 (Visa
20 chargeback issues discussion with Michael Henriksen); Px. 777 (email correspondence "RE:
21 Domain Processing BBB Complaint - Angie Brannen"); Px. 774 (noting to the Vantex Marketing
22 Director that they need to "strike with lightning rapidity" on their plans to make use of the
23 economic stimulus and to target the unemployed in their advertising for the line of credit
24 products).

25 ²⁴⁴ Px. 457 (8/4/2008 email chain re: "FNG compliancy issue.").

²⁴⁵ Px. 537 (2/25/09 email chain re "RE: LOC Refunds.").

²⁴⁶ Px. 598 (Final Judgment in *FTC v. Capital Choice Consumer Credit, Inc., et al.*).

²⁴⁷ See Motion to Serve by Other Means [D.E. 146] ¶ 5 & Ex B; Px. 810 (Jn Paul Dep.), 16:20-
17:2, 20:17-21:8; Px. 624.

1 She actively participated in and directed Defendants' schemes.²⁴⁸ Jn Paul is also a defendant in
2 *FTC v. NHS Systems, Inc. et al.*, Civ. No. 08-2215 (E.D. Pa. filed May 15, 2008) (involving the
3 telemarketing of phony health plans),²⁴⁹ and her business involvement with Kyle Kimoto dates
4 back to the Assail Scheme.²⁵⁰ Jn Paul was one of Kyle Kimoto and Michael Henriksen's most
5 trusted lieutenants and was involved in every aspect of corporate defendant Vantex and Vertek's
6 business operations from its inception.²⁵¹ She oversaw critical parts of Defendants' business,
7 including product development, marketing, affiliate management, and compliance.²⁵² After Kyle
8 Kimoto went to prison, only Juliette Kimoto, Michael Henriksen and Johnnie Smith held higher
9 positions than her at Vantex.²⁵³ Minutes prepared by Vantex Compliance Officer Rachael
10 McKinnon place Jn Paul at most team meetings where Corporate Defendants' deceptive
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14 ²⁴⁸ See Px. 810 (Jn Paul Dep.), FTC-6789, 6804, 6827, 6850, 6881 (116:18-25; 131:6-13; 154:3-
15 19; 177:11-18; 208:5-16); Px. 829 (Dacko Dep.), FTC-6730-3, 6749 (57:14-20; 58:20-59:18;
16 76:6-10); Px. 417; Px. 825 (Smith Dep.), FTC-8507 (128:7-13); Px. 824 (Todorov Dep.), FTC-
8234 (42:16-20); Px. 627.

17 ²⁴⁹ Px. 599 (Preliminary Injunction with an Asset Freeze and Accounting in *FTC v. NHS Sys.s,*
18 *Inc. et al.*).

19 ²⁵⁰ See Px. 810 (Jn Paul Dep.), FTC-6702-03, 6752 (29:14-30:18; 79:22-80:4)

20 ²⁵¹ See Px. 829 (Dacko Dep.), FTC-8869-70 (43:20-44:25). Jn Paul also had and used a Global
21 Gold email address (tasha@globalgoldinc.com); it was listed as the contact on a merchant
22 information report from Discover Financial Services. Px. 810 (Jn Paul Dep.), FTC-6878-81
23 (206:23-208:1); Px. 319, FTC-677; Px. 320, FTC-682 (Merchant Information Reports for Global
Gold Premier and Global Gold Inc. containing Jn Paul's Global Gold email address); Px. 627;
Px. 628; Px. 629.

24 ²⁵² See Px. 902; Px. 417; Px. 422; Px. 859, FTC-9103

25 ²⁵³ See Px. 829 (Dacko Dep.), FTC-8879-80 (53:18-54:20); Px. 817 (McKinnon Dep.), FTC-
7656-57 (170:24-171:1).

1 marketing schemes were hatched and developed.²⁵⁴

2 Jn Paul was also aware of the high number of consumer complaints lodged against
3 Corporate Defendants and their problems with excessive chargebacks.²⁵⁵ She was sufficiently
4 well-versed in Defendants' scam to know that, a common question consumers posed to customer
5 service, was "when and how did I order" Defendants' products.²⁵⁶ Vantex Compliance Officer
6 Rachael McKinnon even testified that Jn Paul overruled her and ordered the continuation of
7 multiple "line of credit" offers that had been found to be in violation of the FTC Act.²⁵⁷

8 Corporate Defendants **Vertek**²⁵⁸ and **Vantex**²⁵⁹ were Nevada limited liability companies
9 and shared an office located at 6060 W. Elton Avenue, Suite A, Las Vegas, Nevada.²⁶⁰ To the
10 outside world, Vertek and Vantex were indistinguishable in that they were both owned by
11 Kimoto-controlled entities,²⁶¹ operated out of the same location,²⁶² shared the same

14 ²⁵⁴ See Px. 817 (McKinnon Dep.), FTC-7590-91 (104:15-105:3); Pxs. 433-34, 461-62, 486-87,
15 506-08; Px. 829 (Dacko Dep.), FTC-8911-12 (85:13-86:15).

16 ²⁵⁵ See Px. 810 (Jn Paul Dep.), FTC-6860-61 (187:12-188:8); Px. 537 (2/25/09 email chain re
17 "RE: LOC Refunds"); Px. 777.

18 ²⁵⁶ See Px. 543, FTC-2592 (2/06/09 email from Jn Paul re "New Upsale- FAQ Needed").

19 ²⁵⁷ Px. 817 (McKinnon Dep.), FTC- 7587-88 (101:5-102:22).

20 ²⁵⁸ Px. 12 (Jones Dec.), ¶¶ 67 & 69; Pxs. 176-77 (Wells Fargo Decs.); Px. 189 (Vertek Business
21 Account Application with Wells Fargo); Px. 330 (Vertek Group, formerly known as Keystone
22 Financial, LLC, filings with Nevada Secretary of State).

23 ²⁵⁹ Px. 329 (Vantex Group filings with Nevada Secretary of State); Px. 366 (Las Vegas Business
24 License Application).

25 ²⁶⁰ Vantex and Vertek Answer to Complaint [D.E. 55], ¶¶ 10-11; J. Kimoto and Pink Answer to
Complaint [D.E. 56], ¶ 10-11.

²⁶¹ See *supra* notes 196-199.

1 management,²⁶³ and were operated by the same employees.²⁶⁴ Even the companies' business
2 cards were identical except for the corporate name.²⁶⁵ In fact, defendants O'Connell and Gray
3 perceived no difference between Vertek and Vantex, believing that Vertek had simply changed
4 its name to "Vantex."²⁶⁶

5 Vantex was the domain name registrant for www.grantconnectoffer.com and
6 www.grantsourceamericaoffer.com, the websites used to advertise and sign up consumers for
7 Grant Connect and Grant Source America.²⁶⁷ Vantex and Vertek used a shared website,
8 accessible through www.vantexgroup.com and/or www.vertekgroup.com, to recruit affiliate
9 marketers that promoted Grant Connect and other products on various blogs and websites.²⁶⁸ On
10 the Vantex/Vertek website, Vantex took credit for launching Grant Connect and touted it to
11 affiliate marketers by offering "very generous" commissions.²⁶⁹

12 Vantex also played a significant role in selling and marketing Acai Total Burn, First Plus
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16 ²⁶² Vantex and Vertek Answer to Complaint [D.E. 55], ¶¶ 10-11; J. Kimoto and Pink Answer to
17 Complaint [D.E. 56], ¶¶ 10-11.

18 ²⁶³ Vantex and Vertek Answer to Complaint [D.E. 55], ¶ 13; J. Kimoto and Pink Answer to
19 Complaint [D.E. 56], ¶ 13.

20 ²⁶⁴ Px. 824 (Todorov Dep.), FTC- 8236 (44:13-18); Px. 810 (Jn Paul Dep.), FTC- 6758-59, 6807-
08 (85:15-86:5, 134:9-135:19).

21 ²⁶⁵ Px. 399, (Second Jones Dec.), ¶¶ 8-9; Px. 401 (Rachael Cook's business cards).

22 ²⁶⁶ Px. 565 (O'Connell Dec.), ¶ 14; Px. 566 (Gray Dec.), ¶ 14.

23 ²⁶⁷ Px. 12 (Jones Dec.), ¶¶ 54-55, 58 & 69; Pxs. 55-56 & 59.

24 ²⁶⁸ Px. 12 (Jones Dec.), ¶¶ 6-7, 69; Pxs. 13-14.

25 ²⁶⁹ Px. 12 (Jones Dec.), ¶¶ 6-7 & 69; Px. 13, FTC-64; Px. 14, FTC-69.

1 Platinum, First Universal Platinum, MemberLegalNet, and Premier Plus Member.²⁷⁰ In addition
 2 to owning the domain names for www.grantconnectoffer.com and
 3 www.grantsourceamericaoffer.com, Vantex was the domain registrant for at least 121 other
 4 websites, including acaitotalburnoffer.com, firstplusplatinumoffer.com,
 5 firstuniversalplatinumoffer.com, globalgoldcreditoffer.com, mysearchcashoffer.com,
 6 memberlegalnetoffer.net, onehourwealthbuilderoffer.com, and premierplusmemberoffer.net.²⁷¹
 7 On the Vantex/Vertek website, Vantex promoted First Universal Platinum as an affiliate
 8 marketing opportunity and proclaimed that consumers could “purchase valuable merchandise
 9 from a top-notch e-commerce site.”²⁷² Vantex also promoted Grant Connect and One Hour
 10 Wealth Builder on its website.²⁷³

11 Defendant **Global Gold** was a Nevada corporation and had an office located at 1404
 12 South Jones Boulevard, Las Vegas, Nevada.²⁷⁴ Global Gold was responsible for the Live
 13 Support Chats available online through Grant Connect.²⁷⁵ Global Gold was responsible for at
 14

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 16 ²⁷⁰ See Px. 513 (4/7/09 email re: “Vantex/Global Gold – New business”); Px. 514 (“Week of
 17 3/16/09 Vantex Group Marketing Department Updates”); see *infra* notes 344, 346, 352-357, 385-
 395.

18 ²⁷¹ Px. 12 (Jones Dec.), ¶¶ 61 & 69; Px. 62.

19 ²⁷² Px. 12 (Jones Dec.), ¶¶ 6-7 & 69; Px. 13, FTC-64; Px. 14, FTC-69.

20 ²⁷³ *Id.*

21 ²⁷⁴ Px. 325 (certified copies of Global Gold’s filings with Nevada Secretary of State’s Office);
 22 Px. 368 (certified copy of Global Gold’s Las Vegas Business License Application).

23 ²⁷⁵ See Px. 12 (Jones Dec.), ¶¶ 20, 32-33 & 69; Px. 29, FTC-150; Px. 40; Px. 41, FTC-176; Px.
 24 502, FTC-2296; Px. 521), FTC-2374-75 (5/07/09 CS QA Report for Jennifer Henriksen; Px. 522
 25 FTC-2377 (5/08/09 CS QA Report for Jennifer Henriksen); Px. 523; Px. 524 (5/13/09 CS QA
 Report for Jennifer Henriksen (calls dated 5/7/2009)); Px. 525 (5/13/09 CS QA Report for
 Jennifer Henriksen (calls dated 5/6/2009)); Px. 526 (5/15/09 CS QA Report for Jennifer
 Henriksen (calls dated 5/5/2009)).

1 least one of Grant Connect’s toll-free customer service telephone numbers.²⁷⁶ Global Gold did
2 business under numerous fictitious names,²⁷⁷ including “First Plus Platinum,”²⁷⁸ “First Universal
3 Platinum,”²⁷⁹ and “Premier Plus Member.”²⁸⁰ When consumers complained about First Plus
4 Platinum and/or First Universal Platinum, defendant Steven Henriksen signed the response
5 letters as either President of Global Gold, Inc. and/or President of First Plus Platinum or First
6 Universal Platinum.²⁸¹ In many of these letters, Steven Henriksen admitted that both First
7 Universal Platinum and First Plus Platinum are service marks for Global Gold.²⁸² The following
8 language was buried in paragraph 41 of the First Plus Platinum Member Agreement: “Global
9 Gold Inc. is a private Nevada Corporation in the business of providing a Home Merchandise
10 Charge/ Purchasing Program through its First Plus Platinum Division and First Plus Platinum is a
11 service mark of Global Gold, Inc. and Global Gold, Inc. is not a credit services organization.”²⁸³
12 Similar language, identifying Global Gold as the company behind First Universal Platinum,
13 appeared in paragraphs 40 and 41 of the First Universal Platinum Member Agreement.²⁸⁴
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16 ²⁷⁶ Px. 12 (Jones Dec.), ¶¶ 62 (“According to InContact’s records, Global Gold established
service for 888-573-6126 on February 6, 2009.”) & 69; Px. 63.

17 ²⁷⁷ Px. 331-51 (Global Gold Certificates of Business Fictitious Firm Name filings) (“Global Gold
18 Fictitious Name Filings”).

19 ²⁷⁸ Px. 331 (Global Gold Fictitious Name Filings).

20 ²⁷⁹ Px. 332 (Global Gold Fictitious Name Filings).

21 ²⁸⁰ Px. 343 (Global Gold Fictitious Name Filings).

22 ²⁸¹ Px. 375 (Campbell Dec.), Att. D, FTC-1078-113.

23 ²⁸² *See id.*, Att. A, FTC-939; Att. D, FTC-1079, FTC-1089, FTC-1095.

24 ²⁸³ Px. 7, FTC-24.

25 ²⁸⁴ Px. 12 (Jones Dec.), ¶¶ 45 & 69; Px. 46, FTC-198.

1 Corporate Defendants **Acai, Inc.; AllClear Communications, Inc.; Dragon Group, Inc.**
 2 **(“Dragon”); Elite Benefits, Inc.; Global Fulfillment, Inc.; Healthy Allure, Inc.; MSC Online,**
 3 **Inc.; Paid to Process, Inc.; Premier Plus Member, Inc.; Total Health, Inc.; and Vcomm, Inc.**
 4 were all Nevada corporations owned by Defendant Steven Henriksen.²⁸⁵ Steven Henriksen was
 5 the President and Director of each of them.²⁸⁶ Although these Corporate Defendants had various
 6 registered addresses in Nevada, they had no real independent office space and conducted their
 7 actual business through the principal office of Global Gold, Inc. – 1404 South Jones Boulevard,
 8 Las Vegas, Nevada.²⁸⁷ The various registered addresses for these companies were used to
 9 receive mail, which was then forwarded to Global Gold’s office.²⁸⁸ None of these companies
 10 had their own employees, except Dragon and possibly Global Fulfillment, which together had 3-
 11 4 employees at most.²⁸⁹ Even the few individuals who worked for Dragon were actually just

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15 ²⁸⁵ S. Henriksen’s Answer [D.E. 163], ¶¶ 11-23; Px. 807 (S. Henriksen Dep.), FTC-6304-6319
 16 (47:20-23 (Acai), 48:16-18 (AllClear), 49:6-7 (Dragon), 51:15-17 (Elite), 52:19-21 (Global
 17 Fulfillment), 56:8-10 (Healthy Allure), 56:25-57:2 (MSC Online), 57:16-18 (Paid to Process),
 58:23-25 (Premiere Plus), 60:7-9 (Total Health), 62:1-3 (VComm)).

18 ²⁸⁶ Px. 807 (S. Henriksen Dep.), FTC- FTC-6304-6319 (47:24-48:1 (Acai), 48:19-21 (AllClear),
 19 49:6-11 (Dragon), 51:18-20 (Elite), 52:19-24 (Global Fulfillment), 56:11-13 (Healthy Allure),
 57:3-5 (MSC Online), 57:19-21 (Paid to Process), 59:16-18 (Premiere Plus), 60:10-12 (Total
 20 Health), 62:4-6 (VComm)).

21 ²⁸⁷ See Px. 559, FTC-2644 (noting that all of Steven Henriksen’s employees will operate out of
 the same building); Px. 807 (S. Henriksen Dep.), FTC- 6305 (48:22-49:2).

22 ²⁸⁸ Px. 807 (S. Henriksen Dep.), FTC- 6314-15 (57:25-58:22); Px. 829 (Dacko Dep.), FTC-
 23 8993-94 (167:7-168:12).

24 ²⁸⁹ Px. 559, FTC-2644 (stating that only Global Gold, Dragon, and Global Fulfillment had
 25 employees); Px. 807 (S. Henriksen Dep.), FTC- 6305-19 (48:7-8, 48:22-49, 51:21-22, 53:5-8),
 56:18-19, 57:10-11, 59:19-60:2, 60:13-18, 62:12-13) (testifying that Global Fulfillment did not
 have employees).

1 current or former employees of Global Gold or Vantex.²⁹⁰ Instead, Global Gold employees
2 performed the vast majority of the actual work necessary to market and sell the products
3 purportedly owned by these 11 entities.²⁹¹ These Steven Henriksen-owned corporations were
4 purely shell entities that served no other role than to give the false impression that there were
5 legitimate separate businesses that independently marketed and sold Defendants' various
6 products.²⁹² In reality, it was one group of scam artists, the Defendants, hawking a plethora of
7 deceptively marketed products to consumers. These shells also allowed the Defendants to mask
8 their excessive chargeback rates behind numerous merchant accounts, reducing the likelihood
9 that the Defendants would incur fines or face other sanctions.²⁹³

10 **Global Gold Limited** was a New Zealand company incorporated under the New Zealand
11 Companies Act 1993 with its registered office located at 32 St. James Drive, Hamilton, New
12 Zealand – until recently defendant Michael Henriksen's residence.²⁹⁴ Global Gold Limited was a
13 wholly owned subsidiary of original defendant Global Gold.²⁹⁵ Its sole Director was defendant
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16 ²⁹⁰ Px. 807 (S. Henriksen Dep.), FTC-6306-6309 (49:25-51:10) (testifying that Dragon's
employees were not officially on the payroll).

17 ²⁹¹ Steven Henriksen created Dragon "as a Parent Company for all his Companies," and although
18 he had imminent plans to "move everyone over to Dragon['s] payroll on August 1," this had not
19 been completed before the Receiver halted Defendants' business. Px. 559, FTC-2644; Px. 501,
20 FTC-2165; Px. 829 (Dacko Dep.), FTC-8965 (139:2-13); Px. 807 (S. Henriksen Dep.), FTC-
6306-08 (49: 25-51:22) (Steven Henriksen planned to move all Global Gold customer service
employees to Dragon).

21 ²⁹² *See supra* notes 285-291.

22 ²⁹³ *See* Px. 766; Px. 910 (Chen Dec.), ¶ 30; *see also infra* notes 403-406.

23 ²⁹⁴ *See* Px.588 (documents re: Global Gold Limited obtained from the Companies Office
24 Register with the Ministry of Economic Development in New Zealand); Px. 806 (M. Henriksen
Dep.), FTC- 6150 (190:17-25).

25 ²⁹⁵ Px.588.

1 Steven Henriksen.²⁹⁶ On December 5, 2008, defendant Global Gold wired \$90,000 to Global
2 Gold Limited's bank account in New Zealand.²⁹⁷

3 **2. The Reno Defendants**

4 At all times material to this action, Defendant **James J. Gray** ("**Gray**") lived in Reno,
5 Nevada and was a Managing Member of Corporate Defendants O'Connell Gray, Horizon
6 Holdings, Grant Connect LLC, CMS, and OS.²⁹⁸ He was also a signatory on multiple bank
7 accounts for these entities.²⁹⁹

8 Defendant **Randy D. O'Connell** ("**O'Connell**") lived in Reno, Nevada and was a
9 Managing Member of Corporate Defendants O'Connell Gray, CMS, and OS.³⁰⁰ He was also a
10 signatory on multiple bank accounts for these entities.³⁰¹

11 O'Connell and Gray are close personal friends and were business partners.³⁰² Prior to
12 going into business, they worked together at several marketing companies, including Gizmo!

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16 ²⁹⁶ Px. 588; Px. 807 (Henriksen Dep.), FTC-6311 (54:14-16).

17 ²⁹⁷ Px. 288 (Wells Fargo Transaction Detail Report showing 12/05/2008 wire transfer from
Global Gold Inc. to Global Gold Limited).

18 ²⁹⁸ Px. 12 (Jones Dec.), ¶¶ 64 & 69; Px. 65 (Irwin Union Aff.); Pxs. 66-85 (Horizon Holdings
19 Bank Account Agreements and Authorization Resolutions for Irwin Union Bank); Px. 324
20 (Grant Connect's filings with Nevada Secretary of State); Px. 326 (Horizon Holdings filings with
Nevada Secretary of State); Px. 327 (O'Connell Gray filings with Nevada Secretary of State).

21 ²⁹⁹ See, e.g., Px. 12 (Jones Dec.), ¶¶ 64 & 69; Px. 65 (Irwin Union Aff.); Pxs. 66-85 (Horizon
22 Holdings Bank Account Agreements and Authorization Resolutions for Irwin Union Bank).

23 ³⁰⁰ Px. 12 (Jones Dec.), ¶¶ 64 & 69; Px. 65 (Irwin Union Aff.); Px. 83; Pxs 326-27.

24 ³⁰¹ Px. 12 (Jones Dec.), ¶¶ 64 & 69; Px. 65 (Irwin Union Aff.); Pxs. 66-85 (Horizon Holdings
Bank Account Agreements and Authorization Resolutions for Irwin Union Bank).

25 ³⁰² Px. 565 (O'Connell Dec.), ¶ 5; Px. 566 (Gray Dec.), ¶ 5.

1 LLC (“Gizmo”) and Blitz Media, Inc. (“Blitz”).³⁰³ On their website, O’Connell and Gray
 2 claimed to “collectively have over 15 years marketing and management experience in Direct
 3 Response advertising, upsell revenue enhancement strategies, corporate joint-ventures and
 4 product development.”³⁰⁴ According to their website, “[in] 1998, O’Connell and Gray
 5 comprised the original executive marketing and management team of Blitz Media Inc. The firm
 6 went from 6 employees and under \$100,000 in gross sales it’s first year to \$67 million in gross
 7 sales and 225 in 2001.”³⁰⁵ In 2001, the Illinois Attorney General’s Office filed a lawsuit against
 8 Blitz, alleging the placement of unauthorized charges on consumers’ credit and debit card
 9 accounts.³⁰⁶ O’Connell and Gray met Kyle Kimoto during the course of doing business with him
 10 when they were at Blitz.³⁰⁷

11 Corporate Defendants **O’Connell Gray, Horizon Holdings, Grant Connect LLC,**
 12 **CMS, and OS** were Nevada limited liability companies and shared an office at 1135 Terminal
 13 Way, Suite 203, Reno, Nevada.³⁰⁸ O’Connell Gray “is primarily a business consulting and
 14

15 ³⁰³ Px. 804 (Gray Dep.), FTC-5570 (29:6-18); Px. 818 (O’Connell Dep.), FTC-7708-09 (23:22-
 16 24:6).

17 ³⁰⁴ Px. 575, FTC-2730 (printout of the O’Connell Gray website).

18 ³⁰⁵ *Id.*

19 ³⁰⁶ *Illinois v. Blitz Media, Inc.* (Sangamon County, No. 2001-CH-592); Telemarketing Sales Rule
 20 Review, Supplemental Comments of the Illinois Attorney General’s Office, FTC File No.
 21 R411001, <http://www.ftc.gov/os/comments/dncpapercomments/supplement/ilag%5B1%5D.pdf>.

22 ³⁰⁷ Px. 804 (Gray Dep.), FTC-5597; Px. 818 (O’Connell Dep.), FTC- 7732 (47:5-7).

23 ³⁰⁸ Px. 324 (certified copies of Grant Connect, LLC filings with Nevada Secretary of State’s
 24 Office); Px. 326, FTC-719 (certified copy of Horizon Holdings’s Articles of Organization); Px.
 25 327, FTC-725 (certified copy of O’Connell Gray’s Articles of Organization); Px. 365 (City of
 Reno Business License for O’Connell Gray); Pxs. 352-59 (certified copies of Fictitious Firm
 Name Certificates filed by Horizon Holdings); Pxs. 360-64 (Grant Connect Certificates of
 Business Fictitious Firm Name filings).

1 staffing company that supports multiple ventures including Horizon Holdings, LLC, Grant
2 Connect LLC, CMS and OS.”³⁰⁹ Horizon Holdings, Grant Connect LLC, CMS, and OS had no
3 employees. Instead, O’Connell Gray’s employees provided them with staffing services
4 whenever necessary.³¹⁰ O’Connell Gray was also in the business of creating ventures using “an
5 existing body of marketing intellectual property that can be conformed for deployment in a turn-
6 key fashion.”³¹¹ It was the domain name registrant for www.grantconnect.com, the website
7 containing the online “information and tools” that constitute Grant Connect.³¹²

8 On March 26, 2007, Horizon Holdings filed a Fictitious Firm Name Certificate with the
9 County of Washoe, Nevada certifying that “IT IS conducting a Grant Search business at 1135
10 Terminal Way STE 203 under the fictitious firm name of Grant Connect.”³¹³ Horizon Holdings
11 paid for web development for www.grantconnect.com³¹⁴ and purchased the outdated grants data
12 made available to consumers through Grant Connect.³¹⁵ Horizon Holdings also paid
13 commissions and royalties to affiliate marketers in connection with the Grant Connect scheme.³¹⁶
14 Until February 5, 2009, Horizon Holdings was responsible for one of Grant Connect’s toll-free
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17 ³⁰⁹ Px. 565 (O’Connell Dec.), ¶ 7; Px. 566 (Gray Dec.), ¶ 7.

18 ³¹⁰ Px. 565 (O’Connell Dec.), ¶ 10; Px. 566, (Gray Dec.) ¶ 10.

19 ³¹¹ Px. 575, FTC-2729 (printout of the O’Connell Gray website).

20 ³¹² Px. 12 (Jones Dec.), ¶¶ 16-20, 56-57 & 69; Px. 58, FTC-259 (Business Records produced by
21 Domain by Proxy, Inc.).

22 ³¹³ Px. 352 (certified copy of Fictitious Firm Name Certificate filed by Horizon Holdings).

23 ³¹⁴ Px. 12 (Jones Dec.), ¶¶ 64 & 69; Px. 65 (Irwin Union Aff.); Px. 92 (Check No. 1035); Px. 93
(Check No. 1002).

24 ³¹⁵ Px. 12 (Jones Dec.), ¶¶ 64 & 69; Px. 65 (Irwin Union Aff.); Px. 95 (Check No. 1012).

25 ³¹⁶ Px. 12 (Jones Dec.), ¶¶ 64 & 69; Px. 65 (Irwin Union Aff.); Pxs. 94, 96-99.

1 customer service telephone numbers.³¹⁷ On March 26, 2007, Horizon Holdings filed a Fictitious
 2 Firm Name with the County of Washoe, Nevada certifying that “IT IS conducting a Discount
 3 Legal Services business at 1135 Terminal Way STE 203 under the fictitious firm name of
 4 Memberlegalnet.”³¹⁸

5 Grant Connect LLC signed the response letters when consumers complained about Grant
 6 Connect.³¹⁹ On January 12, 2009, Grant Connect LLC filed five Fictitious Firm Name
 7 Certificates with the County of Washoe, Nevada certifying that “IT IS conducting a[n] Online
 8 Membership business at 1135 Terminal Way STE 203” under the following fictitious firm
 9 names: “866 637 2096 OnlGra V,” “866 637 2088 GrantC V,” “866 637 2091 GrntSr V,” “866
 10 637 2089 GrntCn V,” and “888 869 3967 Grants V.”³²⁰ These names match the descriptors that
 11 routinely appeared next to charges for Grant Connect on consumers’ bank account and credit
 12 card statements.³²¹

13 Both CMS and OS provided information technology (“IT”) solutions, which included
 14 providing database management, and client relationship management software.³²² CMS and OS
 15 have a license to offer the AWARE system to their clients.³²³ The AWARE system is an

17 ³¹⁷ Px. 12 (Jones Dec.), ¶¶ 63 & 69 (“According to Qwest’s records, Horizon Holdings last used
 18 888-573-6126 on February 5, 2009, a day before Global Gold established service for the same
 19 number through InContact.”); Px. 64.

