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13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 **FEDERAL TRADE COMMISSION,**

16 Plaintiff,

17 v.

18 **NAFSO VLM, INC., et al.,**

19 Defendants.

20 **Case No. 2:12-cv-00781-KJM-EFB**

21 **PLAINTIFF'S MEMORANDUM IN**
22 **SUPPORT OF ITS MOTION FOR**
23 **TEMPORARY RESTRAINING**
24 **ORDER WITH LIMITED**
25 **EXPEDITED DISCOVERY AND**
26 **OTHER EQUITABLE RELIEF AND**
27 **ORDER FOR DEFENDANTS TO**
28 **SHOW CAUSE WHY A**
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE

Memorandum in Support of TRO

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1 **I. INTRODUCTION**

2 A car is second only to a home as the most expensive purchase many consumers make.
3 As a result, most consumers finance the purchase of a new or used motor vehicle. For many
4 people, their vehicles are necessary for them to get to their jobs so that they can work. However,
5 many families are struggling to make ends meet and the number of repossessed cars continues to
6 rise. As a result, many consumers seek vehicle loan assistance relief services in an effort to
7 make their monthly loan payments more affordable and to keep their vehicle.
8

9 Defendants callously take advantage of consumers who are behind on their automobile
10 loan payments and facing repossession. Defendants promise to obtain vehicle loan
11 modifications that will lower substantially consumers' monthly payments, charging their
12 financially distressed clients an up-front fee of hundreds of dollars at a time when consumers
13 have little or no money to spare. Defendants' program, however, is often nothing more than a
14 dead end for consumers in financial distress. After taking their clients' money, Defendants do
15 little or nothing to help their clients, with some consumer getting their cars repossessed.
16 Moreover, in many instances, even when Defendants are unable to obtain loan modifications,
17 they fail to issue promised refunds. Defendants' egregious conduct violates Section 5 of the
18 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45.
19

20
21 To immediately halt Defendants' illegal practices, and obtain the evidence necessary to
22 locate any additional responsible parties, the FTC seeks, under Section 13(b) of the FTC Act, 15
23 U.S.C. § 53(b), issuance of a temporary restraining order ("TRO") with an order to show cause
24 why a preliminary injunction should not issue. The proposed TRO would enjoin Defendants'
25 illegal conduct, suspend Defendants' websites and domain registrations, and include limited
26 expedited discovery provisions. This relief is necessary to prevent continued harm to
27

1 consumers, to identify any additional responsible parties, and thereby to preserve the Court's
2 ability to provide effective final relief.

3 **II. FACTS**

4 **A. The Parties**

5 **1. The Federal Trade Commission**

6 The FTC is an independent agency of the United States government created by statute.
7 15 U.S.C. § 41 *et seq.* The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which
8 prohibits unfair or deceptive acts or practices in or affecting commerce. As described in detail
9 below, Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC, through its own
10 attorneys, to initiate United States District Court proceedings in proper cases to seek permanent
11 relief to enjoin violations of the FTC Act and to secure such equitable relief as may be
12 appropriate in each case, including consumer redress. *See, e.g., FTC v. Pantron I Corp.*, 33 F.3d
13 1088, 1102 (9th Cir. 1994).

14 **2. The Defendants**

15 Defendant **Kore Services, LLC** ("Kore Services") is a California limited liability
16 company, formed on July 20, 2011. (PX01 Att. Q at 170.) Its principal place of business is 555
17 Front Street, Suite 2201, San Diego, California. (*Id.*) On one of its websites and in emails to
18 consumers, Kore Services lists its address as 703 16th Street, Suite 210, San Diego, California.
19 (*Id.* Att. C at 74, Att. P at 168.) The "ring-to" address for its long distance telephone service is
20 also at 703 16th Street, San Diego, California. (*Id.* Att. Z at 299-300.) On July 26, 2011, Kore
21 Services registered the name "Auto Debt Consulting" as a fictitious business name. (*Id.* Att. S at
22 187.)

1 Defendant **NAFSO VLM, Inc.** (“VLM”) is a California corporation, incorporated on
2 January 3, 2011. (*Id.* Att. R at 178, 180.) Its principal place of business is 8441 Briggs Drive,
3 Roseville, California. (*Id.*) On its website, VLM uses the name “Vehicle Loan Mod.” (*Id.* Att.
4 D at 88.)

5
6 Defendant **Michael Kamfiroozie** is Kore Services’ sole manager and its registered agent.
7 (*Id.* Att. Q at 170, Att. R at 187 (Kamfiroozie signed Kore Services’ fictitious business name
8 statement as “CEO”), Att. CC at 311-13 (Kamfiroozie signed Kore Services’ banking documents
9 as “Manager”).) Kamfiroozie is the registrar for Kore Services’ websites,
10 autodebtconsulting.com and carloansmodification.com. (*Id.* Att. X at 227, 228.) Until it was
11 transferred on February 20, 2011, he was also the registrar for VLM’s website,
12 vehicleloanmod.com. (*Id.* at 226.) Kamfiroozie pays Kore Services’ web hosting and domain
13 registration fees with his personal credit card. (*Id.* at 254, 256-59.) He is an authorized
14 signatory on Kore Services’ bank accounts. (*Id.* Att. CC at 311, Att. EE at 334.)

15
16 Defendant **Naythem J. Nafso** is VLM’s sole office and director. (*Id.* Att. R at 180, Att.
17 DD at 322, 324 (Nafso signed VLM’s banking documents as “Managing Member”).) Nafso is
18 the registrar for VLM’s website, vehicleloanmod.com. (*Id.* Att. Y at 274.) Nafso pays VLM’s
19 web hosting and domain registration fees with his personal credit card. (*Id.* at 292-96.) He also
20 pays for VLM’s long distance telephone service with is personal credit card. (*Id.* Att. AA at
21 305.) He is an authorized signatory for both VLM’s and Kore Services’ bank accounts. (*Id.* Att.
22 CC at 311, Att. DD at 322-24, Att. EE at 341-42.)

23
24
25 **B. Defendants’ Deceptive Business Practices**

26 Since at least January 2011, Defendants have marketed auto loan modification services
27 via the Internet and telemarketing. Defendants maintain at least three Internet websites,

1 carloansmodification.com, autodebtconsulting.com, and vehicleloanmod.com, on which they
2 advertise their services.¹ The websites direct consumers to contact Defendants on their toll-free
3 numbers or to enter their contact information so that a representative can call them back. When
4 consumers call, or receive calls from, Defendants, Defendants promise to modify consumers'
5 auto loans to make their monthly payments substantially more affordable – usually between 25%
6 to 40% lower. Defendants bolster their claims with money back guarantees. Consumers who
7 decide to enroll are required to pay an up-front fee, ranging from \$350 to \$799. In most cases,
8 however, Defendants fail to obtain the promised auto loan modifications, and in some instances,
9 consumers get their cars repossessed. Many consumers discover that Defendants never even
10 contacted their lenders. Many consumers also report that the Defendants fail to honor their
11 refund policies.
12

13
14 **1. Defendants Misrepresent That They Will Obtain Auto Loan**
15 **Modifications**

16 Defendants represent that they will obtain an auto loan modification that will reduce
17 consumers' monthly payments between 25% and 40%. Defendants make this representation on
18 their websites, and then reinforce the claim in their telephone sales pitches.

