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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 vs.

18 AMERICAN FINANCIAL BENEFITS CENTER,
19 a corporation, also d/b/a AFB and AF STUDENT
20 SERVICES;

21 AMERITECH FINANCIAL, a corporation;

22 FINANCIAL EDUCATION BENEFITS CENTER,
23 a corporation; and

24 BRANDON DEMOND FRERE, individually and
25 as an officer of AMERICAN FINANCIAL
26 BENEFITS CENTER, AMERITECH
27 FINANCIAL, and FINANCIAL EDUCATION
28 BENEFITS CENTER,

Defendants.

Case No. 18-cv-00806-SBA

**FEDERAL TRADE COMMISSION'S
MOTION FOR PRELIMINARY
INJUNCTION, AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: May 9, 2018

Time: 1:00 p.m.

Location: Courtroom 210
1301 Clay Street, 2nd Floor
Oakland, CA 94612

Judge: Hon. Sandra Brown
Armstrong

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1 **I. NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that on May 9, 2018 at 1:00 p.m., or as soon thereafter as the
3 matter can be heard, in the courtroom of U.S. District Judge Sandra Brown Armstrong of the
4 Northern District of California, 1301 Clay Street, Oakland, California, the Federal Trade
5 Commission (“FTC” or “Commission”) will respectfully move the Court for an order granting a
6 preliminary injunction against Defendants to stop continuing violations of Section 5 of the FTC
7 Act, 15 U.S.C. § 45, and the Telemarketing Sales Rule (“TSR”), 16 C.F.R. pt. 310.

8 To protect consumers from additional harm and preserve assets for eventual restitution to
9 victims, the FTC asks this court to issue a preliminary injunction including appointment of a
10 temporary receiver. A neutral receiver would prevent further harm to consumers and would
11 locate and secure assets and records without disrupting any legitimate business activity.

12 **II. INTRODUCTION**

13 The FTC seeks a preliminary injunction to halt a deceptive debt relief operation that has
14 bilked consumers out of millions of dollars. Since 2014, Defendants have operated a sprawling
15 student loan debt relief enterprise. Defendants misrepresent the cost and features of federal
16 student loan repayment and forgiveness programs in order to extract fees from the very
17 struggling consumers these programs are designed to help. To lure consumers, Defendants send
18 mailers claiming consumers are eligible for federal programs that would permanently reduce
19 their monthly loan payments or result in “total loan forgiveness.” Defendants charge consumers
20 an advance fee of between \$600 and \$800 purportedly to enroll them in these federal programs.
21 In addition to charging illegal advance fees, Defendants collect and retain monthly fees that
22 consumers believe are being applied to pay down their loans. Consumers often only discover
23 that the fees did not go to paying off their loans, but instead went directly to Defendants, when
24 they receive a past due notice from their loan servicer. In many instances, not only has their loan
25 balance not diminished, but it has also accrued interest.

26 Over 300 consumers nationwide have complained about Defendants to government
27 agencies, their loan servicer, and the Better Business Bureau (“BBB”). Complaining consumers
28 consistently report the same deceptive practices alleged by the FTC in this case.

1 Along with this Memorandum, the FTC is submitting overwhelming evidence of
 2 Defendants' scheme. This evidence includes, among other things: hundreds of consumer
 3 complaints;¹ statements from Defendants' former employees that the company is a "scam";²
 4 recordings and transcripts of consumer calls and undercover calls by government investigators
 5 that capture Defendants' misrepresentations; declarations from consumers victimized by
 6 Defendants; a declaration from a servicer of federal loans that has received dozens of complaints
 7 about Defendants; a declaration from the BBB about the complaints it has received about
 8 Defendants and its investigation into Defendants' conduct; hundreds of consumer complaints
 9 about Defendants filed with the BBB, the FTC, or other government agencies; and financial
 10 records indicating that Defendants have dissipated their assets, and are likely to continue doing
 11 so unless the Court grants the requested relief.

12 **III. THE PARTIES**

13 **A. Plaintiff**

14 Plaintiff FTC is an independent agency of the United States Government created by
 15 statute. 15 U.S.C. §§ 41-58. The FTC's responsibilities include enforcing the FTC Act's
 16 prohibitions on unfair or deceptive conduct, 15 U.S.C. § 45(a), as well as enforcing the Rules it
 17 has promulgated under its rulemaking authority, including the Telemarketing Sales Rule
 18 ("TSR"), 16 C.F.R. pt. 310.

19 **B. Defendants**

20 Defendants **American Financial Benefits Center** ("AFBC"),³ **AmeriTech Financial**

22 ¹ Ortiz Att. EE-GG; Stiner Att. A; Lee Att. A-B. Throughout this document, declarations are
 23 cited to by the last name of the declarant and the paragraph of the declaration referenced (*i.e.*,
 24 Ortiz ¶ 1). Attachments to declarations are cited to by the declarant's last name and reference to
 the specific attachment (*i.e.*, Ortiz Att. A).

25 ² Dowdell Att. A-2 ("The company knows they are scamming people"); Stiner Att. L-11 ("It's a
 26 giant scam"); Stiner Att. J ("They have clients all over that they are scamming"); Hamilton ¶ 16
 27 ("they were running a scam"); Bufano ¶ 14 ("AFBC and AmeriTech are shady companies. They
 28 scam people by making it seem like clients' monthly payments are going towards their student
 loans, when in fact all the funds go to the company."); Martinez ¶ 14; *see also* Ortiz Att. HHH.

³ AFBC was incorporated in California in February 2011. Ortiz Att. A. AFBC has also done
 business as "AFB" and "AF Student Services." Rhode ¶¶ 5-6, Atts. C-D.

1 (“AmeriTech”),⁴ and **Financial Education Benefits Center** (“FEBC”)⁵ are California
 2 corporations holding themselves out as doing business in this district.⁶ As described below in
 3 Section VI.A, AFBC, AmeriTech, and FEBC (collectively “Corporate Defendants”) operate as a
 4 common enterprise to defraud consumers with their student loan debt relief scheme. Together,
 5 Corporate Defendants have collected over \$28 million from their 22,000 customers.⁷

6 Individual Defendant **Brandon Demond Frere** (“Frere”) owns and operates the
 7 Corporate Defendants.⁸ Frere resides in this district and, in connection with this matter, transacts
 8 or has transacted business in this district.⁹ As explained below in Section VI.B, Frere is
 9 individually liable for the Corporate Defendants’ actions.

10 **IV. DEFENDANTS’ UNLAWFUL BUSINESS PRACTICES**

11 Defendants capitalize on the financial hardship of many student loan borrowers.
 12 Defendants induce consumers to enroll in, and pay money for, their “student debt relief” program
 13 using a combination of lies, false promises, and calculated omissions. Defendants make false or
 14 unsubstantiated claims: (1) that consumers qualify for plans that will permanently lower their
 15 monthly loan payments and/or lead to loan forgiveness; and (2) that consumers’ monthly
 16 payments to Defendants will be applied towards consumers’ loans. Defendants also require
 17 consumers to provide advance payment for work to be performed relating to consumers’ student
 18 loan debts, in violation of the TSR.

19 Defendants tout themselves as experts in student loan debt relief,¹⁰ and consumers rely on
 20 this expertise when enrolling with Defendants.¹¹ Targeting consumers who are “unfamiliar or

21 _____
 22 ⁴ AmeriTech was incorporated in California in October 2015. Ortiz Att. D.

23 ⁵ FEBC was incorporated in California in October 2015. Ortiz Att. G.

24 ⁶ Ortiz ¶¶ 6, 8-9, 11-12, Atts. A-B, D-E, G-H.

25 ⁷ Ortiz Att. GGG at 2; George ¶ 8. This likely underestimates the fees Defendants have collected
 26 from consumers. The FTC has not obtained banking records for FEBC. Defendants have stated
 27 that FEBC’s finances are kept “completely separate” from those of AmeriTech. Ortiz Att. CCC
 28 ¶ 21. If this is accurate, FEBC likely collected funds not included in the \$28 million figure.

⁸ Ortiz Atts. A-B, D-E, G-H, EEE at 2-3 (Frere is the only owner with more than a 5% interest in
 each AFBC, AmeriTech, and FEBC.); *see infra*, Section VI.B.

⁹ Ortiz Att. B (listing Brandon Frere’s address as 925 Lakeville St., #175, Petaluma, CA 94952).

