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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	P DEPUTY

1 WILLARD K. TOM
General Counsel

2 DEANYA T. KUECKELHAN
3 Regional Director

4 GARY D. KENNEDY, Okla. Bar No. 4961
JAMES E. ELLIOTT, Tex. Bar No. 06557100
5 ANNE D. LEJEUNE, Tex. Bar No. 24054286
LUIS H. GALLEGOS, Okla. Bar No. 19098
6 Federal Trade Commission
1999 Bryan Street, Suite 2150
7 Dallas, Texas 75201
(214) 979-9379; gkennedy@ftc.gov (Kennedy)
8 (214) 979-9373; jelliott@ftc.gov (Elliott)
(214) 979-9371; alejeune@ftc.gov (LeJeune)
9 (214) 979-9383; lgallegos@ftc.gov (Gallegos)
(214) 953-3079 (Fax)

SEALED

10 Attorneys for Plaintiff
11 FEDERAL TRADE COMMISSION

CV-12-914-PHX-DGC

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14
15 **Federal Trade Commission,**

16 Plaintiff,

17 v.

18 **North America Marketing and Associates, LLC,**
a Nevada limited liability company;

19 **NAMAA, LLC,** a Nevada limited liability company;

20 **TM Multimedia Marketing, LLC,** a Nevada limited
21 liability company;

22 **TM Multimedia Marketing, LLC,** an Arizona
23 limited liability company;

24 **National Opportunities, LLC,** a Nevada limited
liability company;

25 **National Opportunities, LLC,** an Arizona limited
26 liability company;

27 **World Wide Marketing and Associates, LLC,**
a Nevada limited liability company;

28 **Wide World of Marketing, LLC,** a Nevada limited
liability company, a/k/a WWM, LLC;

Civil Action No.

**COMPLAINT FOR
INJUNCTIVE AND
OTHER EQUITABLE
RELIEF**

UNDER SEAL

1 **Precious Metals Resource, LLC**, a Nevada limited
liability company;

2 **Guaranteed Communications, LLC**, a Nevada
3 limited liability company;

4 **Superior Multimedia Group, LLC**, a Nevada
5 limited liability company;

6 **Kimberly Joy Birdsong**, individually and as an
officer of **TM Multimedia Marketing, LLC**
7 **(Nevada)**, and as an officer of **Precious Metals**
Resource, LLC;

8 **Joseph Wayne Lowry, a/k/a Joey Lowry, Joey**
Lowe, individually and as a manager of **World**
9 **Wide Marketing and Associates, LLC**; as a manager
of **Wide World of Marketing, LLC**; as a manager of
10 **National Opportunities, LLC (Nevada)**; as a
manager of **Precious Metals Resource, LLC**; a
11 manager of **North America Marketing and**
Associates, LLC; and as a manager of **NAMAA,**
12 **LLC**;

13 **Tracy Jerome Morris**, individually and as a manager
of **TM Multimedia Marketing, LLC (Arizona)**;

14 **Sarah Lynne Stapel**, an individual;

15 **Alysse Maloi Tramel**, individually and doing
16 business as **Time Management Multimedia**
Marketing, LLC, which does business as **TM**
17 **Multimedia, LLC**; as an officer of **North America**
Marketing and Associates, LLC; as an officer of **TM**
18 **Multimedia Marketing, LLC (Nevada)**; as an officer
of **NAMAA, LLC**; and as an officer of **Guaranteed**
19 **Communications, LLC**;

20 **Daniel Vigil**, individually and as a manager of
National Opportunities, LLC (Arizona);

21
22 Defendants, and

23 **Sheila Ann Lowry**, an individual;

24 **Carl Edward Morris, Jr.**, individually and as an
officer of **Marketing Strategies, LLC**; and

25 **Marketing Strategies, LLC**, an Arizona limited
liability company,

26
27 Relief Defendants.

28

1 Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:
2

3 1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade
4 Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and
5 Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108,
6 as amended, to obtain temporary, preliminary, and permanent injunctive relief, rescission or
7 reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten
8 monies, and other equitable relief for Defendants’ acts or practices in violation of Section
9 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (“TSR”),
10 16 C.F.R. Part 310, as amended, in connection with the sale and offering for sale of home-
11 based Internet business opportunities.