19 **a. Defendants' Deceptive Websites**

20 Defendants' carloansmodification.com website makes the following statements regarding
21 their ability to lower the monthly payments on consumers' vehicle loans:
22
23
24

25
26 ¹ Documents from GoDaddy show that Defendants have registered a number of other Internet
27 websites, including autoappeals.com, automobileadvocates.com, theautomodgroup.com, and
nafsovln.com. (PX01 Att. X at 225, Att. Y at 267.) None of these websites are currently active.

- 1 • Lower your monthly vehicle payments by as much as 40% regardless of your
2 credit score!² (PX01 Att. B at 44.)
- 3 • CarLoansModification.com has a goal to help as many Americans as possible find
4 the best way to lower their payments and keep their car, truck, boat or RV. . . This
5 modification consists of extending terms or lowering interest rates to find the
6 payment that works best for you. (*Id.* Att. A at 15, Att. B at 44.)
- 7 • If you have a vehicle with a payment that is just not affordable any longer, then
8 let us step in on your behalf to get you an **auto loan modification**. . . You don't
9 have to settle any longer for high car payments. (*Id.* Att. A at 17, Att. B at 46.)

10 Defendants' autodebtconsulting.com website makes the following statements regarding
11 their ability to lower the monthly payments on consumers' vehicle loans:

- 12 • Lower your monthly vehicle payments by as much as 40% regardless of your
13 credit score! (*Id.* Att. C at 73.)
- 14 • We work directly with your lender to get you an auto loan modification. If you
15 are struggling to make your payments or facing any financial hardship then a car
16 loan modification is for you. (*Id.* Att. C at 73.)
- 17 • We at Auto Debt Consulting will take care of all the hassles so you don't have to
18 worry about them. We will directly deal with you lender, bank or finance
19 company and negotiate the terms of the loan so as to provide a more affordable
20 loan repayment plan. (*Id.* 1 Att. C at 78.)
- 21 • Auto Debt Consulting will contact your bank or lender and negotiate with them
22 on your behalf to modify the terms of your loan (loan duration, current loan
23 balance, interest rate, etc.) such that the monthly loan payments become more
24 affordable and you avoid repossession. Our team is highly skilled at making such
25 negotiations with banks, lenders and finance services [sic], so you can be sure we
26 will get you the best possible resolution/auto loan modification. (*Id.* Att. C at 78.)

27 Defendants' vehicleloanmod.com website makes the following statements regarding their
28 ability to lower the monthly payments on consumers' vehicle loans:

- Lower Car Payments With An Auto Loan Modification - Reduce Payments Now
(*Id.* Att. D at 88; PX02 Att. A at 4; PX03 Att. A at 4.)

² Earlier versions of this website claimed "Lower your monthly vehicle payments by as much as 50% regardless of your credit score." (*Id.* Att. A at 15.)

- 1
- 2 • LOWER YOUR MONTHLY VEHICLE PAYMENTS TODAY! (PX03 Att. A at
- 3 4.)
- 4 • We work directly with lenders nation-wide to provide a permanent solution for
- 5 consumers who are facing financial hardships by modifying the terms of their
- 6 current loan or lease. (PX01 Att. D at 88; PX02 Att. A at 4; PX03 Att. A at 4.)
- 7 • [A]llow the experts at VehicleLoanMod.com to work directly with your lender to
- 8 modify your existing loan or lease to **reduce your monthly payment**. (PX01
- 9 Att. D at 88; PX02 Att. A at 4; PX03 Att. A at 4.)
- 10 • **Our Mission**
- 11 To assist vehicle owners struggling to pay their monthly payments or facing
- 12 repossession. Vehicle Loan Mod will negotiate with Lenders/Banks/Credit
- 13 Unions/Finance Companies and any other Financial Institution(s) to reduce
- 14 vehicle owner's payment obligations or repossessions. Vehicle Loan Mod will
- 15 help all qualified vehicle owners to obtain a loan modification with a new,
- 16 affordable monthly payment. (PX01 Att. D at 91.)
- 17 • **Vehicle Loan Mod** will communicate and negotiate with your lender on your
- 18 behalf to reduce your monthly payment obligations to make them more affordable
- 19 so you may avoid repossession. (*Id.*)
- 20 • We'll negotiate with Lenders to reduce vehicle owners' payment obligations or
- 21 repossessions. We will help all qualified vehicle owners obtain a loan
- 22 modification with an affordable monthly payment to give our clients control of
- 23 their finances and put them back on track. (*Id.*)

24 When consumers enter their contact information on Defendants' vehicleloanmod.com website
25 for more information, they are taken to a webpage page that states a representative will contact
26 them shortly to "get you started on your way to lower payments." (*Id.* at 3 ¶ 7, at 7 ¶ 12, Att. E
27 at 110, Att. M at 158; PX02 at 1 ¶ 3, Att. A at 5; PX03 at 1 ¶ 3, Att. A at 5.)

28 Defendants tout their experience to further their claim that they will obtain promised loan
modifications. For example, Defendants' carloansmodification.com website boasts that
Defendants are "one of the pioneers in **car loan modification** and **vehicle loan modification**,"
(PX01 Att. A at 15, Att. B at 44), while their autodebtconsulting.com website refers to

1 themselves as “one of the leading auto loan modification services,” (*Id.* Att. C at 78), and their
2 vehicleloanmod.com website brags “[w]e are the industry leaders when it comes to **car lease &**
3 **loan modifications.**” (*Id.* Att. D at 88; PX02 Att. A at 4; PX03 Att. A at 4.) Defendants further
4 state:

- 5
- 6 • With the professionals on your side, you will have minimal problems and a
7 tremendous wealth of information at your fingertips. With specialists and experts
8 who are familiar with the process as well as the ins and the outs of the entire
9 industry, you will find it is a relatively straightforward process once you have
10 determined the needs of your particular situation. (PX01 Att. A at 19, Att. B at
11 48.)
- 12 • It is in the best interest of the banks and finance companies to assist you in
13 keeping your vehicle and working with **loan modification experts.** (*Id.* Att. B at
14 60.)

15 Defendants also use purported customer testimonials to support their performance claims.
16 (*See* PX07 at 1-2 ¶¶ 6-7 (consumer’s decision to use Defendants’ services based in part on
17 website testimonials); PX08 at 1 ¶ 2 (same).) These testimonials include the following
18 statements:

- 19 • When I came to auto debt consulting my monthly car payment was \$432 and I
20 was 2 months behind on my payment . . . In the second week, Auto Debt
21 Consulting called me up to let me know they negotiated my payments down to
22 \$350 a month. That’s over 20% savings and it’s also a number I can actually
23 afford to pay. (PX01 Att. C at 82.)
- 24 • . . . “wow, our new loan payment was so much more affordable.” (*Id.*)
- 25 • I truly did not expect such a drastic reduction in my monthly payments! (*Id.*)
- 26 • I am delighted to say that my loan payments has [sic] been lowered by more than
27 \$100! (*Id.* at 83.)
- 28 • They worked with [my lender] to modify my existing loan and successfully
reduced my monthly payments. (*Id.*)

- 1 • Auto Debt Consulting went directly to [my lender] to get my loan issues
2 straightened out. My original monthly payment was close to \$600, now its's
3 down to just a little over \$400. (*Id.*)
- 4 • I recently went through Vehicle Loan Mod to obtain a smaller payment on my
5 Ford F 150. Everything was completed in a couple of weeks and I ended up
6 getting a fairly large payment reduction (\$573.69 reduced to \$408.17). (*Id.* Att. D
7 at 90.)
- 8 • I did receive a very large reduction on my interest rate as well on my monthly
9 payment. (*Id.*)
- 10 • [T]hey did a very good job on retrieving my car back from the repossession
11 company. [My lender] was asking for (\$3,757) to retrieve my car back. Vehicle
12 Loan Mod stepped in and was able to negotiate a settlement from \$3,757 to
13 \$1,250 to get my car back . . . I would recommend them to anyone who needs
14 help lowering their car payment . . . (*Id.*)

15 In addition, Defendants' vehicleloanmod.com website attaches a consumer's modification
16 agreement purportedly obtained as a result of Defendants' services. (*Id.* at 106.) The sample
17 agreement shows a reduction in monthly payment from \$309.33 to \$219.92 (a 29% reduction).
18 (*Id.*)

19 Defendants' websites invite consumers to call them on one of several toll-free numbers.
20 (*Id.* Att. A at 16, Att. B at 44, Att. C at 73.) In addition, consumers can enter their contact
21 information and one of Defendants' representatives will call them back. (*Id.* Att. A at 16, Att. B
22 at 44, Att. C at 73, Att. D at 88; PX06 at 1 ¶ 2; PX07 at 2 ¶ 7.)