20 ³¹⁸ Px. 353. Neither O’Connell nor Gray is an attorney and Horizon Holdings does not offer
 legal services. Px. 804 (Gray Dep.), FTC-5709-10 (168:24-169:14).

21 ³¹⁹ See, e.g., Px. 374 (Johnston Dec.), ¶ 8 and Att. B, FTC-880, FTC-894 & FTC-909.

22 ³²⁰ Pxs. 360-64 (Grant Connect Fictitious Name Filings).

23 ³²¹ See Px. 12 (Jones Dec.), ¶¶ 47-48 & 69; Pxs. 48-49; Px. 380 (Wall Dec.). ¶ 7.

24 ³²² Px. 565 (O’Connell Dec.), ¶ 8 at FTC-2690; Px. 566 (Gray Dec.), ¶ 8 at FTC-2694.

25 ³²³ *Id*; Px. 818 (O’Connell Dep.), FTC-7723 (38:6-24).

1 electronic client relationship management platform used to track and organize customer records
2 and orders placed by customers responding to Internet offers, including Grant Connect, First Plus
3 Platinum, One Hour Wealth Builder, and Acai Total Burn.³²⁴

4 **C. DEFENDANTS' FURTHERANCE OF THE ALLEGED SCHEMES**

5 Bilking thousands of consumers out of more than \$29 million is not easy. Not everyone
6 has the vision, experience, and chutzpah to pull off a scam of this magnitude. To do so,
7 Defendants strategically pooled their resources and expertise.

8 In late 2006 or early 2007, Defendants began to develop an Internet marketing business.
9 Prior to that time, Vertek, which was then known as "Keystone Financial, LLC," had been in the
10 real estate business.³²⁵ As the Las Vegas real estate market slowed, Vertek turned to Internet
11 marketing.³²⁶ Vertek's first Internet marketing project involved the development of the "line of
12 credit" offers for what became known as Global Gold.³²⁷ At first, a small group of individuals,
13 including defendants Kyle Kimoto, Michael Henriksen, Steven Henriksen, Tasha Jn Paul, and
14 Rachael Cook, operated out of Steven Henriksen's house in Las Vegas.³²⁸ According to Jn Paul,
15 "Kyle [Kimoto] and his wife [Juliette Kimoto] were going to be doing the marketing [] while
16 Steve [Henriksen] and his wife were [] going to be one of the product providers."³²⁹

19 ³²⁴ *Id.*; Px. 804 (Gray Dep.), FTC-5586 (45:10-15); Px. 818 (O'Connell Dep.), FTC-7722, 7795
20 (37:8-20, 109:25-110:5); Px. 573 (Berfield Dec.), ¶ 2; Px. 527 (Pisano Dec.), ¶ 25; Px. 528.

21 ³²⁵ J. Kimoto Aff. ¶¶ 5-6 [D.E. 62-2]; Px. 828 (Cook Vol. II), FTC-8729 (34:24-25).

22 ³²⁶ J. Kimoto Aff. ¶ 6 [D.E. 62-2].

23 ³²⁷ Px. 829 (Dacko Dep.), FTC-8857.

24 ³²⁸ Px. 829 (Dacko Dep.), FTC-8869-70 (43:20-44:25); Px. 810 (Jn Paul Dep.) at FTC-6746 &
25 FTC-6750 (73:13-18, 77:8-15).

³²⁹ Px. 810 (Jn Paul Dep.), FTC-0006756 (83:10-14).

1 Kyle Kimoto approached O’Connell and Gray regarding the line of credit offers in late
2 2006.³³⁰ O’Connell and Gray had experience with continuity or subscription billing.³³¹ For that
3 reason, Kyle Kimoto sought their help in creating a model that would assist him in looking at the
4 numbers and determining how to structure Global Gold’s line of credit offers, which were then
5 referred to as the “Catalogue Venture.”³³² At some point later, Kyle Kimoto told O’Connell and
6 Gray that Global Gold was going to move forward with the catalogue venture and create an
7 online store offering a variety of merchandise that members could purchase by applying a
8 portion of the price to a credit line.³³³ After they expressed interest, Kyle Kimoto invited Gray
9 and O’Connell to work with defendants Steven Henriksen, Michael Henriksen and Tasha Jn Paul
10 on the Global Gold project.³³⁴ O’Connell and Gray agreed to help with the logistics of accepting
11 transactions on the internet.³³⁵ To that end, OS and Global Gold entered into a Services
12 Agreement.³³⁶ Pursuant to the Services Agreement, OS agreed to manage and track Global
13 Gold’s customer transactions through a proprietary electronic client relationship management
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18 ³³⁰ Px. 565 (O’Connell Dec.), ¶ 9; Px. 566 (Gray Dec.), ¶ 9.

19 ³³¹ Px. 804 (Gray Dep.), FTC-5603 (62:15-25).

20 ³³² Px. 804 (Gray Dep.) at FTC-5601-06 (60:7-65:16); Pxs. 676-77.

21 ³³³ Px. 565 (O’Connell Dec.), ¶ 9; Px. 566 (Gray Dec.), ¶ 9.

22 ³³⁴ Px. 565 (O’Connell Dec.), ¶11; Px. 566 (Gray Dec.), ¶¶ 10-11; Px. 804 (Gray Dep.). FTC-
23 0005602.

24 ³³⁵ *Id.*

25 ³³⁶ Px. 567 (Services Agreement between OS Marketing and Global Gold); Px. 565 (O’Connell
Dec.), ¶¶8-10; Px. 566 (Gray Dec.), ¶¶ 8-10.

1 system referred to as AWARE.³³⁷ In addition to providing Global Gold with the use of
 2 AWARE, OS agreed to, among other things: make recommendations for merchant processors;
 3 assemble merchant processing applications; monitor merchant account processing performance
 4 and make recommendations for solutions if necessary; **provide consultative input on**
 5 **marketing strategy, product development and general operations**; and provide consultative
 6 input on customer service vendor solutions, scripting and agent training.³³⁸ Also pursuant to the
 7 agreement, Global Gold agreed that OS would receive compensation of “3.5% of all sales
 8 successfully processed on customer’s payment method, less refunds, chargebacks or reserves
 9 held by processors.”³³⁹ In addition, OS was entitled to receive 7.5% of any value received by
 10 Global Gold as part of any “change in control.”³⁴⁰

11 Soon after Gray and O’Connell began working on the Global Gold “line of credit”
 12 project, Kyle Kimoto recruited them to participate in the Grant Connect scheme.³⁴¹ Kyle Kimoto
 13 told Gray and O’Connell that grant offers were popular online and that there was traffic available
 14 to make sales.³⁴² After further discussion with Kyle Kimoto, O’Connell, and Gray made a deal
 15 with Vertek to work on a project to advertise grants.³⁴³

18 ³³⁷ Px. 565 (O’Connell Dec.), ¶¶8-10; Px. 566 (Gray Dec.), ¶¶ 8-10; Px. 567 (Services
 19 Agreement between OS Marketing and Global Gold); Px. 804 (Gray Dep.), FTC-5668 (127:9-
 18).

20 ³³⁸ Px. 567 at FTC-2707 (emphasis added); *see also*, Px. 804 (Gray Dep.), FTC-0005668.

21 ³³⁹ *Id.* at FTC-2707.

22 ³⁴⁰ *Id.* 567 at FTC-2708.

23 ³⁴¹ Px. 565 (O’Connell Dec.), ¶ 12; Px. 566 (Gray Dec.), ¶ 12.

24 ³⁴² *Id.*

25 ³⁴³ *Id.*

1 Specifically, they agreed that one of O’Connell and Gray’s companies, defendant
2 Horizon Holdings, would be responsible for: (1) finding and securing a body of grant related
3 content; (2) arranging for a payment gateway and merchant bank; and (3) arranging for the
4 intake and processing of customer information using AWARE, the proprietary client relationship
5 management system used to track and organize customer records and orders placed by customers
6 via internet commerce websites, including www.grantconnectoffer.com.³⁴⁴

7 For its part, Vertek agreed to be responsible for: (1) creating and designing all of the
8 marketing for Grant Connect, including landing pages such as those found on
9 www.grantconnectoffer.com, where consumers would view the marketing and enter their credit
10 card information if they decided to sign up; (2) assisting on the Grant Connect member site to
11 improve its look, readability, and usability; and (3) securing and managing affiliate marketing
12 relationships.³⁴⁵ Additionally, Horizon Holdings and Vertek agreed to a 55/45 profit split
13 whereby Vertek would get 55% of the adjusted gross revenues derived from Grant Connect.³⁴⁶
14 While they never got around to signing a formal written agreement, Horizon Holdings conducted
15 its business with Vertek, and later Vantex, in accordance with the above-described terms and
16 they jointly launched Grant Connect on or about November 15, 2008.³⁴⁷

17 O’Connell and Gray satisfied their end of the bargain. On or about February 14, 2008,
18 Horizon Holdings procured the content for the Grant Connect member site by entering into a
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22 ³⁴⁴ *Id.*

23 ³⁴⁵ *Id.*

24 ³⁴⁶ *Id.*

25 ³⁴⁷ Px. 565 (O’Connell Dec.), ¶ 13; Px. 566 (Gray Dec.), ¶ 13.

1 Consulting and License Agreement with Quantum Particle.³⁴⁸ Pursuant to the agreement,
2 Quantum granted Horizon Holdings a license to exploit the content in Grant Search Link located
3 at www.grantsearchlink.com.³⁴⁹ They also used AWARE, their electronic customer
4 management platform to manage, track and organize customer records.³⁵⁰

5 For its part, Vertek improved the look of the Grant Search Link content, thereby
6 converting it into the Grant Connect member site.³⁵¹ It also developed a marketing strategy and
7 designed the landing pages for the Grant Connect offer.³⁵² After its formation on March 4, 2008,
8 Vantex supplemented and continued Vertek's work by designing and creating the marketing for
9 Grant Connect, and later, Grant Source America.³⁵³ Vantex configured the servers that hosted

11 ³⁴⁸ Px. 568 (Consulting and License Agreement between Quantum Particle and Horizon
12 Holdings); Px. 566 (Gray Dec.), ¶ 15.

13 ³⁴⁹ Px. 568, FTC-2710-11; Px. 566 (Gray Dec.), ¶ 15.

14 ³⁵⁰ Px. 573, (Berfield Dec.), ¶ 2.

15 ³⁵¹ Px. 569; Px. 844, FTC-9076; Px. 679; Px. 810 (Jn Paul Dep.), FTC-6827 (154:3-13).

16 ³⁵² Kimoto Opp., [D.E. 62] at 6. In 2008 Global Gold paid Vantex Group over \$4.7 million, and
17 Vertek Group over \$1 million for their services. Px. 454), FTC 0001567-68 (Global Gold Inc
18 1099 Summary January through December 2008); Px. 810 (Jn Paul Dep.), FTC-6827 (154:3-13).

19 ³⁵³ Px. 2; Px. 406 (Grant Connect website quotes found in file cabinet of Johnnie Smith); Px.
20 407 ("Kevin first draft grant page" for Grant Connect website); Px. 408 ("Kevin 2nd Draft" for
21 Grant Connect website); Px. 409 ("Kevin Third Draft" for Grant Connect website); Px. 410
22 (Grant Connect website quotes found in file cabinet of Johnnie Smith); Px. 437; Px. 438 (
23 6/23/2009 email from Jn Paul referring to Grant Source America as GSA); Px. 443 (Weekly
24 Developer Meeting Agenda, 26 March 2008 4:00pm PST); Px. 467 (Screenshot of Grant
25 Connect website (showing picture of Obama and touting "free money" for, among other things,
home improvements and medical expenses); Px. 468 2/6/2009 (screenshot of
www.vantexgroup.com/delte/grant1pager.jpg); Px. 473 (Grant Connect Research Packet), FTC-
1649 (general product facts), FTC-0001650 (competitive analysis), FTC-1651, 1656 (news
quotes), FTC-1655, FTC-1660 (listing other "benefits" to include on the grant page); Px. 475
(text for Grant Connect website); Px. 474 (screenshot of Grant Connect webpage); Px. 476,
(notebook found at the workstation of Marc Klein), FTC-1679 ("Why Grant Connect? We can

1 the Grant Connect web site.³⁵⁴ Vantex also marketed and disseminated the Grant Connect offer
 2 through affiliate networks.³⁵⁵ Jn Paul, and others at Vantex, also tested the functionality of the
 3 membership enrollment activation process by signing up for Defendants' products and services,
 4 including Grant Connect.³⁵⁶ An American Express credit card statement addressed to Juliette
 5 Kimoto at Vantex Group shows multiple grant-related charges by Rachael Cook, including
 6 charges listed as "GRNTRSR RENO" "ONLGRA RENO" "GRNTRCN RENO" and "GRANTS
 7 RENO."³⁵⁷

8 Defendants launched Grant Connect in November 2008.³⁵⁸ Initially, Global Gold
 9 bundled Grant Connect with its other offers as an add-on, or upsell.³⁵⁹ Shortly thereafter, it was
 10 launched as a stand-alone product.³⁶⁰ In addition to selling Grant Connect, Global Gold provided

11
 12 give you 15 billion reasons,"), FTC-1681 ("Did you know the government has billions of dollars
 13 to give away"), FTC-1682 ("Getting money as easy as 1, 2, 3!"); Px. 478 (undated document
 14 labeled "Approved Quotes"); Px. 479 (undated document labeled "Offer Details by Product");
 15 Px. 514.

16 ³⁵⁴ Kimoto Opp., [D.E. 62] at 6

17 ³⁵⁵ *Id.*; Px. 512 (Vantex Media Group Advertisement Card); Px. 810 (Jn Paul Dep.), FTC-6827
 18 (154:6-19).

19 ³⁵⁶ Px. 423 (MemberLegalNet welcome page to Tasha Jn Paul); Px. 424 (email to Tasha Jn Paul
 20 re "Welcome to Authority ID"); Px. 425 (email from Approval@grantconnect to Tasha Jn Paul re
 21 MemberLegalNet membership); Px. 426 (email from Approval@grantconnect to Tasha Jn Paul
 22 re Grant Connect Membership); Px. 427 (11/24/08 screenshot welcoming Tasha Jn Paul to Grant
 23 Connect and to MemberLegalNet); Px. 428 (11/21/08 screenshot welcoming Tasha Jn Paul to
 24 Grant Connect and to MemberLegalNet); Px. 446 (American Express Bill July 16, 2009); Px.
 25 841, FTC-9069-70; Px. 857 (6/9/09 email re "QA's of VO pages").

³⁵⁷ Px. 446 (American Express Bill July 16, 2009).

³⁵⁸ Kimoto Opp., [D.E. 62] at 7 & Ex. C; Henriksen Opp., [D.E. 48] at 20; Px. 490, FTC-
 0002121 ("Campaign Quick Reference").

³⁵⁹ *Id.*

³⁶⁰ *Id.*

1 the customer support service for it.³⁶¹ It controlled, supervised, and reviewed the live chat
 2 services for Grant Connect.³⁶² At the Global Gold headquarters, the company stored recordings
 3 of over 105,000 customer services calls—just one indication of their extensive role in the
 4 marketing and sale of Defendants’ products.³⁶³

5 In the course of providing customer service for Grant Connect, Global Gold routinely
 6 misled consumers, implying that they could find grants for assistance with home
 7 improvements,³⁶⁴ housing assistance,³⁶⁵ small businesses,³⁶⁶ student loans,³⁶⁷ and even medical
 8 expenses³⁶⁸ or personal debt.³⁶⁹ A common refrain was that consumers might be approved for up
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12 ³⁶¹ See *supra* note 275; Px. 503, FTC-2299; Px. 481 (“Grad Notebook” found on Jamie Wilson’s
 13 desk) (“Wilson Grad Notebook”), FTC-1846, FTC-1849, FTC-1860; Px. 482, Steno Notebook
 14 found on Jamie Wilson’s desk (“Wilson Steno Notebook”), FTC-1884 (indicating 27 “Support
 15 Tickets” for “Grants), 1872-1876, FTC-1880-82, FTC-1893 (notes of live chat support), FTC-
 1901; Px. 485 (Second Steno Notebook found on Jamie Wilson’s desk) (“Second Wilson
 Notebook”), FTC-1992, FTC-1961, FTC-1984, FTC-1992.

16 ³⁶² *Supra* note 275; Px. 521, FTC-2374-75; Px. 522, FTC-2377; Px. 523; Px. 524; Px. 525; Px.
 17 526.

18 ³⁶³ Px. 527 (Pisano Dec.), ¶¶ 20-21; Px. 564 (Customer file of consumer Rhonda Clark).

19 ³⁶⁴ Px. 521, FTC-2349, FTC-2356; Px. 522, FTC-2392, FTC-2398, FTC-2409, FTC-2411; Px.
 20 525, FTC-2471.

21 ³⁶⁵ Px. 521, FTC-2349, FTC-2363; Px. 524, FTC-2453; Px. 525, FTC-2475; Px. 526, FTC-2492.

22 ³⁶⁶ Px. 521, FTC-2349, FTC-2357-58, FTC-2371; Px. 522, FTC-2401, FTC-2405; Px. 525, FTC-
 2473.

23 ³⁶⁷ Px. 521, FTC-2359.

24 ³⁶⁸ Px. 521, FTC-2349; Px. 526, FTC-2486.

25 ³⁶⁹ Px. 526, FTC-2480.

1 to \$500,000 dollars.³⁷⁰ In one particularly egregious instance, a consumer in search of a grant to
2 restore her electricity was directed to the database's foundation grants, and instructed to "just
3 search away and look for the grant that fits your need."³⁷¹ This consumer gratefully told
4 Defendants that they "might have just saved [her] and [her] son."³⁷²

5 Defendants also collaborated on several work-from-home schemes. At some point, Kyle
6 Kimoto told Gray that "they were looking at business opportunity products" for Steven
7 Henriksen.³⁷³ Gray leapt into action and began looking for business opportunity content.³⁷⁴ On
8 January 28, 2008, O'Connell Gray entered into Consulting and License Agreement with iTime,
9 Inc.³⁷⁵ Pursuant to this agreement, O'Connell Gray licensed the content for what would become
10 the One Hour Wealth Builder and Domain Processing offers.³⁷⁶ Shortly thereafter, in February
11 2008, Kyle Kimoto and some of his cronies at Vertek, including Jn Paul, began creating the
12 Domain Processing and One Hour Wealth Builder offers.³⁷⁷ In an email to the content provider
13 for the Domain Processing scheme, Gray wrote, in pertinent part, "you will most likely be
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17 ³⁷⁰ Px. 521, FTC-2352; Px. 522 FTC-2379, FTC-2386, FTC-2449; Px. 524, FTC-2461; Px. 525,
18 FTC-2467; Px. 526, FTC-2495, FTC-2506, FTC-2508.

19 ³⁷¹ Px. 525, FTC-2469.

20 ³⁷² Px. 525, FTC-2470.

21 ³⁷³ Px. 804 (Gray Dep.), FTC-5751 (210:8-22).

22 ³⁷⁴ Px. 804 (Gray Dep.) at FTC-5751. *See also* Px. 905, FTC-9187 (2/8/2008 (email re "Paid to
23 Process/Domain Processing").

24 ³⁷⁵ Px. 574 (Consulting and License Agreement).

25 ³⁷⁶ Px. 574, FTC-2721; Px. 804 (Gray Dep.), FTC-5749 to FTC-5754.

³⁷⁷ Px. 903, FTC-9182-83; Px. 904; Px. 572; Px. 804 (Gray Dep.), FTC-5752-54.

1 interfacing with Kyle Kimoto who heads up product development and publisher relations.”³⁷⁸

2 On May 22, 2008, O’Connell Gray and Paid To Process entered into an Assignment and
3 Sublicense.³⁷⁹ Pursuant to this sublicense, O’Connell Gray assigned to Paid To Process all
4 rights, title and interest in and to the content acquired from iTime, Inc.³⁸⁰

5 On April 18, 2008, after a two week jury trial, Kyle Kimoto was convicted on all counts
6 in a 14 count indictment charging him with various offenses arising out of the Assail Scheme.
7 *U.S. v. Kyle Kimoto*, 3:07-cr-30089 (S.D. Ill.), [D.E. 52].³⁸¹ He was taken into custody upon
8 conviction. *Id.* Kyle Kimoto was prepared for this possibility and had made the necessary
9 preparations so that his family’s business interests could be taken care of in his absence. Before
10 his trial, sometime in December 2007, Kyle Kimoto recruited Smith to join Vertek, and later
11 Vantex, as Executive Director.³⁸² This allowed Kyle Kimoto to focus on preparing for his
12 criminal trial and left an experienced executive versed in deceptive marketing strategies in
13 charge of Vertek. Smith and Michael Henriksen ran Vertek, and later Vantex, from that moment
14 on.³⁸³

15
16 ³⁷⁸ Px. 572.

17 ³⁷⁹ Px. 574, FTC-2726.

18 ³⁸⁰ *Id.*

19 ³⁸¹ See The United States Attorney Southern District of Illinois News Release, *Nevada Resident*
20 *Sentenced For Role In Fraudulent Telemarketing Scheme* (Sept. 8, 2008) at
21 http://www.justice.gov/usao/ils/press/2008/September/09082008_Kimoto_press%20release.htm
(last visited December 21, 2010)

22 ³⁸² Px. 825 (Smith Dep.), FTC-8423 (44:1-24); Px. 601 (J. Kimoto), ¶ 2; Px. 806 (M. Henriksen
23 Dep.), FTC-6081-38 (122:22-124:22).

24 ³⁸³ Matt Dacko, Vantex’s former Customer Relations Manager and Global Gold’s Operations
25 Manager, identified Michael Henriksen and Smith as the individuals placed in charge of Vantex
following Kyle Kimoto’s incarceration. Px. 829 (Dacko Dep.), FTC-8880, FTC-8905 (54:10-11;
54:12-20, 79:13-19) (referring to Michael Henriksen as the “head of Vantex”); Px. 624, FTC-

1 Vantex was formed on March 4, 2008, six days after the FTC sued Vertek in *FTC v. Safe*
2 *Harbour*, Civil Action No. 08-C-1185 (N.D. Ill.), a mortgage fraud case unrelated to the current
3 matter.³⁸⁴ “After Vantex’s formation, all of Vertek’s customers, employees, and business
4 operations relating to Internet marketing activities were transferred to Vantex.”³⁸⁵

5 After Kyle Kimoto’s imprisonment, the rest of the Defendants continued to operate
6 together as a “collective enterprise” without missing a beat. As before, Defendants focused their
7 activities on five key areas necessary to keep their schemes viable: (1) product development; (2)
8 ad creation; (3) ad dissemination; (4) payment processing; and (5) customer service.

9 With regard to product development, Defendants were skilled at finding products and
10 services (“Product(s)”), like Grant Connect One Hour Wealth Builder and Acai Total Burn, that
11 were cheap to produce and appeared to have some semblance of legitimacy. For instance, the
12 content on the Grant Connect and One Hour Wealth Builder websites appeared to be very
13 valuable on the surface and could be made available to consumers via the Internet at little cost to
14 Defendants. Gray, in particular, was expert at identifying and securing such content. Web
15 designers at Vertek and Vantex often enhanced the appearance and usability of the content.

16 Once the Product was acquired, Defendants collaborated in rebranding it and creating
17 enticing advertising. Web designers and marketers on staff at Vertek, Vantex, and later Dragon
18 created the banner ads, landing pages, and other marketing materials (the “Creatives”) used to
19

20
21 3748 (Jn Paul reported directly to Smith after Kyle Kimoto began preparing for his criminal
22 trial); Px. 609; Px. 610; Px. 810 (Jn Paul Dep.), FTC- 6767-68 (94:7-95:14). A third-party
23 investor, Media Funding Corporation, also believed Michael Henriksen to be in control of
24 Vantex. See Px. 798 (Bieler Dep.), FTC-165:9-166:9; Px. 558; Px. 560”), FTC-2647, FTC-2648
(5/27/09 Email re: “updated list May 26, 2009); Px. 658; Px. 737.

25 ³⁸⁴ On April 24, 2009, the FTC filed a notice of voluntary dismissal as to Vertek, formerly
known as Keystone Financial LLC, without prejudice.

³⁸⁵ J. Kimoto Aff. ¶ 9 [D.E. 62-2] at p. 3.

1 promote Defendants' schemes.³⁸⁶ They also supervised contract web designers located in the
 2 Philippines and elsewhere. Johnnie Smith regularly received drafts of the Defendants' Creatives
 3 and status reports on marketing campaigns.³⁸⁷ Global Gold and Vantex met regularly to discuss
 4 marketing strategy.³⁸⁸ In doing so, Global Gold often brainstormed with Vantex's marketing
 5 team and developed marketing plans with Vantex.³⁸⁹

6 Defendants widely disseminated the Creatives through affiliates and marketing networks
 7 that drove Internet traffic to Defendants' landing pages.³⁹⁰ In doing so, Smith and Jn Paul were
 8

9
 10 ³⁸⁶ Px. 415 ("VComm Project: list of tasks to complete); FTC-1349; Px. 471)Current Projects
 11 for Marketing Department); Px. 476, (Klein notebook), FTC-1715 (Acai Total Burn), FTC-1690,
 12 FTC-1695 (work-at-home business); Px. 489 (file folder for Acai; Vantex also thought up
 13 potential sender names for email messages from Defendants' line of credit products that included
 14 "Uncle Sam," "Tax Specialist," "The American People," Tax Assistance Group," and
 15 "Concerned Money Expert.").

16 ³⁸⁷ Px. 779; Px. 437; Px. 399 (Jones Dec.), ¶ 8; Pxs. 406-410 (Grant Connect marketing drafts
 17 found in Smith's office at Vantex); Pxs. 411- 412 (Line of credit marketing drafts found in
 18 Smith's office at Vantex); Px. 416 (Paid to Process Inc. Domain Processing Customer Service
 19 Training Manual found in Smith's office at Vantex); Px. 495 (7/23/08 email chain re: "FW:
 20 Changes to Terms and Conditions.").

21 ³⁸⁸ Px. 485 (Second Wilson Notebook), FTC-1946 (5/28/09 meeting), FTC-0001961 (6/11/09
 22 meeting), FTC-0001984 (7/13/09 meeting), FTC-0001992 (7/1/09 meeting); Px. 419, FTC-
 23 0001372, Friday 9:30am - 12/12 ("Meeting Minutes 12/12"); Px. 421 Minutes Monday 4pm –
 24 12/08/08 ("Meeting Minutes 12/08/08"); Px. 422 (email from Tasha Jn Paul to Jason Soto, Jason
 25 Lane, Matt Spaid, and Roumen Todorov re: "9:30 ops meeting") (Meeting Minutes 12/08/08
 4:30pm); Px. 433 (Minutes of Meeting 6/24/09); Px. 434 (Minutes of Meeting 7/1/09); Px. 435
 (Minutes of Meeting 6/24/09); Pxs. 486, 509 (Minutes of Meeting 6/11/09); Px. 487 (Minutes of
 Meeting 6/03/09); Px. 508 (5/28/09 Minutes of Meeting); Px. 509 (6/11/09 Minutes of Meeting).

³⁸⁹ Px. 500, FTC-2151 (Outline re: Vantex design team plan for optimization of LOC pages)
 (found in Matt Dacko's office at Global Gold).

³⁹⁰ Px. 494 (6/30/08 Vantex Group Marketing Department Q3 Affiliate Sales Promotion; Px.
 500, Outline re: Vantex design team plan for optimization of LOC pages found in Matt Dacko's
 office) ("LOC Optimization Plan"), FTC-2151 (mentioning "Vantex offers" with regard to line
 of credit products); Px. 512 (Vantex Media Group Advertisement Card).