12 **JURISDICTION AND VENUE**

13 2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1337(a),
14 and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

15 3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15
16 U.S.C. § 53(b).

17 **PLAINTIFF**

18 4. The FTC is an independent agency of the United States Government created
19 by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C.
20 § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The
21 FTC also enforces the Telemarketing Act, under which the FTC promulgated and enforces
22 the TSR, 16 C.F.R. Part 310, as amended, which prohibits deceptive or abusive telemarketing
23 practices.

24 5. The FTC is authorized to initiate federal district court proceedings, by its own
25 attorneys, to enjoin violations of the FTC Act and the TSR and to secure such equitable relief
26 as may be appropriate in each case, including rescission or reformation of contracts,
27 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C.
28 §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 6102(c), and 6105(b).

DEFENDANTS

1
2 6. Defendant North America Marketing and Associates, LLC (“NAMA”), is a
3 Nevada limited liability company with a mailing address of P.O. Box 46243, Denver,
4 Colorado 80201. NAMA transacts or has transacted business in this district and throughout
5 the United States. During all or part of the times material to this Complaint, acting alone or
6 in concert with others, NAMA has advertised, marketed, distributed, or sold the home-based
7 Internet business opportunities at issue in this Complaint to consumers throughout the United
8 States.

9 7. Defendant NAMAA, LLC (“NAMAA”), is a Nevada limited liability company
10 with a mailing address of P.O. Box 46243, Denver, Colorado 80201. NAMAA transacts or
11 has transacted business in this district and throughout the United States. During all or part
12 of the times material to this Complaint, acting alone or in concert with others, NAMAA has
13 advertised, marketed, distributed, or sold the home-based Internet business opportunities at
14 issue in this Complaint to consumers throughout the United States.

15 8. Defendant TM Multimedia Marketing, LLC (Nevada) (“TMMM (Nevada)”),
16 is a Nevada limited liability company with a mailing address of 1550 Larimer St., Suite 516,
17 Denver, Colorado 80202. TMMM (Nevada) transacts or has transacted business in this
18 district and throughout the United States. During all or part of the times material to this
19 Complaint, acting alone or in concert with others, TMMM (Nevada) has advertised,
20 marketed, distributed, or sold the home-based Internet business opportunities at issue in this
21 Complaint to consumers throughout the United States.

22 9. Defendant TM Multimedia Marketing, LLC (Arizona) (“TMMM (Arizona)”),
23 is an Arizona limited liability company with its office and principal place of business at
24 17956 W. Purdue Ave., Waddell, Arizona 85355. TMMM (Arizona) transacts or has
25 transacted business in this district and throughout the United States. During all or part of the
26 times material to this Complaint, acting alone or in concert with others, TMMM (Arizona)
27 has advertised, marketed, distributed, or sold the home-based Internet business opportunities
28 at issue in this Complaint to consumers throughout the United States.

1 10. Defendant National Opportunities, LLC (Nevada) (“NO (Nevada)”), is a
2 Nevada limited liability company with a mailing address of P.O. Box 3070, Littleton,
3 Colorado 80161. NO (Nevada) transacts or has transacted business in this district and
4 throughout the United States. During all or part of the times material to this Complaint,
5 acting alone or in concert with others, NO (Nevada) has advertised, marketed, distributed,
6 or sold the home-based Internet business opportunities at issue in this Complaint to
7 consumers throughout the United States.

8 11. Defendant National Opportunities, LLC (Arizona) (“NO (Arizona)”), is an
9 Arizona limited liability company with its office and principal place of business at 8217 S.
10 33rd Drive, Laveen, Arizona 85339. NO (Arizona) transacts or has transacted business in
11 this district and throughout the United States. During all or part of the times material to this
12 Complaint, acting alone or in concert with others, NO (Arizona) has advertised, marketed,
13 distributed, or sold the home-based Internet business opportunities at issue in this Complaint
14 to consumers throughout the United States.