23 **b. Defendants' Deceptive Telemarketing Activities**

24 The transcripts of undercover calls and consumer interviews reveal that Defendants' sales
25 representatives reinforce the claim that Defendants will obtain a vehicle loan modification
26 lowering consumers' monthly payments. For example, after submitting her information on
27 Defendants' website, an FTC investigator received a voicemail from Defendants. Defendants'
28 representative stated "[p]lease contact me at your earliest convenience and I can provide you

1 with all the details, as well as significantly reduce your monthly payments.” (PX01 Att. H at
2 121-23, Att. O at 164-65.) When other FTC investigators submitted their information on
3 Defendants’ websites, they received nearly identical voicemails from Defendants. (PX02 Att. C
4 at 12; PX03 Att. C at 12-13.)
5

6 During the telemarketing sales calls, Defendants’ telemarketers collect information from
7 consumers, including details about consumers’ vehicle loan and income. (See PX01 Att. L at
8 149-50.) After consumers provide this information, the telemarketers often claim that the
9 consumers are qualified to obtain a vehicle loan modification. (*Id.* Att. L at 151.) For example,
10 after getting information from an FTC investigator (including monthly payment, interest rate,
11 term of loan, and outstanding balance), Defendants’ representative stated “[I]et me put you on a
12 brief hold and see exactly what we can do for you if you are qualified, okay?” (*Id.* Att. L at 150-
13 51.) After a brief pause, the telemarketer informed the investigator “you are qualified.” (*Id.* at
14 151.)
15

16 Then, Defendants’ telemarketers typically promise consumers that Defendants can lower
17 the monthly payment on consumers’ vehicle loans by 25% to 40%. For example, one of
18 Defendants’ representatives told an FTC investigator “what we can do for you is we can lower
19 the monthly payment 25 to 40 percent, which is going to bring your payments down to 310 to
20 390 a month.”³ (*Id.* Att. L at 151.) Similarly, Defendants told consumer Lori Pavelka that they
21 could lower her payments by about \$250 a month, from \$569 to between \$300 to \$321 (about
22 45%). (PX05 at 1 ¶ 3.) Defendants told consumer Angie Prendez that they would lower her
23 payments 25 to 40%. (PX01 Att. V at 210.) Consumer Amy Bonn-Julieano states that
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25

26 ³ Previously, the investigator had told the representative that she was paying \$520 per month.
27 (*Id.* Att. L at 149.)

1 Defendants promised her to reduce her monthly payments “anywhere between 30 - 40% less
2 than what I was paying.” (*Id.* Att. U at 193.) Defendants told consumer Christina Aleridge that
3 they could lower her monthly payment from \$474 to the high \$200s or low \$300s. (PX07 at 2
4 ¶ 7.) Defendants told consumer Tony Dorfeo that they would negotiate a 20% to 25% reduction
5 in his monthly car payment. (PX08 at 1 ¶ 3.)

7 Defendants assure consumers that they will get a loan modification. As one of
8 Defendants’ representatives told an FTC investigator, “we can obtain you [sic] the loan
9 modification.” (PX01 Att. L at 152.) Consumers report the same assurances. Defendants told
10 consumer Tamika Treadway that they would modify her auto loan and reduce her monthly
11 payments. (*Id.* Att. V at 211.) Consumer Anna Flores stated that Defendants told her that “they
12 would deliver on their promise and that they can help me modify my loan.” (*Id.* Att. T at 189.
13 *See also id.* Att. U at 197 (Defendants promised consumer Christie Kouvel they would lower her
14 interest rate), 198 (consumer Patricia Dummond promised a loan modification), Att. V at 212
15 (Defendants promised consumer Jessica Sanchez they would modify her car loan and get her a
16 lower payment), Att. W at 219 (Defendants promised consumer Mildred Grant they get her an
17 auto loan modification).)

19 After promising to obtain a loan modification, Defendants’ telemarketers explain that
20 they charge a one-time “enrollment fee.” (*Id.* Att. L at 152.) The fee appears to vary depending
21 upon consumers’ circumstances. Defendants’ websites state “[o]ur prices vary anywhere from
22 \$350 to \$799 depending the [sic] type of service you request.” (*Id.* Att. C at 79.) Defendants’
23 representative told an FTC investigator the fee was \$399. (*Id.* Att. L at 152.) Consumer Lori
24 Pavelka paid \$499 for Defendants’ services. (PX05 at 1 ¶ 3.) Consumers Angie Prendez, Anna
25 Flores, Desiree Bell, Stephanie Talbert, and Lori Johnson paid Defendants \$410. (PX01 Att. T

1 at 189, Att. U at 196, 199, Att. V at 210; PX06 at 1 ¶ 3.) Consumers Karen Johanning, Jessica
2 Sanchez, and Ivette Rico paid them \$300. (PX01 Att. T at 191, Att. V at 212, 213.) Consumer
3 Amy Bonn-Julieano paid them \$299. (*Id.* Att. U at 193.) Consumer Christina Aleridge paid
4 \$400. (PX07 at 2 ¶ 8.) Compounding the problem, in some instances Defendants advise
5 consumers to stop paying their lender and pay them instead. (PX01 Att. V at 204, 211; PX05 at
6 2 ¶ 6; PX06 at 1 ¶ 3.)

8 **c. Defendants Fail to Obtain Promised Vehicle Loan**
9 **Modifications**

10 Unfortunately, the consumers consistently tell the same story about what happens next —
11 after paying Defendants' fee, Defendants do nothing to obtain the promised loan modification.

12 For example:

- 13 • Consumer Lori Pavelka reports that between October and December 2011, Defendants
14 assured her that they were working with her lender. In December, Defendants called her
15 and said they had worked out three options with her lender – none of which was a loan
16 modification lowering her monthly payments. Ms. Pavelka then called her lender who
17 informed her that it does not work with third parties to negotiate loan modifications and it
18 had never heard from or worked with Defendants. (PX05 at 2 ¶¶ 7,8.) On March 16,
19 2012, her car was repossessed. (*Id.* at 4.)
- 18 • Consumer Lori Johnson reports that Defendants told her that her lender had agreed to
19 reduce her monthly car payment from \$342.68 to \$225. (PX06 at 1 ¶ 4.) When Ms.
20 Johnson called her lender to confirm the modification, her lender stated that it had never
21 heard of Defendants. (*Id.* at 1-2 ¶ 5.) The lender also told her that it does not make third
22 party agreements for loan modifications. (*Id.*)
- 22 • Consumer Angie Prendez reports that Defendants called to tell her that they had
23 negotiated a deferral of her car payments. Shortly thereafter, Ms. Prendez received a call
24 from her lender who informed her they knew nothing about any such “negotiation.”
25 Ultimately, her car was repossessed and she was out the \$410 she paid Defendants.
26 (PX01 Att. V at 210.)
- 27 • Consumer Anna Flores reports that she contacted her finance company and learned that
28 no one from Defendants had ever called them despite being assured by Defendants’
representatives that her case was in “negotiation.” She stated that when she confronted

1 Defendants with this information, the representative “got offended to know that I called
2 my finance company to see what the status was.” (*Id.* Att. T at 189.)