1 responsible for keeping tabs on Defendants' affiliate relationships.³⁹¹ Jn Paul had the password
 2 to access all versions of the webpages being used by Virgin Offers Media, one of their main
 3 affiliate marketers.³⁹² Justin Lund, who ran Virgin Offers Media, regularly communicated with
 4 Vantex (especially with Michael Henriksen and Jn Paul) about the creation and dissemination of
 5 websites and banners for Defendants' products, which Virgin Offers Media promoted to its
 6 affiliates.³⁹³ Vantex went to great lengths to incentivize affiliates. One way they did this was by
 7 putting on a contest with a luxury vacation grand prize for the best-performing affiliate.³⁹⁴ On a
 8 separate occasion, in January 2009, Vantex hosted a party for more than 250 affiliate marketers
 9 in the Fireside VIP Room at the Playboy Club during the Affiliate Summit trade show held in
 10 Las Vegas. According to a news report, the Vantex event "featured an open premium bar,
 11 infamous Playboy bunnies and great networking opportunities."³⁹⁵

12 Affiliates, and affiliate marketing networks, like Virgin Offers Media, typically charge a
 13 commission or bounty based on the number of consumers they drive to a website or the number
 14 of transactions they generate.³⁹⁶ These bounties were Defendants' largest expense.³⁹⁷ And

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 17 ³⁹¹ Px. 436, FTC-1414 (7/01/09 Email re "NHS/GGC Contract"); Px. 810 (McKinnon Dep.),
 18 FTC- 7650-51 (165:24-166:3); Px. 810 (Jn Paul Dep.), FTC-6827 (154:6-13).

19 ³⁹² Px. 817, (McKinnon Dep.), FTC- 7646 (160:8-12).

20 ³⁹³ Px. 844, FTC-9075-76; Px. 845 (8/14/08 Email re "AWBC and FNG Offers"); Px. 848; Px.
 21 846 (email to LaDawn Burley asking Vantex to create a new "Platinum" skin modeled after First
 22 Plus Platinum line of credit product); Px. 855 (Vantex showing off its newest acai email
 23 Creatives to Lund); Px. 850 (7/20/09 email re "happy?"); Px. 849; Px. 857.

24 ³⁹⁴ Px. 494 (6/30/08 Vantex Group Marketing Department Q3 Affiliate Sales Promotion).

25 ³⁹⁵ See, e.g., *Exclusive "Beyond Expectations VIP Party" a Hit at Affiliate Summit*, REUTERS,
 Jan. 23, 2009, <http://www.reuters.com/article/pressRelease/idUS252720+23-Jan-2009+MW20090123>.

³⁹⁶ Px. 813 (Longbicho Dep.), FTC-7319-21 (110:3-112:9).

1 Defendants had to pay them before they could break even on their offers, all of which relied on
 2 continuity or subscription billing. For this reason, Global Gold, Horizon Holdings, Elite, and
 3 Acai, Inc. had to borrow money from Media Funding Corporation (“Media Funding”).³⁹⁸ Media
 4 Funding is a niche lender specializing in funding direct marketing campaigns.³⁹⁹ Without this
 5 unique funding source, Defendants could not have reached nearly as many consumers.
 6 O’Connell and Gray worked under Media Funding’s owner when they were at Gizmo and were
 7 responsible for introducing him to Kyle Kimoto and Michael Henriksen.⁴⁰⁰

8 Defendants also needed a mechanism to process credit and debit card payments via the
 9 Internet, and thereby take consumers’ money. O’Connell had deep ties in the payment
 10 processing business and led Defendants’ efforts to acquire and maintain merchant accounts
 11 despite the fact that many of Defendants’ offers were experiencing excessive chargeback rates.⁴⁰¹

12 In what appears to have been an attempt to improve chargeback rates, Defendants
 13 regularly opened additional merchant accounts using a slew of different companies.⁴⁰² Through
 14
 15

16 ³⁹⁷ *Id.*

17 ³⁹⁸ Px. 688 (Loan and Security Agreement between Media Funding and Horizon Holdings); Px.
 18 742 (Loan and Security Agreement between Global Gold and Media Funding); Px. 743
 19 (Amendment to Loan and Security Agreement between Global Gold, Elite, and Media Funding);
 20 Px. 754 (Loan and Security Agreement between Acai, Inc. and Media Funding Corporation); Px.
 829 (Dacko Dep.), FTC-8916-8917 (90:22-91:9).

21 ³⁹⁹ Px. 804 (Gray Dep.), FTC-0005777.

22 ⁴⁰⁰ Px. 804 (Gray Dep.), 242:5-20; Px. 799 (Bieler Dep.), FTC- 4971-72 (63:24-64:12).

23 ⁴⁰¹ Px. 714, FTC-4158. *See also* Px. 544; Px. 549; Px. 818 (O’Connell Dep.), FTC- 7795 (110:9-
 16); Px. 810 (Jn Paul Dep.), FTC- 6805 (132:8-23).

24 ⁴⁰² Px. 766; *See* Px. 614 (“Global Gold Load Balancing Reassessment Visa/Mastercard
 25 Presentation by Verifi”), FTC-3692 (discussing strategies to lower the chargeback rates,
 including opening additional merchant accounts), FTC-3681 (stating that Global Gold will be

1 this practice, Defendants misled the Visa, Mastercard, and other credit card networks and
2 effectively reset their chargeback rate.⁴⁰³ One payment processor even described Cynthia
3 Granada, Global Gold's "Chargeback Queen" as "the guru of these types of changes."⁴⁰⁴
4 Defendants' reliance on this practice is highlighted by the concern with which they responded
5 when informed of the possibility that banks would attempt to prevent this sort of deception by
6 linking corporate tax identification numbers with merchant accounts, thereby preventing a
7 company from switching accounts to avoid detection.⁴⁰⁵ To avoid chargeback fines and continue
8 their scheme, Michael Henriksen even made plans to move Defendants' payment processing
9 offshore to Panama.⁴⁰⁶

10 Customer Service was the final critical part of Defendants' operation, but not in the way
11 that it is for legitimate businesses. For Defendants, customer service was a means to an end and
12 had nothing to do with keeping consumers satisfied. Since all of Defendants' schemes were set
13 up as continuity programs with recurring monthly charges, Defendants profited by continuing the
14 deception and retaining or "saving" as many customers as possible. Defendants could also limit
15 chargebacks and consumer complaints by strategically issuing refunds only to irate customers
16

17
18 opening an additional offshore account), FTC-3687 (stating that the fraudulent transaction reason
code represents approximately 70% of the total chargebacks).

19 ⁴⁰³ Px. 546 (3/6/09 email chain re "RE: NEW AMEX MID FOR DP"); Px. 549 (5/12/09 email
20 chain re "RE: Closing Accounts"); Px. 553 (5/13/09 email chain re "FW: Vimas TrackIT Case
21 Number 1430078 Resolved"); Px. 558 (5/14/09 email chain re "FW: updates – long but
22 important please read"), FTC-0002643 (discussing opening multiple off-shore payment
processor accounts in Panama).

23 ⁴⁰⁴ Px. 546 (3/6/09 email chain re "RE: NEW AMEX MID FOR DP").

24 ⁴⁰⁵ Px. 544 (6/16/09 Email chain re: "FW:MCMP"); Px. 545 (6/16/09 Email chain re:
25 "FW:MCMP").

⁴⁰⁶ Px. 558, FTC-2640 (5/14/09 Email chain re "FW: updates - long but important..").

1 that were likely to call their bank or the authorities.⁴⁰⁷ As with everything else, Defendants
 2 worked collaboratively on customer service. At the beginning, Vertek was primarily responsible
 3 for customer service.⁴⁰⁸ Eventually, the employees responsible for customer service at Vertek
 4 moved to the Global Gold's offices and were put on its payroll.⁴⁰⁹ From then on, Global Gold
 5 and Dragon were primarily responsible for customer service with regard to all of Defendants'
 6 offers.⁴¹⁰ In carrying out their customer service responsibilities, Global Gold and Dragon
 7 outsourced customer service to call centers located in the Philippines.⁴¹¹ They also took certain
 8 calls that were escalated from the call centers, wrote Customer Service Training Manuals and
 9 reviewed recordings of customer service calls and transcripts of online customer service chats.⁴¹²
 10 Steve Henriksen personally reviewed and responded to consumer complaints from the Better
 11 Business Bureau and other state agencies about Defendants' products.⁴¹³ Vantex and Horizon
 12 Holdings also played a role in reviewing and developing the Customer Service Training Manuals

16
 17 ⁴⁰⁷ Px. 536, 2/25/09 (email from Mike Henriksen to Johnnie Smith, Matt Dacko, Randy
 18 O'Connell, Steven Henriksen, and Tasha Jn Paul re: "LOC Refunds"); Px. 537 (2/25/09 email
 19 chain "RE: LOC Refunds"); Px. 481 (Wilson Grad Notebook), FTC-0001814 (writing in his
 20 notes on chargebacks that "\$30 refund that we are giving is working"); Px. 511.

21 ⁴⁰⁸ Px. 810 (Jn Paul Dep.), FTC- 6824 (151:8-24).

22 ⁴⁰⁹ *Id.*

23 ⁴¹⁰ Px. 814 (Lujan Dep.), FTC- 7391-92 (17:6-18:8); Px. (Dacko Dep.), FTC- 8933 (107:17-22).

24 ⁴¹¹ Px. 665; Px. 666; Px. 667; Px. 668; Px. 669; Px. 670; Px. 671; Px. 672.

25 ⁴¹² Px. 814 (Lujan Dep.), FTC- 7395-06 (21:23-24:14, 28:1-29:13; 30:22-31:5, 32:6-24).

⁴¹³ Px. 807 (S. Henriksen Dep.), FTC- 6483 (226:9-17); Px. 375 (Campbell Dec.), Att. D, FTC-
 1078 to FTC-1113; Px. 539; Px. 814 (Lujan Dep.), FTC- 7406 (32:13-19).

1 for Defendants' schemes.⁴¹⁴ The Reno Defendants also played a role in that Customer service
 2 agents used OS and CMS's AWARE system to input consumer comments. While Defendants
 3 attempted to give their payment processors the appearance that they took "customer complaints
 4 and customer service very seriously,"⁴¹⁵ in reality they thought consumer complaints were
 5 "pretty funny."⁴¹⁶

6 At the time of the entry of the TRO, the Las Vegas Defendants were in the process of
 7 combining the operations of Global Gold and Vantex into Dragon.⁴¹⁷ To that end, Steven
 8 Henriksen had secured new office space, and Vantex's Marketing Director had become a Dragon
 9 employee and moved to Global Gold's offices. Eventually, the Las Vegas Corporate Defendants
 10 expected that Vantex would dissolve and Vantex and Global Gold employees would continue
 11 their work through Dragon.⁴¹⁸

14 ⁴¹⁴ Px. 416 (2008 Paid to Process Inc./Domain Processing Customer Service Training Manual);
 15 Px. 441 (Global Gold, First Plus Platinum and First National Gold Customer Service Training
 16 Manual); Px. 463 (First Plus Platinum Customer Service Training Manual 2007). The Grant
 17 Connect database contained in the AWARE customer records management system also lists not
 18 only Defendants' grant products, but many of Global Gold's line of credit offers. Px. 527 (Pisano
 19 Dec.), ¶ 25.

18 ⁴¹⁵ Px. 530 (1/24/08 email from Steven Henriksen to Rachel Cook re: "Giact.").

19 ⁴¹⁶ Px. 529 (1/24/08 Email from Steven Henriksen to Mike Henriksen and Rachel Cook re:
 20 "Wiki.com "complaint" Screenshots (noting "this is pretty funny" in response to a consumer's
 21 online complaint about one of Defendants' credit line offers)); Px. 501, FTC-2206 (Notebook
 22 found in Matt Dacko's office, note above website listed as isfirstplusplatinumascam.com stating
 "we're gonna buy these!").

23 ⁴¹⁷ Px. 559, FTC-2644; Px. 501, FTC-2165; Px. 829 (Dacko Dep.), FTC- 8965 (139:2-13); Px.
 24 807 (S. Henriksen Dep.), FTC- 6305-07 (49: 25-51:22) (Steven Henriksen planned to move all
 Global Gold customer service employees to Dragon)

25 ⁴¹⁸ Px. 813 (Longbicho Dep.), FTC-7290-91 (81:7-82:12); Px. 480 (Vera Dec.), ¶¶ 6-7; Px. 504;
 Px. 520.

III. LEGAL ARGUMENT

In light of the overwhelming amount of uncontroverted evidence proving Defendants' violations of the FTC Act and the EFTA, the FTC seeks summary judgment on all counts alleged in the Amended Complaint.

A. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate, where, as here, "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). As the movant, the FTC initially "bears the burden of proving there is no genuine issue of material fact." *FTC v. Publs. Bus. Servs.*, 2010 U.S. Dist. LEXIS 34336, 2010-1 Trade Cas. (CCH) P76955 at *35 (D. Nev. Apr. 7, 2010) (quoting *Leisek v. Brightwood Corp.*, 278 F.3d 895, 898 (9th Cir. 2002)). However, once the FTC meets its initial burden, "the burden shifts to the [Defendants] to set forth, by affidavit or as otherwise provided in Rule 56, specific facts showing that there is a genuine issue for trial." *FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009) (citations omitted). And while the Court must view the evidence in the light most favorable to the defendants, *Leisek*, 278 F.3d at 898, they must come forward with more than "bald assertions or a mere scintilla of evidence" in their favor to withstand summary judgment. *Stefanchik*, 559 F.3d at 929; *see also Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002). As set forth below, and supported by the FTC's 47 volumes of evidence, there is ample basis for the entry of summary judgment against Defendants.

B. THE FTC IS ENTITLED TO SUMMARY JUDGMENT ON ALL COUNTS

The FTC is entitled to summary judgment on each of the eight counts contained in the Amended Complaint. Counts I through VII allege violations of Section 5(a) of the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a). In addition to alleging violations of Section 5(a), Count V alleges violations of Section 12 of the FTC Act, which proscribes the dissemination of false advertising "for the purpose of

1 inducing, or which is likely to induce, directly or indirectly, the purchase . . . of food, drugs,
2 devices, services, or cosmetics.” 15 U.S.C. § 52. Count VIII alleges violations of the EFTA, 15
3 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

4 More specifically, Count I alleges that Defendants violated Section 5 of the FTC Act by
5 misrepresenting and failing to substantiate claims that consumers who purchased and used their
6 grant-related products and services were likely to obtain a government or other grant.

7 Count II alleges that Defendants deceptively marketed their line of credit offers by falsely
8 representing that it was a general purpose unsecured credit card. Count III alleges that
9 Defendants failed to adequately disclose material terms and conditions of their line of credit
10 offers, including that (i) consumers were joining Defendants’ online shopping club; (ii) the line
11 of credit could only be used to buy items exclusively from defendants’ online shopping clubs;
12 (iii) the line of credit could not be used to purchase all items available through Defendants’
13 shopping clubs in that some items required a significant deposit prior to shipping; and (iv)
14 certain fees and charges applied to the line of credit offer.

15 Count IV states that Defendants falsely, and without substantiation, claimed that
16 consumers who purchased their work-at-home business opportunity were likely to earn
17 substantial income with minimal effort.

18 Count V asserts that Defendants made unsubstantiated representations that consumers
19 who purchased Acai Total Burn, a dietary supplement, would build muscle, increase their
20 metabolism, lose weight, increase their energy, diminish their fatigue, and slow down the aging
21 process.

22 Count VI alleges that Defendants falsely represented that their products or services were
23 used, endorsed, or approved by specifically identified consumers, including celebrities such as
24 Oprah Winfrey, Rachel Ray, Brad Pitt, Kate Hudson and Denise Richards.

25 Count VII alleges that Defendants falsely claimed that their products and services were

1 available at a very low cost while failing to disclose the material terms and conditions of their
2 offers, including (i) that consumers who sign up for one of Defendants' products or services are
3 enrolled in a membership program for that product or service and must cancel the program
4 within a limited time period to avoid additional charges; (ii) that consumers who sign up for one
5 of Defendants' products or services will be charged for additional unrelated products or services
6 unless consumers take affirmative action to avoid the charges; and (iii) the amounts of such
7 charges.

8 Count VIII alleges that Defendants debited consumers' bank accounts on a recurring
9 basis without obtaining a written authorization signed or similarly authenticated by consumers
10 and without providing a copy of the signed authorization to consumers, in violation of Section
11 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. §
12 205.10(b).

13 **1. Defendants Violated Section 5(a) Of The FTC Act**

14 Defendants cannot dispute the fact that they made the multiple misrepresentations and
15 deceptive omissions alleged in Counts I through VII and thereby violated Section 5(a) of the
16 FTC Act. 15 U.S.C. § 45(a). To establish a Section 5(a) violation, the FTC must show that the
17 representation, omission, or practice is "(1) 'likely to mislead consumers acting reasonably under
18 the circumstances (2) in a way that is material.'" *Publrs. Bus. Servs.*, 2010 U.S. Dist. LEXIS
19 34336 at *44 (quoting *FTC. v. Cyberspace.Com LLC*, 453 F.3d 1196, 1199 (9th Cir. 2006)).
20 "The representation may be either implied or express." *Id.* (quoting *FTC. v. Figgie Int'l Inc.*,
21 994 F.2d 595, 604 (9th Cir. 1993)).

22 "To determine whether a representation, omission, or practice is likely to mislead, the
23 Court considers the overall net impression the representation creates." *Id.* at *44-45 (citing
24 *Cyberspace.Com*, 453 F.3d at 1200). *See also Stefanchik*, 559 F.3d at 928. "Thus, a
25 representation may amount to a Section 5 violation where the representation is literally true, if

1 the overall net impression is likely to mislead.” *Publrs. Bus. Servs.*, 2010 U.S. Dist. LEXIS
2 34336 at *44-45. “A representation, omission, or practice ‘is material if it involves information
3 that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a
4 product.’” *Publrs. Bus. Servs.*, 2010 U.S. Dist. LEXIS 34336 at *47 (quoting *Cyberspace.Com*,
5 453 F.3d at 1201); *see also In the matter of Southwest Sunsites Inc.*, 105 F.T.C. 7, 149 (1985),
6 *aff’d*, 785 F.2d 1431 (9th Cir. 1986), *cert. denied*, 479 U.S. 828 (1986) (same). “Express claims
7 or deliberately-made implied claims used to induce the purchase of a particular product or
8 service are presumed to be material.” *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1272
9 (S.D. Fla. 1999) (citing *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1096 (9th Cir. 1994), *cert.*
10 *denied*, 514 U.S. 1083 (1995).

11 As discussed in detail below, the FTC is entitled to summary judgment because the
12 multiple scams at issue here all involved material representations, omissions, or practices likely
13 to mislead consumers.

14 **a. Defendants’ Misrepresentations Regarding Grants (Count I)**

15 The FTC is entitled to summary judgment on Count I of the Amended Complaint which
16 alleges that Defendants violated Section 5 of the FTC Act by misrepresenting and failing to
17 substantiate claims that consumers who purchased and used their grant-related products and
18 services were likely to obtain a government or other grant. There is no genuine dispute as to the
19 fact that Defendants falsely represented that consumers who purchased Grant Connect would be
20 likely to obtain a grant. The Grant Connect Offer Site displayed numerous quotes, testimonials,
21 and other representations which gave consumers the net impression that they would be likely to
22 obtain a grant, especially from the government, using Grant Connect.⁴¹⁹ *FTC v. NCH, Inc.*, 1997

23
24 ⁴¹⁹ *See, e.g.*, consumer declarations: Px. 376 (Berry Dec.), ¶¶ 2, 8; Px. 377 (Drake Dec.), ¶ 3; Px.
25 378 (Westrich Dec.), ¶ 3; Px. 379 (Nobles Dec.), ¶ 3; Px. 380 (Wall Dec.), ¶ 3; Px. 381 (Hicks
Dec.), ¶ 3, 5-6; Px. 383 (Dec. Loiseau), ¶ 2; Px. 385 (Fields Dec.), ¶ 3; Px. 386 (Rauscher Dec.),

1 U.S. App. LEXIS 760 (9th Cir. Nev. Jan. 15, 1997) (representation is deceptive “if its net
 2 impression is likely to mislead consumers. . .”); *FTC v. Tashman*, 318 F.3d 1273, 1283 (11th Cir.
 3 2003) (Section 5 violation occurs if the “common sense net impression of the representations as
 4 a whole” is misleading). Reasonable consumers who saw Grant Connect’s advertising claims
 5 would understandably believe they could secure a grant using Grant Connect.⁴²⁰ These claims
 6 related directly to the effectiveness of Grant Connect itself and were therefore material to a
 7 consumer’s purchasing decision. In fact, many consumers purchased Grant Connect believing
 8 they would obtain a grant.⁴²¹

9 Unfortunately for consumers who bought Grant Connect in the hopes of getting a grant,
 10 Defendants’ claims were false. Grants are awards of financial assistance made to accomplish or
 11 support a public purpose.⁴²² Thus, grants are rarely awarded to individuals and small
 12 businesses.⁴²³ Rather, most grants are only available to colleges, universities and other non-

13
 14
 15
 16 ¶ 3; Px. 388 (Centeno Dec.) ¶ 3; Px. 389 (Westmoreland Dec.), ¶ 3; Px. 390 (Walker Dec.), ¶ 2-
 3; Px. 393 (Shea Dec.), ¶¶ 2-3; Px. 396 (Kampff Dec.), ¶¶ 2-3.

17 ⁴²⁰ *See, e.g.*, consumer declarations: Px. 376 (Berry Dec.), ¶¶ 2, 8; Px. 377 (Drake Dec.), ¶ 3; Px.
 18 378 (Westrich Dec.), ¶ 3; Px. 379 (Nobles Dec.), ¶ 3; Px. 380 (Wall Dec.), ¶ 3; Px. 381 (Hicks
 19 Dec.), ¶ 3, 5-6; Px. 383 (Dec. Loiseau), ¶ 2; Px. 385 (Fields Dec.), ¶ 3; Px. 386 (Rauscher Dec.),
 20 ¶ 3; Px. 388 (Centeno Dec.) ¶ 3; Px. 389 (Westmoreland Dec.), ¶ 3; Px. 390 (Walker Dec.), ¶ 2-
 3; Px. 393 (Shea Dec.), ¶¶ 2-3; Px. 396 (Kampff Dec.), ¶¶ 2-3.

21 ⁴²¹ *Id.* The Commission need not prove actual reliance by each individual consumer. *Figgie*
 22 *Int’l*, 994 F.2d at 605. Requiring such proof would defeat the intent of the FTC Act and would
 23 frustrate prosecutions of large consumer redress actions. *Id.* Instead, a presumption of actual
 24 reliance arises once the Commission has proved that the defendant made material
 25 misrepresentations, that they were widely disseminated, and that consumers purchased the
 defendant’s product. *Id.* at 605–06.

⁴²² Px. 397 (Davis Dec.), ¶¶ 8-10; Px. 398 (Bauer), ¶¶ 11 & 13-14.

⁴²³ Px. 397 (Davis Dec.), ¶¶ 8-10; Px. 398 (Bauer Dec.), ¶¶ 11-14.

1 profit institutions.⁴²⁴ The likelihood of any individual consumer or small business securing a
 2 grant is fairly low no matter what computer software or advice they purchase.⁴²⁵ Even when an
 3 individual or organization meets the strict eligibility requirements for a particular grant, the
 4 application process is not quick and easy and can take months even if pursued expertly.⁴²⁶ For
 5 this reason, Defendants' representations that purchasers of Grant Connect would be likely to
 6 receive a government grant were false.

7 In testing Grant Connect, David G. Bauer, the FTC's expert, was unimpressed with Grant
 8 Connect and concluded that users of Grant Connect were unlikely to successfully secure a grant.
 9 First, Bauer found practically no grants available for individuals or small businesses in multiple
 10 searches using Grant Connect's database.⁴²⁷ He also found that the data contained in the Grant
 11 Connect database was outdated.⁴²⁸ In addition to containing stale information, Mr. Bauer
 12 discovered that Grant Connect's Live Chat Support representative spread misinformation about
 13 the availability of grants.⁴²⁹ *See FTC v. U.S. Oil & Gas Corp.*, 1987 U.S. Dist. LEXIS 16137
 14 (S.D. Fla. July 10, 1987) (“[T]he sale of services that have no reasonable prospect of achieving
 15 the results claimed’ is deceptive.” (quoting *Raymond Lee Organization*, 92 F.T.C. 489, 631-32
 16 (1978), *aff'd*, 679 F.2d 905 (D.C. Cir. 1980))).

17 Based on this uncontroverted evidence, Defendants clearly violated Section 5 by
 18 misrepresenting that individual consumers would be likely to obtain grants using Grant Connect

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 20 ⁴²⁴ *Id.*

21 ⁴²⁵ Px. 398 (Bauer Dec.) ¶¶ 15-18.

22 ⁴²⁶ Px. 397 (Davis Dec.), ¶ 11; Px. 398 (Bauer Dec.) ¶¶ 15, 18.

23 ⁴²⁷ Px. 398 (Bauer Dec.), ¶ 22.

24 ⁴²⁸ Px. 398 (Bauer Dec.), ¶ 28.

25 ⁴²⁹ Px. 398 (Bauer Dec.), ¶¶ 32-34.

1 and by failing to substantiate their claims.

2 **b. Defendants' Line of Credit Schemes (Counts II & III)**

3 Summary judgment is also appropriate as to Counts II and III, alleging that Defendants'
4 line of credit offers were deceptive. Specifically, the uncontroverted evidence shows that
5 Defendants violated Section 5(a) of the FTC Act through (1) their material misrepresentations
6 and (2) their failure to disclose materials terms in the marketing and sale of their line of credit
7 offer to consumers. As discussed in detail in Section II.A.2 of the Statement of Facts, the line of
8 credit offers' emails, banners and landing pages (collectively "LOC Advertisements") led
9 consumers to believe – expressly and by implication – that for a nominal activation and/or
10 processing fee of \$2.78, they would receive a general purpose unsecured credit card/line with a
11 credit limit between \$5,000 and \$10,000 at 0% interest for 12 full months. Instead, Defendants
12 deceptively enrolled consumers in a costly online shopping club, where they could only purchase
13 certain items exclusively from Defendants, and only by putting money down for each purchase.
14 Such deception violates Section 5 of the FTC Act as interpreted by the Ninth Circuit and this
15 Court. *See Stefanchik*, 559 F.3d at 928; *Publrs. Bus. Servs.*, 2010 U.S. Dist. LEXIS 34336 at *44
16 Applying the governing "overall net impression" standard, federal courts have found violations
17 of Section 5 of the FTC Act in cases involving credit line offers remarkably similar to those at
18 issue here. Perhaps not coincidentally, key defendants in those analogous cases have also played
19 active roles in the LOC Advertisements at issue here.

20 In *FTC v. Capital Choice Consumer Credit, Inc. et al.*, No. Civ-02-21050 (S.D. Fla. Feb.
21 19 2004) (attached as Px. 598), defendants – including Johnnie Smith,⁴³⁰ a defendant in this
22 action, and Zentel, a company owned and operated by Kyle Kimoto, another defendant in this
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25 ⁴³⁰ See Px. 598 at FTC-3514, ¶ 7.

1 action⁴³¹ – violated Section 5 of the FTC Act by deceptively leading consumers to believe that
2 they were offering a general purpose credit card. Px. 598 at FTC-3519. Instead, as here,
3 defendants’ purported credit could only be used to pay for merchandise from their shopping club.
4 *Id.* at FTC-3519, ¶ 27. The *Capital Choice* defendants sent consumers an “approval certificate”
5 which implied that defendants were offering a general purpose credit card. *Id.* at FTC-3523-24.
6 That implication was created by representations similar to those at issue here, such as:

- 7 • “approved credit limit”
- 8 • “you are approved to receive a CREDIT CARD with a personal credit limit of
9 \$4,000 to \$7,500 GUARANTEED!”
- 10 • “Our records show this card to have an approved line of credit of \$4,000.00.”

