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

15 **FEDERAL TRADE COMMISSION,**

16 Plaintiff,

17 v.

18 **HOPE FOR CAR OWNERS, LLC, et al.,**

19 Defendants.

20 **Case No. 2:12-cv-00778-GEB-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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**MISCELLANEOUS**

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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 **Hope for Car Owners, LLC** ("HCO") is a California limited liability  
16 company, formed on March 10, 2009. (PX01 Att. E at 76.) Its registered address is 1410 Rocky  
17 Ridge Drive, Suite 260, Roseville, California. (*Id.*) On Defendants' Internet website, they list  
18 their address as 13389 Folsom Boulevard, Suite 300-180, Folsom, California. (*Id.* Att. A at 26.)  
19 The Folsom Boulevard address is also listed as the contact address for Defendants' long distance  
20 telephone service. (*Id.* Att. I at 241.)

21 Defendant **Patrick Freeman** is the sole manager of HCO and its registered agent. (*Id.*  
22 Att. E at 76.) He also has signatory authority over its bank accounts. (*Id.* Att. J at 244.)  
23 Freeman is the registrant as well as administrative contact, technical, and billing contact for

1 HCO’s Internet websites. (*Id.* Att. H at 203-10, 224-34.) The domain registration and hosting  
2 fees for HCO’s Internet website are paid for with Freeman’s personal credit card. (*Id.* at 212-16,  
3 235-39.) In addition, Freeman responds on behalf of HCO to Better Business Bureau (“BBB”)  
4 complaints against it and sends emails to consumers. (*Id.* at 2 ¶ 6, Att. C at 49, Att. F at 104-07,  
5 124, 134-39, 140-44, 147, 151; PX05 at 3 ¶ 17.)  
6

7 **B. Defendants’ Deceptive Business Practices**

8 Since at least January 2011, Defendants have marketed auto loan modification services  
9 via the Internet and telemarketing. Defendants maintain at least one Internet website,  
10 carloanmod.com, on which they advertise their services.<sup>1</sup> (*Id.* Att. A.) The website directs  
11 consumers to contact Defendants on their toll-free number or to enter their contact information  
12 so that a representative can call them back. When consumers call, or receive calls from,  
13 Defendants, Defendants promise to modify consumers’ auto loans to make their monthly  
14 payments substantially more affordable – usually between 30% to 50% lower. Defendants  
15 bolster their claims with money back guarantees. Consumers who decide to enroll are required  
16 to pay an up-front fee, ranging from \$200 to \$50. In most cases, however, Defendants fail to  
17 obtain the promised auto loan modifications, and in some instances, consumers get their cars  
18 repossessed. Many consumers discover that Defendants never even contacted their lenders.  
19 Many consumers also report that the Defendants fail to honor their refund policies.  
20  
21  
22  
23  
24  
25

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26 <sup>1</sup> Documents from GoDaddy show that Defendants have registered a number of other Internet  
27 websites, including hopeforcarowners.com, hope4carowners.com, hope4carowners.org, and  
28 avoidrepo.org. None of these websites are currently active. (PX01 Att. H at 198-202, 218-23.)

1                   **1. Defendants Misrepresent That They Will Obtain Auto Loan**  
2                   **Modifications**

3                   Defendants represent that they will obtain an auto loan modification that will reduce  
4 consumers' monthly payments between 30% and 50%. Defendants make this representation on  
5 their website, and then reinforce the claim in their telephone sales pitches.

6                   **a. Defendants' Deceptive Website**

7                   Defendants' carloanmod.com website contains statements that induce consumers to  
8 purchase their vehicle loan assistance relief services. For example, at the top of each separate  
9 webpage of the carloanmod.com website are statements in large font, including "Consumer  
10 Stimulus & Bailout ASSISTANCE!" and "Join the thousands who have already SAVED!" and  
11 "Reduce Your STRESS & start Immediately saving!" "Stop overpaying for a depreciating  
12 LIABILITY!" "TAKE BACK control of YOUR MONEY!" and "WE WILL do ALL of the  
13 Work for You!" (*Id.* Att. A at 10, 12, 19, 23, 24, 26.)

14                   Further, Defendants' carloanmod.com website makes the following statements regarding  
15 their ability to lower the monthly payments on consumers' vehicle loans:  
16

- 17
- 18                   • To date, our assistance efforts have reduced many of our clients' monthly  
19                   payments an average of 30% - 40% on a monthly basis . . . (*Id.* at 10, 15.)
  - 20                   • We have solutions for every consumer in every conceivable situation so even if  
21                   you feel as if you can't be helped, YOU CAN. (*Id.* at 10, 15)
  - 22                   • To date, our team of trained professionals at *Hope for Car Owners* has assisted  
23                   thousands of vehicle owners in seemingly every possible financial situation . . . In  
24                   nearly every instance our negotiations have allowed vehicle owners to keep their  
25                   vehicles out of repossession . . . (*Id.* at 10-11, 14.)
  - 26                   • In nearly every instance our negotiations have allowed or [sic] clients to keep  
27                   their vehicles AND reduce their monthly payment and/or principal balance. It is  
28                   NECESSARY and it is EFFECTIVE! (*Id.* at 11.)