¹⁰ Ortiz Att. EEE at 7 (“The Companies are experts in understanding the student loan programs
 for which their customers are enrolled.”); Vildasol ¶ 5. Defendants refer to their employees as

1 frustrated” with the process and who “don’t have the time or knowledge to understand what is
 2 available to them,”¹² Defendants convince consumers to pay hundreds or thousands of dollars in
 3 fees. Defendants have failed to deliver the desired student loan relief to at least half of their
 4 customers,¹³ and some report that Defendants performed no work at all.¹⁴ According to a former
 5 employee, when the company changed its name to AmeriTech, a manager instructed employees
 6 to “stop working on AFBC client files and to focus on AmeriTech clients because they were
 7 paying more.”¹⁵

8 **A. Defendants Falsely Promise Fixed Monthly Loan Payments, Loan**
 9 **Forgiveness, and Eligibility for Government Programs**

10 In pitching their “program” to consumers, Defendants misrepresent both the nature of
 11 federal loan repayment programs *and* that consumers are eligible for the programs. The
 12 Department of Education (“ED”) offers income-driven repayment (“IDR”) programs that allow
 13 eligible borrowers to limit their monthly payments to a percentage of their discretionary monthly
 14 income.¹⁶ Some government programs provide loan forgiveness after the eligible borrower
 15 makes a specific number of qualifying payments.¹⁷ Consumers can apply for and enroll in IDR
 16 and loan forgiveness programs through ED or their student loan servicers at no cost.¹⁸

18 “underwriters” and “account specialists,” creating the impression that they are student loan
 19 specialists. Stiner Atts. BB at 11:6-8, CC at 10:17-21; Gonzalez Att. B at 6:17-19, 12:9-11,
 20 32:2-4. Defendants also claim to be “100 percent compliant with the Department of Education.”
 Ortiz Att. U at 4:11-13.

21 ¹¹ Vildasol ¶ 5; Carbonneau ¶ 4.

22 ¹² Ortiz Att. DDD, Ex. A at 2.

23 ¹³ Out of Defendants’ estimated 22,000 clients, approximately 11,000 are in forbearance and
 24 have not been accepted in a federal loan assistance program. Ortiz Att. GGG at 2; *see, e.g.*,
 25 Archibald ¶ 13; Bowles ¶¶ 12-14, 20; Carbonneau ¶ 9; Vildasol ¶¶ 10-11. *See also* Bufano ¶ 12
 (Former employee explained that “There were not enough people in the Operations Department
 to handle all the client files and applications. As a result, AFBC left many client loans in
 forbearance while working on their loan payment reduction applications. Many people paid
 AFBC money and the company did nothing for them.”).

26 ¹⁴ Emerson ¶¶ 14-16, 19; Olds ¶ 5; Sills ¶¶ 4, 7.

27 ¹⁵ Bufano ¶ 12.

28 ¹⁶ *See* <https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven>.

¹⁷ *Id.*

¹⁸ *Id.*; Lee ¶ 3.

1 It is not possible to promise specific loan forgiveness or to guarantee consumers a fixed
2 monthly payment amount for more than one year.¹⁹ Income and family size affect monthly loan
3 payment amounts and IDR program eligibility, and the borrower must certify these details
4 annually.²⁰ However, in order to entice consumers to enroll and pay their fees, Defendants
5 ignore the strict requirements of the government loan programs and guarantee consumers a set
6 monthly loan payment amount and/or that they will obtain loan forgiveness.²¹

7 **1. Defendants’ Mailers Falsely Promise Student Loan Payment**
8 **Reduction and Loan Forgiveness**

9 Starting with the first contact, Defendants misrepresent the features of IDR programs and
10 consumers’ eligibility for these programs. Defendants initiate contact through letters that invite
11 consumers to contact Defendants for “student loan payment reduction and forgiveness.”²² The
12 mailers have advertised that the addressee is “pre-qualified” or “eligible” for a time-sensitive²³
13 loan reduction and/or forgiveness program.²⁴ Defendants have even included a specific dollar
14 amount listing the savings the consumer could expect.²⁵ These communications have not
15 identified Defendants by name, rather, they are signed from the “Student Loan Department.”²⁶

16 **2. Defendants’ Sales Calls Reinforce False Promises**

17 Defendants continue to misrepresent the nature of the IDR programs when consumers

18 _____
19 ¹⁹ Lee ¶¶ 6-7. Defendants acknowledge that they cannot promise that student loan balances will
20 be reduced. Ortiz Att. DDD, Ex. A at 11-12. Defendants also acknowledge that they cannot
21 track and do not know the number of clients enrolled in loan forgiveness. Ortiz Att. GGG at 2.

22 ²⁰ Lee ¶¶ 6-7.

23 ²¹ Lee ¶¶ 6-7, Atts. A-B; Ortiz ¶ 48(b), Atts. U at 4:14-16 (“We can significantly reduce your --
24 you know, or give you loan forgiveness and, you know, get you back on track.”), EE, FF, JJ at
25 14:13-15:6 (“So a ten-year program total payment is \$79,852.80. That’s a savings of
26 \$136,147.20.”); Stahl Att. H at 19:15-19; Archibald ¶ 4; Bowles ¶¶ 4-5; Carbonneau ¶ 5; Davis ¶
27 3; Marshall ¶ 4; Olds ¶ 3; Sills ¶ 3; Vildasol ¶¶ 4, 7; *see generally* Stiner Att. A.

28 ²² Ortiz Att. S; Marshall ¶ 3; Davis ¶ 3; Emerson ¶ 3; Stiner Atts. F, G at 3-4, H at 4-6, QQ;
Rhode Att. D.

²³ Stiner Atts. QQ (“Failure to respond to this letter may void company offer for services.”), H at
4 (same), T at 5-6 (“FINAL NOTICE”; “FAILURE TO RESPOND TO THIS NOTICE COULD
CANCEL THIS OFFER”).

²⁴ Rhode Att. D at 9-10; Stiner Atts. H at 4, QQ.

²⁵ Rhode Att. D at 9-10.

²⁶ Stiner Atts. F, G at 3-4, H at 4, QQ.

1 call the number listed on the mailer and reach Defendants’ sales team. While describing their
 2 services, Defendants’ agents assure consumers that they are eligible for “the program” and for a
 3 payment plan that will allow them to pay lowered fixed monthly student loan payments for a
 4 fixed time period.²⁷ Defendants also hide their fee structure during their sales calls. In
 5 describing consumers’ payments, they conflate student loan payments and Defendants’ fees,
 6 referring to these amounts collectively as payments to “the program.”²⁸ Defendants further
 7 confuse consumers about the government IDR programs and Defendants’ role by providing other
 8 false information.²⁹ Defendants promise that, after the consumer makes a set number of monthly
 9 payments to “the program,” their loan balance will be reduced or eliminated.³⁰ For example, in
 10 one recorded call with a consumer, Defendants explained:

11 “[F]or the first 11 months, your payment will be [\$]207. . . . And then on the 12th
 12 month, your . . . payment will drop down to \$126.81 [Y]ou’d only have to
 13

14 ²⁷ Stiner Att. BB at 24:2-8, 47:8-48:18 (describing the payment plan as “total program costs” and
 15 confirming that the consumer is eligible for the specific program and payments described);
 16 Carbonneau ¶ 5, Att. B; Olds ¶ 3, Att. A; Archibald ¶ 3, Att. A (“[G]ive me a call so we can start
 17 helping to reduce your Student Loan payments, or put you on track for total 100% forgiveness.
 18 Don’t wait!”); Stahl Att. H at 19:15-19.

19 ²⁸ Ortiz Atts. ZZ at 5:15-22, 7:6-13, 10:11-12:9 (Talking to a consumer who is unemployed and
 20 living in a homeless shelter, Defendants tell her that the “program” cost is \$82 for 33 months and
 21 \$69 monthly thereafter. Defendants do not disclose that any of these monthly costs would go to
 22 Defendants as fees. Defendants tell her, “[Y]ou would have to pay the \$82. These are federal
 23 programs, and payments need to be made on time.”), XX at 19:15-23:10, 24:18-23, 30:13-32:14
 24 (Defendants describe only “program” costs, referenced as “the Department of Education’s
 25 program,” and do not explain fees involved. Only when the consumer asks about the “cost to be
 26 able to enroll in the program” do Defendants allude to any fees, without giving any specific
 27 amounts.), VV at 9:13-10:2, 11:3-6, 11:20-12:8, 15:19-23 (When the consumer repeatedly asked
 28 about the nature of the program, Defendants offered only that “our payments could be way lower
 than the amount that you’re paying.”); Marshall ¶¶ 13, 15, Att. A; Davis ¶ 5; Stiner Att. DD at
 27:6-28:3, 33:9-24, 34:7-25; Gonzalez Att. B at 39:6-15.