11 *Id.*

12 In granting summary judgment to the FTC on the issue of whether the approval certificate
13 offer violated Section 5 of the FTC Act, the court held “that the net impression created by
14 Defendants’ certificate is that consumers who paid the required fee would receive a general
15 purpose credit card and, therefore, [] the certificate is deceptive.” *Id.* at FTC-3519 (internal
16 citation omitted). The court was unimpressed by defendants’ argument that, during the sales
17 process, consumers were exposed to language disclosing the true nature of defendants’ offer. It
18 explained, as this Court held in *Publrs. Bus. Servs.*, 2010 U.S. Dist. LEXIS 34336 at *44-45, that
19 “implied claims as well as express claims may be deceptive, and a claim may be deceptive even
20 though it is literally true.” *Id.* at FTC-3569 (citing *Am. Home Prod. v. FTC*, 695 F.2d 618, 687
21 (3d Cir. 1982) (“[t]he impression created by the advertising, not its literal truth or falsity, is the
22 desideratum[.]”).

23 *FTC v. Peoples Credit First, LLC*, No. 8:03-cv-2353-T-TBM, 2005 U.S. Dist. LEXIS
24

25 ⁴³¹ See Px. 598 at FTC-3540-41, ¶ 74.

1 38545 (M.D. Fla. Dec. 18, 2005), *aff'd* 244 Fed. Appx. 942 (11th Cir. 2007) is another
2 instructive case involving a deceptive credit line offer. A key defendant in *Peoples Credit* was
3 Shaun Olmstead, who provided marketing and customer support services to Defendants in
4 connection with the conduct at issue this matter.⁴³² *Id.* at *5, 8-9. (This Court has issued an
5 Order to Show Cause to Mr. Olmstead after he failed to appear for his noticed deposition in this
6 matter [D.E. 208, 228].) The *Peoples Credit* defendants sent consumers an “acceptance
7 certificate” that included, among others, the following representations:

- 8 • “YOU ARE GUARANTEED APPROVAL FOR A PEOPLES CREDIT FIRST
9 PLATINUM CARD WITH A CREDIT LINE OF \$ 5,000.00.”
- 10 • “YOU MAY USE YOUR PLATINUM CARD IMMEDIATELY UPON RECEIPT
11 FOR ALL PURCHASES FROM CREDIT PROVIDER.”
- 12 • “TO RECEIVE YOUR NEW PLATINUM CARD PLEASE SIGN AND MAIL THIS
13 GUARANTEED ACCEPTANCE CERTIFICATE AND INCLUDE YOUR ONE-
14 TIME ONLY \$ 45.00 MEMBERSHIP.”
- 15 • “NO APPLICATION OR CREDIT CHECK IS NECESSARY WHEN
16 CARDHOLDER SIGNS THIS ACCEPTANCE CERTIFICATE.”
- 17 • “approval is GUARANTEED with a \$ 5,000.000 CREDIT LIMIT AND A 12
18 MONTH 0% APR.”
- 19 • “PLEASE SEE TERMS AND CONDITIONS INCLUDED IN YOUR
20 MEMBERSHIP PACKAGE.”

21 *Id.* at *5-6. The terms and conditions – posted on the web and included in the membership
22 package that consumers received – “indicated that buyers would get a membership card and not a
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25 ⁴³² See, e.g., Px. 823 (Soto Dep. Vol. III), FTC-8054-55 (128:9-129:7), FTC-8161 (235:4-10)
(testimony of Vantex’s Marketing Director regarding dealing with Shaun Olmstead).

1 Visa or Mastercard.” *Id.* at *11.

2 Granting summary judgment to the FTC, the *Peoples Credit* court held that:

3 When fairly and reasonably viewed as a whole, the acceptance
4 certificate had both express and implied representations: (1) it
5 expressly represented that the consumer would get a platinum card
6 with a 0% annual percentage rate and a \$ 5,000.00 credit limit
7 without application or credit check simply by paying \$ 45.00 (or \$
8 49.00); and (2) it implied that the platinum card the consumer
9 would receive upon payment was a credit card.

10 *Id.* at *21.

11 The *Peoples Credit* defendants argued that the matter could not be resolved on summary
12 judgment as the certificate included truthful information about the limited nature of the offer and,
13 per defendants, could also be reasonably read as offering a shopping club membership. *Id.* at
14 *23. The court disagreed, holding that “deception may be accomplished by innuendo rather than
15 by outright false statements”, and that “whether a representation is likely to mislead reasonable
16 consumers must be determined by viewing it as a whole, without emphasizing isolated words or
17 phrases apart from their context.” (citations omitted). Quoting *FTC v. Think Achievement Corp.*,
18 144 F. Supp. 2d 993, 1010 (N.D. Ind. 2000), the *Peoples Credit* court held that

19 the important criterion in determining the meaning of an
20 advertisement or representation is the net impression that it is
21 likely to make on the general populace ... the determination is not
22 restricted to a consideration of what impression an expert or
23 careful reader would draw from the advertisement or
24 representation, but rather involves viewing the representation as it
25 would be seen by the public generally which includes the ignorant,

1 the unthinking and incredulous, who, in making purchases, do not
2 stop to analyze but too often are governed by appearances and
3 general impressions.

4 *Id.* at *24. *See also* *FTC v. Freecom Communs., Inc.*, 401 F.3d 1192, 1202 (10th Cir. 2005)
5 (“Consumer protection laws exist to protect ‘the public-that vast multitude, which includes the
6 ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze,
7 but are governed by appearances and general impressions.’”) (quoting 3A Louis Altman,
8 *Callman on Unfair Competition, Trademarks and Monopolies* § 21:9, at 21-80 (4th ed. 2004)).

9 Affirming the district court’s summary judgment order, the Eleventh Circuit held:

10 The fact that the words in the mail piece are technically or literally
11 true is not persuasive. The material implication in the entirety of
12 the mail piece is that the consumer had been approved for and
13 would receive a platinum credit card in the mail with a \$5,000
14 credit limit upon payment of the \$ 45 or \$ 49 advance fee.

15 *FTC v. Peoples Credit First, LLC*, 244 Fed. Appx. 942, 944 (11th Cir. Fla. 2007).

16 Defendants’ material representations and omissions in marketing their line of credit
17 offers were at least as deceptive as those at issue in *Capital Choice* and *Peoples Credit*. The
18 LOC Advertisements included express and implied representations that were likely to mislead –
19 and indeed misled – reasonable consumers.⁴³³ The LOC Advertisements expressly represented

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22 ⁴³³ *See, e.g.*, Px. 382 (Zvolensky Dec.), ¶ 5 (“when I was approved for the credit card I learned
23 that what I obtained was not a Visa card [but] a card that was only good for purchasing items
24 from an online store”); Px. 391 (Tingley Dec.), ¶ 7 (“I was disappointed to learn that First Plus
25 Platinum is not a traditional credit card [but] a line of credit that can only be used to purchase
merchandise exclusively at the First Plus Platinum online store”); Px. 375, (Campbell Dec.), Att.
C at FTC-976, 978, 980, 990, 1004, 1007, 1010, 1014, 1028, 1055, 1064 (consumers complained
to the Better Business Bureau about being lured to believe that they were receiving a credit card,
but instead receiving membership in an online shopping club); Px. 441 at FTC-1456 (Global

1 to consumers that, for a nominal activation and/or processing fee of \$2.78, they would receive a
2 general purpose unsecured credit line with a credit limit between \$5,000 and \$10,000 at 0%
3 interest for 12 full months; and (2) implied that the credit line consumers would receive upon
4 payment was a general purpose credit card/line.⁴³⁴ At the same time, the LOC Advertisements
5 failed to disclose – or disclose adequately – to consumers that the purported line of credit was
6 actually a \$39.95/month membership in a shopping club.⁴³⁵

7 It is undisputed that the representations and omissions in the LOC Advertisements were
8 material as they were made to induce consumers to enroll in Defendants' line of credit offers.
9 *See FTC v. Pantron I Corp.*, 33 F.3d 1088, 1096 (9th Cir. 1994) (“Express product claims are
10 presumed to be material.”). And “[a] presumption of actual reliance arises once the Commission
11 has proved that the defendant made material misrepresentations, that they were widely
12 disseminated, and that consumers purchased the defendant’s product.” *Figgie Int’l*, 994 F. 2d at
13 605. Here, Defendants disseminated the LOC Advertisements over the internet and solicited
14 money from hundreds of thousands of consumers.⁴³⁶ That consumers were misled by the
15 misrepresentations in the LOC Advertisements is evident by: (1) the line of credit offers’ high
16 cancellation rate;⁴³⁷ (2) the high refund and chargeback demands;⁴³⁸ (3) the exceedingly low

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18 Gold’s customer service manual anticipated consumer confusion about the nature of the offer).
19 *See also supra* Section II.A.2.

20 ⁴³⁴ *Id.*

21 ⁴³⁵ Px. 375, (Campbell Dec.), Att. C at FTC-976, 978, 980, 990, 1004, 1007, 1010, 1014, 1028,
22 1055, 1064 (consumers complained to the Better Business Bureau about being lured to believe
23 that they were receiving a credit card, but instead receiving membership in an online shopping
24 club); Px. 441 at FTC-1456 (Global Gold’s customer service manual anticipated consumer
25 confusion about the nature of the offer).

⁴³⁶ Px. 527 (Pisano Dec.), ¶ 31.

⁴³⁷ *Id.*

1 number of orders from the online store;⁴³⁹ and (4) consumers' complaints to the Better Business
2 Bureau and multiple law enforcement agencies.⁴⁴⁰

3 As in *Peoples Credit* and *Capital Choice*, Defendants' use of disclaimers in the sales
4 process – *i.e.*, (1) the inclusion of arguably disclaiming language in some LOC Advertisements
5 that the line of credit offers were “towards thousands of our merchandise items,”⁴⁴¹ and (2) the
6 language buried in the fine print of the line of credit offers' lengthy terms and conditions that
7 restricted the line of credit to items offered exclusively through Defendants' online shopping
8 club – fails to exonerate the Defendants. “[A] representation may amount to a Section 5
9 violation where the representation is literally true, if the overall net impression is likely to
10 mislead.” *Publrs. Bus. Servs.*, 2010 U.S. Dist. LEXIS 34336 at *44-45 (citing *Cyberspace.Com*,
11 453 F.3d at 1200). The “overall net impression” created by the LOC Advertisements was that,
12 for a nominal fee, consumers would get a general purpose credit card/line, not a costly
13 membership to an online store. Tellingly, the LOC Advertisements, and even the order pages,
14 were completely devoid of terms like “shop,” “store,” “catalog,” “shopping club,” etc.⁴⁴²

15 In sum, the undisputed evidence demonstrates that the line of credit offers were deceptive
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17 ⁴³⁸ See Ex. A to the Amended Report of Receiver's Activities [July 29, 2009 through August 31,
18 2009] [D.E. 82-2] at Tab 4, p.56 (summarizing the refund/chargeback rate for Global Gold).

19 ⁴³⁹ See Px. 725 (Defendants' “Status Report” lists consumer orders by month); Px. 813
(Logbicho Dep.), FTC- 7339 (130:4-12).

20 ⁴⁴⁰ Px. 375, (Campbell Dec.), Att. C at FTC-976, 978, 980, 990, 1004, 1007, 1010, 1014, 1028,
21 1055, 1064 (consumers complained to the Better Business Bureau about being lured to believe
22 that they were receiving a credit card, but instead receiving membership in an online shopping
club).

23 ⁴⁴¹ See, *e.g.*, Px. 6, FTC-16; Px. 727, FTC-4273; Px. 728, FTC-4283

24 ⁴⁴² See, *e.g.*, Pxs. 6, 42, 44 & 727-29; Ex. E to Defendants Global Gold and Steven R.
25 Henriksen's Opp. to Mo. for Pre. Injunction at 3, 6-9 (line of credit banners) [D.E. 59]; Tr. of
9/11/09 Pre. Injunction Hearing at 52:8-18 (defense counsel description of banners and e-mails).

1 in violation of Section 5(a) of the FTC Act.

2 **c. Defendants' Work-From-Home Schemes (Count IV)**

3 The FTC is also entitled to summary judgment on Count IV in that the uncontroverted
4 evidence shows that Defendants violated Section 5(a) of the FTC Act by making unsubstantiated
5 earning claims in the marketing of their Work-from-Home Products. As demonstrated in detail
6 in Section II.A.3 of the Statement of Facts, Defendants represented that consumers who
7 purchased and used their Work-from-Home Products would immediately, and easily, earn
8 substantial income in just a few hours of their spare time. The undisputed evidence, however,
9 demonstrates that Defendants had absolutely no data to substantiate their false earnings claims.

10 As the Ninth Circuit reiterated in *Stefanchik*, it is unlawful, under Section 5 of the FTC
11 Act, to make unsubstantiated earnings claims in the marketing of business opportunities like
12 Defendants' Work-from-Home Products. *Stefanchik*, 594 F.3d at 926-30. In *Stefanchik*,
13 defendants' marketing materials "gave the net impression that by working only five to ten hours
14 per week, a consumer easily could earn \$10,000 per month using Stefanchik's method" of
15 buying and selling privately held mortgages *Id.* at 928. The FTC sued *Stefanchik* and other
16 defendants, alleging, *inter alia*, that the earnings claims were unsubstantiated and false. *Id.* at
17 926-27. In granting the FTC's motion for summary judgment, the district court held that
18 "defendants made false and unsubstantiated earnings claims that led consumers to believe they
19 could earn large amounts of money in the paper business with little or no effort." *Id.* Upholding
20 the district court's decision, the Ninth Circuit held that defendants failed to offer "competent
21 affirmative evidence ... to identify consumers who were able to make substantial amounts of
22 money using the Stefanchik method as claimed in the marketing materials." *Id.* at 929.

23 *FTC v. Febre* provides another example where unsubstantiated earnings claims were held
24 unlawful under Section 5. *FTC v. Febre*, No. 94 C 3625, 1996 U.S. Dist. LEXIS 9487 (N.D. Ill.
25 Jul. 2, 1996); adopted by 1996 U.S. Dist. LEXIS 14297 (Sep. 25, 1996). Like Defendants here,

1 the *Febre* defendants marketed several work-from-home opportunities, making various earnings
2 claims regarding each opportunity, such as

3 the “Home Inquiry Tabulator” program, which boasted that
4 consumers could earn \$764 for just a few hours of easy
5 work; 2) the “Amazing Pase Photo System” program which
6 claimed that consumers could earn up to \$ 1800 per day; 3)
7 the “Hi-Tech 900” program, which declared that over
8 \$250,000 per year in proven income “could be yours;” and,
9 4) the “Mailing Postcards” program, which stated that
10 “we’re going to make it possible for you to make \$1,000,
11 \$5,000 or even \$15,000 a day just by mailing postcards.”

12 *Id.* at *6.

13 The FTC alleged that the earnings claims were unsubstantiated and, therefore, unlawful.
14 *Id.* at *5-6. The *Febre* defendants countered that “the promotional materials contained no
15 express earnings claims because none guaranteed the stated level of earnings and in fact the
16 language used was conditional (e.g., one ‘could earn up to’ or it was ‘possible’ to make the
17 indicated amount).” *Id.* They “note[d] that the advertisements did not indicate that other
18 consumers had already earned the stated amounts and argue that the earnings claims are nothing
19 more than ‘puffery.’” *Id.* at *7. The *Febre* defendants further stated that “there [was] no
20 extrinsic evidence from which the court [could] conclude that consumers, acting reasonably,
21 were likely to be misled by any earnings claims that may be implied from the promotional
22 literature.” *Id.*

23 Despite these arguments, the district court granted summary judgment to the FTC,
24 holding that “[e]ven though the advertisements did not guarantee the stated level of earnings,
25 they made express claims regarding the earnings potential of the programs,” which were

1 unsubstantiated and, therefore, unlawful. *Id.* at *8. It further held that, “while it might not be
 2 reasonable to believe that everyone who participates in the program would earn the stated
 3 amount, it can be presumed that a consumer would reasonably believe that the statements of
 4 earnings potential represent typical or average earnings.” *Id.* The court reasoned that, as “the
 5 claims of earnings potential [were] express, it [was] not necessary to consider extrinsic evidence
 6 to ascertain their meaning.” *Id.* at *9 n1 (citing *Thompson Medical Co.*, 104 F.T.C. at 788-89).

7 Here, as in *Stefanchik* and *Febre*, Defendants’ earnings claims regarding their Work-
 8 from-Home Products violated Section 5(a) of the FTC Act in that they were material and
 9 unsubstantiated. Defendants’ Domain Processing advertisements and landing pages included
 10 express representations, such as:⁴⁴³

- 11 • “Making Money is as Easy as 1,2,3”
- 12 • “Remember, **ANYONE** can do this. With our proven method, you can
 13 immediately begin earning hundreds to thousands of dollars a day, in just a
 14 few minutes of your spare time—all from the comfort of your own home!”
- 15 • “With our method, processing a single domain takes only 15 minutes out of
 16 your day. Making at least \$45 per domain, you can process four or more
 17 domains in an hour and make more than \$180! That means in just a few hours
 18 a day you can make a week’s salary, and in a full work-week you can earn
 19 more than what most people make in a month!

20 Similarly, the MSC advertisements were littered with statements that promised
 21 consumers substantial income, indeed – financial freedom, such as:⁴⁴⁴

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 24 ⁴⁴³ Px. 578; *see also* Am. Compl. [D.E. 112] ¶ 58; S. Henriksen’s Answer [D.E. 163] ¶ 58.

25 ⁴⁴⁴ Px. 625 at FTC-3771-72; Am. Compl. [D.E. 112] ¶ 59; S. Henriksen’s Answer [D.E. 163] ¶ 59; Px. 578.

1 A. “Hurry, Big money waiting!”

2 B. “Be in charge of your financial future with the My Search Cash wealth builder
3 system!”

4 C. “Your money worries are over!”

5 D. “Riches range from a few hundred dollars a month to \$50,000 or more a year!”

6 It is well settled that “[s]uch express [earning] claims are presumed to be material, *i.e.*,
7 likely to affect a consumer’s choice or conduct regarding a product, and, within reason, to mean
8 what they say.” *Febre*, No. 94 C 3625, 1996 U.S. Dist. LEXIS 9487. at *8 (citing *Kraft, Inc. v.*
9 *FTC*, 970 F.2d 311, 322 (7th Cir. 1992); *see also Stefanchik*, 594 F.3d at 930 (“the
10 representations made about the Stefanchik Program were materially misleading insofar as they
11 misrepresented consumers’ earning potential”). The Work-from-Home Products’ earnings
12 claims were even more egregious than those in *Febre* as they included “testimonials” of
13 purported satisfied customers who allegedly made substantial money using the relevant
14 products,⁴⁴⁵ as well as specific information about how much money consumers were expected to
15 make.⁴⁴⁶

16 The record, however, unequivocally shows that Defendants had absolutely no data to
17 support the Work-from-Home Products’ earnings claims. Rachael McKinnon, Vantex’s
18 Compliance Officer and the individual charged with reviewing and approving the
19 advertisements, testified that she was unaware of any data that tend to support the Domain
20 Processing earnings claims.⁴⁴⁷ She also testified that Roumen Todorov, Vantex’s Organizational

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22 ⁴⁴⁵ *See, e.g.*, Px. 578 at FTC-3297 (testimonials under “Member comments”); Px. 834 and 836
23 (testimonials of “James Douglas and “Mike Thompson”).

24 ⁴⁴⁶ *See, e.g.*, Px. 578 at FTC-0003298 (table of expected earnings); Px. 834 and 836 (“Riches
25 range from a few hundred dollars a month to \$50,000 or more a year!).

⁴⁴⁷ Px. 817 (McKinnon Dep.), FTC-7579-80 (93:24-94:9).

1 Manager, was the Vantex employee who would have known whether Defendants had any
2 support for the earnings claims contained in the Work-from-Home advertisements.⁴⁴⁸ Todorov
3 subsequently testified that Vantex had no such supporting data.⁴⁴⁹ And Jason Soto, the
4 Marketing Director of Vantex and later the Dragon Group, testified that it was unlikely that
5 common consumers could have earned the sums listed in the earnings table posted on One Hour
6 Wealth Builder's landing page.⁴⁵⁰

7 In both written discovery and depositions, the FTC asked Defendants and their
8 employees to provide any information that would substantiate the earnings claims contained in
9 the Work-from-Home advertisements. Defendants failed to provide any such information. In its
10 relevant interrogatory response, Defendant Paid to Process stated that it was "not in possession
11 of documents and material which may contain information responsive to the instant request [,
12 but] the Court appointed Receiver may be in possession of documents and material which may
13 provide information responsive to the instant request."⁴⁵¹ The Receiver, however, searched
14 Defendants' relevant files and found no data substantiating Defendants' earning claims.⁴⁵² In
15 addition, with the exception of one individual, none of the purported consumers who provided
16 "testimonials" for the Work-from-Home Products' advertisements is listed in Defendants'

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20 ⁴⁴⁸ *Id.*

21 ⁴⁴⁹ Px. 824 (Todorov Dep.), FTC- 8296-97 (104:21-105:14).

22 ⁴⁵⁰ Px. 823 (Soto Dep. Vol. III), FTC-8147 (221:1-6) (testifying regarding the earning table in
23 Px. 578 at FTC-0003298).

24 ⁴⁵¹ *See, e.g.*, Px. 265, Defendant Paid to Process, Inc's Responses to Plaintiff's First Set of
25 Interrogatories, Response to Interrogatory No. 7.

⁴⁵² Px. 831 (Miller Dec.), ¶¶ 4-6.

1 customer database.⁴⁵³ Indeed, the Receiver found no evidence that any of these testimonials
 2 were genuine.⁴⁵⁴

3 Unsurprisingly, the vast majority of consumers who signed up for the Work-from-Home
 4 Products cancelled their membership shortly after signing up.⁴⁵⁵ And many of them tried to get
 5 their money back. According to a report filed by the Receiver, the chargeback/refund rate for the
 6 merchant accounts associated with One Hour Wealth Builder and Domain Processing (fictitious
 7 names for Paid to Process, Inc.) was 25.99%, and the chargeback/refund rate for My Search Cash
 8 (fictitious name for MSC Online) was 8.74%.⁴⁵⁶

9 The record, therefore, leads to the unavoidable conclusion that the earnings claims
 10 contained in the Work-from-Home advertisements, like the earnings claims in *Stefanchik* and
 11 *Febre*, were both material and unsubstantiated, and, therefore, in violation of Section 5(a) of the
 12 FTC Act. For that reason, summary judgment in favor of the FTC on Count IV is appropriate.

13 **d. Defendants' Misrepresentations regarding Acai Total Burn (Count V)**

14 The FTC is entitled to summary judgment on Count V in that the uncontroverted
 15 evidence shows that Defendants made unsubstantiated health claims regarding Acai Total Burn.
 16 An advertisement is misleading under sections 5(a) and 12 of the FTC Act where, as here,
 17 Defendants have no reasonable basis to support claims that the use of a dietary supplement, like
 18 Acai Total Burn, will achieve the benefits advertised. *FTC v. Medlab*, 615 F.Supp.2d 1068,
 19 1079 (N.D. Cal. 2009); *see FTC v. Pantron I Corp.*, 33 F.3d 1088, 1096, n.23 (9th Cir. 1994). In

21 ⁴⁵³ Px. 909 (Mikhail Dec.), ¶ 4

22 ⁴⁵⁴ Px. 831 (Miller Dec.), ¶ 7.

23 ⁴⁵⁵ *See* Px. 832 (Second Pisano Dec.), ¶ 31.

24 ⁴⁵⁶ *See* Ex. A to the Amended Report of Receiver's Activities [July 29, 2009 through August 31,
 25 2009] [D.E. 82-2] at Tab 4, p.56 (summarizing the refund/chargeback rate for Paid to Process
 and MSC Online).

1 order to have a reasonable basis to support express or implied health claims, a seller must
 2 possess support from competent scientific or medical research, or other clinical studies, which
 3 corroborate that the stated effects of using the product are likely to be achieved. *Pantron I*
 4 *Corp.* 33 F.3d at 1096; *Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1154 (9th Cir. 1984) (finding
 5 that advertisements implicating that benefits of product have been proven by scientific or other
 6 evidence must be substantiated); *Porter & Dietsch, Inc. v. FTC*, 605 F.2d 294, (7th Cir. 1979).

7 Defendants' Acai Total Burn advertisements expressly claimed that consumers who used
 8 the product would experience a plethora of health benefits, including weight loss, increased
 9 metabolism, and even a halting of the aging process.⁴⁵⁷ They even called the product the "#1
 10 Weight Loss Supplement in 2008!"⁴⁵⁸ Defendants also made false implied claims regarding the
 11 benefits of Acai Total Burn as well, stating that acai berries "can aid in weight loss," contain
 12 substances that "increase your health," and make it "easier to reach your perfect weight," thereby
 13 suggesting that consumers who used Acai Total Burn would experience these benefits.⁴⁵⁹
 14 Defendants also cited to irrelevant scientific research and bogus celebrity endorsements to make
 15 consumers believe their claims were true.⁴⁶⁰

16 Defendants possessed absolutely no proof that taking Acai Total Burn would result in the
 17 wondrous benefits they promised consumers.⁴⁶¹ They performed absolutely no scientific
 18 research on the effects of Acai Total Burn, or its likelihood to result in the health benefits
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 20

21 ⁴⁵⁷ Px. 579, FTC-3300.

22 ⁴⁵⁸ Px. 579, FTC-3299.

23 ⁴⁵⁹ Px. 579, FTC-3300.

24 ⁴⁶⁰ Px. 579, FTC-3300-01.

25 ⁴⁶¹ Px. 824 (Todorov Dep.), FTC- 8300-02 (108:14-110:5).

1 proclaimed in their marketing.⁴⁶² They also failed to consult any scientists or nutritionists to
 2 verify their claims.⁴⁶³ Moreover, the FTC's expert, Dr. Edward Blonz, who holds a Ph.D. in
 3 nutrition, confirms that Defendants' claims are outlandish and unsubstantiated.⁴⁶⁴ He found no
 4 basis in the available scientific literature to suggest that Acai Total Burn would result in the
 5 health benefits Defendants described.⁴⁶⁵ Ultimately, he concluded that Defendants' health
 6 claims regarding Acai Total Burn were wholly unsupported by scientific literature.⁴⁶⁶

7 Accordingly, the undisputed evidence demonstrates that Defendants' Acai Total Burn
 8 advertisements were deceptive and in violation of Sections 5(a) and 12 of the FTC Act.

9 **e. Defendants' Phony Testimonials & Endorsements (Count VI)**

10 Summary judgment in favor of the FTC is also appropriate on Count VI in that
 11 Defendants' advertisements contained phony testimonials and endorsements. "[I]t is a deceptive
 12 practice to state falsely that a product has received a testimonial from a respected source." *FTC*
 13 *v. Colgate-Palmolive Co.*, 380 U.S. 374, 389 (1965); *Howe v. FTC*, 148 F.2d 561 (9th Cir. 1945),
 14 cert. denied, 326 U.S. 741 (1945) (finding that use of the name "Howe's Hollywood, Favorite of
 15 the Stars" in cosmetics advertising was deceptive when it was "not recognized by the actresses of
 16 Hollywood as being of superior quality"). In addition, courts have held that testimonials
 17 purportedly offered by average consumers imply that the results described in the testimonial
 18 typify the results obtained by most consumers. *FTC v. Bronson Partners, LLC*, 564 F. Supp. 2d
 19 119, 125 (D. Conn. 2008).

21 ⁴⁶² Px. 817 (McKinnon Dep.), FTC- 7568-70 (82:19-84:16), FTC- 7571-72 (85:25-86:3).

22 ⁴⁶³ Px. 817 (McKinnon Dep.), FTC-7572-73 (86:25-87:8).

23 ⁴⁶⁴ Px. 796 (Blonz Dec.), ¶¶ 3, 15-20.

24 ⁴⁶⁵ Px. 796 (Blonz Dec.), ¶¶ 15-20.

25 ⁴⁶⁶ Px. 796 (Blonz Dec.), ¶¶ 15-20.