- 1 • No matter your particular situation, we have the solution. We have nearly a 99%  
2 success rate which means in almost every situation we have been able to achieve  
3 a positive financial result which means putting real dollars back into our clients'  
pockets. (*Id.*)

4 Defendants bolster their claims by including a frequently asked questions (or "FAQ's")  
5 webpage that make statements such as:

- 6 • **Can I do this myself?**

7 . . . .

8 Our research has shown that approximately 94% of consumers who attempt to  
9 work directly with their lender are unsuccessful as they are usually met with  
resistance and/or denial and usually go away frustrated after one or two attempts.

10 . . . .

11 In our experience, the only time a lender is willing to extend an offer of assistance  
12 is after we have submitted a client's file for review.

13 . . . .

14 We have reviewed many resolutions offered by lenders to client's [sic] who had  
15 previously chosen to work directly with their lender and we have found that, on  
16 average, the savings offered by the lender is approximately 8% of the original  
17 payment. The average savings for a client who receives a successful resolution  
through our process is 41%. That is a difference of \$33 out of every \$100 of your  
payment. (*Id.* at 31-32.)

- 18 • **What if I am not satisfied with my result?**

19 Prior to enrollment (as well as within your enrollment package) you will be asked  
20 what new (reasonable) payment you will be comfortable with going forward.

21 Provided the payment request is a reasonable amount, we are 95% successful in  
22 hitting our payment goal. Our average payment reduction is roughly 41% of the  
original payment and we are adding to that number with every successful  
resolution achieved. (*Id.* at 34.)

23 Defendants tout their experience to further their claim that they will obtain promised loan  
24 modifications by frequently referring to themselves as a "team of professionals." (*Id.* at 10, 15.)

25 In addition, they state:  
26  
27

- 1 • Our staff possesses the knowledge and we have developed and retain [sic] the  
2 necessary relationships within the industry to assist in every situation imaginable.  
(*Id.* at 11, 16.)
- 3 • We have aligned ourselves with like minded business partners who stand at the  
4 ready with teams of highly trained and experienced professionals dedicated to  
5 assisting every aspect of your financial circumstance. (*Id.* at 17.)
- 6 • *Hope for Car Owners* has the knowledge and expertise to step in and negotiate on  
7 your behalf. (*Id.* at 18.)
- 8 • The professionals at *Hope for Car Owners* are here to inform and educate our  
9 clients as to their options and alternatives. (*Id.*)
- 10 • We often explain the necessity for our services thusly [sic]; if you were charged  
11 with a crime, you would have a much higher chance of success if you hired a  
12 professional (attorney) to help with your defense. If you transfer and apply that  
13 theory to negotiating with your lender, then it makes perfect sense to hire a  
14 professional to negotiate on your behalf. We do this every day for thousands of  
15 clients and it is through our comprehensive analysis, innovative processes,  
16 industry relationships and leveraged positions which provide us with the ability to  
17 offer you the highest chance of successful resolution. (*Id.* at 21.)

18 Defendants also use purported customer testimonials to support their performance claims.

19 (See PX03 at 1 ¶ 3 (consumer decided to use Defendants' service after reading online  
20 testimonials).) The testimonials include the following statements:

- 21 • I was 4 months late and on the verge of losing my car to the repo man. *Hope 4  
22 Car Owners* stepped in and not only stopped the repossession, but they negotiated  
23 to reduce my payments from \$1200 a month to \$548!! (PX01 Att. A at 12.)
- 24 • *Hope 4 Car Owners* works magic . . . I saved over \$1500 per month with the  
25 assistance of *Hope 4 Car Owners*. (*Id.*)
- 26 • I was \$11,000 upside down on my truck and was ready to give it back because I  
27 could no longer afford the payments. *Hope 4 Car Owners* negotiated a new  
28 payment plan that cut my payments in HALF!! (*Id.* at 13.)
- We were \$22,000 upside down in our car. . . Instead of losing our car, we enrolled  
with *Hope 4 Car Owners* and were able to work out a new payment plan with our  
lender. (*Id.* at 12.)

- 1 • We could no longer afford the payments on our Motor Home and it was \$44,000  
2 upside down. . .but *Hope 4 Car Owners* stepped in and negotiated a new deal with  
3 our lender that saved our future! (*Id.*)
- 4 • I owed \$37,000 more on my boat than what it was worth and instead of losing it  
5 to repossession and destroying my credit, *Hope 4 Car Owners* worked out a new  
6 arrangement with my lender which helped me keep my boat and reduce my  
7 considerable stress. (*Id.* at 13.)

8 Defendants' website invites consumers to call them on a toll-free number, "866-237-  
9 HOPE (4673)." (*Id.* at 26.) In addition, consumers can enter their contact information and one of  
10 Defendants' representatives will call them back. (*Id.* at 23; PX03 at 1 ¶¶ 4-5.)