²⁹ Gonzalez Att. B at 32:17-18 (“There is no interest in a federal program.”); Ortiz Atts. VV at
 14:8-15:16 (“You’re not paying your loan off, okay? You’re paying [the loan servicer] . . . to do
 nothing for you at this time. . . . That’s not going towards your loan.”), XX at 24:16-17.

³⁰ Ortiz Atts. TT at 6:24-7:18, 14:1-15, 14:25-15:7 (“I was told when I signed up for this
 program . . . a year and a half ago after I worked for a government agency for a year that my
 loans would be forgiven. . . . [I]t’s all bait-and-switch”), U, JJ at 14:13-15:6, XX at 25:5-
 16; Stiner Atts. BB at 24:2-8, DD at 11:17-25, 22:2-12, I; Archibald ¶ 4; Lee ¶ 7, Atts. A-B;
 Carbonneau ¶ 5, Att. B; Davis ¶ 3; Marshall ¶ 4; Vildasol ¶ 4; Gonzalez Att. B at 55:14-56:6.

1 pay into the program for . . . ten years for 120 payments [A]t the end of your
2 term, the ten-year period, \$[redacted] is the amount that's going to be forgiven."³¹

3 These claims are false. As explained above, it is impossible to guarantee a certain student loan
4 payment or loan forgiveness amount. Even in instances where consumers are aware that they
5 may enroll in the ED programs free of charge directly through their loan servicers, Defendants
6 discourage them from doing so by significantly overstating the difficulty of the application process.³²

7 3. Defendants Misrepresent Consumers' Eligibility for IDR Programs

8 Defendants also misrepresent consumers' eligibility for IDR programs and for the low
9 quoted monthly payment rates. Factors such as income and family size dictate whether a
10 borrower qualifies for an IDR plan.³³ Regulations limit those included in "family size" to a
11 borrower's spouse, children who receive more than half of their support from the borrower, and
12 other people who both live with and receive more than half of their support from the borrower.³⁴
13 Under an IDR program, a higher family size will likely lower a borrower's monthly payment.³⁵

14 Defendants manipulate consumers into unknowingly providing a higher family size in
15 their IDR program applications than what is appropriate.³⁶ As a former employee explained,
16 some sales representatives enrolled clients by "aggressively inflating family size figures."³⁷
17 During sales calls, Defendants convince consumers that "family size," for the purpose of
18 applying to IDR programs, includes *anyone* to whom the consumer provides *any* support.³⁸

19 _____
20 ³¹ Stiner Att. BB at 23:3-24:8.

³² Ortiz Att. VV at 13:2-21, 14:8-25; Stahl Att. H at 21:6-18; Gonzalez Att. B at 45:6-10.

³³ Lee ¶ 7.

³⁴ 34 C.F.R. § 682.215(a)(3).

³⁵ Lee ¶ 6; Ortiz Att. LL at 11:9-12, 18:2-15; Gonzalez Att. B at 26:15-20, 29:23-25.

³⁶ Hamilton ¶¶ 10-11, Att. A at 6 (former employee produced a matrix that AmeriTech used to
23 determine the family size necessary to qualify for a \$0 loan payment. For example, if a client
24 earned \$86,000, the chart recommended a family size of thirteen); Stiner Att. L at L-18:4-19:5;
25 Ortiz Att. XX at 9:13-10:23, 12:18 -13:21 ("[I]t really is just an arbitrary number that you're
26 providing of the people that you're helping support"); Martinez ¶¶ 8-9.

³⁷ Hamilton ¶ 10.

³⁸ Ortiz Atts. LL at 11:9-14:10, 19:1-20:20, 25:2-6 (Sales agent: "So, like, for example, I'm a --
27 a dad with a daughter. You'd think it would just be two people, but if I went through and said,
28 you know, who I actually support in my family, with bills or, you know, other ways of support,
driving people places or -- now, actually, probably it's more close to eight people in my life

1 According to Defendants, a grandchild that a consumer babysits can count towards “family
2 size.”³⁹ So can a niece to whom a consumer simply gave a Christmas gift.⁴⁰ Defendants told one
3 consumer:

4 “[S]upport includes any kind of money, gifts, loans, housing, food, clothing, car,
5 medical or dental, payment of college costs. Do you help anybody -- if you have
6 somebody on your cell phone plan; if you have somebody on your gym
7 membership, they’re considered part of your family. And we just had Christmas.
8 You know, if you bought presents, clothes, watch, earrings, toilet paper, they’re a
9 part of your family.”⁴¹

10 Defendants reassure skeptical consumers that although this definition of “family size” “feels
11 crazy,” “it’s different than the IRS” and it is appropriate to include people for whom a consumer
12 provides only minimal support.⁴²

13 Consumers trust Defendants’ “expert” advice and allow Defendants to apply for IDR
14 programs on their behalf using inflated family size information.⁴³ The higher family size
15 generates an artificially low monthly payment for the consumer under an IDR program.⁴⁴ A
16 consumer may begin making payments under an IDR plan and only later learn that he or she did
17 not actually qualify for the particular forgiveness plan or payment rate.⁴⁵ This can significantly
18 set back the consumer’s repayment of the student loans and potentially expose a consumer to
19 additional liability.⁴⁶

20
21
22 under this definition, so it’s a . . . little bit different.”), JJ at 12:15-13:1; Stiner Att. DD at 18:12-
23 20; Carbonneau ¶ 4; Vildasol ¶ 5; Martinez ¶¶ 8-9 (AmeriTech managers told employees to tell
24 consumers that “[a] close friend that uses your Netflix account” constituted a family member.)

25 ³⁹ Vildasol ¶ 5.

26 ⁴⁰ Ortiz Att. LL at 19:19-20: 9; Stiner Att. DD at 21:4-13.

27 ⁴¹ Stiner Att. DD at 20:6-14.

28 ⁴² Ortiz Att. LL at 13:23-14:10.

⁴³ Vildasol ¶ 5; Carbonneau ¶ 4; Stiner Att. L at L-18:4-24.

⁴⁴ Ortiz Att. LL at 11:9-12.

⁴⁵ Vildasol ¶ 10.

⁴⁶ *Id.*

1 **B. Defendants Mislead Consumers to Extract Monthly Charges and Illegal**
 2 **Advance Fees**

3 Defendants collect two types of fees from consumers: (1) illegal advance fees, and
 4 (2) monthly fees that they mislead consumers into believing are their new loan payments, but
 5 that actually pay for a “financial education” membership program.

6 **1. Illegal Advance Fees**

7 Defendants typically charge consumers two types of advance fees. One upfront fee
 8 purportedly pays for Defendants’ document preparation services, and generally has ranged
 9 between \$600 and \$800.⁴⁷ Defendants claim that the other advance fee enrolls consumers in
 10 Defendants’ “financial education” membership program, and have charged consumers from
 11 around \$100 to \$1,200.⁴⁸ Defendants collect payment information for both advance fees during
 12 the initial telemarketing call with consumers.⁴⁹ Consumers pay all or a portion of the advance
 13 fee almost immediately, often long before consumers are enrolled in an IDR program.⁵⁰
 14 Defendants lead consumers to believe that Defendants will apply all or a portion of these
 15 advance payments to repay their student loans.⁵¹

16 Since late 2015, Defendants have attempted to circumvent the requirements of the TSR,
 17 which prohibits sellers and telemarketers from requesting or receiving payment of any fees prior

18 _____
 19 ⁴⁷ Archibald Att. B at 14 (\$800 fee); Bowles Att. B at 8 (\$600 fee); Carbonneau Att. A at 2
 (same); Emerson Att. A at 6 (same); Marshall Att. A at 2 (same); Vildasol Att. A at 12 (same).

20 ⁴⁸ Archibald Att. B at 22 (\$100 fee); Emerson Att. A at 11-12 (\$695 fee, including set-up fee);
 Bowles Att. B at 14 (\$1295 fee); Marshall Att. A at 7 (same); Vildasol Att. A at 1 (same).

21 ⁴⁹ Emerson ¶ 10; Stiner Atts. BB at 52:9-22, CC at 17:17-18:12, DD at 42:6-11.