3 • Consumer Karen Johanning reports that after paying the fee, she heard nothing from
4 Defendants. She notes that “when they wanted the initial fee I received numerous phone
5 calls and emails on the subject” but afterwards all her emails and messages remained
unanswered. (*Id.* at 191.)

6 • When consumer Tamika Treadway called her finance company to confirm that the
7 paperwork that Defendants said had been faxed, the finance company responded that they
had not received any paperwork nor do they work with Defendants. (*Id.* Att. V at 211.)

8 • Similarly, when consumer Amy Bonn-Julieano called her lender to confirm whether they
9 had received her paperwork, they stated that they had not received anything regarding her
car loan. (*Id.* Att. U at 193-94.)

10 • When consumer Desiree Bell called her lender to inform them that she was working with
11 a loan modification company, they informed her that they do not work with third parties.
12 (*Id.* at 196.)

13 • Defendants assured consumer Patricia Drummond that “everything was going good.”
14 But when she called her lender they said no one had contacted them. Ultimately, her
vehicle was repossessed. (*Id.* Att. U at 198.)

15 • Defendants told consumer Ivette Rico that they had negotiated a modification with her
16 lender. When she called her lender to confirm, they said they never agreed to any
modification with Defendants. (*Id.* Att. V at 213.)

17 • Defendants assured consumer Mildred Grant they were negotiating with her lender.
18 When Ms. Grant contacted her lender, they told her they had never heard from
19 Defendants. (*Id.* Att. W at 219.)

20 • Defendants told consumer Moyra Alayne they were working with her dealer. When she
21 called the dealer, they said they had never heard of Defendants. When Ms. Alayne called
22 Defendants back to tell them what her dealer had told her, Defendants responded by
accusing her dealer of lying and that Defendants were still negotiating with the dealer.
23 Meanwhile, Ms. Alayne’s truck was repossessed. (*Id.* Att. W at 221.)

24 • After signing up for Defendants’ services, consumer Tony Dorfeo received a call from
25 his lender threatening repossession. When he explained that he had hired Defendants, his
26 lender replied that it does not negotiate with third parties. Mr. Dorfeo called Defendants
and was assured that they were working with his lender. Mr. Dorfeo called back his
27 lender only to learn that the lender had no record of Defendants calling on his behalf.
The lender also confirmed that it only negotiates loan modifications with the borrower

1 not third parties. Mr. Dorfeo ended up negotiating his own loan modification. (PX08 at
2 1-2 ¶¶ 4-7.)

3 **2. Defendants Misrepresent That They Will Grant Full Refunds**

4 Defendants expressly guarantee that consumers will get their money back if they fail to
5 obtain a loan modification. The homepage of Defendants' autodebtconsulting.com website has a
6 hyperlink to a webpage entitled "Money Back Guarantee." (*Id.* Att. C at 73.) The "Money
7 Back Guarantee" states "if for any reason you are dissatisfied with our services or we are
8 unsuccessful in the negotiation process we will provide a **100 percent money back guarantee.**"
9 (*Id.* Att. C at 80. *See also* PX08 at 1 ¶ 2 (consumer recalls Defendants' website had 100%
10 satisfaction guarantee).)

11
12 In numerous instances, Defendants' telemarketers also promise consumers their money
13 back if Defendants fail to obtain an auto loan modification. For example, Defendants'
14 representative assured consumer Angie Prendez that she would get a refund if they did not lower
15 her monthly payments. (PX01 Att. V at 210.) Defendants promised consumer Mary Helen
16 Gutierrez her money back if they were not able to help her. (*Id.* Att. V at 202.) Defendants
17 guaranteed consumer Jessica Sanchez they would get her a loan modification that would lower
18 her monthly payments. (*Id.* Att. V at 212.) Consumer Lori Pavelka states that Defendants
19 guaranteed that her car payment would be lower or she would get her money back. (PX05 at 1
20 ¶ 3.) Defendants told consumer Christina Aleridge she could get a refund if she was not satisfied
21 with Defendants' work. (PX07 at 2 ¶ 8.)

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24 Although Defendants promise refunds, in fact they routinely deny their clients' requests
25 for refunds. Many consumers were denied refunds after Defendants failed to obtain the
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1 promised loan modification. (PX01 Att. U at 197, Att. V at 205) For those who did manage to
2 get refunds, they did so only after complaining to a Better Business Bureau. For example:

- 3 • Defendants refused to give consumer Angie Prendez a refund claiming they had
4 “negotiated a deal” even though when Ms. Prendez contacted her lender they had
5 no knowledge of any deal. (*Id.* Att. U at 210.)
- 6 • When Defendants failed to obtain a loan modification, consumer Anna Flores
7 attempted to obtain a refund. She reports having left multiple messages asking
8 for a refund but no one returns her call. She only received her refund after filing a
9 complaint with the Better Business Bureau. (*Id.* Att. T at 189.)
- 10 • Consumer Heather Mulcahy reports that Defendants claimed they sent her a
11 refund, going so far as providing her with the Fed Ex tracking number. When she
12 tried to track the package, she discovered it was a bogus number - the package did
13 not exist. Only after filing a formal complaint with the Better Business Bureau
14 did she receive the promised refund. (*Id.* at 190.)
- 15 • Consumer Lori Pavelka requested a refund when Defendants failed to obtain the
16 promised loan modification. Defendants denied her refund request, claiming they
17 had exhausted all of her funds representing her even though her lender confirmed
18 that it had never heard from or worked with Defendants. (PX05 at 2-3 10.)
- 19 • Defendants refused to give consumer Lori Johnson a refund claiming they had
20 done so much work on her account, even though Ms. Johnson’s lender confirmed
21 that it had never heard of Defendants and does not deal with third parties. (PX06
22 at 2 ¶ 6.)
- 23 • Defendants refused to give consumer Tony Dorfeo a full refund, even after
24 Mr. Dorfeo’s lender confirmed that not only was there no record of Defendants
25 ever contacting the lender on his behalf but also that the lender does not negotiate
26 with third parties like Defendants. Defendants claimed that they had played a role
27 in Mr. Dorfeo negotiating his own modification, yet refused to provide any
28 evidence of the work they claimed to have done. (PX08 at 2-3 ¶¶ 8-9.)

22 In short, Defendants’ promise of a refund is as illusory as their promise of obtaining a
23 loan modification that would reduce substantially consumers’ monthly car loan payment.
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1 **C. Consumer Injury**

2 Bank documents suggest that Defendants have taken in gross revenues of at least
3 \$216,720 between January and December 2011. (*Id.* at 11-13 ¶ 26.)