### 11 **b. Defendants' Deceptive Telemarketing Activities**

12 The transcript of an undercover call and consumer interviews reveal that Defendants'  
13 sales representatives, during sales calls with consumers, reinforce the claim that Defendants will  
14 obtain a vehicle loan modification lowering consumers' monthly payments. For example, when  
15 an FTC investigator told Defendants' representative that she was paying \$520 a month on her car  
16 loan, the sales representative explained that "our averages, when there are, you know, reductions,  
17 when we do the modification rather than the short sale is — it's right about between 47 and 52  
18 percent, in that window."<sup>2</sup> (PX01 Att. D at 56.) The representative then asked if \$300 would be  
19 a more comfortable payment. (*Id.*)

20 Similarly, one of Defendants' representative told consumer Julia Tedim that Defendants  
21 could reduce her car loan payment by half. (PX05 at 1 ¶ 6.) Consumer Harry White states that  
22 Defendants promised they would reduce the monthly payment on his car loan from \$664 a  
23

---

24  
25 <sup>2</sup> Just before telling the FTC investigator that Defendants typically reduced consumers'  
26 monthly payments between 47% and 52%, the representative joked "we're not technically  
27 allowed to, you know, preemptively say where our average and things are because, you know,  
invariably human nature is like, yeah, that's what I want." (*Id.*) He does so nevertheless.

1 month to \$400 (a 40% reduction). (PX01 Att. F at 100.) Consumer Jessica Backer reports that  
2 Defendants promised her that they would reduce her \$421 monthly payment down to between  
3 \$200 to \$250 per month (a 40% to 50% reduction). (*Id.* Att. F at 140.) Defendants told  
4 consumer Tammy Bertrand-Hulsey her monthly payments would be reduced from \$378.97 to  
5 between \$190 and \$200. (PX04 at 1 ¶ 4.) Consumer Stefanie Richardson reports that  
6 Defendants promised to lower her \$353 monthly payment to \$200 a month. (PX06 at 1 ¶ 4. *See*  
7 *also* PX03 at 1-2 ¶ 7 (Defendants promised consumer Yuriy Buha they would lower his monthly  
8 payment and interest rate); PX05 at 3 ¶ 13 (Defendants guaranteed that consumer Fatima  
9 Bicksler’s loan would be modified), 4 ¶ 23 (consumer Ashley Johle received similar guarantee).)

12 After promising to obtain a loan modification, Defendants’ telemarketers explain that  
13 they charge an up-front fee, typically \$399. For example, one of Defendants’ representative told  
14 an FTC investigator “the fee for us to actually negotiate with them, it’s \$399.” (PX01 Att. D at  
15 64. *See also id.* Att. F at 85, 95, 97, 108; PX05 at 1 ¶ 6, 4 ¶ 23.) Some consumers, however,  
16 report having paid higher or lower amounts. Consumer Tammy Bertrand-Hulsey states that  
17 Defendants wanted to charge her \$500, which they later reduced to \$399 when she explained that  
18 she couldn’t afford the payment. (PX04 at 1 ¶¶ 2,3.) Defendants also agreed to reduce their fee  
19 from \$500 to \$400 when consumer Stefanie Richardson explained she couldn’t afford the more  
20 expensive fee. (PX06 at 1-2 ¶ 6.) Consumer Yuriy Buha paid Defendants \$199 for their  
21 services. (PX03 at 2 ¶ 8.) Compounding the problem, in some instances Defendants advise  
22 consumers to stop paying their lender and pay them instead. (PX01 Att. F at 97, 131; *see also id.*  
23 Att. F at 95 (Defendants advised consumer to make payments a few days late every month to  
24 show proof of hardship), PX04 at 2 ¶ 6 (Defendants told consumer to stop paying her lender),  
25 PX05 at ¶ 7.)

1                                   **c.       Defendants Fail to Obtain Promised Vehicle Loan**  
2                                   **Modifications**

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

5 In some instances, consumers learn that Defendants have done nothing only after their lender  
6 contacts them about repossession of the vehicle. And in some instances, adding insult to injury,

7 Defendants demand additional fees to continue working on consumers' files. For example:  
8

- 9 •       Consumer Tammy Bertrand-Hulsey paid Defendants \$399 in October 2010 and by  
10       December 2010 had not been contacted by Defendants, nor had the website to which she  
11       had been directed to check for progress been updated. When she contacted Defendants,  
12       the representative told her not to pay her lender. By January 2011, she had fallen behind  
13       on her payments and again contacted Defendants, at which point the representative told  
14       her the fee she had paid had been exhausted and if she wanted a modification she would  
15       need to pay an additional fee. The representative also directed her to hide her car to avoid  
16       repossession. (PX04 at 1-2 ¶¶ 5-7.)
- 17 •       Another of Defendants' representatives instructed consumer Julia Tedim to stop making  
18       payments on her vehicle loan. After the first missed payment, a representative from  
19       Ms. Tedim's lender contacted her to warn her that her car was going to be repossessed.  
20       Ms. Tedim explained that she was working with Defendants, to which her lender replied  
21       that it does not negotiate with Defendants. When Ms. Tedim shared this information  
22       with Defendants, the representative confirmed that Ms. Tedim's lender would not work  
23       with them. (PX05 at 2 ¶¶ 7-9.)
- 24 •       Consumer Fatima Bicksley had heard nothing from Defendants. After being enrolled for  
25       two months, she received an email from Defendants stating that they had exhausted the  
26       funds in her account and would stop working on her negotiation unless she paid an  
27       additional \$400 fee. After speaking with Defendants' president, Patrick Freeman,  
28       Ms. Bicksley agreed to pay the additional fee. More than six months later, Ms. Bicksley  
29       learned that her lender was unwilling to negotiate with Defendants. Around this time,  
30       Ms. Bicksley received another email from Defendants again indicating that they had  
31       exhausted her funds, at which time Ms. Bicksley decided to attempt to negotiate with her  
32       lender herself. (PX05 at 3-4 ¶¶ 16-20.)
- 33 •       Consumer Patricia Buskey stated that when she contacted her lender she was informed  
34       that not only does the lender not deal with third parties but also that Defendants had  
35       never contacted them. Yet Defendants informed Ms. Buskey that they had been in  
36       contact and even had a purported conference call with the lender (a week prior to her  
37       conversation with the lender). (PX01 Att. F at 108.)