22 ⁵⁰ Archibald ¶¶ 7, 9-11, 13 (consumer signed up on 1/8/16; first payment was deducted on
 23 2/5/16; forbearance notice received on 6/9/17; IDR adjustment received on 7/4/17); Bowles ¶¶ 9-
 24 10, 20 (consumer signed up on 1/22/15; first payment was deducted in early 2015; in May 2015,
 25 consumer learned that no action had been taken on loan account); Carbonneau ¶¶ 3-7, 9
 (consumer signed up on 1/22/15; first payment was deducted on 9/16/15; on 5/25/17, consumer
 26 learned loans had been placed in deferment); Marshall ¶¶ 6-8 (consumer signed up on 3/9/15 and
 27 first payment was deducted on 4/3/15); Olds ¶¶ 3-5 (consumer signed up on 9/1/16; first payment
 28 was withdrawn shortly thereafter; consumer learned in June or July 2017 that her loan “had
 never been touched”); Vildasol ¶¶ 4, 8, 10 (consumer signed up on 4/3/14; first payment was
 withdrawn on 5/30/14; consumer learned in Sept. 2015 that his loan was in forbearance and he
 did not qualify for loan forgiveness).

⁵¹ Carbonneau ¶ 5; Emerson ¶ 10; Olds ¶¶ 4-5; Sills ¶ 2.

1 to the successful renegotiation or reduction of at least one of the consumer’s debts,⁵² by placing
2 consumers’ advance fees for document preparation services in a dedicated bank account
3 managed by a third party.⁵³ Defendants claim they will access these funds only once they
4 determine that they have “earned [their] fees,”⁵⁴ but have also provided differing information
5 about when they remove the consumers’ payments from the dedicated accounts.⁵⁵ Defendants do
6 not clearly and conspicuously disclose that their upfront payments for document preparation are
7 being held in a dedicated account, and consumers are unaware that they can retrieve their
8 funds.⁵⁶ Nor do Defendants adequately inform consumers that they are enrolled in or paying for
9 the “financial education” membership program.⁵⁷ As discussed further below in Section V.C.2,
10 Defendants’ use of dedicated accounts does not relieve them of liability under the TSR.

11 **2. Deceptive Monthly Charges**

12 After exacting these illegal advance fees, Defendants also charge their financially
13 strapped consumers a monthly “program” fee, usually of between \$49 and \$99.⁵⁸ Defendants
14 represent to consumers that this is their new monthly payment amount and that these payments
15 will be applied each month to their outstanding loan balance.⁵⁹ This is false. Defendants collect
16 these fees every month but send no money to pay the consumers’ loans.⁶⁰

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18
19 ⁵² See *infra*, Section V.C.2.

20 ⁵³ Ortiz Atts. DDD, Ex. A at 5, 8, EEE at 3-4, GGG at 2.

21 ⁵⁴ Ortiz Atts. DDD, Ex. A at 5, 8, GGG at 2.

22 ⁵⁵ Ortiz Atts. DDD, Ex. A at 12 (Defendants “do[] not collect fees until such time as the
23 consumer is actually accepted into a federal student relief program and makes a payment . . .
[e]xcept in cases of forbearances . . .”), CCC ¶ 21 (“Ameritech nonetheless does not accept any
24 payment for its federal student loan application documentation and processing services until after
25 the customers receive their results.”), FFF at 3 (“Ameritech only collects its fees after the
26 company completes and submits the consumer’s documents . . .”).

27 ⁵⁶ Marshall ¶ 9; Archibald ¶ 7; Stiner Att. CC at 27:22-28:7 (Defendants referred to the escrow
28 company simply as “the company that the program utilizes to manage your payments.”).

⁵⁷ See *infra*, Section IV.B.2.

⁵⁸ Archibald ¶ 4, Att. B at 22, 36; Bowles ¶ 5, Att. B at 17; Marshall ¶ 13, Att. A at 9; Olds ¶ 3;
Emerson Att. A at 14; Martinez ¶¶ 5, 11-12.

⁵⁹ Marshall ¶¶ 9-15; Emerson ¶ 10; Olds ¶¶ 4-5; Vildasol ¶¶ 7, 9, Att. C; Sills ¶ 2; Stiner Att. BB
at 23:3-9; Archibald ¶ 15; Bowles ¶ 5.

⁶⁰ George ¶ 30, Att. T; Ortiz Att. EEE at 10.

1 When pressed, Defendants admit that these monthly fees actually pay for a “financial
2 education” membership program.⁶¹ The “financial education” program includes access to
3 services that are unrelated to consumers’ student loans, such as “Key Ring & Luggage
4 Protection,” and “Auto Buying Service and Maintenance Discounts.”⁶²

5 Many consumers pay for months or years before learning that Defendants are not
6 applying their payments toward their student loans.⁶³ It is easy to see why consumers are misled.
7 Defendants do not advertise the “financial education” program in their mailers and infrequently
8 mention it in the course of the sales calls.⁶⁴ On the rare occasion when Defendants did reference
9 the “financial education” membership, they presented the resource as a complimentary sign-up
10 perk.⁶⁵ References to the “financial education” program in Defendants’ agreements often are
11 buried in the paperwork.⁶⁶

12 Defendants also reinforce consumers’ understanding that their recurring monthly
13 payments go to pay off their student loans. The duration of the monthly payments is the same as

14 ⁶¹ Archibald ¶ 15. Defendants have offered different membership programs over time – they are
15 referred to collectively here as the “financial education” program. Defendants originally offered
16 their “financial education” program as part of enrollment with AFBC. Ortiz Att. EEE at 2-3. At
17 different points, they have called it the “Financial Education and Resource Center Program and
18 AFBC Student Financial Management Plan” (Bowles Att. B at 14) and the “Financial Education
19 Platinum Member Benefits Program and AFBC Financial Success Kit” (Emerson Att. A at 11).
20 Since December 2015, Defendants have offered the “financial education” program through
21 FEBC. Ortiz Att. CCC ¶¶ 7, 19.

22 ⁶² Vildasol Att. A at 17.

23 ⁶³ Archibald ¶¶ 13-16; Bowles ¶ 20; Carbonneau ¶¶ 9-11; Marshall ¶ 13; Olds ¶¶ 5-7; Sills ¶¶ 7-
24 8; Vildasol ¶ 11; Ortiz ¶ 48(A), Atts. EE-HH; Lee ¶¶ 7, 11, Atts. A-B; Ortiz Atts. PP at 5:14-
25 6:15, 8:25-9:13 (“How come I didn’t know this and I’ve been doing this for several years
26 now?”), TT at 4:18-5:25, 7:23-8:1; *see generally* Stiner Att. A; Martinez ¶ 12.

27 ⁶⁴ Ortiz Att. S; Stiner Atts. F, QQ, BB at 58:14-19, 74:16-23, 76:13-24 (“financial education”
28 program mentioned in passing during sales call once, and only mentioned again during
verification, after consumer signed contract), CC at 36:2-10, 51:15-22, 53:5-15 (same), DD (no
mention of “financial education” program); Olds ¶ 3, Att. A (describing the consumer’s “quote”
as “\$255 for 1 month then it would drop down to \$235 for an additional 6 months then it will be
\$99 for the remainder of your loan term”); Stahl Atts. E, F, G (no mention of “financial
education” program), H at 18:5-14 (general reference to a “membership” only); Holton Att. B
(no mention of “financial education” program); Gonzalez Att. B at 40:1-15 (general reference to
a “membership fee” only); Archibald ¶ 15; Bowles ¶ 6.

⁶⁵ Stiner Att. BB at 58:14-19; Stiner Att. CC at 36:2-10.

⁶⁶ Archibald Att. B at 21-26; Bowles Att. B at 14-16; Emerson Att. A at 11-12, 14.