4
5 **III. A TEMPORARY RESTRAINING ORDER SHOULD ISSUE AGAINST
6 DEFENDANTS**

7 **A. This Court Has the Authority to Grant the Requested Relief**

8 This Court has the authority to grant preliminary and permanent relief pursuant to the
9 second proviso of Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), which states that “in proper
10 cases the FTC may seek, and, after proper proof, the court may issue, a permanent injunction”
11 against violations of “any provision of law enforced by the Federal Trade Commission.” 15
12 U.S.C. § 53(b); *Pantron I Corp.*, 33 F.3d at 1102.⁴ A “proper case” includes any matter
13 involving a violation of a law that the FTC enforces. *See, e.g., FTC v. Evans Prods. Co.*, 775
14 F.2d 1084, 1086-87 (9th Cir. 1985); *Singer*, 668 F.2d at 1113.⁵

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18 ⁴ This action is not brought pursuant to the first proviso of Section 13(b), which addresses the
19 circumstances under which the FTC can seek preliminary injunctive relief before or during the
20 pendency of an administrative proceeding. Because the FTC brings this case pursuant to the
21 second proviso of Section 13(b), its complaint is not subject to the procedural and notice
22 requirements in the first proviso. *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir.
23 1984) (Congress did not limit the court’s powers under the [second and] final proviso of § 13(b)
24 and as a result this Court’s inherent equitable powers may be employed to issue a preliminary
injunctive relief); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982) (holding that
routine fraud cases may be brought under second proviso, without being conditioned on first
proviso requirement that the FTC institute an administrative proceeding).

25 ⁵ In fact, Congress observed that Section 13(b) of the FTC Act “authorizes the FTC to file suit
26 to enjoin any violations of the FTC [sic]. The FTC can go into court *ex parte* to obtain an order
27 freezing assets, and is also able to obtain consumer redress.” S. Rep. No. 130, 103rd Cong., 2d
Sess. 15-16, reprinted in 1994 U.S. Code Cong. & Admin. News 1776, 1790-91.

1 Section 13(b) confers full equitable powers on this Court. In addition to entering a
2 permanent injunction, the Court may order the rescission of contracts, restitution, and/or
3 disgorgement of ill-gotten gains. *See FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346-47
4 (9th Cir. 1989) (affirming district court's power to freeze assets); *Singer*, 668 F.2d at 1113
5 (affirming preliminary injunction and personal and corporate asset freeze). All preliminary
6 equitable remedies are also available to the Court, including a preliminary injunction with
7 ancillary relief. *See Evans Prods.*, 775 F.2d at 1086; *Singer*, 668 F.2d at 1111-13; *FTC v. John*
8 *Beck Amazing Profits, LLC*, 2009 U.S. Dist. LEXIS 130923, at *10-11 (C.D. Cal. Nov. 17,
9 2009). When, as here, the public interest is implicated, this Court's equitable powers "assume an
10 even broader and more flexible character than when only a private controversy is at stake." *FTC*
11 *v. Gem Merch. Corp.*, 87 F.3d 466, 469 (11th Cir. 1996) (quoting *Porter v. Warner Holding Co.*,
12 328 U.S. 395, 398 (1946)). Courts in this District and throughout the Ninth Circuit have
13 repeatedly exercised their authority to grant TROs with ancillary equitable relief in FTC fraud
14 cases,⁶ and as demonstrated below, the relief requested by the FTC is warranted in this case.
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22 ⁶ *See, e.g., FTC v. Premier Nationwide Corp.*, Case No. 2:12-cv-00009-GMS (D. Ariz. Jan. 4,
23 2012); *FTC v. Forensic Case Mgmt. Serv., Inc.*, Case No. 2:11-cv-07484-RGK-SS (C.D. Cal.
24 Sep. 13, 2011); *FTC v. Immigration Center*, Case. No. 3:11-cv-00055-LRH-VPC (D. Nev. Jan.
25 26, 2011); *FTC v. Nat'l Awards Serv. Advisory, LLC*, Case No. 4:10-cv-05418-PJH (N.D. Cal.
26 Dec. 1, 2010); *FTC v. US Homeowners Relief, Inc.*, Case. No. 8:10-cv-01452-JST-PJW (C.D.
27 Cal. Sep. 28, 2010); *FTC v. Advanced Mgmt. Serv. NW LLC*, Case. No. 2:10-cv-00148-LRS
(E.D. Wash. May 10, 2010); *FTC v. Pricewert, LLC*, Case No. 5:09-cv-02407-RMW (N.D. Cal.
Jun. 2, 2009); *FTC v. Shared Network Services, LLC*, Case No. 2:99-cv-01087-WBS-JFM (E.D.
Cal. Jun. 3, 1999); *FTC v. Corzine*, Case No. 2:94-cv-01446-DFL-JFM (E.D. Cal. Sep. 12,
1994).

1 **B. The FTC Meets the Standard for Granting a Government Agency’s Request**
2 **for a Preliminary Injunction**

3 Because the FTC acts as “a statutory guardian charged with safeguarding the public
4 interest,” the standard for preliminary injunctive relief under Section 13(b) differs from that
5 typically applied to private litigants. *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir.
6 1975). In determining whether to grant a preliminary injunction under Section 13(b), a court
7 “must 1) determine the likelihood that the Commission will ultimately succeed on the merits and
8 2) balance the equities.” *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999)
9 (quoting *FTC v. Warner Commc’ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)). Unlike private
10 litigants, the FTC need not prove irreparable injury. *Affordable Media*, 179 F.3d at 1233.
11 Moreover, in balancing the equities, the public interest should receive greater weight than private
12 interests. *World Wide Factors*, 882 F. 2d at 347. As set forth in this memorandum, the FTC has
13 amply demonstrated that it will ultimately succeed on the merits of its claims and that the
14 balance of equities favors injunctive relief.
15
16

17 **1. The FTC Has Demonstrated its Likelihood to Succeed on the Merits**

18 Generally, the FTC “meets its burden on the likelihood of success issue if it shows
19 preliminarily, by affidavit or other proof, that it has a fair and tenable chance of ultimate success
20 on the merits.” *FTC v. Beatrice Foods Co.*, 587 F.2d 1225, 1229 (D.C. Cir. 1978). The FTC can
21 prove its claims through a small number of injured consumers, from which a court can infer a
22 pattern or practice of deceptive behavior. *FTC v. Sec. Rare Coin & Bullion Corp.*, 931 F.2d
23 1312, 1316 (8th Cir. 1991); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989),
24 *cert. denied*, 493 U.S. 954 (1989). Moreover, in considering an application for a TRO or
25 preliminary injunction, the Court has the discretion to consider hearsay evidence. *Flynt Distrib.*
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1 *Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) (even inadmissible evidence may be
2 given some weight when to do so serves the purpose of preventing irreparable harm before trial);
3 *see also Heideman v. S. Salt Lake City*, 348 F. 3d 1182, 1188 (10th Cir. 2003) (“The Federal
4 Rules of Evidence do not apply to preliminary injunction hearings.”).