- 1 • Consumer Yolanda Tidwell similarly reported that when she called her lender to confirm  
2 that Defendants were working on her behalf, her lender advised her that they had never  
3 received any information from them. (*Id.* Att. F at 116.)
- 4 • Stacie Branum paid Defendants \$400 to lower her car payments. She did not hear from  
5 them for weeks. Finally, she was able to make contact with one of Defendants'  
6 representatives who told her that he would take the entire \$400 she paid and apply it  
7 towards his wages for having to take time out of his day to tell her there was no update.  
8 She ended up getting her car repossessed. (*Id.* Att. F at 88.)
- 9 • Defendants told consumer Jason Jones they were speaking with his lender and  
10 negotiations were going well. Two weeks later, his truck was repossessed. (*Id.* Att. F at  
11 131.)
- 12 • Defendants told consumer Patrique Siler that they were working on his modification.  
13 Indeed, Defendants claimed they had arranged a modification with his lender that would  
14 require two payments be made to the lender starting April 14, 2010. On April 14, the  
15 consumer's car was repossessed. (*Id.* Att. F at 165.)
- 16 • Three weeks after paying Defendants \$400, consumer Stefanie Richardson called her  
17 lender to confirm what was being done to reduce her monthly payments. She learned that  
18 no one at her lender had been contacted by Defendants. (PX06 at 2 ¶ 10.)

19 Other consumers report similar stories. (*See, e.g.*, PX01 Att. F at 97 (Defendants' file on  
20 consumer states Defendants have been talking to her lender but her lender says they never  
21 called), 146 (Defendants claimed they were talking with consumer's lender to keep his car out of  
22 repossession, nevertheless it was repossessed), 151 (Defendants told consumer they were in  
23 negotiations with her lender, but when consumer spoke with her lender he found out that the  
24 lender had no paperwork from, and never heard of, Defendants), 154 (consumer paid Defendants  
25 \$399 but when she contacted her lender, the lender said Defendants never contacted it).)

## 26 **2. Defendants Misrepresent That They Will Grant Full Refunds**

27 Defendants expressly guarantee that consumers will get their money back if they fail to  
28 obtain a loan modification. The homepage of Defendants' carloanmod.com website contains a  
"Confidence Guarantee" that states "[w]e are so confident in our programs and services that we

1 offer a ‘No Dispute’ Money Back Guarantee in the event we are unable to provide a successful  
2 resolution.” (*Id.* Att. A at 10, 15.)

3           In numerous instances, Defendants’ telemarketers also promise consumers their money  
4 back if Defendants fail to obtain an auto loan modification. For example, consumer Stephanie  
5 Richardson stated that one of Defendants’ representatives informed her that a full refund was  
6 available in the event that she was not satisfied with their services. (PX06 at 1 ¶ 5.) Similarly,  
7 Defendants told consumer Matt Beavers that he would get a refund if they could not find a  
8 solution. (PX01 Att. F at 91.) Defendants told consumer Yuriy Buha that if he was not satisfied  
9 with the deal they negotiated for him, he could reject the deal and request a refund of his money.  
10 (PX03 at 2 ¶ 7.) Defendants told consumer Jessica Baker that they had a no dispute money back  
11 guarantee. (PX01 Att. F at 140.) Meanwhile, consumer Ashley Johle recalls she was told that  
12 Defendants’ services were guaranteed. (PX05 at 4 ¶ 23; *see also* PX04 at 1 ¶ 4 (Defendants told  
13 consumer Tammy Bertrand-Hulsey their services were guaranteed).)

14           Although Defendants promise refunds, in fact they routinely deny their clients’ requests  
15 for refunds. For example:

- 16           •       Consumer Stefanie Richardson called Defendants to request a refund after her  
17           lender told her Defendants had not contacted it about her loan. The consumer  
18           services representative who she spoke with told her not to call about the refund  
19           because doing so would eat into her retainer. Ms. Richardson emailed Defendants  
20           requesting a refund, but received no response. She then tried calling several  
21           different numbers listed on Defendants’ website, but all the numbers had been  
22           disconnected. (PX01 at 2-3 ¶¶ 11-13.)
- 23           •       After Defendants’ representative told consumer Ashley Johle that Defendants  
24           would not be able to modify her car loan, she asked the representative for a refund  
25           pursuant to the advertised refund policy. Defendants did not refund her money.  
26           (PX04 at 5 ¶¶ 26-27.)

- 1 • Consumer Stacie Branum was promised an auto loan modification. Defendants  
2 did nothing and her car was repossessed. When she demanded her money back,  
3 Defendants refused to give her a refund. (PX01 Att. F at 88.)
- 4 • Consumer Jessica Backer reports that when asked for a refund she was transferred  
5 to a person who claimed to be the owner of the company. She said that he flat  
6 refused to give her money back. When she asked why would the company put a  
7 guarantee on their website if they weren't going to honor it, he responded that she  
8 hadn't signed a contract with the website so he wasn't going to give her a refund.  
9 (*Id.* Att. F at 140.)