1 the remaining term of consumers' loans.⁶⁷ Defendants tell consumers that their "program" is at
 2 will and that consumers may cancel if they "wish go back to [their] standard repayment," giving
 3 the impression that Defendants' monthly fees are linked to consumers' student loans and
 4 necessary to remain enrolled in a government program.⁶⁸ And if a consumer misses a payment
 5 to Defendants, Defendants send correspondence suggesting that the consumer is falling behind
 6 on loan payments.⁶⁹

7 Nearly all clients enrolled with Defendants' "document preparation" service are also
 8 enrolled in their "financial education" membership program.⁷⁰ However, consumers have stated
 9 that they never would have knowingly paid for such a program "because the whole point of
 10 dealing with AFBC was to reduce the amount of my student loan to an affordable payment," not
 11 to sign up for additional monthly payments.⁷¹

12 **C. Defendants' High-Pressure Tactics Prevent Consumers from Discovering**
 13 **Misrepresentations**

14 After Defendants have convinced consumers to enroll in their program and have obtained
 15 payment information, they rush consumers into electronically signing a lengthy and confusing
 16 agreement. While on the phone, Defendants email consumers a link to a dense set of documents
 17 for electronic signature.⁷² Defendants quickly run through the contract, falsely representing that
 18 the agreement simply enumerates what Defendants already outlined on the call.⁷³ At times,
 19

20 ⁶⁷ Olds ¶ 3; Stiner Atts. BB at 23:22-24:8, DD at 27:18-28:3; Ortiz Att. LL at 21:4-15; Gonzalez
 Att. B at 35:14-20.

21 ⁶⁸ Stiner Att. CC at 26:7-12; Stahl Att. H at 21:20-22:1.

22 ⁶⁹ Vildasol ¶ 12, Att. D ("I told AFBC to stop charging me. AFBC agreed to cancel my account,
 23 but then I received an email from AFBC stating: 'This is our second attempt to resolve your
 declined payment. . . . Don't risk falling behind on your payments - ACT NOW!'); Sills Att. D.

24 ⁷⁰ Defendants admit that approximately 90% of customers enrolled with AmeriTech are also
 paying for "financial education" membership services. Ortiz Att. GGG at 2.

25 ⁷¹ Bowles ¶ 6; Sills ¶ 8; Archibald ¶ 15.

26 ⁷² Marshall ¶ 6, Att. A; Carbonneau ¶ 6, Att. A; Davis ¶ 4; Emerson ¶ 12, Att. A; Vildasol ¶ 6,
 Att. A; Archibald ¶ 5, Att. B.

27 ⁷³ Stiner Atts. BB at 53:17-60:8 ("This, again, is just breaking everything down in legal terms."),
 CC at 25:16-20 ("[Y]ou'll see something called Ameritech Financial Doc Prep and Service
 28 Agreement And this is going to be the program. And that page just reiterates the basic
 information I gathered."); Carbonneau ¶ 6; Davis ¶ 4; Emerson ¶ 12; Vildasol ¶ 6.

1 Defendants send consumers partially blank forms.⁷⁴ Defendants urge consumers to
 2 electronically sign the contract while still on the call.⁷⁵ Many consumers did not have an
 3 opportunity to read or understand the agreement, but trusted that Defendants had accurately
 4 represented its contents.⁷⁶

5 After a consumer signs the agreement package, Defendants transfer the consumer to their
 6 “Verification Department.”⁷⁷ At this point, consumers often have been on the phone with
 7 Defendants for close to or over an hour, have already signed the agreement to enroll with
 8 Defendants and provided payment information, and are eager to finish the call.⁷⁸ Defendants’
 9 verifiers quickly read a script that both asks consumers to confirm personal details and speeds
 10 through important legal qualifications and clarifications that conflict with Defendants’ earlier
 11 misrepresentations.⁷⁹ Defendants’ “verifiers” require consumers to answer all questions with
 12 either a “yes” or a “no.” If a consumer asks a question, the verifier will transfer the consumer
 13 back to the sales agent for an answer before completing the verification process.⁸⁰

14 In other words, Defendants tell consumers one thing during the sales call, and then
 15 pressure them to sign without reading a document that states something completely different.
 16 Defendants then hastily try to avoid liability by transferring the consumer to the “Verification
 17 Department.”

18
 19
 20 ⁷⁴ Marshall ¶ 8 (“AFBC sent me forms that I signed, scanned, and emailed back to AFBC.
 21 Sometimes AFBC sent me forms with information fields left blank.”); Davis ¶ 4 (“All the fields
 22 on the forms were blank.”); Archibald ¶ 5, Att. B; Carbonneau Att. A.

⁷⁵ Stiner Att. BB at 60:10-14; Carbonneau ¶ 6; Davis ¶ 4; Emerson ¶ 12; Vildasol ¶ 6.

⁷⁶ Marshall ¶ 6; Davis ¶ 4; Archibald ¶ 5; Vildasol ¶ 6.

⁷⁷ Ortiz Att. DDD, Ex. A at 4.

⁷⁸ Stiner Atts. Y and BB at 61:20 (consumer is transferred to “verification” department after she
 24 has electronically signed the agreement and has been on the phone with Defendants for over an
 25 hour and twenty minutes), Z and CC at 43:8 (consumers were transferred to “verification”
 26 department after they electronically signed the agreement and had been on the phone with
 27 Defendants for over 50 minutes), AA and DD (consumer was on the call with Defendants for
 28 over an hour when the recording is cut off; consumer had not yet been sent to the “verification”
 department), BB at 63:2-6, CC at 43:8-10.

⁷⁹ Stiner Atts. BB at 63:22-83:18, CC at 43:8-70:8.

⁸⁰ Stiner Atts. BB at 63:24- 64:12, CC at 48:9-21; Gonzalez Att. B at 58:16-24.

D. Defendants Cut Off Consumers' Communications with Loan Servicers and the Department of Education to Prevent Discovery of the Scam

Defendants take numerous steps to prevent or delay consumers from discovering that they have been scammed. Defendants surreptitiously cut off communications between consumers and their loan servicers. Defendants require consumers to turn over highly sensitive information – including Social Security numbers and Federal Student Aid (“FSA”) login IDs, passwords, and security questions.⁸¹ Defendants use these details to change consumers’ FSA passwords and email contact information so loan-related correspondence goes directly to Defendants, instead of to the consumers, thereby shutting consumers out of their own online student loan accounts.⁸² Defendants instruct consumers to cease communications with⁸³ and payments to their loan servicer.⁸⁴ In some instances, Defendants have even misrepresented that they will be the consumer’s new loan servicer and that the consumer will be making their monthly payments directly to Defendants.⁸⁵

Defendants often place consumers’ loans into forbearance, which also hinders consumers from learning of Defendants’ misrepresentations.⁸⁶ When a loan is in forbearance, the consumer is not required to make student loan payments, and so the loan servicer may not contact the consumer.⁸⁷ Consumers are unaware that their loans are in forbearance and believe their payments to Defendants are going to pay down their loans, and so do not question why Defendants are pulling money from their accounts.⁸⁸ Defendants have kept consumers’ loans in forbearance for lengthy periods,⁸⁹ while the consumers’ loans continue to accrue interest.⁹⁰

⁸¹ Archibald ¶¶ 8, 12; Bowles ¶¶ 8,18-19; Marshall ¶ 14.

⁸² Lee ¶ 13 (“The contact email address for 199 Great Lakes borrowers changed to AFBC.Confirmation@afcenter.com.”); Bowles ¶ 20; Marshall ¶ 14; Ortiz Att. PP at 4:15-18, 8:13-19 (consumer does not get monthly bill from loan servicer, but Defendants do).

⁸³ Marshall ¶ 8; Carbonneau ¶ 5

⁸⁴ Stiner Atts. BB at 39:17-25, CC at 34:14-17.

⁸⁵ Sills ¶¶ 2, 8.

⁸⁶ Lee ¶ 11, Att. A-B; Archibald ¶ 13; Carbonneau ¶ 9; Vildasol ¶ 10.

⁸⁷ Lee ¶ 11, Att. A-B.

⁸⁸ *Id.*

⁸⁹ Archibald ¶¶ 7, 9-13; Bowles ¶¶ 9-10, 20; Carbonneau ¶¶ 3-9; Olds ¶¶ 3-5; Vildasol ¶¶ 4, 8,10.

1 Months or years after enrolling with Defendants, a consumer may learn that Defendants
 2 did not obtain the promised payment reduction and forgiveness, that the consumer's payments
 3 went to Defendants instead of toward paying down their loan balances, and that the consumer
 4 could have applied for the loan payment programs cited by Defendants for free.⁹¹ However,
 5 Defendants ensure that it is difficult for consumers to discover the truth. Even when consumers
 6 have noticed something awry in their dealings with Defendants, Defendants have continued to
 7 misrepresent their services in an attempt to continue to collect fees.⁹²

8 **V. THE FTC HAS SHOWN A LIKELIHOOD OF SUCCESS AND THE EQUITIES**
 9 **WEIGH IN FAVOR OF THE REQUESTED RELIEF**

10 To stop Defendants' ongoing deceptive practices, Plaintiff respectfully requests the Court
 11 to issue a preliminary injunction enjoining future misrepresentations, prohibiting the collection
 12 of illegal advance fees; preserving assets and documents, requiring an accounting of Defendants'
 13 finances, and appointing a temporary receiver. Incident to its authority to issue permanent
 14 injunctive relief, this Court has the inherent equitable power to grant all preliminary relief
 15 necessary to effectuate ultimate relief. *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir.
 16 1994); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989); *FTC v. H.N. Singer,*
 17 *Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982).