15 12. Defendant World Wide Marketing and Associates, LLC (“WWMA”), is a
16 Nevada limited liability company with its principal place of business at 8547 E. Arapahoe
17 Road, Suite J-545, Greenwood Village, Colorado 80112. WWMA transacts or has transacted
18 business in this district and throughout the United States. During all or part of the times
19 material to this Complaint, acting alone or in concert with others, WWMA has advertised,
20 marketed, distributed, or sold the home-based Internet business opportunities at issue in this
21 Complaint to consumers throughout the United States.

22 13. Defendant Wide World of Marketing, LLC (“Wide World”), is a Nevada
23 limited liability company with its office and principal place of business at 8547 E. Arapahoe
24 Road, Suite J-545, Greenwood Village, Colorado 80112. Wide World transacts or has
25 transacted business in this district and throughout the United States. During all or part of the
26 times material to this Complaint, acting alone or in concert with others, Wide World has
27 advertised, marketed, distributed, or sold the home-based Internet business opportunities at
28 issue in this Complaint to consumers throughout the United States.

1 14. Defendant Precious Metals Resource, LLC (“PMR”), is a Nevada limited
2 liability company with a mailing address of 1550 Larimer Street, Suite 641, Denver,
3 Colorado 80202. PMR transacts or has transacted business in this district and throughout the
4 United States. During all or part of the times material to this Complaint, acting alone or in
5 concert with others, PMR has advertised, marketed, distributed, or sold the home-based
6 Internet business opportunities at issue in this Complaint to consumers throughout the United
7 States.

8 15. Defendant Guaranteed Communications, LLC (“GC”), is a Nevada limited
9 liability company with its office and principal place of business at 1400 Glenarm Place, Suite
10 301, Denver, Colorado 80202. GC transacts or has transacted business in this district and
11 throughout the United States. During all or part of the times material to this Complaint,
12 acting alone or in concert with others, GC has advertised, marketed, distributed, or sold the
13 home-based Internet business opportunities at issue in this Complaint to consumers
14 throughout the United States.

15 16. Defendant Superior Multimedia Group, LLC (“SMG”), is a Nevada limited
16 liability company with a mailing address of 303 S. Broadway St., Suite 200-310, Denver,
17 Colorado 80209. SMG transacts or has transacted business in this district and throughout the
18 United States. During all or part of the times material to this Complaint, acting alone or in
19 concert with others, SMG has advertised, marketed, distributed, or the sold home-based
20 Internet business opportunities at issue in this Complaint to consumers throughout the United
21 States.

22 17. Defendant Kimberly Joy Birdsong is an Arizona resident. She is an officer of
23 Defendants TMMM (Nevada) and PMR and has signature authority on their bank accounts.
24 Birdsong is listed on telephone records as the primary contact for SMG, and SMG’s mail is
25 forwarded to Birdsong’s Arizona address. At all times material to this Complaint, acting
26 alone or in concert with others, she has formulated, directed, controlled, had the authority to
27 control, or participated in the acts and practices set forth in this Complaint. Defendant
28

1 Birdsong, in connection with the matters alleged here, transacts or has transacted business
2 in this district and throughout the United States.

3 18. Defendant Joseph Wayne Lowry is a Colorado resident. He is a managing
4 member of Defendants WWMA, Wide World, NO (Nevada), NAMA, NAMAA, and PMR
5 and has signature authority on their bank accounts. At all times material to this Complaint,
6 acting alone or in concert with others, he has formulated, directed, controlled, had the
7 authority to control, or participated in the acts and practices set forth in this Complaint.
8 Defendant Lowry, in connection with the matters alleged here, transacts or has transacted
9 business in this district and throughout the United States.

10 19. Defendant Tracy Jerome Morris is an Arizona resident and a manager of
11 Defendant TMMM (Arizona). Morris and TMMM (Arizona) assisted NO (Nevada) in the
12 operation of Defendants' business scheme. At all times material to this Complaint, acting
13 alone or in concert with others, he has formulated, directed, controlled, had the authority to
14 control, or participated in the acts and practices set forth in this Complaint. Defendant
15 Morris, in connection with the matters alleged here, transacts or has transacted business in
16 this district and throughout the United States.