5
6 **a. Defendants Have Violated Section 5 of the FTC Act**

7 Section 5 of the FTC Act prohibits “unfair or deceptive practices in or affecting
8 commerce[.]” 15 U.S.C. § 45. An act or practice is deceptive under Section 5(a) if it involves a
9 material representation or omission that is likely to mislead consumers, acting reasonably under
10 the circumstances. *FTC v. Stefanichik*, 559 F.3d 924, 928 (9th Cir. 2009). A misrepresentation is
11 material if it involves facts that a reasonable person would consider important in choosing a
12 course of action. *See FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006).
13 Express claims are presumed material, so consumers are not required to question their veracity in
14 order to be deemed reasonable. *Pantron I*, 33 F. 3d at 1095-96 n.21. Implied claims are also
15 presumed material if there is evidence that the seller intended to make the claim, *see, e.g.*,
16 *Novartis Corp. v. FTC*, 223 F.3d 783, 786-87 (D.C. Cir. 2000); *Kraft, Inc. v. FTC*, 970 F.2d 311,
17 322 (7th Cir. 1992), or if the claims go to the heart of the solicitation or the central
18 characteristics of the produce or service offered. *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 604
19 (9th Cir. 1993) (no loophole for implied deceptive claims); *In re Southwest Sunsites, Inc.*, 105
20 F.T.C. 7, 149 (1985), *aff’d*, 785 F.2d 1431 (9th Cir. 1986). In considering whether a claim is
21 deceptive, the Court must consider the “net impression” created by the representation.⁷
22
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24

25 ⁷ The FTC need not prove that Defendants’ misrepresentations were made with an intent to
26 defraud or deceive or were made in bad faith. *See, e.g., FTC v. World Travel Vacation Brokers*,
27 861 F.2d 1020, 1029 (7th Cir. 1988); *Removatron Int’l Corp. v. FTC*, 884 F.2d 1489, 1495 (1st
28 (continued...))

1 *Cyberspace.com*, 453 F.3d at 1200 (solicitation can be deceptive by virtue of its net impression
2 even if it contains truthful disclosures); *Five-Star Auto Club*, 97 F. Supp. 2d at 528 (“the Court
3 must consider the misrepresentations at issue, by viewing [them] as a whole without
4 emphasizing isolated words or phrases apart from their context”).

5
6 A representation is also deceptive if the maker of the representation lacks a reasonable
7 basis for the claim. *FTC v. Direct Mktg. Concepts, Inc.*, 2010 U.S. App. LEXIS 21743, at *11-
8 12 (1st Cir. Oct. 21, 2010). Where the maker lacks adequate substantiation evidence, they
9 necessarily lack any reasonable basis for their claims. *Id.*; *Removatron Int’l*, 884 F.2d at 1498.

10 The FTC need not prove reliance by each purchaser misled by Defendants. *FTC v.*
11 *SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1275 (S.D. Fla. 1999). “Requiring proof of subjective
12 reliance by each individual consumer would thwart effective prosecutions of large consumer
13 redress actions and frustrate the statutory goals of [Section 13(b)].” *Figgie Int’l*, 994 F.2d at 605
14 (citations omitted). Rather, a “presumption of actual reliance arises once the FTC has proved
15 that the defendant made material misrepresentations, that they were widely disseminated, and
16 that consumers purchased the defendant’s product.” *Id.* at 605-6; *see also SlimAmerica*, 77 F.
17 Supp. 2d at 1275.

18
19
20 **i. Count I: Defendants Represent, Falsely or Without**
21 **Substantiation, That They Generally Will Obtain**
22 **Vehicle Loan Modifications That Will Make**
23 **Consumers’ Debt Payments Substantially More**
24 **Affordable**

25 As described above, the core message of Defendants’ marketing campaign is that they
26 will obtain a vehicle loan modification for consumers that will substantially reduce consumers’

27

⁷(...continued)

28 Cir. 1989); *FTC v. Five-Star Auto Club*, 97 F. Supp. 2d 502, 526 (S.D.N.Y. 2000).

1 monthly loan payments. Defendants' marketing materials repeatedly tout Defendants' ability to
2 reduce consumers vehicle loan payments by 25% to 40%, with no indication of any limitations.
3 Courts have held that an unqualified performance claim implies that consumers generally will
4 receive the claimed performance and that the benefit is a significant one. *See, e.g., Five Star*
5 *Auto Club*, 97 F. Supp. 2d at 528 ("at the very least, it would have been reasonable for
6 consumers to have assumed that the promised rewards were achieved by the typical Five Star
7 participant.").

9 In reality, as described above, few if any consumers ever obtain the promised
10 modifications or savings. Indeed, as discussed, many consumers report that Defendants never
11 even contact their lenders or, at best, make minimal non-substantive contact. Moreover,
12 according to Bill Himpler, Executive Vice President of the American Financial Services
13 Association, a national trade association for the consumer credit industry, many lenders and
14 finance companies refuse to negotiate with third-parties, preferring to deal directly with the
15 consumer-debtor or their attorneys. (PX04 at 2 ¶ 5.) Although the FTC is aware of no
16 consumers who Defendants actually helped, Defendants may argue that they have helped some
17 customers obtain actual loan modifications. This may be so, but, as the old saw goes, even a
18 blind squirrel eventually stumbles upon a nut. Defendants have represented essentially without
19 qualification that they could help most consumers, not just a small fraction of them. "The
20 existence of some satisfied customers does not constitute a defense under the FTC [Act]." *Amy*
21 *Travel Service*, 875 F.2d at 572.

24 In addition, Defendants' claims that they will obtain auto loan modifications that make
25 consumers' monthly payments substantially more affordable are likely to be unsubstantiated.
26 Defendants claim that they can reduce consumers' monthly payments anywhere between 25% to

1 40%. Even assuming a lender or finance company agrees to a modification at all or to negotiate
2 with a third party, such claims are unrealistic. (PX04 at 1 ¶ 3.) Further, typical auto loan
3 modifications involve either deferring missed payments to the end of the loan or extending the
4 loan term to reduce monthly payment, which actually increases the total money paid in interest,
5 even with a lower interest rate. (*Id.* ¶ 4.) Creditors rarely reduce the principal amount or interest
6 rate in auto loan modifications. (*Id.*) Thus, Defendants’ performance claims are neither true nor
7 substantiated.
8

9 **ii. Count II: Defendants Misrepresent That They Will**
10 **Give Refunds If They Fail to Obtain a Vehicle Loan**
11 **Modification**

12 As described above, Defendants explicitly claim that they will refund consumers’ money
13 if Defendants fail to obtain a loan modification. However, in most cases, Defendants do not
14 grant refunds. Those consumers who did received refunds, in most cases did so only after
15 complaining to a Better Business Bureau or state Attorney General. But consumers should not
16 be required to file formal complaints to third parties in order for Defendants to honor their
17 refund promises. Thus, Defendants’ promises of refunds are false.
18

19 **b. Defendants are a common enterprise and jointly and severally**
20 **liable for the law violations**

21 “When one or more corporate entities operate as a common enterprise, each may be held
22 liable for the deceptive acts and practices of the others.” *FTC v. Think Achievement Corp.*, 144
23 F. Supp. 2d 993, 1011 (N.D. Ind. 2000), *aff’d* 312 F.3d 259 (7th Cir. 2002). Courts have found a
24 common enterprise where companies share common control, office space, employees,
25 interrelated funds, and/or other factors. *See, e.g., FTC v. J.K. Publ’ns, Inc.*, 99 F. Supp. 2d 1176,
26 1202 (C.D. Cal. 2000). Where the same individuals transact business through a “maze of
27

1 interrelated companies,” the whole enterprise may be held liable as a joint enterprise. *See id.*
2 (quoting *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964)).