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

19 This Court has the authority to grant preliminary and permanent relief pursuant to Section
 20 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Rule 65 of the Federal Rules of Civil Procedure. In
 21 actions brought under Section 13(b), the district court may exercise the full breadth of its
 22 equitable authority, including the imposition of additional relief necessary to accomplish
 23 complete justice, such as orders appointing a receiver or requiring restitution to consumers. *FTC*
 24 *v. World Wide Factors, Ltd.*, 882 F.2d 344, 346-48 (9th Cir. 1989) (affirming district court's
 25

26 ⁹⁰ See <https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven>; Archibald ¶ 16;
 Vildasol ¶ 14.

27 ⁹¹ Archibald ¶¶ 13, 15-16; Lee ¶ 3.

28 ⁹² Carbonneau ¶ 12 (“At one point, the agent claimed that AFBC actually forwarded all the
 money they collected as fees to my loan servicer at the end of the ten-year period.”).

1 power to appoint a receiver); *Singer*, 668 F.2d at 1113 (affirming preliminary injunction); *FTC v.*
 2 *Alliance Document Prep.*, No. 17-7048, slip op. at 14 (C.D. Cal. Nov. 2, 2017) (issuing
 3 preliminary injunction in matter involving “student loan debt relief services”).

4 **B. Legal Standard for Issuing a Preliminary Injunction**

5 To obtain a preliminary injunction, the FTC must show a likelihood of success on the
 6 merits and that the equities weigh in favor of granting the relief requested. *FTC v. Affordable*
 7 *Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999); *World Wide Factors*, 882 F.2d at 346. Harm
 8 to the public is presumed. *Affordable Media*, 179 F. 3d at 1233; *see also United States. v.*
 9 *Odessa Union Warehouse Co-op*, 833 F.2d 172, 175 (9th Cir. 1987) (where injunction is
 10 authorized by statute, enforcing agency need not show irreparable injury). Further, in weighing
 11 the public and private equities in a statutory enforcement action, public equities should receive
 12 greater weight. *World Wide Factors*, 882 F.2d at 347; *Affordable Media*, 179 F.3d at 1236. The
 13 FTC easily meets this standard in the present case.

14 **C. The FTC Has Demonstrated a Likelihood of Success on the Merits**

15 **1. Defendants’ Misrepresentations Violate the FTC Act**

16 Defendants’ deceptive representations violate the FTC Act, which prohibits “deceptive
 17 acts or practices in or affecting commerce.” 15 U.S.C. § 45(a). An act or practice is deceptive if
 18 it is likely to mislead consumers, acting reasonably under the circumstances, in a material
 19 respect. *FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1199 (9th Cir. 2006). A
 20 misrepresentation “is material if it ‘involves information that is important to consumers and,
 21 hence, likely to affect their choice of, or conduct regarding, a product.’” *Id.* at 1201 (quoting *In*
 22 *re Cliffdale Assocs.*, 103 F.T.C. 110, 165 (1984)). The Court should consider the overall “net
 23 impression” that Defendants’ representations make upon consumers, and not merely analyze
 24 isolated words and phrases. *See id.* at 1200.⁹³ Even claims that are not demonstrably false must
 25 nonetheless be supported by a reasonable basis. *In re Pfizer, Inc.*, 81 F.T.C. 23 (1972); *see also*
 26 *In re Thompson Medical Co.*, 104 F.T.C. 648, 788 (1984), *aff’d*, *Thompson Medical Co., Inc. v.*

27 _____
 28 ⁹³ A solicitation “capable of being interpreted in a misleading way” is construed against the
 maker of the solicitation. *Simeon Mgmt. Corp. v. FTC*, 579 F.2d 1137, 1146 (9th Cir. 1978).

1 *FTC*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

2 Here, Defendants have made repeated material misrepresentations about at least two
3 aspects of their business: (1) that consumers qualify for plans that will permanently lower their
4 monthly loan payments and/or lead to loan forgiveness; and (2) that consumers' monthly
5 payments to Defendants will be applied towards consumers' student loan balances.

6 The first claim is false or unsubstantiated; the second claim is patently false. As
7 described above in Section IV.A, Defendants cannot guarantee that consumers qualify for loan
8 payment reduction or forgiveness, and Defendants did not make payments to loan servicers on
9 behalf of consumers. Each of these representations violates the FTC Act because it is material,
10 and likely to mislead consumers who were acting reasonably under the circumstances.
11 Reasonable consumers are not required to doubt the veracity of express representations, and the
12 Court may presume express claims to be material. *Pantron I*, 33 F.3d at 1095. Implied claims
13 are presumptively material where there is evidence that the seller intended to make the claim or
14 the claims go to the heart of the solicitation or the characteristics of the product or service
15 offered. *See Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992); *Southwest Sunsites, Inc.*, 105
16 F.T.C. 7, 149 (1985), *aff'd*, 785 F.2d 1431 (9th Cir. 1986); *see also FTC v. Figgie Int'l, Inc.*, 994
17 F.2d 595, 604 (9th Cir. 1993) (law does not protect people who merely imply their deceptive
18 claims). Furthermore, consumers' reliance on such false claims is presumptively reasonable.
19 *Cliffdale Assocs., Inc.*, 103 F.T.C. at 168. Both of these claims are express representations, and
20 in any event go to the heart of the services promised by Defendants.

21 These misrepresentations also are not cured by the contradictory disclaimer language
22 buried in the "agreement" that Defendants pressure consumers to e-sign at the end of the
23 deceptive sales call.⁹⁴ The lengthy document – which consumers are rushed to e-sign only after

24
25 ⁹⁴ Not only was this tactic ineffective in alerting consumers, it is also legally impermissible. *See*
26 *Resort Car Rental Sys., Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir. 1975) (The FTC Act is violated
27 "if [a company] induces the first contact through deception" despite buyer later obtaining more
28 information.); *FTC v. Gill*, 71 F. Supp. 2d 1030, 1044 (C.D. Cal. 1999) (disclaimer in a contract
that "consumers eventually sign" is insufficient because "the disclaimer is not included in the
representations" and "each representation must stand on its own merit, even if other
representations contain accurate, non-deceptive information"), *aff'd*, 265 F.3d 944 (9th Cir.

1 they have already divulged their payment information – contains buried disclaimers and
 2 contradictory statements. As the hundreds of complaints from consumers who believed
 3 Defendants’ misrepresentations demonstrate, Defendants’ late disclaimers are ineffective.⁹⁵ *See*
 4 *Cyberspace.com*, 453 F. 3d at 1201 (Proof that representation actually deceived consumers is
 5 “highly probative to show that a practice is likely to mislead consumers acting reasonably under
 6 the circumstances.”).

7 Thus the FTC is likely to prevail in showing that each of these misrepresentations is false
 8 or was unsubstantiated at the time it was made.

9 2. Defendants’ Misrepresentations and Upfront Fees Violate the TSR

10 Defendants are subject to the TSR. The TSR prohibits abusive and deceptive
 11 telemarketing, and expressly applies to sellers or telemarketers of “debt relief services,” defined
 12 as “any program or service represented, directly or by implication, to renegotiate, settle, or in any
 13 way alter” debt between a consumer and unsecured creditors, including “a reduction in the
 14 balance, interest rate, or fees.”⁹⁶ Defendants receive inbound calls in response to a direct mail
 15 solicitation, meaning they qualify as “telemarketers” and “sellers.” *See* 16 C.F.R. § 310.6(5).
 16 Student loan debt relief services are considered “debt relief services” for the purposes of the
 17 TSR. *See CFPB v. Irvine Webworks*, No. 14-1967, slip op. at *12-13 (C.D. Cal. Feb. 2, 2016)
 18 (order) (“[T]he comments made by the FTC in the promulgation of the Telemarketing Sales Rule
 19 confirm the intent for the Telemarketing Sales Rule to cover entities that engage in practices
 20 substantially similar to those of loan consolidation middlemen.”); *FTC v. AI DOCPREP*, No. 17-

21
 22 2001); *see also FTC v. Johnson*, 96 F. Supp. 3d 1110, 1139 (D. Nev. 2015) (Fine print
 23 disclosures offered after the consumer had started the ordering process did not alter the
 24 misleading net impression created by the solicitation.).