17 20. Defendant Sarah Lynne Stapel is a Colorado resident. Stapel opened a post
18 office box for NAMA and two UPS Store mailboxes for TMMM (Nevada). She is the
19 primary contact on the payment processor accounts of WWMA and NO (Nevada) and has
20 earned wages from WWMA and NAMA. At all times material to this Complaint, acting
21 alone or in concert with others, she has formulated, directed, controlled, had the authority to
22 control, or participated in the acts and practices set forth in this Complaint. Defendant
23 Stapel, in connection with the matters alleged here, transacts or has transacted business in
24 this district and throughout the United States.

25 21. Defendant Alyisse Maloi Tramel is an Arizona resident and is an officer of GC,
26 TMMM (Nevada), NAMA, and NAMAA, and is also doing business as Time Management
27 Multimedia Marketing, LLC, which is doing business as TM Multimedia, LLC ("Time
28 Management"). At all times material to this Complaint, acting alone or in concert with

1 others, he has formulated, directed, controlled, had the authority to control, or participated
2 in the acts and practices set forth in this Complaint. Defendant Tramel, in connection with
3 the matters alleged here, transacts or has transacted business in this district and throughout
4 the United States.

5 22. Defendant Daniel Vigil is a manager of Defendant NO (Arizona). Vigil and
6 NO (Arizona) assisted NO (Nevada) in the operation of Defendants' business scheme. At
7 all times material to this Complaint, acting alone or in concert with others, he has formulated,
8 directed, controlled, had the authority to control, or participated in the acts and practices set
9 forth in this Complaint. Defendant Vigil, in connection with the matters alleged here,
10 transacts or has transacted business in this district and throughout the United States.

11 23. Relief Defendant Sheila Ann Lowry is an individual who has received funds
12 that can be traced directly to Defendants' deceptive and unlawful acts or practices alleged
13 below, and she has no legitimate claim to those funds.

14 24. Relief Defendant Carl Edward Morris, Jr. is an individual who has received
15 funds that can be traced directly to Defendants' deceptive and unlawful acts or practices
16 alleged below, and he has no legitimate claim to those funds. Relief Defendant Morris
17 resides in this district.

18 25. Relief Defendant Marketing Strategies, LLC ("MS") is an Arizona limited
19 liability company that has received funds that can be traced directly to Defendants' deceptive
20 and unlawful acts or practices alleged below, and it has no legitimate claim to those funds.
21 MS's principal place of business is in this district.

22 **COMMON ENTERPRISE**

23 26. Defendants NAMA, NAMAA, NO (Nevada), NO (Arizona), Wide World,
24 and PMR (the "Initial Sales Defendants"); WWMA, TMMM-NV, TMMM-AZ, and SMG
25 (the "Upsell Defendants"); and GC (the "Business Services Defendant") (collectively, the
26 "Corporate Defendants") have operated as a common enterprise while engaging in the
27 deceptive acts and practices alleged in this Complaint. Defendants have conducted the
28 business practices described below through interrelated companies that have common

1 managers, business functions, employees, office locations, and mailing addresses.
2 Because these Corporate Defendants have operated as a common enterprise, each of them
3 is jointly and severally liable for the acts and practices alleged below. Individual
4 Defendants Kimberly Joy Birdsong, Joseph Wayne Lowry, Tracy Jerome Morris, Sarah
5 Lynne Stapel, Alyisse Maloi Tramel, and Daniel Vigil, acting individually or jointly, have
6 formulated, directed, controlled, have the authority to control, or have participated in the
7 acts and practices of the Corporate Defendants that constitute the common enterprise.

8 **COMMERCE**

9 27. At all times relevant to this Complaint, Defendants have maintained a
10 substantial course of trade in or affecting commerce, as “commerce” is defined in Section
11 4 of the FTC Act, 15 U.S.C. § 44.

12 **DEFENDANTS’ BUSINESS ACTIVITIES**

13 28. Since at least 2006, and continuing thereafter, Defendants have marketed
14 their home-based Internet business opportunities to consumers throughout the United
15 States and Canada. These business opportunities offer consumers an opportunity to
16 operate their own Internet website, which Defendants represent will earn commission-
17 based income for the website’s owner.