1 Here, Defendants cannot deny they used phony testimonials and endorsements in
 2 hawking their offers.⁴⁶⁷ The fact that neither Oprah Winfrey nor Rachel Ray endorsed Acai
 3 Total Burn,⁴⁶⁸ did not stop Defendants from using their names in an Acai Total Burn
 4 advertisement.⁴⁶⁹ Similarly, consumer testimonials contained in advertisements for Defendants'
 5 grant and work-from-home offers were completely fabricated.⁴⁷⁰ As Defendants were likely
 6 aware, these phony endorsements and testimonials were material to consumers' decisions to
 7 purchase their products.⁴⁷¹ Defendants should therefore be held liable for violating Section 5(a)
 8 the FTC Act and summary judgment in favor of the FTC on Count VI is appropriate.

9 **f. Defendants' Failure to Disclose Negative Option Memberships &**
 10 **Upsells (Count VII)**

11 Summary judgment in favor of the FTC is also justified with regard to Count VII because
 12 the uncontroverted record proves Defendants' failure to adequately disclose negative option
 13 memberships and upsells. The failure to disclose material information causes an advertisement
 14 to be deceptive. *Simeon Mgmt. Corp. v. FTC*, 579 F.2d 1137, 1146 (9th Cir. 1978). Moreover,
 15 courts have held in various contexts that an inconspicuous disclosure does not remedy the
 16 deceptiveness of a material omission. *FTC v. Cyberspace.com*, 2002 U.S. Dist. LEXIS 25565, *

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 19 ⁴⁶⁷ Px. 1, FTC-2; Px. 2, FTC-4; Px. 6, FTC-18; Px. 44, FTC-186; Px. 578, FTC-3297.

20 ⁴⁶⁸ Px. 787 (Pattison Dec.), ¶¶ 9-10; Px. 788 (Ray Dec.), ¶ 7; Px. 817 (McKinnon Dep.), FTC-
 21 7570-71 (84:17-85:6).

22 ⁴⁶⁹ Px. 824 (Todorov Dep.), FTC-8300-02 (108:10-110:5); Px. 579, FTC-3300.

23 ⁴⁷⁰ Px. 1, FTC-2; Px. 2, FTC-4; Px. 566, ¶¶ 15-16. Px. 569; Px. 817 (McKinnon Dep.), FTC-
 24 7545-46 (59:16-60:22), FTC-7546-47 (60:20-61:15); Px. 582, Affidavit of Rachael McKinnon,
 ¶ 2; Px. 831, (Miller), ¶ 7.

25 ⁴⁷¹ Px. 377 (Drake), ¶¶ 3-4; Px. 386 (Rauscher), ¶ 3; Px. 390 (Walker), ¶ 3; Px. 396 (Kampff), ¶
 3; Px. 792 (Johnson), ¶ 3; Px. 794 (Sims), ¶ 4.

1 8-9 (W.D. Wash. July 10, 2002) (fine print disclosures inadequate to escape liability), *aff'd* 453
2 F.3d 1196, 1200 (9th Cir. 2006) (reviewing cases finding deception because fine print
3 disclosures inadequate to disclose material information); *FTC v. Brown & Williamson Tobacco*
4 *Corp.*, 778 F.2d 35, 43 (D.C. Cir. 1985) (advertisement's description of cigarette tar content
5 deceptive despite fine print disclosure at the bottom of the ad); *FTC v. Gill*, 71 F. Supp. 2d 1030,
6 1044 (C.D. Cal. 1999) (disclaimers in contract for credit repair services insufficient to counteract
7 advertising claims about the service); *FTC v. Porter & Deitsch*, 605 F.2d 294, 301 (7th Cir.
8 1979) (upholding FTC finding that disclosures "buried in fine print" were inadequate to qualify
9 weight loss claims in advertising). Similarly, advertising violates the FTC Act "if it induces the
10 first contact through deception, even if the buyer later becomes fully informed before entering
11 the contract." *Resort Car Rental System, Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir. 1975) (holding
12 that "dollar-a-day" slogan was deceptive and "by its nature ha[d] a decisive connotation for
13 which qualifying language would result in a contradiction in term."); *Gill*, 71 F. Supp. 2d at 1044
14 (holding that disclaimers included in the defendants' contract for services were insufficient to
15 counteract representations made in the advertisement).

16 In *Cyberspace.com* the defendants solicited consumers by mail with offers for internet
17 access that included a form containing a detachable check for \$3.50. *Id.* at 1198. Fine print on
18 the back of the check indicated that consumers who cashed it agreed to sign up for a monthly fee
19 for internet access. *Id.* The Court concluded that the defendants had violated Section 5(a) of the
20 FTC Act because they failed to clearly and conspicuously disclose the material fact that
21 consumers would be signing up for a monthly service if they cashed the check. *Id.* at 1200-01.

22 In this case, as in *Cyberspace.com*, Defendants cannot hide behind fine print disclaimers
23 made in inconspicuous locations on their websites. Defendants cannot deny that they omitted
24 material information in violation of Section 5(a) by failing to adequately disclose to consumers
25 that: (1) there was a trial period for Defendants' products and services; (2) Defendants enrolled

1 consumers who did not cancel during this trial period in memberships for multiple products and
 2 services; and (3) the memberships for these additional products and services would cost over \$70
 3 per month. Multiple consumer declarations and Better Business Bureau complaints show that
 4 Defendants failed to adequately disclose the material terms and conditions accompanying what
 5 consumers believed were simple \$1 to \$3 purchases.⁴⁷²

6 As outlined in the Statement of Facts, Defendants did not place their inadequate fine-print
 7 disclosures in the advertising for their products until after consumers had been induced by their
 8 claims and begun the ordering process.⁴⁷³ Each of Defendants' schemes involved a multi-step
 9 order process.⁴⁷⁴ Defendants' initial contact with consumers through email or banner
 10 advertisements often contained no disclosure whatsoever.⁴⁷⁵ Then when consumers arrived at
 11 Defendants' offer pages where they initially provided their contact information, they received
 12 little to no information regarding any fees, costs, or terms and conditions other than a link to
 13

14
 15 ⁴⁷² Px. 375, (Campbell Dec.), Att. C at FTC-976, 978, 980, 990, 1004, 1007, 1010, 1014, 1028,
 16 1055, 1064 (consumers complained to the Better Business Bureau about being lured to believe
 17 that they were receiving a credit card, but instead receiving membership in an online shopping
 club). *See also* Px. 374 (Johnston Dec.), ¶¶ 4-8, Atts. A-B.

18 ⁴⁷³ Px. 1 (no disclosure of costs or memberships on initial landing page); Px. 6 (same); Px. 824
 19 (Todorov Dep.), 135:4-18. Defendants' placement of a miniscule link containing the "Terms and
 20 Conditions" of the offer at the bottom of the website does not begin to approach a sufficient
 disclosure. *See Cyberspace.com*, 2002 U.S. Dist. LEXIS 25565, at * 8-9. *See also* Px. 542
 21 (Email from Vantex compliance officer received by defendants Steven Henriksen, Michael
 22 Henriksen, Smith, and Jn Paul describing recent FTC cases in which the FTC stated that clicking
 on a link to view terms and conditions is insufficient to disclose monthly recurring charges).

23 ⁴⁷⁴ *Id.*

24 ⁴⁷⁵ Ex. E to Defendants Global Gold and Steven R. Henriksen's Opp. to Mo. for Pre. Injunction
 at 3 (line of credit banners) [D.E. 59]; Tr. of 9/11/09 Pre. Injunction Hearing at 52:8-18 (defense
 25 counsel description of banners and e-mails); Ex. 395 at FTC-1189, FTC-1192 (Att. A to
 Eckelberry Dec.) (banner that consumer Exkelberry received and reviewed online).

1 Defendants' privacy policy and an inconspicuous link to Defendants' terms and conditions.⁴⁷⁶
2 Even in the final step of the order process where consumers entered their debit or credit card
3 number, Defendants' disclosures were inadequate in that they were only visible in an area of the
4 computer screen that required consumers to scroll downward.⁴⁷⁷ To add to the confusion, the
5 webpages presented to consumers during this final step were, except for the addition of fine print
6 disclaimers, indistinguishable from the webpages consumers reviewed upon first arriving at
7 Defendants' offer pages.⁴⁷⁸ Defendants could thereby lull consumers who may have carefully
8 reviewed the initial offer page into completing the process without scrutinizing the second offer
9 page (where the newly added fine-print disclosures were buried).

10 Consumers did not see the fine print disclosures regarding any additional terms and costs
11 and, misled by Defendants' deception, decided to sign up for Defendants' offers.⁴⁷⁹ Thus many
12 consumers were surprised when instead of being charged a minimal fee for a single low-cost
13 product, Defendants bombarded them with recurring monthly charges totaling more than \$70 per
14 month for the product prominently identified in the offer and the inadequately disclosed
15 upsells.⁴⁸⁰ These upsells were always sold together with Defendants' offers so that consumers

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18 ⁴⁷⁶ See Px. 1; Px. 6.

19 ⁴⁷⁷ Px. 5, FTC-14; Px. 17, FTC-76-77; Px. 42, FTC-180; Px. 45, FTC-189-190; see D.E. 163,
20 Steven Henrisken Answer to Amended Complaint, ¶ 79.

21 ⁴⁷⁸ Compare: Px. 1, FTC-1 and Px. 5, FTC-12; Px. 6, FTC-16 and Px. 42, FTC-178; Px. 44,
22 FTC-184 and Px. 45, FTC-188.

23 ⁴⁷⁹ Px. 376 (Berry), ¶ 6; Px. 377 (Drake), ¶ 9; Px. 378 (Westrich), ¶ 5; Px. 379 (Nobles), ¶¶ 7 &
24 10; Px. 380 (Wall), ¶ 6-8; Px. 381 (Hicks), ¶¶ 8-9; Px. 385 (Fields), ¶ 4; Px. 386 (Rauscher), ¶ 7;
25 Px. 387 (Lange), ¶¶ 12; Px. 388 (Centeno), ¶ 7; Px. 389 (Westmoreland), ¶¶ 6-7; Px. 390
(Walker), ¶ 6; Px. 392 (Barlow), ¶¶ 5-6.

⁴⁸⁰ Px. 12 (Jones), ¶¶ 47-48 & 69; Pxs. 48-49; Px. 380 (Wall), ¶ 7; Px. 381 (Hicks), ¶ 8; Px. 386
(Rauscher), ¶ 7; Px. 389 (Westmoreland), ¶ 6; Px. 390 (Walker), ¶¶ 6-7; Px. 392 (Barlow), ¶ 5.

1 could not make an order without being simultaneously signed up for multiple monthly
2 memberships.⁴⁸¹

3 The upsells were unwanted and, logically, consumers would not have purchased
4 Defendants' products had they been aware of the onerous and expensive terms and conditions
5 attached to their purchase.⁴⁸² This conclusion is further supported by the fact that most of the
6 upsells were of dubious value and most consumers never used them. For example, after ordering
7 one of Global Gold's line of credit products, some consumers were signed up for memberships to
8 Vcomm Unlimited, purportedly a long-distance calling service, and Premier Plus, a
9 "personalized desktop with free email and SMS sending."⁴⁸³ Despite charging consumers for
10 \$5.2 million worth of Vcomm memberships in 2008, Defendants spent only \$2,000 in fulfillment
11 costs to provide the actual telecommunications service, suggesting that only a miniscule number
12 of consumers actually used the product.⁴⁸⁴ Similarly, the Vantex compliance officer noted that
13 "very few" consumers actually used Premier Plus because "[i]t's probably just something
14 nobody needs."⁴⁸⁵ Member Legal Net, purportedly a discounted legal services provider, was not
15 a law firm and its owners were not licensed to practice law.⁴⁸⁶ Moreover, many of the upsells
16 were never marketed to consumers as standalone products indicating that Defendants themselves
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19 ⁴⁸¹ Px. 811 (Kimoto Dep.), FTC-7044 (86:15-88:11).

20 ⁴⁸² See Px. 382 (Zvolensky), ¶ 6; Px. 383 (Loiseau), ¶ 13; Px. 385 (Fields), ¶ 6; Px. 390
21 (Walker), ¶ 6.

22 ⁴⁸³ Px. 42, FTC-180; Px. 490; *see also* Px. 824 (Todorov Dep.), FTC-8324 (132:6-20).

23 ⁴⁸⁴ Px. 813 (Longbicho Dep.), FTC- 7341-42 (132:23-133:21); Px. 656, FTC-3981 (VComm
24 Profit and Loss Report).

25 ⁴⁸⁵ Px. 817 (McKinnon Dep.), FTC- 7599 (113:18-23).

⁴⁸⁶ Px. 804 (Gray Dep.), FTC-5709-10 (168:24-169:4).

1 thought they were worthless.⁴⁸⁷

2 The high number of chargebacks initiated by consumers further demonstrates that
 3 Defendants failed to adequately disclose the material terms of their offers.⁴⁸⁸ In fact, their
 4 chargebacks were so excessive that Visa and Mastercard placed Defendants into the Visa
 5 Merchant Chargeback Monitoring Program and the Mastercard Excessive Chargeback
 6 Program.⁴⁸⁹ As noted by the Business Leader for Visa's U.S. Acceptance Risk team, the use of
 7 upsells, which allows a merchant to create multiple charges for what is effectively one
 8 transaction, is a technique that is sometimes used to evade detection by the Visa MCMP.⁴⁹⁰
 9 Specifically, by charging consumers multiple times, Defendants increased the total number of
 10 transactions on their merchant accounts to create what looked like a lower chargeback rate.⁴⁹¹
 11 Despite Defendants' efforts to evade detection however, they nevertheless continually exceeded
 12 the Visa and Mastercard threshold for excessive chargebacks.⁴⁹²

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 16 ⁴⁸⁷ Px. 807 (S. Henrisken Dep.), FTC-6324 (67:2-21) (Elite Benefits only sold as upsell); Px. 810
 17 (Jn Paul Dep.), FTC-6854 (181:18-182:10) (Premiere Plus only offered as upsell); Px. 817
 18 (McKinnon Dep.), FTC-7599 (113:11-17) (same); Px. 810 (Jn Paul Dep.), FTC-6854 (181:7-17)
 (Vcomm only offered as upsell); Px. 817 (McKinnon Dep.), FTC-7689 (123:8-22) (same); Px.
 824 (Todorov Dep.), FTC-8327 (135:4-18).

19 ⁴⁸⁸ See Receiver's Report [D.E. 64], at Page 66 of 122 (listing total refunds/chargeback rates for
 20 various Corporate Defendants); Px. 910 (Chen Dec.), ¶¶ 43-47, 54 & Exhibits A-D (Visa
 21 chargeback rates for Global Gold, and VComm merchant accounts; Px. 833 (Davidson Dec.),
 ¶¶ 12-22 (Mastercard chargeback rates for Global Gold, Premier, VComm, and Horizon
 Holdings).

22 ⁴⁸⁹ Px. 910 (Chen Dec.), ¶ 44, 48 & Exhibits A-C; Px. 833 (Davidson Dec.), ¶¶ 5,12-22.

23 ⁴⁹⁰ Px. 910 (Chen Dec.), ¶¶ 24-26.

24 ⁴⁹¹ Px. 910 (Chen Dec.), ¶ 26.

25 ⁴⁹² Px. 910 (Chen Dec.), ¶ 44, 48 & Exhibits A-C; Px. 833 (Davidson Dec.), ¶¶ 5,12-22.

1 **2. Defendants Violated the Electronic Fund Transfer Act and Regulation E**
2 **(Count VIII)**

3 There is also no triable issue on Count VIII and, therefore, summary judgment in the
4 FTC's favor is appropriate. The uncontroverted evidence shows that Defendants' deceptive
5 business practices violated both Section 907(a) of the Electronic Fund Transfer Act (the
6 "EFTA"), 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b),
7 which together regulate the requirements for preauthorized electronic fund transfers from a
8 consumer's bank account.

9 The EFTA and Regulation E regulate the circumstances under which a merchant may
10 make recurring debits from a consumer's bank account. The EFTA and Regulation E require
11 merchants to obtain a written authorization signed or similarly authenticated by the consumer
12 before making recurring debits. 15 U.S.C. § 1693e(a); 12 C.F.R. § 205.10(b). In order for a
13 preauthorization to be valid, the terms of the preauthorized transfer must be "clear and readily
14 understandable," and the authorization "should evidence the consumer's identity and assent to
15 the authorization." Federal Reserve Board's Official Staff Commentary to Regulation E, 12
16 C.F.R. Part 205, Supp I, ¶ 10(b), comments (5)&(6). Moreover, a copy of the authorization must
17 be provided to the consumer. 15 U.S.C. § 1693e(a); 12 C.F.R. § 205.10(b). These protections
18 ensure that consumers' consent to recurring debits will be knowing and informed. A consumer's
19 rights under the EFTA cannot be waived. 15 U.S.C. § 1693l.

20 Here, many consumers were completely unaware that Defendants would deduct recurring
21 monthly fees from their bank accounts when they enrolled in Defendants' offers.⁴⁹³ Defendants'

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24 ⁴⁹³ See Px. 376 (Berry), ¶ 6; ¶ 9; Px. 378 (Westrich), ¶ 5; Px. 379 (Nobles), ¶¶ 7 & 10; Px. 381
25 (Hicks), ¶¶ 8-9; Px. 382 (Zvolensky), ¶ 4; Px. 383 (Loiseau), ¶ 3; Px. 386 (Rauscher), ¶ 4; Px.
387 (Lange), ¶ 6; Px. 390 (Walker), ¶ 4; Px. 392 (Barlow), ¶ 3; Px. 393 (Shea), ¶ 3; Px. 396
(Kampff), ¶ 3.

1 attempts to lock consumers into these arrangements with tiny disclosures, a checkbox regarding
 2 the terms and conditions, and a “Submit” button were insufficient to meet the EFTA’s
 3 requirements. First, the terms and conditions were not clear and readily understandable, as
 4 evidenced by multiple declarations in which consumers state that they had no idea Defendants
 5 would charge them more than a nominal amount such as \$0.99.⁴⁹⁴ Second, neither the terms and
 6 conditions pages, nor the offer pages, could serve as the consumer’s “copy” of the authorization
 7 because they were not signed or similarly authenticated by the consumer and did not evidence
 8 the consumer’s identity and assent to additional transfers. Based on this evidence, Defendants
 9 did not meet the requirements of the EFTA and violated both EFTA and Regulation E on
 10 numerous occasions.

11 **3. The Corporate Defendants Are Jointly And Severally Liable**

12 **a. Defendants Were A Common Enterprise**

13 Where, as here, Corporate Defendants act as a common enterprise, each may be held
 14 jointly and severally liable for the deceptive acts and practices of the other. *Sunshine Art*
 15 *Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973); *FTC v. J.K. Publications, Inc.*, 99 F.
 16 Supp. 2d 1176, 1202 (C.D. Cal. 2000) (finding that defendants were part of a common enterprise
 17 where they “conducted their business through ‘a maze of interrelated companies’ purportedly
 18 operating the same web sites.”) The common enterprise doctrine is based on equitable principles
 19 and is flexible enough to cover a wide range of circumstances where the corporate form is being
 20 abused to circumvent enforcement of the FTC Act. Thus, when determining whether a common
 21 enterprise exists, “the pattern and frame-work of the whole enterprise must be taken into
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 24 ⁴⁹⁴ Px. 376 (Berry), ¶ 6; Px. 377 (Drake), ¶ 9; Px. 378 (Westrich), ¶ 5; Px. 379 (Nobles), ¶¶ 7 &
 25 Px. 380 (Wall), ¶ 6-8; Px. 381 (Hicks), ¶¶ 8-9; Px. 385 (Fields), ¶ 4; Px. 386 (Rauscher), ¶ 7;
 Px. 387 (Lange), ¶¶ 12; Px. 388 (Centeno), ¶ 7; Px. 389 (Westmoreland), ¶¶ 6-7; Px. 390
 (Walker), ¶ 6; Px. 392 (Barlow), ¶¶ 5-6.

1 consideration.” *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746-47 (2d Cir. 1964) (affirming an
2 FTC order holding a company liable because it was part of a “maze of interrelated companies”).
3 “Some of the factors that courts evaluate to determine whether a common enterprise exists
4 include common control; the sharing of office space and officers; whether business is transacted
5 through a maze of interrelated companies; the commingling of corporate funds and failure to
6 maintain separation of companies; unified advertising; and evidence that reveals that no real
7 distinction exists between the corporate defendants.” *FTC v. National Urological Group*, No.
8 1:04-CV-3294-CAP, 2008 WL 2414317 at *6 (N.D. Ga. Jun. 4, 2008). “[E]ntities constitute a
9 common enterprise when they exhibit either vertical or horizontal commonality-qualities that
10 may be demonstrated by a showing of strongly interdependent economic interests or the pooling
11 of assets and revenues.” *FTC v. Network Services Depot, Inc.*, 617 F.3d 1127, 1143 (9th Cir.
12 2010).

13 There is no question that Corporate Defendants worked together as a common enterprise
14 to develop, market, and sell a variety of products and services including Grant Connect, First
15 Plus Platinum, One Hour Wealth Builder, and Acai Total Burn. Jim Gray, the Co-owner and
16 Manager of O’Connell Gray, put it best when he wrote in an email to the heads of Vantex and
17 Global Gold, “I like the word ‘Team’ when I describe our collective enterprise because I think it
18 is an apt description of how we operate together.”⁴⁹⁵

19 Defendants, including Corporate Defendants, strategically pooled their resources and
20 expertise to develop, advertise, and sell a variety of products and services, including Grant
21 Connect, First Plus Platinum, One Hour Wealth Builder, and Acai Total Burn.⁴⁹⁶ As detailed in
22 Section II.C. of the Statement of Facts, it is doubtful Defendants would have been able to pull off

24 ⁴⁹⁵ Px. 680.

25 ⁴⁹⁶ See *infra* Section II.C.

1 a scam of this magnitude without their collective efforts in five key areas: (1) product
 2 development; (2) ad creation; (3) ad dissemination; (4) payment processing; and (5) customer
 3 service. While certain Corporate Defendants were primarily responsible for, or contractually
 4 obligated to perform, certain functions, in practice Defendants worked across the common
 5 enterprise completely disregarding corporate formalities or written contracts. Corporate
 6 Defendants also had interdependent economic interests in that their profits were jointly tied to
 7 how many consumers they could dupe into purchasing their offers.⁴⁹⁷

8 Defendants organized themselves into two Nevada clusters located in Las Vegas and
 9 Reno that together formed the larger common enterprise. Each of these clusters had the
 10 attributes of a classic common enterprise under FTC caselaw, including common control, the
 11 sharing of office space and officers, transaction of business through a maze of interrelated
 12 companies, the commingling of corporate funds and failure to maintain separation of companies,
 13 and unified advertising.

14 **i. The Las Vegas Corporate Defendants Were A Classic Common**
 15 **Enterprise**

16 The Las Vegas Corporate Defendants were under common control. According to the
 17 corporate records, Juliette Kimoto, directly or indirectly, owned Vertek, Vantex, Pink, and the
 18 Juliette Kimoto Asset Protection Trust.⁴⁹⁸ Pink was used as a vessel through which Juliette
 19 Kimoto owned Vertek, while the Juliette Kimoto Asset Protection Trust was used as the means

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 22 ⁴⁹⁷ Px. 565 (O’Connell) ¶ 16 (Global Gold was entitled to 50% of the net revenue generated
 23 through the sale of Grant Connect as an additional product to Global Gold’s offers); Px. 566
 24 (Gray) ¶ 17 (same); Px. 565 (O’Connell Dec.), ¶ 12 (Horizon Holdings and Vertek agreed to a
 55/45 profit split whereby Vertek would get 55% of the adjusted gross revenues derived from
 Grant Connect.); Px. 566 (Gray Dec.), ¶ 12 (same).

25 ⁴⁹⁸ Px. 328, FTC-772; Px. 330, FTC-797; D.E. 62-2, Ex. A, Affidavit of Juliette Kimoto, ¶¶ 2, 4,
 & 8.

1 to hold Vantex.⁴⁹⁹ Vertek and Vantex were so closely intertwined that the supposed spin-off of
 2 Vertek's "Internet marketing businesses" into Vantex was imperceptible to the companies'
 3 employees and others, including Defendants Gray and O'Connell.⁵⁰⁰ Other than learning at
 4 some point that Vertek was changing its name to Vantex, O'Connell and Gray did not notice that
 5 anything had changed and continued dealing with the same people on Grant Connect and other
 6 ventures.⁵⁰¹ This is not surprising because Vertek and Vantex shared: office space, defendant
 7 Rachael Cook as Manager, employees, and a website used to recruit affiliate marketers.⁵⁰²

8 The corporate records show that Steven Henriksen owned and was the President of
 9 Global Gold, Acai, Allclear, Dragon, Elite, Global Fulfillment, Healthy Allure, MSC, Paid to
 10 Process, Premier, Total Health, and VComm.⁵⁰³ Global Gold Limited was Global Gold's wholly
 11 owned New Zealand subsidiary and Steven Henriksen was its sole director.⁵⁰⁴ The vast majority
 12 of these Steve Henriksen-owned companies were simply shells. All of their business was

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 14 ⁴⁹⁹ D.E. 62-2, Ex. A, Affidavit of Juliette Kimoto, ¶¶ 2, 8.

15 ⁵⁰⁰ Px. 824 (Todorov Dep.), FTC-8236 (44:13-18); Px. 810 (Jn Paul Dep.), FTC-6758-59 (85:15-
 16 86:5), FTC-6807-08 (134:9-135:19); Px. 565 (O'Connell), ¶ 14; Px. 566 (Gray), ¶ 14.

17 ⁵⁰¹ Px. 565 (O'Connell), ¶ 14; Px. 566 (Gray), ¶ 14.

18 ⁵⁰² Px. 399, ¶¶ 8-9; Px. 401 (Rachael Cook business cards); Pxs. 13 & 14 (same websites); Px.
 19 828 (Cook Dep. Vol. II), FTC-8734 (39:20-24), FTC- 8749 (54:14-15); Px. 824 (Todorov Dep.),
 20 44:13-18; Px. 810 (Jn Paul Dep.), 85:15-86:5; 134:9-135:19.

21 ⁵⁰³ D.E. 163, Answer to Amended Complaint by Steven Henriksen, *et al.*, ¶¶ 11-23; Px. 807 (S.
 22 Henriksen Dep.), FTC-6304 (47:20-23) (Acai), FTC-6305 (48:16-18) (AllClear), FTC-6306
 23 (49:6-7) (Dragon), FTC-6308 (51:15-17) (Elite), FTC-6309 (52:19-21) (Global Fulfillment),
 24 FTC-6313 (56:8-10) (Healthy Allure), FTC-6314 (56:25-57:2) (MSC Online), FTC-6315 (57:16-
 25 18) (Paid to Process), FTC-6316 (58:23-25) (Premiere Plus), FTC-6317 (60:7-9) (Total Health),
 FTC-6319 (62:1-3) (VComm); Px. 588, FTC-3459. Although Dragon was being set up to
 supplant Global Gold as the parent corporation, this had not yet occurred when the FTC halted
 Defendants' activities. Px. 559, FTC-2644.

⁵⁰⁴ Px.588.

1 conducted by Global Gold's employees.⁵⁰⁵ They all worked out of the Global Gold Offices.⁵⁰⁶
2 Many of these companies were set up purely to create confusion as to who was behind the
3 Corporate Defendants' deceptive offers, and to hide their excessive chargeback rates behind the
4 numerous merchant accounts obtained for each of their offers.⁵⁰⁷

5 What the formal corporate records fail to reveal is the fact that Defendants Kyle Kimoto,
6 Michael Henriksen, Jn Paul and Smith were also responsible for controlling the Las Vegas
7 Corporate Defendants along with Juliette Kimoto, Cook and Steven Henriksen. While Kyle
8 Kimoto, Michael Henriksen, Jn Paul, and Smith have refused to take responsibility, numerous
9 emails, documents, and the testimony of multiple witnesses places them at the helm of the Las
10 Vegas Corporate Defendants. In light of this extensive evidence, their bald uncorroborated
11 denials are not enough to withstand summary judgment.