3 Here, the corporate Defendants operate as a common enterprise in the marketing and sale
4 of auto loan modification services. VLM appears to act solely as a lead generator, directing
5 consumers to Kore Services. When FTC investigators entered their contact information on
6 VLM’s vehicleloanmod.com website (which states “simply fill out our no-obligation evaluation
7 form and you will be contacted by a qualified professional within 48 hours”), they are taken to a
8 webpage that states a “representative will contact you within 48 hours to gather any additional
9 information needed and get you started on your way to lower payments.” (PX01 at 3 ¶ 7, at 7
10 ¶ 12, Att. E at 110, Att. M at 158; PX02 at 1 ¶ 3, Att. A at 5; PX03 at 1 ¶ 3, Att. A at 5.) Shortly
11 after entering their information, they received emails from VLM stating “a qualified
12 representative from VehicleLoanMod.com will be contacting you shortly” and signed “The
13 Team at VehicleLoanMod.com.” (PX01 at 7-8 ¶ 13, Att. N at 160; PX02 at 2 ¶ 4, Att. B at 7;
14 PX03 at 2 ¶ 4, Att. B at 7.) The investigators received phone calls, however, from
15 representatives who were “calling on behalf of Auto Debt Consulting Group” and stated that the
16 investigators “had recently sent us an online inquiry.” (PX01 at 5 ¶ 10, at 8 ¶ 14, Att. H at 123,
17 Att. O at 164; PX02 at 2 ¶ 5, Att. C at 12; PX03 at 2 ¶ 5, Att. C at 12.)

18 Furthermore, the companies commingle funds. Bank records show that Kamfiroozie and
19 Nafso are both authorized signatories on Kore Services’ bank accounts. (PX01 Att. CC at 311,
20 Att. EE at 341-42.) In addition, bank records show that VLM regularly transfers money to
21 Kamfiroozie (*Id.* Att. DD at 325-32), and Kore Services’ transfers money to both Kamfiroozie
22 and Nafso. (*Id.* Att. CC at 314-20, Att. EE at 343-52.) Documents from Go Daddy and
23 Domains by Proxy show that Kamfiroozie used to be the owner/registrar for VLM’s
24

1 vehicleloanmod.com website, before he transferred registration and ownership to Nafso in
2 February 2011. (*Id.* Att. X at 226, 246, Att. Y at 274, 277.) Because the activities of the
3 corporate Defendants are intertwined, the Court should hold each of them jointly and severally
4 liable, as a common enterprise, for all violations.
5

6 **c. The Individual Defendants Are Liable for Injunctive and**
7 **Monetary Relief**

8 In addition to the corporate defendants, individual defendants Kamfiroozie and Nafso are
9 liable for injunctive and monetary relief for law violations committed by the common enterprise
10 corporate defendants. To obtain an injunction against an individual, the FTC must show that the
11 individual either had the authority to control the unlawful activities or participated directly in
12 them. *See Affordable Media*, 179 F.3d at 1234. In general, an individual's status as a corporate
13 officer gives rise to a presumption of liability to control a small, closely held corporation.
14 *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir.), *cert. denied*, 414 U.S. 828
15 (1973). More particularly, assuming the duties of a corporate officer is probative of an
16 individual's participation or authority. *Amy Travel*, 875 F.2d at 573; *Five-Star Auto Club*, 97 F.
17 Supp. 2d at 538.
18

19 An individual may be held liable for monetary redress for corporate practices if the
20 individual had, or should have had, knowledge or awareness of the corporate defendants'
21 misrepresentations. *Affordable Media*, 179 F.3d at 1231. This knowledge element, however,
22 need not rise to the level of subjective intent to defraud consumers. *Id.* at 1234. Instead, the
23 FTC need only demonstrate that the individual had actual knowledge or material
24 misrepresentations, reckless indifference to the truth or falsity of such representations, or an
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1 awareness of a high probability of fraud coupled with the intentional avoidance of the truth. *Id.*
2 Participation in corporate affairs is probative of knowledge. *Id.* at 1235.

3 Here, Kamfiroozie and Nafso are the sole owners and officers of Kore Services and
4 VLM, respectively. This alone establishes their ability to control the corporate acts and practices
5 of the common enterprise. *See, e.g., FTC v. World Media Brokers*, 415 F.3d 758, 764-65 (7th
6 Cir. 2005) (corporate officer “hard-pressed to establish that he lacked authority to control” over
7 corporate entity). They are the registrants of Defendants’ Internet websites. Both are signatories
8 on Defendants’ bank accounts. Finally, there is strong evidence that Kamfiroozie personally
9 engages in deceptive practices.⁸ Given that the corporate Defendants’ entire business model
10 consists of making false representations, there can be little doubt that Kamfiroozie and Nafso
11 have knowledge of the corporate defendants’ wrongful acts, and, accordingly, they should be
12 enjoined from violating the FTC Act and held liable for consumer redress or other monetary
13 relief in connection with their activities. Further, because they control companies in a common
14 enterprise, each is responsible for the acts of the common enterprise. Preliminary relief,
15 therefore, is appropriate against them.

19 **2. The Equities Weigh in Favor of Granting Injunctive Relief**

20 The public interest in halting Defendants’ misrepresentations and deceptive claims about
21 their vehicle loan modification services far outweighs any interest Defendants may have in
22 continuing to deceptively market their services. In balancing the equities between the parties,
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24
25 ⁸ Several consumers recall speaking with a representative who identified himself as Mike.
26 (PX05 at 2 ¶¶ 5-7, 10; PX06 at 2 ¶¶ 6-7; PX08 at 2-3 ¶ 9.) A review of checks written by
27 Defendant Kore Services (presumably, including checks to employees) suggests that there are no
employees named Mike other than Michael Kamfiroozie. (PX01 at 13 ¶ 27.) Thus, the “Mike”
with whom consumers spoke is likely Michael Kamfiroozie.

1 the public equities must be given far greater weight. *Affordable Media*, 179 F.3d at 1236.
2 Because Defendants “can have no vested interested in a business activity found to be illegal,”
3 *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972) (internal quotations and
4 citations omitted), a balance of equities tips decidedly toward granting the requested relief. *See*
5 *also CFTC v. British American Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977)
6 (quoting *FTC v. Thomsen-King & Co.*, 109 F.2d 516, 519 (7th Cir. 1940)) (“[a] court of equity is
7 under no duty ‘to protect illegitimate profits or advance business which is conducted illegally’”).
8

9 Granting such relief is also necessary because Defendants’ conduct indicates that they
10 will likely continue to deceive the public. *Five-Star Auto Club*, 97 F. Supp. 2d at 536 (“[P]ast
11 illegal conduct is highly suggestive of the likelihood of future violations.”); *SEC v. R.J. Allen &*
12 *Assoc., Inc.*, 386 F. Supp. 866, 877 (S.D. Fla. 1974) (past misconduct suggests likelihood of
13 future violations); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir.), *cert. denied*, 442 U.S. 921
14 (1979).
15

16 In contrast, the private equities in this case are not compelling. Compliance with the law
17 is hardly an unreasonable burden. *See World Wide Factors*, 882 F.2d at 347 (stating “there is no
18 oppressive hardship to Defendants in requiring them to comply with the FTC Act [or] refrain
19 from fraudulent representation . . .”). Because the injunction will preclude only harmful, illegal
20 behavior, the public equities supporting the proposed injunctive relief outweigh any burden
21 imposed by such relief on Defendants. *See, e.g., Nat’l Soc’y of Prof. Eng’rs. v. United States*,
22 435 U.S. 679, 697 (1978).
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1 **IV. THE SCOPE OF THE PROPOSED TRO IS APPROPRIATE IN LIGHT OF**
2 **DEFENDANTS' CONDUCT**

3 As the evidence has forcefully shown, the FTC will ultimately succeed in proving that
4 Defendants are engaging in deceptive practices in violation of the FTC Act, and that the balance
5 of equities strongly favors the public. Preliminary injunctive relief is thus justified.