25 ⁹⁵ Ortiz ¶ 48, Atts. EE-HH; Stiner Att. A.

26 ⁹⁶ 16 C.F.R. §§ 310.2(dd), (ff), (o). The TSR applies to any “seller” or “telemarketer” selling
 27 goods or services by use of one or more telephones via interstate telephone calls. 16 C.F.R.
 28 §§ 310.2(dd), (ff), (gg). A “telemarketer” means any person who, in connection with
 telemarketing, *initiates or receives* telephone calls to or from a customer. 16 C.F.R. § 310.2(ff).
 “Telemarketing” means a plan, program, or campaign which is conducted to induce the purchase
 of goods or services or a charitable contribution, by use of one or more telephones and which
 involves more than one interstate telephone call. 16 C.F.R. § 310.2(gg).

1 cv-07044 (C.D. Cal. Sept. 28, 2017) (order) granting TRO and finding likely violation of the
2 TSR's advance fee ban); *FTC v. M&T Fin. Grp.*, No. 17-cv-06855 (C.D. Cal. Sept. 19, 2017)
3 (same); *FTC v. Student Debt Doctor LLC*, No. 17-cv-61937 (S.D. Fla. Oct. 3, 2017) (same); *FTC*
4 *v. Am. Student Loan Consolidators*, No. 17-cv-61862 (S.D. Fla. Sept. 26, 2017) (same).

5 Defendants violate two provisions of the TSR. First, the TSR prohibits debt relief sellers
6 or telemarketers from misrepresenting any material aspect of their services. 16 C.F.R. §§ 310.3
7 (a)(2)(vii), (x). Defendants misrepresent at least two material aspects of their services.⁹⁷

8 Second, Defendants violate the TSR's provision that prohibits sellers and telemarketers
9 from requesting or receiving payment of any fees prior to the successful renegotiation or
10 reduction of at least one of the consumer's debts, *and* prior to the consumer making at least one
11 payment pursuant to such reduction. *See* 16 C.F.R. § 310.4(a)(5)(i). Defendants require
12 consumers to pay advance fees shortly after the first telemarketing call and before Defendants
13 have even submitted enrollment paperwork to ED on behalf of the consumers.

14 Defendants contend that they comply with the advance-fee prohibition in the TSR
15 because they keep consumer funds in dedicated bank accounts until they complete their work on
16 a consumer's loans.⁹⁸ This argument fails for several reasons. First, Defendants did not use
17 dedicated accounts for at least their first two years of operation.⁹⁹ Defendants cannot claim the
18 dedicated account system as a defense for that earlier period. Second, Defendants fail to disclose
19 adequately the existence of the dedicated accounts and the consumers' right to withdraw funds.
20 The TSR requires clear and conspicuous disclosure of the existence of a dedicated account, and
21 other additional information about it. 16 C.F.R. § 310.3(a)(1)(viii)(D); *see New Mexico ex rel.*
22 *King v. CreditArbitrators, LLC*, No. CV 12-16, 2014 WL 12581756 (D.N.M. Mar. 26, 2014)
23 (interpreting this disclosure requirement strictly and mandating clear and conspicuous
24 disclosures for each sub-provision). Third, Defendants have stated that they withdrew funds
25 from consumers' accounts even though the consumers were not yet enrolled in the promised

26 ⁹⁷ *See supra*, Section IV.

27 ⁹⁸ Ortiz Att. CCC ¶¶ 21-22.

28 ⁹⁹ Ortiz Att. GGG at 2 (Defendants began using dedicated bank accounts (or "escrow accounts")
in "late 2015.").

1 federal loan assistance program.¹⁰⁰ Finally, Defendants try to avoid the TSR’s requirements and
 2 collect fees upfront by funneling many of the fees to FEBC, and claiming that this program does
 3 not offer debt relief services.¹⁰¹ Courts have rejected this tactic. *See CFPB v. Morgan Drexen*,
 4 60 F. Supp. 3d 1082, 1093-94 (C.D. Cal. 2014), *rev’d on other grounds*, 671 Fed. Appx. 954 (9th
 5 Cir. 2016). In fact, the recent separation of AmeriTech (offering “document preparation”
 6 services) and FEBC (offering a membership to a “financial education” membership program)
 7 from AFBC is a sham, as described below in Section VI.A.

8 **D. The Equities Favor Granting the Preliminary Injunction**

9 As discussed above, once the FTC establishes the likelihood of its ultimate success,
 10 preliminary relief is appropriate if the Court finds that the equities weigh in favor of granting the
 11 relief sought. In weighing the equities, the Ninth Circuit has held that the public interest should
 12 receive far greater weight than the private interests. *Affordable Media*, 179 F.3d at 1236
 13 (quoting *World Wide Factors*, 882 F.2d at 347); *FTC v. Warner Commc’ns, Inc.*, 742 F.2d 1156,
 14 1165 (9th Cir. 1984). The equities in this case weigh heavily in favor of preliminary injunctive
 15 relief. Defendants’ conduct has led many consumers to spend considerable money – and even to
 16 acquire further student loan debt¹⁰² – under the false belief that they were guaranteed lower
 17 payments and/or loan forgiveness and that Defendants were forwarding payments to pay down
 18 the consumers’ student loans. In fact, Defendants cannot promise permanent loan reduction and
 19 forgiveness, many consumers do not qualify for the loan programs, and Defendants retained all
 20 of the consumers’ payments. Given the pervasive nature of the unlawful activity, there is a
 21 strong likelihood that, absent injunctive relief, future law violations will occur. *See FTC v.*
 22 *Southwest Sunsites, Inc.*, 665 F.2d 711, 723 (5th Cir. 1982) (Injunctive relief is appropriate
 23 where evidence suggests “a large-scale systematic scheme tainted by fraudulent and deceptive

24 ¹⁰⁰ *See supra*, note 55.

25 ¹⁰¹ Ortiz Att. CCC ¶¶ 21-22. It is also noteworthy that the documents provided to consumers
 26 from the company that manages the dedicated accounts, such as the application forms and
 27 account updates, are incredibly confusing. It would be nearly impossible for a consumer to
 28 divine the purpose of the different charges. Archibald Att. B at 36.

¹⁰² Vildasol ¶ 10 (“I continued to receive delinquency notices from my lender in 2014 and 2015.
 On one notice, I realized my loan balance had not decreased but actually increased.”).

1 practices, giving rise to a ‘fair inference of a reasonable expectation of continued violations’
 2 absent restraint.”). These violations, if continued, will result in additional consumer loss.

3 The private equities in this case are not compelling. There is no oppressive hardship to
 4 Defendants in requiring them to comply with the law and refrain from fraudulent representations.
 5 *See World Wide Factors*, 882 F.2d at 347. The FTC acknowledges that requesting appointment
 6 of a temporary receiver is a serious remedy. However, if the receiver finds that Defendants’
 7 business can be run lawfully, a receiver will allow it to continue to do so. If not, then Defendants
 8 have no private interest in an unlawful operation. The evidence demonstrates that the public
 9 equities – the protection of innocent consumers from fraud and the effective enforcement of the
 10 law – weigh heavily in favor of granting the preliminary relief requested in this case.

11 **VI. THE LIABILITY OF DEFENDANTS**

12 **A. Corporate Defendants Are Liable as a Common Enterprise**

13 Corporate Defendants operate as a common enterprise and are jointly and severally
 14 liable. “Where one or more corporate entities operate in a common enterprise, each may be held
 15 liable for the deceptive acts and practices of the others.” *FTC v. Think Achievement Corp.*, 144
 16 F. Supp. 2d 993, 1011 (N.D. Ind. 2000), *aff’d*, 312 F.3d 259 (7th Cir. 2002); *see FTC v. John*
 17 *Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1082 (C.D. Cal. 2012) (quoting *Delaware*
 18 *Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964)).