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16 ⁵⁰⁵ Px. 559, FTC-2644 (stating that only Global Gold, Dragon Group, and Global Fulfillment had
17 employees); Px. 807 (S. Henriksen Dep.), FTC-6305 (48:7-8) (Acai), FTC-6305-06 (48:22-49:5)
18 (All Clear), FTC-6308 (51:21-22) (Elite), FTC-6310 (53:5-8) (Global Fulfillment), FTC-6313
19 (56:18-19) (Healthy Allure), FTC-6314 (57:10-11) (MSC Online), FTC-6316-17 (59:19-60:2)
20 (Premiere Plus), FTC-6317 (60:13-18) (Total Health), FTC-6319 (62:12-13) (VComm). The one
21 exception was Global Limited, which employed Michael Henriksen, the Director of Accounting
22 for Vantex. D.E. 156, Michael Henriksen Answer, ¶ 30.

23 ⁵⁰⁶ Px. 559, FTC-2644 (noting that all of Steven Henriksen's employees will operate out of the
24 same building) ; *see* Px. 807 (S. Henriksen Dep.), FTC-6305-06 (48:22-49:2) (noting that "just
25 like all the other companies" there was no office location other than the registered address for
AllClear Communications).

⁵⁰⁷ *See* Px. 910 (Chen Dec.), ¶ 30; Px. 766 (listing the various merchant accounts for different
Steven Henriksen companies); Px. 558, FTC-2638-40 (discussing number of merchant accounts
for various products and opening multiple off-shore payment processor accounts in Panama).
See also Px. 546 (processor calls Defendants the "guru" of changing merchant accounts; Px. 549;
Px. 553).

1 Global and Vantex's leadership teams were in constant communication and shared
2 sensitive information.⁵⁰⁸ They were so close that Johnnie Smith, Vantex's Executive Officer
3 informed a Vantex employee there was no need for a nondisclosure agreement between them
4 because they "ha[d] no confidentiality issues."⁵⁰⁹ Many employees also had overlapping roles at
5 Vantex and Global Gold . For example, Vantex's accounting department was responsible for
6 Global Gold's bookkeeping and all of Global Gold's computerized accounting files were kept on
7 Vantex's servers.⁵¹⁰ This was natural in that Mike Henriksen, Steve Henriksen's brother, was in
8 charge of both Vantex and Global Gold's accounting department.⁵¹¹ In fact, when the TRO was
9 entered, most of Vantex and Global Gold's employees were in the process of being rolled into
10 Dragon, Steven Henriksen's newly-formed parent company.⁵¹²

11 In addition to being under common control and, in many instances sharing officers and
12 employees, the Las Vegas Corporate Defendants shared office space. At the time of the entry of
13 the TRO, the Las Vegas Corporate Defendants were operated out of two offices conveniently
14 located near each other in Las Vegas, Nevada. Vertek, Vantex, Pink, and the Juliette Kimoto
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18 ⁵⁰⁸ Px. 712; Px. 776, FTC-4613 (Vantex CEO Smith edits response to consumer complaint from
19 Ohio Attorney General); Px. 558; Px. 539 (email re consumer complaint from Iowa Attorney
20 General); Px. 527 (Pisano), ¶ 22.

21 ⁵⁰⁹ Px. 613.

22 ⁵¹⁰ Px. 657; Px. 813 (Longbicho Dep.), FTC-7249-51 (40:15-42:3); Px. 527 (Pisano), ¶ 22.

23 ⁵¹¹ D.E. 156, Michael Henriksen Answer, ¶ 30; *see* Px. 589 (letter from Steven Henriksen to the
24 immigration authorities of New Zealand, confirming Michael Henriksen's employment as Global
25 Gold's Director of Accounting); Px. 657, FTC-3982-83, 5/20/09 email exchange re "i hope you
don't hate me... .UPDATED LIST" (Michael Henriksen discussed Global Gold accounting
issues with Vantex's accountant Girma Logbicho).

⁵¹² Px. 559, FTC-2644; Px. 829 (Dacko Dep.), FTC-8915-16 (89:19-90:2).

1 Asset Protection Trust were located at 6060 W. Elton Avenue, Suite A (the “Vantex Offices”).⁵¹³
 2 Global Gold, Acai, Allclear, Dragon, Elite, Global Fulfillment, Healthy Allure, MSC, Paid to
 3 Process, Premier, Total Health, and VComm operated primarily out of offices a few blocks away
 4 at 1404 South Jones Boulevard (“the Global Offices”).⁵¹⁴ Prior to acquiring this office space,
 5 Vertek and Global Gold operated out of Steven Henriksen’s house.⁵¹⁵ Even after they moved out
 6 of Steven Henriksen’s house, Global Gold and Dragon occupied space at the Vantex Offices.
 7 Prior to entry of the TRO, Dragon had arranged to lease new offices where all of the Las Vegas
 8 Corporate Defendants could work together.⁵¹⁶

9 **ii. The Reno Corporate Defendants Were A Classic Common Enterprise**

10 There is no question that O’Connell Gray, CMS, Grant Connect LLC, Horizon Holdings,
 11 and OS operated as a common enterprise, with O’Connell Gray at the epicenter.⁵¹⁷ Each of these
 12 entities was owned and controlled by Jim Gray and Randy O’Connell.⁵¹⁸ They shared the same
 13 office in Reno.⁵¹⁹ Finally, the only Reno Corporate Defendant with employees was O’Connell
 14 Gray. O’Connell, Gray and these employees staffed and conducted all of the business activities
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17 ⁵¹³ Vantex and Vertek Answer to Complaint [D.E. 55], ¶¶ 10-11; J. Kimoto and Pink Answer to
 18 Complaint [D.E. 56], ¶ 10-11.

19 ⁵¹⁴ Px. 325, Certified copies of Global Gold’s filings with Nevada Secretary of State’s Office;
 20 Px. 368, Certified copy of Global Gold’s Las Vegas Business License Application.

21 ⁵¹⁵ Px. 810 (Jn Paul Dep.), FTC-6746-48 (73:10-75:24); Px. 829 (Dacko Dep.), FTC-8861-62
 (35:19-36:17).

22 ⁵¹⁶ Px. 559, FTC-2644; Px. 813 (Longbicho Dep.), FTC-7290-91 (81:7-82:12).

23 ⁵¹⁷ See Px. 565 (O’Connell), ¶ 3, 6, 10, 15; Px. 566 (Gray Dec.) ¶¶ 3, 6.

24 ⁵¹⁸ Px. 565 (O’Connell), ¶ 3; Px. 566 (Gray), ¶ 3.

25 ⁵¹⁹ Px. 565 (O’Connell), ¶ 4; Px. 566 (Gray), ¶ 4.

1 of CMS, Horizon Holdings, Grant Connect LLC, and OS.⁵²⁰

2 Based on the intertwined relationship that all the Corporate Defendants shared, equity
3 demands that this Court hold them jointly and severally liable for their collective violations of
4 the FTC Act. In any event, the evidence shows that both the Las Vegas Corporate Defendants
5 and the Reno Corporate defendants directly participated in Defendants' schemes and would thus
6 be liable even if no common enterprise existed between them.

7 **4. The Individual Defendants Are Personally Liable**

8 The Individual Defendants – Kyle Kimoto, Juliette Kimoto, Michael Henriksen, Steven
9 Henriksen, Cook, Smith, Jn Paul, Gray, and O'Connell are personally liable for the conduct at
10 issue in this matter. An individual is subject to injunction for corporate acts or practices that
11 violate Section 5 of the FTC Act if the FTC establishes that the individuals participated directly
12 in the acts or practices or had the authority to control them. *FTC v. Publ'g Clearing House, Inc.*,
13 104 F.3d 1168, 1170 (9th Cir. 1997); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir.
14 1989). Direct participation or authority to control is evidenced by “active involvement in
15 business affairs and the making of corporate policy, including assuming the duties of a corporate
16 officer.” *Amy Travel*, 875 F.2d at 573. A person's status as a corporate officer of a closely-held
17 company “gives rise to a presumption of ability to control.” *FTC v. Transnet Wireless Corp.*,
18 506 F. Supp. 2d 1247, 1270 (S.D. Fla. 2007). “A heavy burden of exculpation rests on the chief
19 executive and primary shareholder of a closely held corporation whose stock-in-trade is
20 overreaching and deception.” *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir.
21 1973).

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24 ⁵²⁰ Px. 565 (O'Connell), ¶¶ 10,15; Px. 566 (Gray), ¶ 10.
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1 To find an individual personally liable for equitable monetary relief, the FTC must also
 2 show some knowledge of the acts or practices. *Stefanchik*, 559 F.3d at 931; *Amy Travel*, 875
 3 F.2d at 574. Individuals possess the requisite knowledge if they (1) had actual knowledge of the
 4 misrepresentations; (2) were recklessly indifferent to the truth or falsity of the
 5 misrepresentations, or (3) had an awareness of a high probability of deceptive conduct together
 6 with an intentional avoidance of the truth. *Network Serv.s Depot, Inc.*, 617 F.3d at 1138-39;
 7 *Publ'g Clearing House*, 104 F.3d at 1171; *Amy Travel*, 875 F.2d at 574. The degree of
 8 participation in business affairs is probative of knowledge. *Id.*; *FTC v. Sharp*, 782 F. Supp.
 9 1445, 1450 (D. Nev. 1991). The FTC is not required to prove that an individual actually
 10 intended to deceive in order to establish knowledge under this standard. *Network Serv. Depot,*
 11 *Inc.*, 617 F.3d at 1139; *Publ'g Clearing House*, 104 F.3d at 1171.

12 No genuine issue of material fact exists as to the personal liability of the Individual
 13 Defendants under Section 5. As described below, the undisputed evidence shows that each
 14 Individual Defendant not only had the authority to control at least some of the Corporate
 15 Defendants, but also had the requisite knowledge of the Defendants' deceptive practices to be
 16 held liable under Section 5.

17 **a. Kyle Kimoto Is Personally Liable For Violating Section 5 Of The FTC Act.**

18 **i. Kyle Kimoto Had Authority To Control Corporate Defendants Vertek And**
 19 **Vantex, And Directly Participated In Defendants' Deceptive Acts**

20 There is no genuine issue of material fact as to Kyle Kimoto's control over corporate
 21 defendants Vertek and Vantex. While Kyle Kimoto's wife legally owned the companies,⁵²¹ he
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25 ⁵²¹ Affidavit of Juliette Kimoto [D.E. 62], ¶¶ 2, 4 & 8; Px. 601 (Kimoto Dec.), ¶ 2.

1 was the person who directed their activities.⁵²² Indeed, no one at Vertek or Vantex other than his
2 wife held any authority over Kyle Kimoto.⁵²³

3 Kyle Kimoto recruited Tasha Jn Paul and Johnnie Smith to work in high-level positions
4 at Vertek.⁵²⁴ He negotiated the terms of Smith's compensation and Smith identified Kyle
5 Kimoto as someone who had the authority to fire him.⁵²⁵ Jn Paul reported directly to Kyle
6 Kimoto and he had authority to grant or deny her requests for time off.⁵²⁶ It was also Kyle
7 Kimoto who worked out the relationship between Defendants Vertek, O'Connell Gray, and
8 Global Gold.⁵²⁷ In meetings between Defendants where Kyle Kimoto was present, he took the
9 lead.⁵²⁸

10 Mr. Kimoto not only wielded power at Vertek and Vantex, but also directly participated
11 in the creation and development of the array of deceptive offers sold and marketed by
12 Defendants, including the line of credit, the work-from-home business opportunity, and Grant
13 Connect. He first recruited Defendants O'Connell and Gray to work on Defendants' line of
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17 ⁵²² Px. 810 (Jn Paul Dep.), FTC-6757 (84:11-22).

18 ⁵²³ Px. 810 (Jn Paul Dep.), FTC-6814 (141:1-6); Px. 825 (Smith Dep.), FTC-8515-16 (136: 21-
19 137:4); Px. 806 (M. Henriksen Dep.), FTC-6045-46 (86:22-87:16).

20 ⁵²⁴ Px. 810 (Jn Paul Dep.), FTC-6735-36 (62:15-63:4); FTC-6737 (64:3-22); Px. 806 (M.
21 Henriksen Dep.), FTC-6045-47 (86:22-88:3); Px. 825 (Smith Dep.), FTC-8415-16 (36:17 –
22 37:24); FTC-8423 (44:1-23); FTC-8453-54 (74:9-75:2).

23 ⁵²⁵ Px. 825 (Smith Dep.), FTC- 8453 (74:3-11), FTC- 8466 (87:10-14).

24 ⁵²⁶ Px. 624, FTC-3748 (letter from Jn Paul); Px. 825 (Smith Dep.), FTC-8520-21 (141:3-142:15).

25 ⁵²⁷ Px. 566 (Gray), ¶ 13; Px. 565 (O'Connell), ¶ 13;

⁵²⁸ Px. 818 (O'Connell Dep.), FTC-7744 (59:2-24).

1 credit offers.⁵²⁹ Mr. Kimoto tasked them with setting up the database that tracked customer
 2 orders for the line of credit offers.⁵³⁰ He then introduced them to the idea of selling grant
 3 products, and agreed that Vertek would market the offer if O’Connell and Gray would supply it –
 4 this became Grant Connect.⁵³¹ He then asked Gray to find a work-from-home business
 5 opportunity for Defendants to market, which ultimately became Domain Processing and One
 6 Hour Wealth Builder.⁵³² Gray introduced K. Kimoto in an email to a third party as heading up
 7 product development and publisher relations.⁵³³ Mr. Kimoto also participated in other aspects of
 8 Vertek’s business. He took part in discussions about setting up Defendants’ merchant accounts
 9 and the decision to create Vantex.⁵³⁴ He also reviewed the marketing for the work-from-home
 10 business opportunity, including the false earnings chart used on the One Hour Wealth Builder
 11 Offer Site, which represented that consumers could make over \$100,000 per year by using the
 12 One Hour Wealth Builder Program.⁵³⁵

13 **ii. Kyle Kimoto Had Actual Knowledge Of Defendants’ Deception**

14 Kyle Kimoto’s actual knowledge of Defendants’ deceptive practices is undisputed. He
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 17 ⁵²⁹ Px. 565 (O’Connell), ¶ 9; *see* Px. 678 (draft of a Letter of Intent between Kyle Kimoto and
 18 O’Connell Gray for the “development and implementation of an on-line subscription-based
 catalog for the sale of direct response consumer products).

19 ⁵³⁰ Px. 565 (O’Connell), ¶ 9; Px. 818 (O’Connell Dep.), FTC-7734-35 (49:21-50:23).

20 ⁵³¹ Px. 818 (O’Connell Dep.), FTC-7750-51 (65:22-66:13); Px. 804 (Gray Dep.), FTC-5657-58
 21 (116:10-117:6), FTC-5661-62 (120:18-121-13); Px. 678, FTC-4018, 4023-26 (letter of intent).

22 ⁵³² Px. 804 (Gray Dep.), FTC-5751-55 (210:11-214:21).

23 ⁵³³ Px. 572.

24 ⁵³⁴ Px. 576 (discussion regarding merchant accounts); Px. 825 (Smith Dep.), FTC-8533-8535
 25 (154:11-156:8) (Kyle Kimoto recommended the creation of Vantex to Michael Henriksen).

⁵³⁵ *Compare* Px. 778, FTC-4619 *with* Px.578, FTC-3298.

1 admits that he was familiar with the tactics Defendants used to sell the line of credit offers
 2 online, including their use of free trials and upsells/add-ons.⁵³⁶ He reviewed the offer websites
 3 for the line of credit, and the marketing material for Domain Processing, which included
 4 deceptive earnings claims.⁵³⁷ He also pitched the the line of credit and grant offers to
 5 Defendants O’Connell and Gray.⁵³⁸ Gray sent Kyle Kimoto a link to the grant site O’Connell
 6 and Gray had purchased in order to create Grant Connect, which included the phony testimonials
 7 they planned to use on the Grant Connect offer site.⁵³⁹

8 Further, Kyle Kimoto is a repeat offender, having already been sued twice by the FTC for
 9 deceptively telemarketing an advance fee catalogue card as an all-purpose credit card and
 10 debiting consumers’ bank accounts without obtaining their authorization.⁵⁴⁰ He is currently
 11 serving a 350-month prison sentence for fraudulent conduct arising from the Assail Case.⁵⁴¹ In
 12 this instance, he again teamed up with other FTC recidivists: Michael Henriksen, his best friend
 13 and former chief financial officer at Mr. Kimoto’s company Assail; Johnnie Smith, a key
 14 defendant in *FTC v. Capital Choice*; and Steven Henriksen, who was held in contempt and

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 16 ⁵³⁶ Kimoto Dep., 83:8-84:17, 86:15-88:11.

17 ⁵³⁷ Px. 811 (Kimoto Dep.), FTC-7026 (68:8-15); *Compare* Px. 778, FTC-4619 with Px.578,
 18 FTC-3298.

19 ⁵³⁸ Px. 565 (O’Connell), ¶ 12; Px. 566 (Gray), ¶ 12.

20 ⁵³⁹ Px. 569.

21 ⁵⁴⁰ *FTC v. Assail, Inc., et al.*, Case No. WA:03-CV-7 (W.D. Tex.) [D.E. 1, D.E. 193]; *See* Px.
 22 598 at FTC-3540-41, ¶ 74 (*FTC v. Capital Choice Consumer Credit, Inc. et al.*)

23 ⁵⁴¹ *U.S. v. Kimoto*, No. 3:07-cr-30089-MJR (S.D. Ill. Oct. 14, 2008) [D.E. 116]; *U.S. v. Kyle*
 24 *Kimoto*, 588 F.3d 464, 495 (7th Cir. 2009); The United States Attorney Southern District of
 25 Illinois News Release, *Nevada Resident Sentenced For Role In Fraudulent Telemarketing*
Scheme (Sept. 8, 2008) at
http://www.justice.gov/usao/ils/press/2008/September/09082008_Kimoto_press%20release.htm
 (last visited Dec. 22, 2010).

1 thrown in jail for violating the court-ordered asset freeze in the *FTC v. Assail*.⁵⁴² The undisputed
 2 evidence demonstrates Kyle Kimoto's knowledge, as well as control, of Defendants' deceptive
 3 practices, and supports finding him liable of violating Section 5, including for equitable
 4 monetary relief.

5 **b. Juliette Kimoto Is Personally Liable For Violating Section 5 Of The FTC Act**

6 **i. Juliette Kimoto Had Authority To Control Corporate Defendants Vertek**
 7 **And Vantex**

8 There is no dispute as to Juliette Kimoto's ownership of Vertek, Vantex, and Pink. She is
 9 the Managing Member of Vertek through Pink LP.⁵⁴³ She is the sole member of Vantex through
 10 the Juliette Kimoto Asset Protection Trust, for which she is the Investment Trustee.⁵⁴⁴ She had
 11 the authority to hire and fire the top executives of the company.⁵⁴⁵

12 It is also undisputed that Juliette Kimoto reaped the benefits of Defendants' deceptive
 13 practices. A person who enjoys the benefits of deception cannot insulate herself from liability by
 14 claiming that she did not participate directly in the deceptive practices. *Amy Travel*, 875 F.2d at
 15 574. Juliette Kimoto enjoyed the fruits of Vertek's and Vantex's deceptive conduct by regularly
 16 extracting \$15,000 to \$60,000 a month in cash from the companies.⁵⁴⁶ In addition to customary
 17 cash infusions to her personal bank account, many of Juliette Kimoto's bills and expenses,

19 ⁵⁴² *FTC v. Assail, Inc., et al.*, Case No. WA:03-CV-7 (W.D. Tex.) [D.E. 1, D.E. 193]; Px. 825
 20 (Smith Dep.), 39:9-40:5, 41:25-42:23; Px. 598 (*FTC v. Capital Choice et.al.*)

21 ⁵⁴³ Px. 330 Certified copy of Vertek Group LLC corporate filings, FTC-0000797; D.E. 62-2, Ex.
 22 A, Affidavit of Juliette Kimoto, ¶ 2.

23 ⁵⁴⁴ DE 62-2, Ex. A, Affidavit of Juliette Kimoto, ¶ 8.

24 ⁵⁴⁵ Px. 825 (Smith Dep.), FTC-8466 (87:10-11).

25 ⁵⁴⁶ Px. 806 (M. Henriksen Depo.), FTC-6099-6100 (140:10-141:18); Px. 283-284 (wire transfers
 to Juliette Kimoto).

1 including the maintenance of her home in Hawaii, were paid by Vertek and Vantex, adding to the
2 total amount of funds she actually gained from the deceptive practices at issue here.⁵⁴⁷

3 **ii. Juliette Kimoto Was Either Recklessly Indifferent To Defendants’**
4 **Misrepresentations Or Intentionally Avoided The Truth**

5 The undisputed evidence supports a finding of personal liability against Juliette Kimoto
6 based on her knowledge of Defendants’ deceptive conduct. Her husband, who effectively
7 controlled Vertek and Vantex, had been sued by the FTC previously for deceptive marketing
8 practices.⁵⁴⁸ Her Director of Accounting, Michael Henriksen, had been sued by the FTC in the
9 same matter.⁵⁴⁹ Her Executive Officer, Johnnie Smith, had been sued by the FTC for deceptive
10 marketing practices in a similar matter that her husband was also involved in.⁵⁵⁰ Steven
11 Henriksen, whose home was Vertek’s first headquarters, had been held in contempt and even
12 thrown in jail for violating an asset freeze in *FTC v. Assail*.⁵⁵¹ These men’s backgrounds should
13 have raised red flags as to the possibility of deceptive conduct, yet Ms. Kimoto entrusted her
14 businesses to her husband, Michael Henriksen, and Smith, and allowed them to contract and
15 collaborate with Steven Henriksen.⁵⁵²

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19 ⁵⁴⁷ Px. 828 (Cook Dep. Vol. II), FTC-8799-8801 (104:25-106:2); Pxs. 160 – 163; Pxs. 262 – 268;
20 Px. 450 (checks to pay for Juliette Kimoto’s personal expenses).

21 ⁵⁴⁸ See Px. 595 (Amended Order in *FTC v. Assail, Inc., et al.*).

22 ⁵⁴⁹ See Px. 597 (Stipulated Order for Permanent Injunction and Monetary Judgment as to
23 Defendant Michael Henriksen in *FTC v. Assail*).

24 ⁵⁵⁰ See Px. 598 .

25 ⁵⁵¹ *FTC v. Assail, Inc., et al.*, Case No. WA:03-CV-7 (W.D. Tex.), [D.E. 193].

⁵⁵² Px. 601 (J. Kimoto Aff.), ¶ 2.

1 Furthermore, while Ms. Kimoto should have made significant efforts to ensure that her
 2 companies were not engaging in deceptive marketing practices, she instead admits that she did
 3 not review any marketing materials created by Vertek or Vantex.⁵⁵³ Rather, she explains, she
 4 relied on her “trained and experienced staff” to follow the law.⁵⁵⁴ These undisputed facts leave
 5 no genuine issue of fact as to Ms. Kimoto’s reckless indifference to the deceptive marketing
 6 practices of the companies she owned, or her intentional avoidance of the truth despite an
 7 awareness of a high probability of deceptive conduct. In light of all the above, the Court should
 8 hold her liable for restitution under Section 5 of the FTC Act.

9 **c. Michael Henriksen Is Personally Liable For Violating Section 5 Of The FTC**
 10 **Act**

11 **i. Michael Henriksen Had Authority To Control Corporate Defendants**
 12 **Vertek and Vantex, And Directly Participated In Defendants’ Deceptive**
 13 **Activities**

14 Michael Henriksen admits that he was the Director of Accounting for Vantex.⁵⁵⁵ Other
 15 than his own self-serving proclamations to the contrary, the facts prove that he also oversaw
 16 accounting, among other things, for Global Gold.⁵⁵⁶ Indeed, in a letter to the New Zealand
 17 immigration authorities Global Gold’s President, Steven Henriksen, described Michael
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 20 ⁵⁵³ D.E. 62-2, Ex. A, Affidavit of Juliette Kimoto, ¶ 13.

21 ⁵⁵⁴ D.E. 62-2, Ex. A, Affidavit of Juliette Kimoto, ¶ 17.

22 ⁵⁵⁵ Michael Henriksen Answer to Am. Compl. [D.E. 156], ¶ 30.

23 ⁵⁵⁶ See Px. 589 (letter from Steven Henriksen to the immigration authorities of New Zealand,
 24 confirming Michael Henriksen’s employment as Global Gold’s Director of Accounting); Px.
 25 657, FTC-3982-83, 5/20/09 email exchange re “i hope you don’t hate me... .UPDATED LIST”
 (Michael Henriksen discussed Global Gold accounting issues with Vantex’s accountant Girma
 Logbicho).

1 Henriksen as Global Gold’s “Director of Accounting” and added that “Mr. Henriksen will be
2 networking with people in the region to determine the marketability of our products there.”⁵⁵⁷

3 Michael Henriksen wielded significant control over Defendants’ activities, and after Kyle
4 Kimoto was incarcerated, he was one of the individuals who took command of Vertek and
5 Vantex, and actively participated in Defendants’ deceptive practices.⁵⁵⁸ His authority at Vertek
6 and Vantex is confirmed by multiple people both outside and inside the company. Within
7 Vertek, Michael Henriksen interviewed and hired employees.⁵⁵⁹ Matt Dacko testified that
8 Michael Henriksen was the “boss,” “pretty much the top guy,” and “in charge.”⁵⁶⁰ Non-
9 executive managers at Vertek and Vantex considered Michael Henriksen to be one of the top
10 three people in charge.⁵⁶¹ This is confirmed by an email indicating that Michael Henriksen was
11 the person who demoted Tasha Jn Paul, then the Director of Operations.⁵⁶² His authority in
12 performing this function gave him the leeway to “allow her” a few days to discuss it with her
13 husband and “ponder her future.”⁵⁶³

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17 ⁵⁵⁷ Px. 589.

18 ⁵⁵⁸ Px. 825 (Smith Dep.), FTC-8517 (138:11-18); Px. 804 (Gray Dep.), FTC-5775-76 (234:21-
235:13); Px. 818 (O’Connell Dep.), FTC-7851 (166:11-23).

19 ⁵⁵⁹ Px. 824 (Todorov Dep.), 23:10-23; Px. 806 (M. Henriksen Depo.), 92:17-93:22. *See* Px. 781.

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21 ⁵⁶⁰ Px. 829 (Dacko Dep.), FTC-8880 (54:10-20), FTC-8905 (56:12-18).

22 ⁵⁶¹ Px. 829 (Dacko Dep.), FTC-8880 (54:10-11; 54:12-20), FTC-8905 (79:13-19); Px. 824
23 (Todorov Dep.), FTC-8284-85 (40:18-41:23); *See* Px. 810 (Jn Paul Dep.), FTC-6814 (141:12-
25), FTC-6816-18 (143:21-145:22).

24 ⁵⁶² Px. 658. *See also* Px. 825 (Smith Dep.), FTC-8546 (167:8-25) (Smith testimony also
25 indicating that Mike Henriksen demoted Jn Paul).

⁵⁶³ Px. 658.

1 People outside of Vertek and Vantex also saw Michael Henriksen as having significant
2 control over the companies. The owner of Media Funding, a third-party investor who contracted
3 with Global Gold to fund its marketing costs, believed Michael Henriksen to be in charge at
4 Vantex.⁵⁶⁴ Similarly, Justin Lund, the President of Virgin Offers Media – the network
5 affiliate/publisher that helped generate much of Defendants’ sales⁵⁶⁵ – turned to Michael
6 Henriksen with key matters involving Defendants’ business with Virgin Offers Media.⁵⁶⁶

7 The evidence also proves that Michael Henriksen was regularly involved in a wide range
8 of Defendants’ business activities, including marketing, strategic planning, and avoiding
9 detection by authorities. Specifically, he participated in meetings and conversations about
10 Defendants’ marketing strategies and concerns.⁵⁶⁷ He negotiated the contracts between investor
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13 ⁵⁶⁴ Px. 798 (Bieler Dep.) FTC-4789 (68:18-69:15).