10 (*See also id.* Att. F at 151 (Defendants refused to give consumer a refund even though lender  
11 told consumer it never heard of Defendants).)

12 In short, Defendants' promise of a refund is as illusory as their promise of obtaining a  
13 loan modification that would reduce substantially consumers' monthly car loan payment.

### 14 **C. Consumer Injury**

15 Bank documents suggest that Defendants have taken in gross revenues of at least  
16 \$370,378 between March 20, 2009 and October 31, 2011. (*Id.* at 4-7 ¶ 14.) In a letter to the  
17 Better Business Bureau of Northeast California in January 2011, Defendant Freeman wrote "[t]o  
18 date, we have assisted more than 13,000 consumer's [sic]." (*Id.* Att. F at 105.) Thus, the actual  
19 consumer injury could be much higher.

## 20 **III. A TEMPORARY RESTRAINING ORDER SHOULD ISSUE AGAINST DEFENDANTS**

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

22 This Court has the authority to grant preliminary and permanent relief pursuant to the  
23 second proviso of Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), which states that "in proper  
24 cases the FTC may seek, and, after proper proof, the court may issue, a permanent injunction"  
25 against violations of "any provision of law enforced by the Federal Trade Commission." 15  
26

1 U.S.C. § 53(b); *Pantron I Corp.*, 33 F.3d at 1102.<sup>3</sup> A “proper case” includes any matter  
2 involving a violation of a law that the FTC enforces. *See, e.g., FTC v. Evans Prods. Co.*, 775  
3 F.2d 1084, 1086-87 (9th Cir. 1985); *Singer*, 668 F.2d at 1113.<sup>4</sup>

4 Section 13(b) confers full equitable powers on this Court. In addition to entering a  
5 permanent injunction, the Court may order the rescission of contracts, restitution, and/or  
6 disgorgement of ill-gotten gains. *See FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346-47  
7 (9th Cir. 1989) (affirming district court’s power to freeze assets); *Singer*, 668 F.2d at 1113  
8 (affirming preliminary injunction and personal and corporate asset freeze). All preliminary  
9 equitable remedies are also available to the Court, including a preliminary injunction with  
10 ancillary relief. *See Evans Prods.*, 775 F.2d at 1086; *Singer*, 668 F.2d at 1111-13; *FTC v. John*  
11 *Beck Amazing Profits, LLC*, 2009 U.S. Dist. LEXIS 130923, at \*10-11 (C.D. Cal. Nov. 17,  
12 2009). When, as here, the public interest is implicated, this Court’s equitable powers “assume an  
13 even broader and more flexible character than when only a private controversy is at stake.” *FTC*  
14 *v. Gem Merch. Corp.*, 87 F.3d 466, 469 (11th Cir. 1996) (quoting *Porter v. Warner Holding Co.*,

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15  
16  
17  
18 <sup>3</sup> 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  
injunction, including a freeze of assets, during the pendency of an action for permanent  
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 <sup>4</sup> 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  
freezing assets, and is also able to obtain consumer redress.” S. Rep. No. 130, 103rd Cong., 2d  
27 Sess. 15-16, reprinted in 1994 U.S. Code Cong. & Admin. News 1776, 1790-91.

1 328 U.S. 395, 398 (1946)). Courts in this District and throughout the Ninth Circuit have  
2 repeatedly exercised their authority to grant TROs with ancillary equitable relief in FTC fraud  
3 cases,<sup>5</sup> and as demonstrated below, the relief requested by the FTC is warranted in this case.

4  
5 **B. The FTC Meets the Standard for Granting a Government Agency's Request  
6 for a Preliminary Injunction**

7 Because the FTC acts as “a statutory guardian charged with safeguarding the public  
8 interest,” the standard for preliminary injunctive relief under Section 13(b) differs from that  
9 typically applied to private litigants. *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir.  
10 1975). In determining whether to grant a preliminary injunction under Section 13(b), a court  
11 “must 1) determine the likelihood that the Commission will ultimately succeed on the merits and  
12 2) balance the equities.” *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999)  
13 (quoting *FTC v. Warner Commc'ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)). Unlike private  
14 litigants, the FTC need not prove irreparable injury. *Affordable Media*, 179 F.3d at 1233.  
15 Moreover, in balancing the equities, the public interest should receive greater weight than private  
16 interests. *World Wide Factors*, 882 F. 2d at 347. As set forth in this memorandum, the FTC has  
17 amply demonstrated that it will ultimately succeed on the merits of its claims and that the  
18 balance of equities favors injunctive relief.  
19  
20

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21  
22 <sup>5</sup> 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           **1. The FTC Has Demonstrated its Likelihood to Succeed on the Merits**

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

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

15           Section 5 of the FTC Act prohibits “unfair or deceptive practices in or affecting  
16 commerce[.]” 15 U.S.C. § 45. An act or practice is deceptive under Section 5(a) if it involves a  
17 material representation or omission that is likely to mislead consumers, acting reasonably under  
18 the circumstances. *FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009). A misrepresentation is  
19 material if it involves facts that a reasonable person would consider important in choosing a  
20 course of action. *See FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006).  
21 Express claims are presumed material, so consumers are not required to question their veracity in  
22 order to be deemed reasonable. *Pantron I*, 33 F. 3d at 1095-96 n.21. Implied claims are also  
23 presumed material if there is evidence that the seller intended to make the claim, *see, e.g.*,