18 29. The Initial Sales Defendants typically contact these consumers through
19 telemarketing sales calls made at a call center operated by GC, the Business Services
20 Defendant. Defendants also maintain websites, accessible to the general public, where
21 consumers can learn about Defendants’ business opportunities. For example, Defendants
22 have used, among others, the following websites: www.3waystoearn.com,
23 www.tnmmarketing.com, www.tnmmultimediamarketing.com,
24 www.nationalopportunitiesllc.com, www.wwmallc.com,
25 worldwidemarketingandassociates.com, and www.wideworldmarketing.com.
26 Defendants’ websites invite interested consumers to provide their names and phone
27 numbers online so that Defendants may contact them by telephone.

28

1 30. During the initial sales calls, the Initial Sales Defendants offer what they
2 refer to as a turn-key, money-back guaranteed home-based Internet business opportunity
3 that gives the consumer the ability to make thousands of dollars. Defendants claim that
4 their business opportunity has unlimited growth and high earning potential. For example,
5 a salesman for PMR – the most recent Initial Sales Defendant– told an FTC Investigator
6 that the customer “could make more than the average person makes in an entire year.”

7 31. In exchange for fees ranging from \$100 to \$400, the Initial Sales
8 Defendants promise to build and host a website for the consumers that will be affiliated or
9 connected with the websites of “Fortune 500” retail companies, such as Wal-Mart, Best
10 Buy, and Starbucks. Defendants claim that consumers will earn commission income
11 every time Internet users click through the consumers’ website and make purchases from
12 one of those retailers.

13 32. The Initial Sales Defendants tell consumers that Defendants will do
14 everything to get the consumers’ website up and running and that the business requires no
15 additional monetary investment. Defendants represent that they will provide the services
16 of a business professional or a marketing coach to provide free consultation, especially in
17 the early stages of the new business. Defendants claim that, with the assistance of these
18 experts, consumers will make substantial profits. In reality, Defendants’ marketing coach
19 attempts to upsell expensive, but useless, marketing services. They also offer a money-
20 back guarantee and claim that, if purchasers are not satisfied, Defendants will refund their
21 money in the first year.

22 33. Relying upon the Initial Sales Defendants’ representations described above,
23 many consumers purchase Defendants’ business opportunity, authorizing Defendants to
24 charge their credit cards or debit their checking accounts for fees generally ranging from
25 \$100 to \$400. Consumers ultimately derive little, if any, income from the websites they
26 purchase.

27 34. Defendants’ website sale is little more than a prelude to the second stage of
28 Defendants’ marketing scheme. Soon after the website purchase, the Upsell Defendants

1 attempt to sell an advertising package to consumers, ostensibly designed to promote the
2 website and generate increased sales. Defendants have most recently marketed the
3 advertising package, which typically costs between \$5,000 to \$20,000, through SMG.
4 Defendants claim that the advertising package will generate sales of \$3,000 to \$20,000 a
5 month, depending upon the size of the package purchased by consumers.

6 35. Despite the Upsell Defendants' representing that their advertising package
7 will drive "targeted visitors" to the consumer's website and result in sales, the package
8 fails to generate any significant sales commissions, let alone the \$3,000 to \$20,000 a
9 month in promised sales. Some consumers who complain to the company are again
10 upsold thousands of dollars in additional advertising services.

11 36. After consumers purchase the advertising packages, they encounter
12 difficulty reaching Defendants' representatives to discuss their website or obtain
13 "coaching" assistance. Instead, consumers reach voice mail extensions or are advised that
14 a representative will have to call them back.

15 37. While Defendants sometimes honor refund requests for the cost of the
16 websites, they routinely deny refunds to consumers who purchase the more expensive
17 advertising packages.

18 38. When consumer complaints mount, Defendants begin shuttering their
19 operations and start the scam over, operating under new business names. Because the
20 prior companies go out of business, it becomes impossible for consumers doing business
21 with them to receive refunds.

22 39. Most consumers who purchase the Initial Sales Defendants' home-based
23 Internet business opportunity do not earn any profits, regardless of the amount of their
24 investment or whether they purchased the Upsell Defendants' additional advertising
25 packages.

26 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

27 40. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or
28 deceptive acts or practices in or affecting commerce.

1 46. In truth and in fact, in numerous instances in which Defendants have made
2 the representations set forth in Paragraph 45 of this Complaint, purchasers do not receive
3 access to business experts, business professionals, and marketing coaches.