6 **A. Conduct Relief**

7 To prevent ongoing consumer injury, the proposed temporary restraining order prohibits
8 Defendants from making future misrepresentations concerning the provision of vehicle loan
9 assistance relief services. As discussed above, this Court has broad equitable authority under
10 Section 13(b) of the FTC Act to grant ancillary relief necessary to accomplish complete justice.
11 *Singer*, 668 F.2d at 1113. These prohibitions do no more than order that Defendants comply
12 with the FTC Act.
13

14 The provision barring Defendants from charging or requesting advance fees from
15 consumers in connection with the sale of any vehicle loan assistance relief service is necessary to
16 prevent ongoing consumer injury. This provision is justified by Defendants' illegal conduct and
17 the high fees Defendants charge consumers who can least afford to pay them, resulting in
18 devastating financial harm to many. The prohibition on advance fees also is consistent with
19 recently promulgated federal regulations preventing advanced fees in connection with mortgage
20 assistance relief services, *see* 16 C.F.R. § 322.5, and unsecured debt relief services, *see* 16
21 C.F.R. § 310.4(a)(5). These regulations reflect widespread agreement that public policy favors
22 delaying payment until such service providers actually perform their promised services, in light
23 of the high risk for fraud coupled with enormous required fees. Indeed, before the promulgation
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1 of federal regulations banning advanced fees in the sale of mortgage assistance relief services,
2 courts in the Ninth Circuit and elsewhere granted similar preliminary injunctive relief.⁹

3 As the evidence demonstrates, Defendants' conduct fits squarely within this description,
4 and, thus, public policy militates against permitting Defendants to continue collecting advance
5 fees. As discussed above, Defendants charge hundreds of dollars in up-front fees, and then do
6 little or nothing of value for consumers after receiving payment. Those consumers who fall prey
7 to Defendants' deceptive marketing can little afford to have hundreds of dollars taken by
8 Defendants or tied up with Defendants for months while little or nothing is done on their behalf.
9 These consumers otherwise could use the money to continue paying their vehicle loans or reduce
10 other debt. Moreover, many consumers lose valuable time they otherwise could have used to
11 work directly with their lenders. The requested preliminary injunctive relief, then, is necessary
12 to protect consumers from injury during the litigation and stop further harm.
13
14

15 **B. Temporary Disabling of Websites**

16 An order provision temporarily disabling Defendants' websites and suspending their
17 domain name registrations is necessary to prevent further consumer injury. As discussed above,
18 Defendants operate several active Internet websites containing deceptive representations.
19 Suspending their domain name registrations will ensure that Defendants cannot evade
20 compliance with any preliminary relief entered by this Court pending final determination of this
21 matter.
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23 _____
24 ⁹ See, e.g., *FTC v. Washington Data Resources, Inc.*, Case No. 8:09-cv-2309-T-23TBM (M.D.
25 Fla. Nov. 13, 2009) (TRO banning advanced fees in connection with sale of mortgage assistance
26 relief services); *FTC v. Loss Mitigation Services, Inc.*, Case 8:09-cv-00800-DOC-AN (C.D. Cal.
27 Jul. 20, 2009) (same); *FTC v. Lucas Law Center, Inc.*, Case No. 8:09-cv-00770-DOC-AN (C.D.
Cal. Jul. 9, 2009) (same); *FTC et al. v. US Foreclosure Relief Corp.*, Case No. 8:09-cv-00768-
JVS-MLG (C.D. Cal. Jul. 7, 2009) (same).

1 This Court has the authority to direct third parties to effectuate the purpose of the TRO.
2 *Cf. Deckert v. Independence Shares Corp.*, 311 U.S. 282, 290 (1940) (holding that courts have
3 authority to direct third parties to preserve assets); *United States v. First Nat'l City Bank*, 379
4 U.S. 378, 385 (1965); *Reebok Int'l, Ltd. v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995);
5 *Waffenschmidt v. Mackay*, 763 F.2d 711, 714 (5th Cir. 1985). Other courts have granted similar
6 relief against other defendants who have utilized Internet websites to promote fraud.¹⁰
7

8 C. Preservation of Records

9 In addition, the proposed order contains a provision directing Defendants to preserve
10 records, including electronic records, and evidence. It is appropriate to enjoin Defendants
11 charged with deception from destroying evidence and doing so would place no significant
12 burden on them. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990)
13 (characterizing such orders as “innocuous”). Because Defendants’ operation appears to be
14 mostly Internet based, absent such a provision, Defendants could easily delete relevant evidence.
15

16 D. Expedited Discovery

17 The FTC also seeks limited expedited discovery to identify possible additional
18 defendants, locate documents pertaining to Defendants’ businesses, and locate Defendants,
19 should they attempt to evade service. These types of discovery orders reflect the Court’s broad
20 and flexible authority in equity to grant preliminary emergency relief in cases involving the
21 public interest. *See Porter*, 328 U.S. at 398; *FSLIC v. Dixon*, 835 F.2d 554, 562 (5th Cir. 1987);
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25 ¹⁰ *See, e.g., FTC v. Mountain View Systems, Ltd., et al.*, Case No. 1:03-cv-0021-RMC (D.D.C.
26 Jan. 9, 2003); *FTC v. Stuffingforcash.com Corp.*, Case No. 1:02-cv-05022-CRN (N.D. Ill. July
27 16, 2002); *FTC v. TLD Network Ltd.*, Case No. 1:02-cv-01475-JFH (N.D. Ill. Feb. 28, 2002);
FTC v. 1268957 Ontario Inc., Case No. 1:01-cv-00423-JEC (N.D. Ga. Feb. 13, 2001) ; *FTC v.*
Pereira, Case No. 1:99-cv-01367-AVB (E.D. Va. Sep. 14, 1999).

1 *Federal Express Corp. v. Federal Expresso, Inc.*, 1997 U.S. Dist. LEXIS 19144, at * 6
2 (N.D.N.Y. Nov. 24, 1997) (early discovery “will be appropriate in some cases, such as those
3 involving requests for a preliminary injunction”) (quoting commentary to Fed. R. Civ. P. 26(d));
4 *Benham Jewelry Corp. v. Aron Basha Corp.*, 1997 U.S. Dist. LEXIS 15957, at *58 (S.D.N.Y.
5 July 18, 1997) (courts have broad powers to grant expedited discovery).
6

7 **E. Financial Accounting**

8 In addition to injunctive relief, the FTC will seek a final order with monetary equitable
9 relief. To determine the scope of the harm and identify assets to effectuate final relief, the FTC
10 requests that the Court issue an order requiring an immediate accounting of Defendants’ assets
11 and any transfers by Defendants, of assets worth \$1,000 or more. The FTC also requests that the
12 Court order Defendants to complete and return to the FTC financial statements on the forms
13 attached to the proposed order. An accounting and financial statements will increase the
14 likelihood of identifying assets pending final determination of this matter. *See, e.g., SEC v.*
15 *Bankers Alliance Corp.*, 881 F. Supp. 673, 676 (D.D.C. 1995); *SEC v. Parkersburg Wireless*
16 *LLC*, 156 F.R.D. 529, 532 n. 3 (D.D.C. 1994).
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1 **V. CONCLUSION**

2 For the reasons set forth above, the FTC respectfully requests that the Court enter the
3 proposed Temporary Restraining Order and then a Preliminary Injunction to halt Defendants'
4 violations of the FTC Act.
5

6 Dated: March 28, 2012

Respectfully submitted,

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