14 ⁵⁶⁵ See Px. 806 (M. Henriksen Dep.), FTC-6196 (237:11-25); Px. 823 (Soto Dep. Vol. III), FTC-
15 8093-94 (167:14-168:5).

16 ⁵⁶⁶ See, e.g., Px. 733, FTC-4300 (Lund emails Michael Henriksen and Steve Henriksen to discuss
17 problems with the conversion rates—*i.e.*, sales resulting in commissions—for the line of credit
18 offer and recommends that “we all coordinate (Reno, Utah, Vegas) toward the common goal of
19 resolution”; Px. 735 (Lund email to Michael Henriksen and Steve Henriksen about issues with
20 My Search Cash); Px. 737 (Lund email to Michael Henriksen about how to “mold” Vantex’s
21 Marketing Director); Px. 842, FTC-9071 (Lund tells Michael Henriksen to “have the troops
around your office in Vegas lay low on the grant stuff”); Px. 849 (Lund email to Michael
Henriksen, copying Steve Henriksen, getting approval on how to handle a situation with an
affiliate); Px. 844, FTC-9076 (Michael Henriksen assures Lund that the grant website will be up
soon and says to let him know if there are any problems).

22 ⁵⁶⁷ Px. 732 (email from Vantex marketing director setting up a meeting to discuss third quarter
23 sales promotion in which Michael Henriksen was listed as a required attendee); Px. 731 (Michael
24 Henriksen is copied on an email discussing a new line of credit skin); Px. 735 (email to Steve
25 Henriksen and Michael Henriksen discussing a problem with My Search Cash); Px. 733 (email
originally to Steven and Michael Henriksen discussing the status of Defendants’ line of credit
sales, and, in a later email, Defendants’ competition in that arena); Px. 558 (email from Michael
Henriksen discussion various business concerns, including whether to do a bonus sale for acai,

1 Media Funding and Global Gold (which Steven Henriksen ultimately signed).⁵⁶⁸ He was
 2 actively involved in figuring out with the other executives at Vantex at Global Gold “how to take
 3 [their] business to the next level.”⁵⁶⁹ The evidence is also irrefutable as to his intimate
 4 involvement in procuring and maintaining the merchant accounts Defendants used to charge
 5 consumers’ credit and debit cards, and to conceal their deception.⁵⁷⁰

6 **ii. Michael Henriksen Had Actual Knowledge Of Defendants’ Deception**

7 The undisputed evidence demonstrates that Michael Henriksen had ample knowledge
 8 about Defendants’ deceptive practices. He is an FTC recidivist already banned from
 9 telemarketing for violating Section 5 when he was the Chief Financial Officer of Assail.⁵⁷¹ In
 10 this instance, Michael Henriksen, again acting as the CFO of a corporation engaged in deception,
 11 was deeply involved in Defendants’ business and was regularly exposed to Defendants’
 12 deceptive conduct. Michael Henriksen was made aware that Defendants’ marketing lacked
 13 adequate disclosures by a number of sources, including third-parties and consumers. For
 14 example, he received an email from a publisher whose lawyer highlighted the deficiencies in
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18 getting articles of incorporation for two companies, drafting agreements, and opening accounts in
 19 Panama to avoid chargebacks).

20 ⁵⁶⁸ Px. 798 (Bieler Dep.), FTC- 4886-87 (165:9-166:9).

21 ⁵⁶⁹ Px. 612.

22 ⁵⁷⁰ Px. 806 (M. Henriksen Depo.), FTC-6054 (95:9-18); Px. 558 (email discussing all the “stuff
 23 [he] is watching over, including a variety of Defendants’ offers, and directing Steve Henriksen,
 24 Smith, and Cook to “please read and pay attention to everything with your name on it”); Px. 560
 25 (email from Michael Henriksen to same individuals discussing various issues concerning
 multiple offers sold by Defendants); Px. 766 (email from Michael Henriksen listing the various
 Corporate Defendants’ merchant accounts).

⁵⁷¹ *FTC v. Assail, Inc., et al.*, Case No. WA:03-CV-7 (W.D. Tex.) [D.E.1].

1 Defendants' advertising.⁵⁷² He had also seen consumer complaints regarding the deceptive
 2 marketing of Defendants' products.⁵⁷³ One indication of consumer dissatisfaction came from
 3 Steven Henriksen in an email with the subject line "this is pretty funny."⁵⁷⁴ Attached to the
 4 email are screenshots from an internet website, wiki.answers.com, saying that one of
 5 Defendants' credit line offers is fraudulent.⁵⁷⁵

6 Michael Henriksen knew that Defendants' offers, including the line of credit offers and
 7 their accompanying upsells/add-ons, had excessive chargeback rates.⁵⁷⁶ He sought to conceal
 8 these signs of deception by masking the high chargeback rates, and helping Defendants to
 9 regularly create and switch merchant accounts.⁵⁷⁷ As of July 21, 2009, Michael Henriksen
 10 helped maintaining over 50 merchant accounts for Defendants' vast array of offers and upsells,
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13 ⁵⁷² Px. 457 (publisher states that his lawyer found Defendants' marketing noncompliant because
 14 it lacked the proper disclosures, including not adequately disclosing the nature of the program, its
 15 cost, or the 3 negative options attached to the offer). *See also* Px. 542 (Vantex compliance
 16 officer researching recent FTC cases and noting that it was considered deceptive to fail "to
 17 disclose monthly recurring charges prior to purchase, including negative options charges," and
 18 that "this could not be done by clicking on a link to view the terms and conditions.")

19 ⁵⁷³ Px. 529 (email regarding a complaint on wiki.com); Px. 539 (Michael Henriksen was the
 20 recipient of an email about a consumer complaint from the Iowa Attorney General's office).

21 ⁵⁷⁴ Px. 529, FTC-2546.

22 ⁵⁷⁵ Px. 529, FTC-2547-48.

23 ⁵⁷⁶ Px. 554-556 (fines from Visa and Mastercard for excessive chargebacks); Px. 536 (email from
 24 Michael Henriksen discussing Defendants' strategy of giving more refunds to decrease the
 number of chargebacks); Px. 592 (Michael and Steven Henriksen, O'Connell, and Gray planned
 to meet about Defendants' being placed on the Visa merchant monitoring program for the fourth
 month in a row due to excessive chargebacks, which O'Connell describes as "a very serious
 situation.").

25 ⁵⁷⁷ Px. 766 (email from Michael Henriksen listing Defendants' merchant accounts); Px. 560
 (email discussing, among other things, the setting up of additional merchant accounts).

1 and had submitted applications for over 40 additional offers.⁵⁷⁸ These are not the actions of an
 2 individual who had no knowledge about the problematic nature of Defendants' offers. Because
 3 Michael Henriksen had ample knowledge of Defendants' deceptive conduct, and significant
 4 control over Defendants' business, he should be held personally liable under Section 5 of the
 5 FTC Act, including for equitable monetary relief.

6 **d. Steven Henriksen Is Personally Liable For Violating Section 5 Of The FTC Act**

7 **i. Steven Henriksen Had Authority To Control Thirteen Of The Corporate**
 8 **Defendants And Directly Participated In Defendants' Deceptive Practices**

9 It is undisputed that Steven Henriksen was the chief executive of 13 of the Corporate
 10 Defendants, including Acai, Allclear, Dragon, Elite, Global Gold, Global Gold Limited, Global
 11 Fulfillment, Healthy Allure, MSC, Paid to Process, Premier, Total Health, and VComm,⁵⁷⁹ and
 12 that he had authority to control these companies. Steven Henriksen admits that he ran each of
 13 these companies.⁵⁸⁰ He was a signatory on their bank accounts,⁵⁸¹ and executed agreements on
 14 their behalf.⁵⁸² There is no question that he controlled these entities.

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 16 ⁵⁷⁸ Px. 766.

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 18 ⁵⁷⁹ Px. 807 (S. Henriksen Dep.) FTC-6299 (42:5-9) (Global Gold), FTC-6304-05 (47:19-48:1)
 19 (Acai), FTC-6305 (48:16-21) (All Clear), FTC-6306 (49:6-11) (Dragon), FTC-6308 (51:15-20)
 20 (Elite), FTC-6309 (52:19-24) (Global Fulfillment), FTC-6311 (54:14-16) (Global Gold Limited),
 21 FTC-6313 (56:8-13) (Healthy Allure), FTC-6313-14 (56:25-57:5) (MSC Online), FTC-6314
 22 (57:16-21) (Paid to Process), FTC-6316 (59:13-18) (Premiere Plus), FTC-6317 (60:7-12) (Total
 23 Health), FTC-6319 (62:1-6) (VComm).

24 ⁵⁸⁰ Px. 807 (S. Henriksen Dep.), FTC-6322 (65:4-16).

25 ⁵⁸¹ Px. 178, FTC-464 (Business account application for Global Gold ending in 1465); Px. 179,
 1/22/2008 Addendum to Certificate of Authority for Global Gold Inc., Account #
 XXXXXX1465; Px. 180, 6/11/2007 Wells Fargo Business Account Application for Global Gold
 Inc., Account # XXXXXX1754; Px. 181, 6/15/2007 Wells Fargo Business Account Application
 for Global Gold Inc., Wells Fargo Account # XXXXXX1770; Px. 182, 9/12/2007 Wells Fargo
 Business Account Application for Global Gold Inc., Wells Fargo Account # XXXXXX4174; Px.

1 Steven Henriksen also participated extensively in the companies' business activities,
 2 including their deceptive marketing. He admits that he reviewed the advertisements for his
 3 companies' offers.⁵⁸³ And any material changes to these advertisements were presented to him
 4 for approval.⁵⁸⁴ He controlled the customer service for all of Defendants' offers, using Global
 5 Gold personnel (formerly employed at Vantex) to oversee and manage customer service
 6 representatives.⁵⁸⁵ In short, there is no genuine issue of material fact as to Steve Henriksen's
 7 control over many of the key Corporate Defendants in this action.

8 **ii. Steven Henriksen Had Actual Knowledge Of Defendants' Deceptive**
 9 **Practices**

10 The evidence irrefutably shows that Steven Henriksen is liable for monetary restitution
 11 based on his actual knowledge of Defendants' deceptive practices. As the owner, officer, and
 12 director of key Corporate Defendants, he was intimately familiar with the marketing practices at
 13 issue here. He knew, for instance, that the One Hour Wealth Builder Offer Site included an
 14 earnings chart that was not based on actual or typical amounts earned by consumers.⁵⁸⁶ He was
 15 aware that publishers and payment processors had expressed concerns over, and even outright
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 18 183, 10/11/2007 Wells Fargo Business Account Application for Global Gold Inc., Account #
 XXXXXX3159.

19 ⁵⁸² Px. 807 (S. Henriksen Dep.), FTC-6323 (65:4-16); Px. 567 (Services Agreement between
 20 Global Gold and OS signed by Steve Henriksen), Px. 742, Px. 743, Px. 744, Px. 749.

21 ⁵⁸³ Px. 807 (S. Henriksen Dep.), FTC-6349-50 (92:17-93:7).

22 ⁵⁸⁴ Px. 807 (S. Henriksen Dep.), FTC-6349-50 (92:17-93:7).

23 ⁵⁸⁵ Px. 807 (S. Henriksen Dep.), FTC-6478-80 (221:8-223:3); FTC-6441 (183:9-15); *see also* Px.
 24 807 (S. Henriksen Dep.), FTC-6354 (97:1-21); Px. 559.

25 ⁵⁸⁶ Px. 807 (S. Henriksen Dep.), FTC-6367-75 (110:11-118:8); Px. 578 (One Hour Wealth
 Builder site).

1 rejected, Defendants' advertisements due to their deceptive nature.⁵⁸⁷ For example, one
2 publisher specifically stated that he ceased mailing Defendants' line of credit offer, First
3 National Gold, after he was warned by his lawyer that: (1) "[t]he cost of the program is not
4 adequately disclosed;" (2) "[t]he nature of the program is not disclosed until page two, after
5 consumer information is obtained;" and (3) "[t]here are 3 negative options ... [that] do not
6 satisfy FTC disclosure requirements."⁵⁸⁸ Similarly, Steven Henriksen, like his brother Michael,
7 received an email from Defendant Johnnie Smith on FTC caselaw research done by Vantex's
8 Compliance Officer, which reported – among other things – that: (1) it was deceptive to fail “to
9 disclose monthly recurring charges prior to purchase including negative option charges [and]
10 [t]his can not be done by clicking on a link to view the terms and conditions;” (2) it was unlawful
11 to use “misleading representation of stated earnings,” as well as “unsubstantia[t]ed earnings;”
12 and (3) it was unlawful to “[c]laim[] that grants will pay off personal expensed or debt,” as well
13 as market to consumers an outdated grants database “listing Grants that were only available to
14 organizations.”⁵⁸⁹

15 Significantly, Steven Henriksen was made aware of Defendants' deceptive practices from
16 numerous consumers who complained that they were mislead by Defendants' advertisements.⁵⁹⁰

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18 ⁵⁸⁷ Px. 531; Px. 457(publisher states that his lawyer found Defendants' marketing noncompliant
19 because it lacked the proper disclosures, including not adequately disclosing the nature of the
20 program, its cost, or the 3 negative options attached to the offer).

21 ⁵⁸⁸ Px. 457 (publisher states that his lawyer found Defendants' marketing noncompliant because
22 it lacked the proper disclosures, including not adequately disclosing the nature of the program, its
23 cost, or the 3 negative options attached to the offer).

24 ⁵⁸⁹ Px. 542 (Vantex compliance officer describing recent FTC cases in which it was found that
clicking on a link to view terms and conditions was insufficient to disclose monthly recurring
charges).

25 ⁵⁹⁰ Px. 807 (S. Henriksen Dep.), FTC-6483 (226:9-17); Px. 375, Declaration of Sylvia Campbell,
Southern Nevada Better Business Bureau (“Campbell”), ¶ 9 & Att. C, FTC-976, 978, 990, 1004,

1 He personally reviewed and responded to complaints brought to his attention by the Better
2 Business Bureau and various agencies.⁵⁹¹

3 Further, Steven Henriksen was well aware of the high cancellation rates of Defendants'
4 membership programs.⁵⁹² Specifically, he was aware of the inclusion of Defendants' products in
5 Visa's and MasterCard's respective chargeback/fraud monitoring programs due to excessive
6 chargeback rates.⁵⁹³ As part of these programs, Visa and MasterCard repeatedly slapped Steve
7 Henriksen's companies with significant fines.⁵⁹⁴ Rather than changing his business practices to
8 provide proper disclosures, Steven Henriksen, with the help of the other Defendants, sought to
9 evade detection by Visa and MasterCard by regularly closing and switching merchant
10 accounts.⁵⁹⁵

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14 1007, 1010, 1014, 1028, 1055, 1064.; Px. 539, FTC-2581, 2584 (email re consumer complaint
15 from Iowa Attorney General).

16 ⁵⁹¹ Px. 807 (S. Henriksen Dep.), FTC-6483 (226:9-17); Px. 375 (Campbell), Att. D, FTC-1078 to
17 FTC-1113; Px. 539 (email re consumer complaint from Iowa Attorney General).

18 ⁵⁹² See Px. 527 (Pisano), ¶¶ 26, 31 at Att. A (94% cancellation rate for line of credit); Px. 527
19 (Pisano), ¶¶ 26, 32 at Att. B (91% cancellation rate for grants).

20 ⁵⁹³ Px. 554-556 (fines from Visa and Mastercard for excessive chargebacks).

21 ⁵⁹⁴ Px. 547, FTC-2603-08 (Visa fines); Px. 548, FTC-2610-2612 (bank letter discussing high
22 chargeback rate problems); Px. 554, FTC-2624-25 (Visa fines); Px. 556, FTC-2630, 2632
(Mastercard fines).

23 ⁵⁹⁵ Px. 549 (email discussing the "migration" (*i.e.*, closure) of Defendants' merchant accounts);
24 Px. 545, FTC-2597 (Michael Henrisken complaining to Steven Henriksen about the procedures
25 banks may be implementing to associate merchant accounts with corporations); Px. 546
(discussion about how to change merchant accounts); *see* Px. 910, Declaration of Andrew Chen,
¶ 27, 30 (discussing techniques Visa has observed merchants adopt to avoid being included in
the Merchant Chargeback Monitoring Program, including opening new merchant accounts).

1 The undisputed record, therefore, demonstrates that Steven Henriksen possessed actual
2 knowledge of Defendants' deceptive practices and summary judgment should be granted against
3 him, including monetary redress.

4 **e. Rachael Cook Is Personally Liable For Violating Section 5 Of The FTC Act.**

5 **i. Rachael Cook Had Authority To Control Corporate Defendants Vertek**
6 **And Vantex And Directly Participated In Defendants' Deceptive Activities**

7 There is no genuine issue of material fact that Rachael Cook, sister of Steven and
8 Michael Henriksen,⁵⁹⁶ had authority to control Vertek and Vantex. She was the Manager of both
9 companies.⁵⁹⁷ She worked with Kyle Kimoto, Tasha Jn Paul, and Michael Henriksen at Vertek
10 since the company's inception.⁵⁹⁸ As Manager, she exercised authority and control over the
11 company, including signing contracts and other documents on behalf of the company.⁵⁹⁹ She had
12 the authority to hire and fire personnel.⁶⁰⁰ She was an authorized signer on Vertek's and
13 Vantex's bank accounts and regularly wrote checks from those accounts.⁶⁰¹

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17 ⁵⁹⁶ Px. 827 (Cook Dep.), FTC-8701-02 (13:18-14:4).

18 ⁵⁹⁷ Px. 329, FTC-780; Px. 330, FTC-797.

19 ⁵⁹⁸ Px. 828 (Cook Dep. Vol. II), FTC-8734-36 (39:14-41:4); Px. 824 (Todorov Dep.), FTC-8223-
20 24 (31:13-32:2).

21 ⁵⁹⁹ Px. 604 (Consulting Agreement with Smith signed by Rachael Cook on behalf of Vertek); Px.
22 451 (XO Communications Service Change of Ownership Request Form signed by Rachael Cook
23 transferring ownership from Vertek to Dragon Group); Px. 460 (Vantex Page Publishing and
Rotation Procedures approved by Rachael Cook).

24 ⁶⁰⁰ Px. 824 (Todorov Dep.), FTC-8237-38 (45:15-46:24); Px. 825 (Smith Dep.) FTC-8466 (87:2-
25 5).

⁶⁰¹ Px. 828 (Cook Dep. Vol. II), FTC-8739 (44:9-18). Px. 189; Pxs. 261-268; Pxs. 160-175.

1 The evidence shows that Cook actively participated in Defendants' business activities.
2 She approved the procedure for publishing and rotating Defendants' online marketing.⁶⁰² She
3 was regularly involved with setting up merchant accounts for Defendants' various offers.⁶⁰³ And
4 her corporate credit card was used to test Defendants' offer sites.⁶⁰⁴ In sum, it cannot be
5 disputed that Cook, as the Manager of Vertek and Vantex, exercised significant control over both
6 companies' business practices.

7 **ii. Cook Had Sufficient Knowledge Of Defendants' Deceptive Practices**

8 Cook's participation in Defendants' business activities made her privy to a wealth of
9 information that should have alerted her of Defendants' deceptive conduct. She received emails
10 discussing consumer complaints about Defendants' offers.⁶⁰⁵ She knew that Defendants'
11 membership programs had excessive chargeback rates, and that excessive chargebacks could
12 lead Visa or MasterCard to terminate a merchant under their respective chargeback/fraud
13 monitoring programs.⁶⁰⁶ Cook also knew that Defendants had a high number of regularly
14 changing merchant accounts for their various offers.⁶⁰⁷ She was aware that many of the people
15 with whom she conducted business, including her brother Michael and his best friend Kyle
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18 ⁶⁰² Px. 460.

19 ⁶⁰³ Px. 558, FTC-2638-2640; Px. 828 (Cook Dep. Vol. II), FTC-8771 (76:9-20).

20 ⁶⁰⁴ Px. 558, FTC-2638-2640; Px. 446, FTC-1534; Px. 828 (Cook Dep. Vol. II), FTC-8747-48
21 (52:9-53:22); FTC-8756 (61:10-24).

22 ⁶⁰⁵ Px. 529 (consumer complaint from wiki.com); Px. 530 (Cook was tasked with sending a
23 response to a processor about the wiki.com complaint).

24 ⁶⁰⁶ Px. 828 (Cook Dep. Vol. II), FTC-8787-88 (92:20-93:2); Px. 541 (letter from Steven
25 Henriksen discussing Global Gold's chargeback plan).

⁶⁰⁷ Px. 766 (email listing the various merchant accounts Corporate Defendants' had opened or
were attempting to open); Px. 785 (email listing new Paid to Process merchant accounts).

1 Kimoto, were under FTC orders. Even assuming, *arguendo*, that Cook had no actual knowledge
 2 of Defendants' deceptive practices, it cannot be denied that she was at least recklessly indifferent
 3 to the conduct at issue in this matter, and therefore, is individually liable under Section 5 of the
 4 FTC Act, including for restitution.

5 **f. Johnnie Smith Is Personally Liable for Violating Section 5 of the FTC Act.**

6 **i. Johnnie Smith Had Authority to Control Corporate Defendants Vertek**
 7 **and Vantex, and Directly Participated In Defendants' Deceptive Activities.**

8 Johnnie Smith was chief executive at Vertek and Vantex.⁶⁰⁸ He was hired by Kyle
 9 Kimoto to oversee Vertek while Kimoto was preparing for his criminal trial.⁶⁰⁹ After Kimoto
 10 was incarcerated, Smith continued to manage the company, working closely with Tasha Jn Paul,
 11 the Director of Operations.⁶¹⁰ Jn Paul reported directly to Smith.⁶¹¹ In his role as an executive at
 12 the company, Smith's compensation was \$16,700 a month plus 3% of the net profits from
 13 Vertek.⁶¹² His consulting agreement with Vertek gave him broad authority and suggests that he
 14 was more than just a consultant.⁶¹³

17 ⁶⁰⁸ Px. 430; Px. 517.

18 ⁶⁰⁹ Px. 806 (M. Henriksen Depo.), FTC-6081-83 (122:22-124:22).

19 ⁶¹⁰ Px. 829 (Dacko Dep.), FTC-8879 (53:5-15); Px. 803 (Granada Dep.), FTC-5470 (28:14-25);
 20 Px. 814 (Lujan Dep.), FTC-7388 (14:17-21); Px. 824 (Todorov Dep.), FTC-8255 (63:19-64:2);
 21 Px. 824 (Todorov Dep.), FTC-8285 (93:4-14); Px. 817 (McKinnon Dep.), FTC-7656-57 (170:24-
 171:1).

22 ⁶¹¹ Px. 624, FTC-3748 (letter from Jn Paul stating that she reported to Smith); Px. 810 (Jn Paul
 23 Dep.), FTC-6767-68 (94:7-95:14).

24 ⁶¹² Px. 604, FTC-3660; Px. 825 (Smith Dep.), FTC-8454 (75:6-9).

25 ⁶¹³ Px. 604, FTC-3660 (duties under the Agreement included new business development,
 operations, personnel issues, and project coordination, among other things).

1 Smith participated directly in the management of Defendants' marketing campaigns. He
 2 discussed and negotiated the terms of contracts and payments with affiliate marketers.⁶¹⁴ He was
 3 kept apprised of all aspects of Vertek's and Vantex's business activities, including the
 4 development, marketing, and sale of all of Defendants' offers.⁶¹⁵ He took part in marketing
 5 meetings, edited terms and conditions for Defendants' offers, and received progress reports on
 6 the status of Defendants' marketing campaigns.⁶¹⁶ As an executive, he demanded to be kept
 7 informed about the marketing operations of the company, and grew angry if information about
 8 marketing campaign strategies were not delivered to him immediately.⁶¹⁷ In short, there is no
 9 dispute that Smith exercised significant control over the business practices of Vertek and Vantex.

10 **ii. Smith Had Actual Knowledge of Defendants' Deceptive Practices.**

11 Smith's leadership role at Vertek and Vantex provided him with sufficient knowledge to
 12 make him liable for restitution under Section 5 of the FTC Act. For example, Smith knew that
 13 Defendants' line of credit advertisements were deceptive from emails and consumer complaints
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 17 ⁶¹⁴ Px. 436, FTC-1414 (Smith attempting to resolve a dispute with an outside party regarding the
 amount of the "bounty" the party would receive).

18 ⁶¹⁵ Px. 437 (Smith receiving marketing updates from Jn Paul); Px. 779 (Smith expressing anger
 19 that he was not immediately informed about one of Defendants' marketing campaigns); Px. 591
 (Smith receiving a Marketing Department Status Report); Px. 600 (Smith setting the priorities of
 20 the Vantex marketing department); Px. 608 (Smith informing Vantex management about the new
 pay policy and directing a Vantex employee to insert the new policy in the Employee Manual).

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 22 ⁶¹⁶ Px. 732 (Meeting set to take place in Smith's office with Michael Henriksen, Steven
 Henriksen, and Tasha Jn Paul to discuss third quarter sales promotion); Px. 495 (Smith editing
 23 terms and conditions for one of Defendants' offers); Px. 824 (Todorov Dep.), FTC-8261-62
 (69:6-70:6) (Smith and Steven Henriksen approved terms and conditions); Px. 738 (Smith
 24 receiving marketing updates and mockups for various offers).

25 ⁶¹⁷ Px. 779, FTC-4622 (Smith expressing anger that he was not immediately informed about one
 of Defendants' marketing campaigns).

1 he received.⁶¹⁸ He reviewed and edited responses to some of these complaints.⁶¹⁹ As an
2 individual found liable for deception in *FTC v. Capital Choice*, a case that centered on a phony
3 line of credit scheme, Smith had ample knowledge about what constitutes a deceptive line of
4 credit offer.⁶²⁰ He also knew that Kyle Kimoto was under indictment for engaging in similar
5 fraudulent activities.⁶²¹ In addition, he knew of Defendants' excessive chargeback rates.⁶²² At
6 one point, when a processor terminated Global Gold's account, he was told by Defendant Gray
7 that they would likely just create a company that appeared to have different ownership and
8 reapply for another account.⁶²³ Smith was also the one who forwarded to Steven and Michael
9 Henriksen the research from Vantex's Compliance department, which highlighted various
10 compliance issues with respect to the offers at issue here.⁶²⁴ Based on his control, participation,

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13 ⁶¹⁸ Px. 457 (publisher states that his lawyer found Defendants' marketing noncompliant because
14 it lacked the proper disclosures, including not adequately disclosing the nature of the program, its
15 cost, or the 3 negative options attached to the offer); Px. 539 (email re consumer complaint from
16 Iowa Attorney General); Px. 776 (Smith edits response to Ohio Attorney General consumer
17 complaint).

18 ⁶¹⁹ Px. 776 (Smith edits response to Ohio Attorney General consumer complaint).

19 ⁶²⁰ Px. 598 (Final Judgment in *FTC v. Capital Choice Consumer Credit Inc. et. al.*).

20 ⁶²¹ Px. 825 (Smith), FTC-8423 (44:1-23).

21 ⁶²² Px. 537 (Smith confirming in email to Michael Henriksen, Steve Henriksen, O'Connell, and
22 Jn Paul that Defendants are providing more refunds to decrease their chargeback level); Px. 592
23 (Michael and Steven Henriksen, O'Connell, and Gray planned to meet about Defendants' being
24 placed on the Visa merchant monitoring program for the fourth month in a row due to excessive
25 chargebacks, which O'Connell describes as "a very serious situation.").

⁶²³ Px. 768.

⁶²⁴ Px. 542 (Vantex compliance officer researched recent FTC cases and notes that it was
considered deceptive to fail "to disclose monthly recurring charges prior to purchase, including
negative options charges," and that "this could not be done by clicking on a link to view the
terms and conditions.").

1 and knowledge of Defendants' deceptive practices, the Court should hold Smith individually
2 liable under Section 5, including for restitution.