1 *Novartis Corp. v. FTC*, 223 F.3d 783, 786-87 (D.C. Cir. 2000); *Kraft, Inc. v. FTC*, 970 F.2d 311,  
2 322 (7th Cir. 1992), or if the claims go to the heart of the solicitation or the central  
3 characteristics of the produce or service offered. *FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 604  
4 (9th Cir. 1993) (no loophole for implied deceptive claims); *In re Southwest Sunsites, Inc.*, 105  
5 F.T.C. 7, 149 (1985), *aff'd*, 785 F.2d 1431 (9th Cir. 1986). In considering whether a claim is  
6 deceptive, the Court must consider the “net impression” created by the representation.<sup>6</sup>  
7  
8 *Cyberspace.com*, 453 F.3d at 1200 (solicitation can be deceptive by virtue of its net impression  
9 even if it contains truthful disclosures); *Five-Star Auto Club*, 97 F. Supp. 2d at 528 (“the Court  
10 must consider the misrepresentations at issue, by viewing [them] as a whole without  
11 emphasizing isolated words or phrases apart from their context”).  
12

13 A representation is also deceptive if the maker of the representation lacks a reasonable  
14 basis for the claim. *FTC v. Direct Mktg. Concepts, Inc.*, 2010 U.S. App. LEXIS 21743, at \*11-  
15 12 (1st Cir. Oct. 21, 2010). Where the maker lacks adequate substantiation evidence, they  
16 necessarily lack any reasonable basis for their claims. *Id.*; *Removatron Int'l*, 884 F.2d at 1498.  
17

18 The FTC need not prove reliance by each purchaser misled by Defendants. *FTC v.*  
19 *SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1275 (S.D. Fla. 1999). “Requiring proof of subjective  
20 reliance by each individual consumer would thwart effective prosecutions of large consumer  
21 redress actions and frustrate the statutory goals of [Section 13(b)].” *Figgie Int'l*, 994 F.2d at 605  
22 (citations omitted). Rather, a “presumption of actual reliance arises once the FTC has proved  
23 that the defendant made material misrepresentations, that they were widely disseminated, and  
24

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25 <sup>6</sup> 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 Cir. 1989); *FTC v. Five-Star Auto Club*, 97 F. Supp. 2d 502, 526 (S.D.N.Y. 2000).

1 that consumers purchased the defendant's product." *Id.* at 605-6; *see also SlimAmerica*, 77 F.  
2 Supp. 2d at 1275.

3  
4 **i. Count I: Defendants Represent, Falsely or Without**  
5 **Substantiation, That They Generally Will Obtain**  
6 **Vehicle Loan Modifications That Will Make**  
7 **Consumers' Debt Payments Substantially More**  
8 **Affordable**

9 As described above, the core message of Defendants' marketing campaign is that they  
10 will obtain a vehicle loan modification for consumers that will substantially reduce consumers'  
11 monthly loan payments. Defendants' marketing materials repeatedly tout Defendants' ability to  
12 reduce consumers vehicle loan payments by 30% to 50%, with no indication of any limitations.  
13 Courts have held that an unqualified performance claim implies that consumers generally will  
14 receive the claimed performance and that the benefit is a significant one. *See, e.g., Five Star*  
15 *Auto Club*, 97 F. Supp. 2d at 528 ("at the very least, it would have been reasonable for  
16 consumers to have assumed that the promised rewards were achieved by the typical Five Star  
17 participant.").

18 In reality, as described above, few if any consumers ever obtain the promised  
19 modifications or savings. Indeed, as discussed, many consumers report that Defendants never  
20 even contact their lenders or, at best, make minimal non-substantive contact. Moreover,  
21 according to Bill Himpler, Executive Vice President of the American Financial Services  
22 Association, a national trade association for the consumer credit industry, many lenders and  
23 finance companies refuse to negotiate with third-parties, preferring to deal directly with the  
24 consumer-debtor or their attorneys. (PX02 at 2 ¶ 5.) Although the FTC is aware of no  
25 consumers who Defendants actually helped, Defendants may argue that they have helped some  
26 customers obtain actual loan modifications. This may be so, but, as the old saw goes, even a  
27

1 blind squirrel eventually stumbles upon a nut. Defendants have represented essentially without  
2 qualification that they could help most consumers, not just a small fraction of them. “The  
3 existence of some satisfied customers does not constitute a defense under the FTC [Act].” *Amy*  
4 *Travel Service*, 875 F.2d at 572.  
5

6 In addition, Defendants’ claims that they will obtain auto loan modifications that make  
7 consumers’ monthly payments substantially more affordable are likely to be unsubstantiated.  
8 Defendants claim that they can reduce consumers’ monthly payments anywhere between 30% to  
9 50%. Even assuming a lender or finance company agrees to a modification at all or to negotiate  
10 with a third party, such claims are unrealistic. (PX02 at 1 ¶ 3.) Further, typical auto loan  
11 modifications involve either deferring missed payments to the end of the loan or extending the  
12 loan term to reduce monthly payment, which actually increases the total money paid in interest,  
13 even with a lower interest rate. (*Id.* ¶ 4.) Creditors rarely reduce the principal amount or interest  
14 rate in auto loan modifications. (*Id.*) Thus, Defendants’ performance claims are neither true nor  
15 substantiated.  
16