4 47. Therefore, Defendants' representations set forth in Paragraph 45 are false
5 and misleading and constitute deceptive acts or practices in violation of Section 5(a) of
6 the FTC Act, 15 U.S.C. § 45(a).

7 **VIOLATIONS OF THE FTC TELEMARKETING SALES RULE**

8 48. Congress directed the FTC to prescribe rules prohibiting abusive and
9 deceptive telemarketing acts or practices under the Telemarketing Act, 15 U.S.C.
10 §§ 6101-6108, in 1994. The FTC adopted the original Telemarketing Sales Rule in 1995,
11 extensively amended it in 2003, and amended certain sections thereafter.

12 49. The TSR prohibits sellers and telemarketers from misrepresenting any
13 material aspect of an investment opportunity, including, but not limited to, risk, liquidity,
14 earnings potential, or profitability. 16 C.F.R. § 310.3(a)(2)(vi).

15 50. The TSR prohibits sellers and telemarketers from misrepresenting, directly
16 or by implication, any material aspect of the performance, efficacy, nature, or central
17 characteristics of goods or services that are the subject of a sales offer. 16 C.F.R.
18 § 310.3(a)(2)(iii).

19 51. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as
20 defined in the TSR, 16 C.F.R. § 310.2(aa), (cc), and (dd).

21 52. The home-based Internet business opportunity Defendants offer is a
22 business opportunity or an "investment opportunity" as that term is defined in the TSR,
23 16 C.F.R. § 310.2 (q).

24 53. Under Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and
25 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the TSR constitute
26 unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a)
27 of the FTC Act, 15 U.S.C. § 45(a).

28

COUNT III

1
2 54. In numerous instances, in connection with the marketing, offering for sale,
3 or sale of Defendants' home-based Internet business opportunities, Defendants represent,
4 directly or indirectly, expressly or by implication that

5 (a) Consumers who purchase and use the website sold by Defendants are
6 likely to earn substantial income; or

7 (b) Consumers who purchase and use the advertising package sold by
8 Defendants will quickly earn back the cost, or substantially more than the cost, of the
9 advertising package.

10 55. In truth and in fact, in numerous instances in which Defendants have made
11 the representations set forth in Paragraph 54 of this Complaint,

12 (a) Consumers who purchase and use the website offered by Defendants
13 do not earn substantial income; and

14 (b) Consumers who purchase and use the advertising package sold by
15 Defendants do not quickly earn back the cost, or substantially more than the cost, of the
16 advertising package.

17 56. Defendants' acts or practices, as described in Paragraph 54 above, violate
18 Section 310.3(a)(2)(vi) of the TSR, 16 C.F.R. § 310.3(a)(2)(vi).

19 **COUNT IV**

20 57. In numerous instances, in connection with the marketing, offering for sale,
21 or sale of Defendants' home-based Internet business opportunities, Defendants represent,
22 directly or indirectly, expressly or by implication, that their business experts, business
23 professionals, and marketing coaches will provide purchasers with substantial assistance
24 in operating their home-based Internet businesses.

25 58. In truth and in fact, in numerous instances in which Defendants have made
26 the representations set forth in Paragraph 57 of this Complaint, purchasers do not receive
27 access to business experts, business professionals, and marketing coaches.
28

1 Dated: April 30, 2012

Respectfully submitted,

2 WILLARD K. TOM
3 General Counsel

4 DEANYA T. KUECKELHAN
5 Regional Director



6
7 GARY D. KENNEDY, Okla. Bar No. 4961
8 JAMES E. ELLIOTT, Tex. Bar No. 06557100
9 ANNE D. LEJEUNE, Tex. Bar No. 24054286
10 LUIS H. GALLEGOS, Okla. Bar No. 19098
11 Federal Trade Commission
12 1999 Bryan Street, Suite 2150
13 Dallas, Texas 75201
14 (214) 979-9379; gkennedy@ftc.gov (Kennedy)
15 (214) 979-9373; jelliott@ftc.gov (Elliott)
16 (214) 979-9371; alejeune@ftc.gov (LeJeune)
17 (214) 979-9383; lgallegos@ftc.gov (Gallegos)
18 (214) 953-3079 (fax)

19 Attorneys for Plaintiff
20 FEDERAL TRADE COMMISSION
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