3 **g. Tasha Jn Paul Is Personally Liable For Violating Section 5 of the FTC Act.**

4 **i. Tasha Jn Paul Had Authority to Control Corporate Defendants Vertek and**
5 **Vantex and Directly Participated in Defendants' Deceptive Practices.**

6 The undisputed evidence demonstrates that Tasha Jn Paul played a key role in marketing
7 Defendants' deceptive offers to consumers. As the Director of Operations at Vertek and Vantex,
8 she oversaw much the companies' business, including its marketing and compliance activities.⁶²⁵
9 Jn Paul directed Defendants' marketing campaigns, and approved the landing pages and banners
10 through which Defendants marketed and sold their deceptive offers online.⁶²⁶ She also oversaw
11 the compliance department and helped create the guidelines for the marketing campaigns.⁶²⁷ In
12 this role, she had access to, and provided input regarding, the various offers' sites and banners.⁶²⁸

13 **ii. Tasha Jn Paul Had Actual Knowledge of Defendants' Deception.**

14 In her role as Director of Operations at Vertek and Vantex, Jn Paul had actual knowledge
15 of the deceptive marketing being used by Defendants. Indeed, it was her job to know. In fact, Jn
16 Paul saw, and was informed by the Compliance Officer at Vertek, of deceptive marketing pages

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20 ⁶²⁵ Px. 829 (Dacko Dep.), FTC-8883 (57:14-20); FTC-8884-85 (58:20-59:18); FTC-8902 (76:6-
21 10); Px. 417; Px. 825 (Smith Dep.), FTC-8507 (128: 7-13); Px. 824 (Todorov Dep.), FTC-8234
(42:16-20).

22 ⁶²⁶ Px. 810 (Jn Paul Dep.), FTC-6850 (177:11-18); FTC-6804 (131:6-13); FTC-6789 (116:18-
23 25); FTC-6827 (154:3-19); FTC-6881 (208:5-16).

24 ⁶²⁷ Px. 810 (Jn Paul Dep.), FTC-6808-09 (135:15-136:16).

25 ⁶²⁸ Px. 817 (McKinnon Dep.), FTC-7646 (160:8-12); Px. 810 (Jn Paul Dep.), FTC-6890 (217:1-
22); Px. 423; Px. 424; Px. 425; Px. 426; Px. 427; Px. 428.

1 being used by Defendants.⁶²⁹ Jn Paul, however, purposefully chose to allow deceptive
 2 advertising to remain online because it was profitable.⁶³⁰ Furthermore, despite the fact that Jn
 3 Paul ultimately oversaw the compliance department, she never actually tried to verify that the
 4 outlandish claims Defendants made about their grant offers, work-from-home opportunities, or
 5 health supplements were truthful.⁶³¹ In fact, she knew that the testimonials for Defendants' grant
 6 offers were obtained before Grant Connect had even begun operating.⁶³²

7 Jn Paul also has a history with Kyle Kimoto and the Henriksen brothers. She worked as a
 8 telemarketing agent for Kyle Kimoto at Assail and was eventually promoted to a manager,
 9 overseeing his call center.⁶³³ She was there when the FTC shut Kyle Kimoto's business down.⁶³⁴
 10 She was later employed at a company previously owned by Steven Henriksen, doing customer
 11 service training.⁶³⁵ Jn Paul is currently a defendant in *FTC v. NHS Systems, Inc. et al.*, Civ. No.
 12 08-2215 (E.D. Pa. filed May 15, 2008), which involves allegations of deceptive marketing of
 13 phony health plans.⁶³⁶ Given the knowledge and control that Jn Paul had as a result of being a
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15 ⁶²⁹ Px. 817 (McKinnon Dep.), FTC-7587-88 (101:5-102:22).

16 ⁶³⁰ Px. 817 (McKinnon Dep.), FTC-7587-88 (101:5-102:22); *see also* Px. 810 (Jn Paul Dep.),
 17 FTC-6830-32 (157:13-159:18) (confirming that Jn Paul knew that ads featuring President Obama
 18 were used in Defendants' marketing).

19 ⁶³¹ Px. 810 (Jn Paul Dep.), FTC-6832 (159:19-161:2); FTC-6844-45 (171:11-172:13); FTC-
 20 6864-65 (191:24-192:16).

21 ⁶³² Px. 810 (Jn Paul Dep.), FTC-6844-45 (171:11-172:13).

22 ⁶³³ Px. 810 (Jn Paul Dep.), FTC-6702-05 (29:14-32:8).

23 ⁶³⁴ Px. 810 (Jn Paul Dep.), FTC-6721 (48:6-12).

24 ⁶³⁵ Px. 807 (S. Henriksen Dep.), FTC-6293 (36:10-18), FTC-6280 (23:24-27:8); Px. 810 (Jn Paul
 25 Dep.), FTC-6721-24 (48:17-51:3).

⁶³⁶ Px. 599, Preliminary Injunction with an Asset Freeze and Accounting in *FTC v. NHS Systems, Inc. et al.*

1 Director of Operations at Vertek and Vantex, she should be held personally liable under Section
2 5 of the Act, including for restitution.

3 **h. James Gray Is Personally Liable For Violating Section 5 of the FTC Act**

4 **i. James Gray Had Control Over The Reno Corporate Defendants and**
5 **Directly Participated in Defendants' Deceptive Practices.**

6 Together with Randy O'Connell, James Gray controlled and directed the corporate
7 defendants located in Reno. He was the Managing Member of O'Connell Gray, Horizon
8 Holdings, and Grant Connect.⁶³⁷ He regularly signed agreements on behalf of these Corporate
9 Defendants.⁶³⁸ He was also a signatory on multiple Horizon Holdings bank accounts.⁶³⁹

10 Gray participated extensively in the marketing and sale of Defendants' deceptive offers.
11 He provided the phony testimonials used to market Grant Connect.⁶⁴⁰ In doing so, he knew that
12 the testimonials could not have come from Grant Connect customers since Grant Connect had
13 not been marketed yet.⁶⁴¹ He helped add to Defendants' cache of deceptive offers by
14 collaborating with Kyle Kimoto to create and launch the line of credit, Grant Connect, and the
15 business opportunity that Defendants ultimately marketed as Domain Processing and One Hour
16 Wealth Builder.⁶⁴² Gray drafted a letter of intent to Kyle Kimoto detailing a plan to work

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18 ⁶³⁷ Px. 327, FTC-733; Px. 326, FTC-721; Px. 324, FTC-709.

19 ⁶³⁸ Pxs. 352-359; Px. 568; Px. 804 (Gray Dep.), FTC-5747-48 (206:16-207:21); Pxs. 360-364
20 (agreements signed on behalf of Grant Connect); Px. 804 (Gray Dep.), FTC-5749 (208:10-22);
21 FTC-5754 (213:18-22); Px. 574 (agreements signed on behalf of O'Connell Gray).

22 ⁶³⁹ Pxs. 66-85; Px. 804 (Gray Dep.), 206:16-207:21; Pxs. 352-359; Px. 568

23 ⁶⁴⁰ Px. 804 (Gray Dep.), FTC-5721-22 (179:7-180:23); Px. 679; Px. 570.

24 ⁶⁴¹ Px. 686, FTC-4043-44; Px. 566, ¶ 16; Px. 569; Px. 570.

25 ⁶⁴² Px. Px. 818 (O'Connell Dep.), FTC-7751 (66:2-22); Px. 804 (Gray Dep.), FTC-5751-82
(210:11-241:21); Px. 695.

1 together on a line of credit venture.⁶⁴³ The business arrangement described in the letter of intent
2 was eventually formalized in a Services Agreement between Global Gold and OS, which
3 governed their relationship.⁶⁴⁴ Under the Services Agreement, in addition to processing
4 customer information using AWARE, and recommending merchant processors and other
5 vendors, OS was also to “provide consultative input on marketing strategy, product development
6 and general operations.”⁶⁴⁵ In fact, Gray licensed the underlying program for the One Hour
7 Wealth Builder program, which he then sublicensed to Domain Processing, a corporate
8 defendant owned by Steven Henriksen.⁶⁴⁶ Gray also helped Defendants’ business grow by
9 reaching out to affiliates to promote Defendants offers.⁶⁴⁷ He secured upsells/add-ons for the
10 Grant Connect product and participated in deciding which upsells/add-ons to use with that
11 offer.⁶⁴⁸

12 **ii. James Gray Had Actual Knowledge of Defendants’ Deceptive Practices.**

13 Gray actively participated, and, therefore, was well aware of Defendants’ deceptive
14 offers. He had a key role in the design and implementation of Defendants’ grants and line of
15 credit offers. He generated phony testimonials⁶⁴⁹ and tactics designed to thwart monitoring by
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18 ⁶⁴³ Px. 678

19 ⁶⁴⁴ Px. 567; Px. 804 (Gray Dep.), FTC- 5666 (125:12-16).

20 ⁶⁴⁵ Px. 567, FTC-2707.

21 ⁶⁴⁶ Px. 804 (Gray Dep.), FTC-5746-47 (204:10-205:8).

22 ⁶⁴⁷ Px. 684, 4/18/2008 Email from Jim Gray to Joe Lilly, copying Randy O'Connell, re "I heard
23 something weird."

24 ⁶⁴⁸ Px. 804 (Gray Dep.), FTC-5731 (190:3-23), FTC-5732 (194:12-14); Px. 680.

25 ⁶⁴⁹ Px. 679.

1 Visa and payment processors.⁶⁵⁰ Indeed, after a payment processor terminated Defendants’
2 merchant account, Gray told Johnnie Smith that his partner Randy O’Connell would likely
3 recommend that they just create a new company with different apparent ownership and “go right
4 back” to that processor.⁶⁵¹ Considering Gray’s active and intimate participation in the deceptive
5 practices at issue here, the Court should hold him liable under Section 5 of the FTC Act,
6 including for monetary relief.

7 **i. Randy O’Connell Is Personally Liable for Violating Section 5 of the FTC**
8 **Act.**

9 **i. Randy O’Connell had Authority to Control the Reno Corporate**
10 **Defendants and Directly Participated In Defendants’ Deceptive Practices.**

11 As the Managing Member of corporate defendants O’Connell Gray, Consolidated
12 Merchant Solutions and OS, Randy O’Connell exercised control over these companies.⁶⁵² He
13 signed the Services Agreement between Global Gold and OS as its President.⁶⁵³ In the
14 Agreement, OS is responsible for “provid[ing] consultative input on marketing strategy, product
15 development and general operations” for the line of credit offers.⁶⁵⁴ O’Connell also admitted
16 that he shared the duties of CEO over all of the corporate entities located in Reno with his
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21 ⁶⁵⁰ Px. 768, FTC-4525 (email in which Gray suggests they will reapply to the same processor
that terminated their account using a different corporate entity).

22 ⁶⁵¹ *Id.*

23 ⁶⁵² Px. 818 (O’Connell Dep.), FTC-7721 (36:14-19); Px. 327, FTC-733.

24 ⁶⁵³ Px. 567; Px. 818 (O’Connell Dep.), FTC-7769-71 (84:20-86:6).

25 ⁶⁵⁴ Px. 567, FTC-2707.

1 partner Jim Gray.⁶⁵⁵ This is confirmed by the fact that O'Connell was a signatory with Gray on
2 all the bank accounts for Horizon Holdings.⁶⁵⁶

3 O'Connell also directly participated in Defendants' business practices. He and Jim Gray
4 put together the grant product that Defendants' sold first as an upsell with Global Gold and then
5 as a standalone product.⁶⁵⁷ O'Connell was in charge of maintaining and providing technical
6 support for Defendants' customer relationship management database, AWARE, which
7 Defendants used to track customer purchases, refunds, and calls to customer service.⁶⁵⁸ He
8 facilitated Defendants' relationship with financier Media Funding, which provided the funds that
9 paid for a large portion of Defendants' marketing costs.⁶⁵⁹ He also negotiated the contract
10 between Media Funding and Horizon Holdings to obtain additional funding for marketing.⁶⁶⁰

15 ⁶⁵⁵ Px. 818 (O'Connell Dep.), FTC-7727-28 (42:7-43:1); FTC-7744 (59:6-14).

16 ⁶⁵⁶ Pxs. 66-85.

17 ⁶⁵⁷ Px. 565 (O'Connell Dec.), ¶ 13.

18 ⁶⁵⁸ Px. 818 (O'Connell Dep.), FTC-7783 (98:9-10); FTC-7772-73 (87:17-88:7); FTC-7795
19 (110:9-16).

20 ⁶⁵⁹ Px. 538, 4/30/09 Email re "Global Gold Credit Card Processors"; Px. 756, 4/16/2009 Email
21 from Randy O'Connell re "URL's Requested", and email from Tasha Jn Paul "RE: MFC Needs"
22 (email from O'Connell regarding information needed by Media Funding); Px. 757, 2/23/2009
23 Email from Randy O'Connell to Shane Bradford, cc Christine Emmons, "RE: Grants" (email
24 from O'Connell regarding information needed by Media Funding on grants); Px. 759, 7/21/2009
Email from Randy O'Connell to Jennifer Murdoch re "My Search Cash" (email from O'Connell
to Media Funding talking about My Search Cash); Px. 762, 7/22/2009 Email from Randy
O'Connell to Jennifer Murdoch, cc Jeanne and Shane Bradford, re "Acai Total Burn is also Live"

25 ⁶⁶⁰ Px. 804 (Gray Dep.), FTC-5786-87 (245:18-246:21); Px. 818 (O'Connell Dep.), FTC-6805
(160:2-7).

1 Finally, he procured and kept up Defendants' numerous merchant accounts, which were used to
2 charge consumers' debit and credit cards.⁶⁶¹

3 **ii. Randy O'Connell Had Actual Knowledge of Defendants' Deceptive Practices.**

4 O'Connell knew of Defendants' deceptive practices as he played a key role in those
5 practices. He also dealt with the results of those practices on a regular basis: high chargeback
6 rates which led to numerous fines, high customer refund and cancellation rates recorded in the
7 AWARE database, and the constant need to change merchant accounts so as to avoid detection
8 by the Visa and Mastercard fraud monitoring programs.⁶⁶² O'Connell admits that he knew that
9 the line of credit offer had an excessive number of chargebacks.⁶⁶³ He gave Defendants advice
10 on how to deal with the chargeback issue, which would have made him intimately aware of the
11 level of consumer dissatisfaction.⁶⁶⁴ He also worked regularly in the AWARE database, so
12 would have had access to data about the high consumer refund rate, something Defendants' were
13 trying to use to decrease the number of chargebacks.⁶⁶⁵ Michael Henriksen specifically included
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16 ⁶⁶¹ Px. 549 (O'Connell discussing the "migration" (*i.e.*, closure) of Defendants' merchant
17 accounts); Px. 818 (O'Connell Dep.), FTC-7795 (110:9-16); FTC-7845 (160:2-7); Px. 810 (Jn
18 Paul Dep.), FTC-6805 (132:8-23).

19 ⁶⁶² *See infra* notes 663-667.

20 ⁶⁶³ Px. 818 (O'Connell Dep.), FTC-7833-35 (148:21-150:3); *see also* Px. 538; Px. 592 (Michael
21 and Steven Henriksen, O'Connell, and Gray planned to meet about Defendants' being placed on
22 the Visa merchant monitoring program for the fourth month in a row due to excessive
chargebacks, which O'Connell describes as "a very serious situation."); Px. 541-FTC-2589-90;
Px. 547-FTC-2601; Px. 550-FTC-2615; Px. 551-FTC-2617.

23 ⁶⁶⁴ Px. 818 (O'Connell Dep.), FTC-7830-31 (145:22-146:4); Px. 803 (Granada Dep.), FTC-5494
(52:2-16).

24 ⁶⁶⁵ Px. 537, FTC-2577 (Smith confirming in email to Michael Henriksen, Steve Henriksen,
25 O'Connell, and Jn Paul that Defendants are providing more refunds to decrease their chargeback
level).

1 O'Connell in an email discussing the dramatic increase in customer refunds.⁶⁶⁶ O'Connell also
 2 knew of, and helped Defendants accomplish, the regular opening, closing, and switching of
 3 merchant accounts.⁶⁶⁷ This behavior helped conceal from the VISA and MasterCard
 4 chargeback/fraud monitoring programs the true consumer chargeback rates caused by
 5 Defendants' deceptive marketing.⁶⁶⁸

6 O'Connell is not a novice to the marketing industry, having been a Vice President at a
 7 marketing company that was later sued by the FTC.⁶⁶⁹ It was while he was working at that
 8 company, Blitz, that he met Kyle Kimoto whose company, Assail, performed telemarketing for
 9 Blitz.⁶⁷⁰ Kyle Kimoto recruited O'Connell to work with Global Gold and Vertek.⁶⁷¹ After
 10 O'Connell had begun doing business with these companies, Kyle Kimoto was convicted in
 11 federal court for actions related to his ownership of Assail.⁶⁷² Despite this news, O'Connell was
 12 not concerned about his association with Vertek, and did not take any steps to ensure that the
 13 marketing and sales tactics being used by Defendants were not deceptive.⁶⁷³ Indeed, as

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 15 ⁶⁶⁶ Px. 537, FTC-2577.

16 ⁶⁶⁷ Px. 549, FTC-2613; Px. 766.

17 ⁶⁶⁸ Px. 910 (Chen Dec.), ¶ 27, 30.

18 ⁶⁶⁹ Px. 565 (O'Connell Dec.) ¶ 5; Px. 818 (O'Connell Dep.), FTC -7702 (17:4-5). Blitz Media,
 19 Inc was sued soon after O'Connell left the company by the Illinois Attorney General's Office for
 20 placing unauthorized charges on consumers' credit and debit card accounts in Illinois v. Blitz
 21 Media, Inc. (Sangamon County, No. 2001-CH-592), FTC File No. R411001,
<http://www.ftc.gov/os/comments/dncpapercomments/supplement/ilag%5B1%5D.pdf>.

22 ⁶⁷⁰ Px. 818 (O'Connell Dep.), FTC-7732-33 (47:16-48:8); Px. 818 (O'Connell Dep.), FTC-7713
 (28:2-29:15).

23 ⁶⁷¹ See *infra* notes 663-667.

24 ⁶⁷² Px. 818 (O'Connell Dep.), FTC-7747 (62:4-64:3).

25 ⁶⁷³ Px. 818 (O'Connell Dep.), FTC-7747 (62:4-64:3).

1 discussed above, O'Connell was complicit in Defendants' deceptive conduct. O'Connell's
2 control, participation, and level of knowledge support holding him liable under Section 5 of the
3 FTC Act, and an order requiring him to pay monetary redress to return the money he helped
4 swindle from consumers.

5 **C. PERMANENT INJUNCTIVE RELIEF IS NECESSARY**

6 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) authorizes courts to issue a permanent
7 injunction whenever a defendant violates any of the laws enforced by the Commission, and is
8 likely to continue to violate such laws. *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1112-13 (9th
9 Cir. 1982); *FTC v. Gem Merchandising Corp.*, 87 F.3d 466, 468 (11th Cir. 1996); *FTC v.*
10 *Medlab, Inc.*, 615 F. Supp. 2d 1068, 1082 (N.D. Cal. 2009). To determine whether a defendant
11 is likely to engage in similar violations in the future, courts look to two general factors: (1) the
12 deliberateness and seriousness of the present violation, and (2) the defendant's past record with
13 respect to deceptive and unfair marketing practices. *Sears, Roebuck and Co. v. FTC*, 676 F.2d
14 385, 392 (9th Cir. 1982). "Other circumstances may be weighed, including the adaptability or
15 transferability of the unfair practice to other products." *Id.* "The more egregious the facts with
16 respect to a particular element, the less important it is that another negative factor be present. In
17 the final analysis, [courts] look to the circumstances as a whole and not to the presence or
18 absence of any single factor." *Id.*

19 Finally, "[a] court may frame an injunction based on violation of the FTC Act broadly
20 enough to prevent the defendant from engaging in similar illegal conduct in the future." *FTC v.*
21 *Neovi, Inc.*, No. 06-CV-1952 JLS, 2010 U.S. Dist. LEXIS 101583 (S.D. Cal. Sept. 27, 2010)
22 (citing *FTC v. Colgate-Palmolive*, 380 U.S. 374, 395 (U.S. 1965)). In fact, numerous courts
23 have imposed bans enjoining future participation in a particular line of business. See, e.g., *FTC*
24 *v. Gill*, 265 F.3d 944, 957-58 (9th Cir. 2001) (ban on engaging in the credit repair business); *FTC*
25 *v. Holiday Enter., Inc.*, Civ. No. 1:06-CV-2939 (N.D. Ga. Feb. 5, 2008) (ban on involvement in

1 franchises, and business opportunities); *FTC v. Neiswonger*, 494 F. Supp. 2d 1067, 1084 (E.D.
 2 Mo. 2007) (ban on marketing of business opportunities); *FTC v. Int'l Prod. Design, Inc.*, No.
 3 1:97-CV-01114-AVB (E.D. Va. Jul 12, 2007) (ban on participating in invention promotion
 4 services); *FTC v. Credit Enhancement Serv*, CV-02-2134 (E.D.N.Y. Mar. 31, 2004) (ban on
 5 marketing or selling any credit-related goods or services); *FTC v. Five Star Auto Club*, 97 F.
 6 Supp. 2d 502, 536 (S.D.N.Y. 2000) (ban on multi-level marketing); *FTC v. Int'l Computer*
 7 *Concepts, Inc.*, No. 5:94CV1678, 1995 WL 767810, at *7 (N.D. Ohio Oct. 24, 1995) (ban on
 8 involvement in business opportunities and franchises).

9 Defendants have all engaged in the multiple online scams at issue here, which affected
 10 hundreds of thousands of consumers, cheating them out of millions of dollars. In addition,
 11 virtually all of the Individual Defendants have been sued or involved in previous or concurrent
 12 FTC actions for similar unlawful practices.⁶⁷⁴ The Individual Defendants are recidivists who
 13 knowingly – or, at minimum, with gross and reckless indifference – designed and implemented
 14 scam after scam, causing injury to numerous consumers across the nation. Strong and
 15 sufficiently broad injunctive provisions are warranted to protect consumers against future similar
 16 scams by the Defendants. The Proposed Order is based on the multiple scams at issue in this
 17 litigation, and includes provisions that ban the Individual Defendants from engaging in negative-

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 20 ⁶⁷⁴ Defendant Kyle Kimoto (*FTC v. Assail, Inc.*, 410 F.3d 256 (5th Cir. 2005); *Capital Choice*,
 21 No. Civ-02-21050); Defendant Smith (*Capital Choice*, No. Civ-02-21050); Defendant Michael
 22 Henriksen (*FTC v. Assail, Inc.*, WA:03-CV-7 (D. Tx.)); Defendant Steven Henriksen (contempt
 23 of court in *Assail, Inc.*, WA:03-CV-7); Defendant Tasha Jn Paul (subject to a preliminary
 24 injunction in *FTC v. NHS Sy's, Inc.*, No. 2:08-cv-02215 (D. Pa.) and former employee of Assail);
 25 Julie Kimoto (relief defendant in *Assail, Inc.*, WA:03-CV-7); Randy O'Connell and Jim Gray
 (former employees of Blitz Media, Inc, which was sued soon after they left the company by the
 Illinois Attorney General's Office for placing unauthorized charges on consumers' credit and
 debit card accounts in *Illinois v. Blitz Media, Inc.* (Sangamon County, No. 2001-CH-592), FTC
 File No. R411001,
<http://www.ftc.gov/os/comments/dncpapercomments/supplement/ilag%5B1%5D.pdf>).

1 option marketing, continuity programs, preauthorized electronic fund transfers and the use of
2 testimonials. It also enjoins them from marketing and selling products such as those at issue here
3 – grant-related products, credit-related products, business opportunities, as well as dietary
4 products and nutraceuticals.

5 **D. EQUITABLE MONETARY RELIEF IS APPROPRIATE**

6 Where, as here, consumers suffer economic injury resulting from defendants’ violations
7 of the FTC Act, equity requires monetary relief in the full amount lost by consumers. *FTC v.*
8 *Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009) (affirming summary judgment holding defendants
9 liable for the full amount of loss incurred by consumers); *FTC v. Inc21.com Corp.*, No. C 10-
10 00022 WHA, 2010 WL 3789103 at *30 (N.D. Cal. Sept. 21, 2010). The correct measure for
11 monetary relief under Section 13(b) is net sales, *i.e.* total sales revenue or gross receipts less
12 refunds. *Id.* See also *FTC v. Kuykendall*, 371 F.3d 745, 765-66 (10th Cir. 2004) (en banc)
13 (summarizing previous FTC cases that “illustrate that allowing a damages determination based
14 on gross receipts in a case arising directly under the FTC Act furthers the FTC’s ability to carry
15 out its statutory purpose” and further ruling that the district court on remand need not offset from
16 gross sales the value of the product that consumers received); *FTC v. Chierico*, 206 F.3d 1378,
17 1389 (11th Cir. 2000) (affirming district court’s use of gross sales – the equivalent of gross
18 revenues – as the correct measure for monetary relief under Section 13(b) of the FTC Act).

19 An award of pre-judgment interest is also appropriate under the FTC Act. See, *e.g.*, *FTC*
20 *v. QT, Inc.*, 512 F.3d at 864; *FTC v. Atlantex Assocs.*, 872 F.2d 966, 969 n.1 (11th Cir. 1989);
21 *FTC v. National Business Consultants, Inc.*, 781 F.Supp. 1136, 1144 (E.D. La. 1991) (awarding
22 consumer redress, plus pre-judgment interest). Such an award “furthers the purposes of the
23 statute by encouraging businesses who are found to have participated in unfair or deceptive acts
24 or practices to settle with its consumers (through the FTC) quickly and fairly, thereby avoiding
25 lengthy litigation.” *National Business Consultants*, 781 F.Supp. at 1144.

1 Here, there is undisputed evidence, based on data from Defendants' customer relationship
2 management system and payment processing records, that the net sales generated from
3 Defendants schemes, including the Line of Credit Offers, Grant Connect, Work at Home Offers,
4 Acai Total Burn, and Vcomm totaled \$29,784,770.52.⁶⁷⁵ The FTC has also submitted an expert
5 report calculating and explaining the economic basis for a prejudgment interest award.⁶⁷⁶

6 Accordingly, the Court should award consumer redress in the amount of \$29,784,770.52
7 plus pre-judgment interest.

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18 ⁶⁷⁵ Px. 830 (Dale Dec.) ¶¶ 3-9, Att. A, FTC-9030 (FTC Data Analyst's summary of billing data
19 extracted from the AWARE System, Defendants' customer relationship management database,
20 and sales and refund data for Vcomm received from the Court-appointed Receiver). *See also*,
21 Px. 573 (Berfield Dec.) ¶¶ 2-3 (describing the AWARE System and how the billing data for
22 Grant Connect and the Line of Credit offers was supplied to the FTC); Px. 907 (Berfield Dec. 2)
23 ¶¶ 2-7 (describing the AWARE System and how the billing data for all Defendants' offers,
except Vcomm, was supplied to the FTC); Px. 527 (Pisano) ¶¶ 25-30 Atts. A (FTC Technical
Forensic Examiner who received the AWARE data from Berfield and preserved it); Px. 832
(Pisano 2) ¶¶ 25-30 (FTC Technical Forensic Examiner who received additional AWARE data
from Berfield and preserved it)

24 ⁶⁷⁶ Px. 797 (Kelly Expert Report), ¶¶ 6-11 (opining on appropriate prejudgment interest charges
25 in the event the Court finds Defendants' liable for violations of the FTC Act); Px. 911 (Kelly
Dec.), ¶¶ 6-13 (providing tables making it possible to calculate prejudgment interest for any day
between now and January 31, 2012).

1 **IV. CONCLUSION**

2 For these reasons, the FTC respectfully requests that the Court grant summary judgment
3 against Defendants on all counts alleged in the Amended Complaint and enter the concurrently
4 filed Proposed Order for Permanent Injunction and Final Judgment.

5
6 Dated: December 22, 2010

Respectfully submitted,

7
8 /s/ Roberto Anguizola

9 ROBERTO ANGUIZOLA
10 TRACEY THOMAS
11 DOTAN WEINMAN

12 Attorneys for Plaintiff
13 Federal Trade Commission
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