17  
18 **ii. Count II: Defendants Misrepresent That They Will**  
19 **Give Refunds If They Fail to Obtain a Vehicle Loan**  
20 **Modification**

21 As described above, Defendants explicitly claim that they will refund consumers’ money  
22 if Defendants fail to obtain a loan modification. However, in most cases, Defendants do not  
23 grant refunds. Thus, Defendants’ promises of refunds are false.  
24  
25  
26  
27

1                                   **b.     The Individual Defendant Is Liable for Injunctive and**  
2                                   **Monetary Relief**

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

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

20             Here, Freeman is the sole owner and officer of HCO. This alone establishes his ability to  
21 control the corporate acts and practices of the common enterprise. *See, e.g., FTC v. World*  
22 *Media Brokers*, 415 F.3d 758, 764-65 (7th Cir. 2005) (corporate officer "hard-pressed to  
23 establish that he lacked authority to control" over corporate entity). As discussed, he is the  
24

1 registrant of Defendants' Internet website and paid for them with his personal credit card. He is  
2 signatory on Defendants' bank accounts. He responds to BBB complaints and sends emails to  
3 consumers. Finally, there is strong evidence that Freeman personally engages in deceptive sales  
4 calls.<sup>7</sup> Given that the corporate Defendant's entire business model consists of making false  
5 representations, there can be little doubt that Freeman has knowledge of the corporate  
6 defendant's wrongful acts, and, accordingly, he should be enjoined from violating the FTC Act  
7 and held liable for consumer redress or other monetary relief in connection with their activities.  
8 Preliminary relief, therefore, is appropriate against him.  
9

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

11 The public interest in halting Defendants' misrepresentations and deceptive claims about  
12 their vehicle loan modification services far outweighs any interest Defendants may have in  
13 continuing to deceptively market their services. In balancing the equities between the parties,  
14 the public equities must be given far greater weight. *Affordable Media*, 179 F.3d at 1236.  
15 Because Defendants "can have no vested interested in a business activity found to be illegal,"  
16 *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972) (internal quotations and  
17 citations omitted), a balance of equities tips decidedly toward granting the requested relief. *See*  
18 *also CFTC v. British American Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977)  
19 (quoting *FTC v. Thomsen-King & Co.*, 109 F.2d 516, 519 (7th Cir. 1940)) ("[a] court of equity is  
20 under no duty 'to protect illegitimate profits or advance business which is conducted illegally'").  
21  
22  
23

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24  
25 <sup>7</sup> When an FTC investigator called Defendants' toll free telephone number, she spoke with a  
26 representative who identified himself as Patrick. (PX01 at 3 ¶ 7, Att. D at 53.) A review of  
27 checks written by Defendant HCO (presumably, including checks to employees) suggests that  
there are no employees named Patrick. (*Id.* at 7-8 ¶ 15.) Thus, the "Patrick" with whom the  
FTC investigator spoke is likely Patrick Freeman.

1 Granting such relief is also necessary because Defendants' conduct indicates that they  
2 will likely continue to deceive the public. *Five-Star Auto Club*, 97 F. Supp. 2d at 536 (“[P]ast  
3 illegal conduct is highly suggestive of the likelihood of future violations.”); *SEC v. R.J. Allen &*  
4 *Assoc., Inc.*, 386 F. Supp. 866, 877 (S.D. Fla. 1974) (past misconduct suggests likelihood of  
5 future violations); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir.), *cert. denied*, 442 U.S. 921  
6 (1979).

8 In contrast, the private equities in this case are not compelling. Compliance with the law  
9 is hardly an unreasonable burden. *See World Wide Factors*, 882 F.2d at 347 (stating “there is no  
10 oppressive hardship to Defendants in requiring them to comply with the FTC Act [or] refrain  
11 from fraudulent representation . . .”). Because the injunction will preclude only harmful, illegal  
12 behavior, the public equities supporting the proposed injunctive relief outweigh any burden  
13 imposed by such relief on Defendants. *See, e.g., Nat’l Soc’y of Prof. Eng’rs. v. United States*,  
14 435 U.S. 679, 697 (1978).

16 **IV. THE SCOPE OF THE PROPOSED TRO IS APPROPRIATE IN LIGHT OF**  
17 **DEFENDANTS’ CONDUCT**

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

22 **A. Conduct Relief**

23 To prevent ongoing consumer injury, the proposed temporary restraining order prohibits  
24 Defendants from making future misrepresentations concerning the provision of vehicle loan  
25 assistance relief services. As discussed above, this Court has broad equitable authority under  
26 Section 13(b) of the FTC Act to grant ancillary relief necessary to accomplish complete justice.  
27

1 *Singer*, 668 F.2d at 1113. These prohibitions do no more than order that Defendants comply  
2 with the FTC Act.

3         The provision barring Defendants from charging or requesting advance fees from  
4 consumers in connection with the sale of any vehicle loan assistance relief service is necessary to  
5 prevent ongoing consumer injury. This provision is justified by Defendants' illegal conduct and  
6 the high fees Defendants charge consumers who can least afford to pay them, resulting in  
7 devastating financial harm to many. The prohibition on advance fees also is consistent with  
8 recently promulgated federal regulations preventing advanced fees in connection with mortgage  
9 assistance relief services, *see* 16 C.F.R. § 322.5, and unsecured debt relief services, *see* 16  
10 C.F.R. § 310.4(a)(5). These regulations reflect widespread agreement that public policy favors  
11 delaying payment until such service providers actually perform their promised services, in light  
12 of the high risk for fraud coupled with enormous required fees. Indeed, before the promulgation  
13 of federal regulations banning advanced fees in the sale of mortgage assistance relief services,  
14 courts in the Ninth Circuit and elsewhere granted similar preliminary injunctive relief.<sup>8</sup>

15  
16  
17         As the evidence demonstrates, Defendants' conduct fits squarely within this description,  
18 and, thus, public policy militates against permitting Defendants to continue collecting advance  
19 fees. As discussed above, Defendants charge hundreds of dollars in up-front fees, and then do  
20 little or nothing of value for consumers after receiving payment. Those consumers who fall prey  
21 to Defendants' deceptive marketing can little afford to have hundreds of dollars taken by  
22

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23  
24 <sup>8</sup> *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 Defendants or tied up with Defendants for months while little or nothing is done on their behalf.  
2 These consumers otherwise could use the money to continue paying their vehicle loans or reduce  
3 other debt. Moreover, many consumers lose valuable time they otherwise could have used to  
4 work directly with their lenders. The requested preliminary injunctive relief, then, is necessary  
5 to protect consumers from injury during the litigation and stop further harm.  
6

7 **B. Temporary Disabling of Websites**

8 An order provision temporarily disabling Defendants' websites and suspending their  
9 domain name registrations is necessary to prevent further consumer injury. As discussed above,  
10 Defendants operate at least one active Internet website containing deceptive representations.  
11 Suspending their domain name registrations will ensure that Defendants cannot evade  
12 compliance with any preliminary relief entered by this Court pending final determination of this  
13 matter.  
14

15 This Court has the authority to direct third parties to effectuate the purpose of the TRO.  
16 *Cf. Deckert v. Independence Shares Corp.*, 311 U.S. 282, 290 (1940) (holding that courts have  
17 authority to direct third parties to preserve assets); *United States v. First Nat'l City Bank*, 379  
18 U.S. 378, 385 (1965); *Reebok Int'l, Ltd. v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995);  
19 *Waffenschmidt v. Mackay*, 763 F.2d 711, 714 (5th Cir. 1985). Other courts have granted similar  
20 relief against other defendants who have utilized Internet websites to promote fraud.<sup>9</sup>  
21  
22  
23

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24  
25 <sup>9</sup> 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           **C.       Preservation of Records**

2           In addition, the proposed order contains a provision directing Defendants to preserve  
3 records, including electronic records, and evidence. It is appropriate to enjoin Defendants  
4 charged with deception from destroying evidence and doing so would place no significant  
5 burden on them. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990)  
6 (characterizing such orders as “innocuous”). Because Defendants’ operation appears to be  
7 mostly Internet based, absent such a provision, Defendants could easily delete relevant evidence.  
8

9           **D.       Expedited Discovery**

10           The FTC also seeks limited expedited discovery to identify possible additional  
11 defendants, locate documents pertaining to Defendants’ businesses, and locate Defendants,  
12 should they attempt to evade service. These types of discovery orders reflect the Court’s broad  
13 and flexible authority in equity to grant preliminary emergency relief in cases involving the  
14 public interest. *See Porter*, 328 U.S. at 398; *FSLIC v. Dixon*, 835 F.2d 554, 562 (5th Cir. 1987);  
15 *Federal Express Corp. v. Federal Expresso, Inc.*, 1997 U.S. Dist. LEXIS 19144, at \* 6  
16 (N.D.N.Y. Nov. 24, 1997) (early discovery “will be appropriate in some cases, such as those  
17 involving requests for a preliminary injunction”) (quoting commentary to Fed. R. Civ. P. 26(d));  
18 *Benham Jewelry Corp. v. Aron Basha Corp.*, 1997 U.S. Dist. LEXIS 15957, at \*58 (S.D.N.Y.  
19 July 18, 1997) (courts have broad powers to grant expedited discovery).  
20  
21

22           **E.       Financial Accounting**

23           In addition to injunctive relief, the FTC will seek a final order with monetary equitable  
24 relief. To determine the scope of the harm and identify assets to effectuate final relief, the FTC  
25 requests that the Court issue an order requiring an immediate accounting of Defendants’ assets  
26 and any transfers by Defendants, of assets worth \$1,000 or more. The FTC also requests that the  
27

1 Court order Defendants to complete and return to the FTC financial statements on the forms  
2 attached to the proposed order. An accounting and financial statements will increase the  
3 likelihood of identifying assets pending final determination of this matter. *See, e.g., SEC v.*  
4 *Bankers Alliance Corp.*, 881 F. Supp. 673, 676 (D.D.C. 1995); *SEC v. Parkersburg Wireless*  
5 *LLC*, 156 F.R.D. 529, 532 n. 3 (D.D.C. 1994).

7 **V. CONCLUSION**

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

11 Dated: March 28, 2012

Respectfully submitted,

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