19 Corporate Defendants engage in the same student loan debt relief scheme to defraud
 20 consumers. Defendants conduct business through an interrelated network of companies that, as
 21 described below in Section VI.B, are commonly owned and managed by Frere. Defendants have
 22 openly acknowledged an intertwined relationship.¹⁰³ Defendants admit that AFBC divided into
 23 AmeriTech and FEBC in order to take advantage of a perceived legal loophole, and have since
 24 essentially shuttered the operations of AFBC.¹⁰⁴ Defendants AFBC and AmeriTech market,

25
 26
 27 ¹⁰³ Gonzalez Att. B at 49:2-4 (“American Financial Benefits Center program is a subsidiary of
 Ameritech Financial. We’re one and the same.”); Stiner ¶ 28, Att. M (Ameritech submitted
 paperwork describing Ameritech as a “branch Location” or “child” of AFBC).

28 ¹⁰⁴ Ortiz Att. CCC ¶¶ 21-22.

1 offer for sale, and sell the same products or services.¹⁰⁵ AmeriTech and FEBC sell their services
 2 together and provide service contracts simultaneously to consumers.¹⁰⁶ Corporate Defendants
 3 have common employees¹⁰⁷ and share work facilities.¹⁰⁸ Bank records obtained through
 4 Commission Civil Investigative Demands show consistent, substantial payments between the
 5 AmeriTech and AFBC accounts.¹⁰⁹

6 **B. Defendant Frere Is Liable for Monetary and Injunctive Relief**

7 Defendant Frere is individually responsible for the illegal activity of the corporations he
 8 controls and may be subject to injunctive and monetary relief for violations the corporations have
 9 committed. To establish individual liability for injunctive relief, the FTC must show that the
 10 individual participated directly in the violative acts or practices or had authority to control them.
 11 *FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1138 n.9 (9th Cir. 2010) (quoting *FTC v.*
 12 *Publ’g Clearing House, Inc.*, 104 F.3d 924, 1170 (9th Cir. 1997)). Authority to control can arise
 13 from assuming the duties of a corporate officer, particularly when the corporate defendant is a
 14 small, closely held corporation. *Amy Travel*, 875 F.2d at 573-74; *Publ’g Clearing House*, 104
 15 F.3d at 1170-71.

16 Defendant Frere is liable for injunctive relief based on his participation in the scheme.
 17 He is the founder, CEO, Secretary, CFO, and sole Director of each of the closely held Corporate
 18 Defendants¹¹⁰ and is a signatory on AFBC’s and AmeriTech’s depository bank accounts.¹¹¹ He
 19 unquestionably controlled, participated in, and was aware of their practices.

20 An individual subject to injunctive liability is further liable for monetary redress for
 21 corporate practices if the individual knew or should have known of the practices. *FTC v.*

22 ¹⁰⁵ *Id.* ¶¶ 5-7.

23 ¹⁰⁶ Marshall Att. A at 2-9, 19; Vildasol Att. A at 1-3, 12, 17-22; Emerson Att. A at 6,11-18;
 24 Stiner Atts. BB at 58:14-19, CC at 36:12-18.

25 ¹⁰⁷ Ortiz ¶ 28, Att. V (showing at least 66 employees who were employed by AFBC and then
 26 shortly thereafter by AmeriTech).

27 ¹⁰⁸ Ortiz Att. EEE at 3 (“FEBC, like AFBC, has executives and employees that spend most of
 their time at the Ameritech’s [sic] facilities in Rohnert Park.”)

28 ¹⁰⁹ George ¶ 9 (identifying \$2.485 million in transfers from AFBC to Ameritech); Ortiz Att. T.

¹¹⁰ Ortiz ¶¶ 6-14, Atts. A- B, D-E, G-H, III-1; Stiner ¶ 30.

¹¹¹ Ortiz Att. Y.

1 *Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009). Knowledge in this context is defined as actual
 2 knowledge of material misrepresentations, reckless indifference to the truth or falsity of a
 3 misrepresentation, or an awareness of a high probability of fraud along with an intentional
 4 avoidance of the truth. *Affordable Media*, 179 F.3d at 1234; *Publ’g Clearing House*, 104 F.3d at
 5 1171 (citing *FTC v. Am. Standard Credit Sys., Inc.*, 874 F. Supp. 1080, 1089 (C.D. Cal. 1994)).
 6 The FTC does not need to show intent to defraud. *Affordable Media*, 179 F.3d at 1234. The
 7 extent of an individual’s involvement in a fraudulent scheme alone is probative of and sufficient
 8 to establish the requisite knowledge. *Id.* at 1235; *Amy Travel*, 875 F.2d at 573.

9 Frere is liable for monetary relief based on his actual knowledge of the wrongdoing.
 10 Frere manages day-to-day operations of Corporate Defendants and signs contracts on behalf of
 11 Defendants.¹¹² Frere is fully aware of Defendants’ unlawful practices, having received numerous
 12 complaints from the BBB.¹¹³

13 Frere also appears to operate the AmeriTech and AFBC bank accounts as his personal
 14 fund. There is reason to believe that Frere transferred over \$3.164 million from Corporate
 15 Defendants’ accounts to his personal account.¹¹⁴ Corporate Defendants’ accounts further show
 16 dissipation of over \$128,000 to airlines, hotels, resorts, casinos, cruise lines, and similar
 17 companies;¹¹⁵ over \$202,000 to automotive and motorsports companies;¹¹⁶ and over \$253,000 to
 18 companies that provide building, landscaping, and related supplies and services that appear
 19

20 ¹¹² Stiner ¶¶ 29-33, 25, 27, 51-53, 55-57, Atts. N, O, R, T, HH, JJ, KK (Frere represented
 21 AmeriTech in meetings and correspondence with the BBB.); Bowles Att. B at 22 (Frere is the
 22 signatory on the contract and is listed as “Managing Director” of AFBC.); Ortiz Atts. DDD, Ex.
 23 A at 2-3 (Frere “actively participates and focuses on clear communications with consumers to set
 24 expectations properly.”), K (identifies Brandon Frere as “admin” for afbcenter.com website), N
 25 (identifies Brandon Frere as “admin” for ameritechfinancial.com website).

26 ¹¹³ Stiner ¶¶ 29-33, 35, 51-53, 55-56, 63, Atts. N, O, R, T, HH, JJ, KK.

27 ¹¹⁴ Corporate Defendants’ bank accounts transferred over \$3.164 million to a particular Bank of
 28 America account. George ¶ 26, Att. P. FinCEN reports identify Frere as withdrawing funds
 from a Bank of America account, which had an account number ending in the same four
 numbers as the account referenced in the first sentence of this footnote, and as conducting the
 transaction on his own behalf. Ortiz ¶¶ 33-38, Atts. Z, AA-BB.

¹¹⁵ George ¶ 15, Att. H.

¹¹⁶ *Id.* ¶ 16, Att. I.

1 unrelated to the operation of Defendants' business.¹¹⁷ Frere directed payments of over \$864,000
 2 that appear to go to his family members or family-owned businesses.¹¹⁸

3 **VII. A PRELIMINARY INJUNCTION WITH EQUITABLE RELIEF IS NECESSARY**

4 **A. Preliminary Injunction**

5 The proposed injunction will benefit the public by preventing further harm and requiring
 6 Defendants to follow the law. Absent an injunction, Defendants will likely continue to deceive
 7 the public. Section I of the proposed Order would bar Defendants from continuing to collect
 8 illegal advance fees. This will help stop ongoing consumer injury, and has been granted in a
 9 recent FTC case involving similar conduct. *Alliance Document Prep.*, No. 17-7048, slip op. at
 10 12-14. Section II would require them to cease deceptive marketing that violates the FTC Act and
 11 the TSR, simply requiring Defendants to comply with the law. Section III would require
 12 Defendants and affiliated businesses and persons to maintain records. Section IV would require
 13 Defendants to report new business activity and would allow Plaintiff to monitor Defendants'
 14 order compliance. Sections V through X and XVII would address the appointment of a
 15 temporary receiver to act as the agent of this Court. The requested preliminary injunctive relief
 16 is within the equitable powers of this Court and will protect consumers from suffering further
 17 injury during litigation.¹¹⁹

18 **B. Appointment of a Temporary Receiver**

19 As noted above, the FTC seeks appointment of a receiver over the three Corporate
 20 Defendants. The Court has inherent power to appoint a receiver incident to its statutory authority
 21 to issue permanent injunctions under Section 13(b) of the FTC Act. *FTC v. U.S. Oil & Gas*, 748
 22 F.2d 1431, 1432 (11th Cir. 1984); *see, e.g., AI DOCPREP*, No. 17-cv-07044 (order). A receiver
 23 is necessary when a corporate defendant has deceived the public. *SEC v. Keller Corp.*, 323 F.2d
 24 397, 403 (7th Cir. 1963) (It was "hardly conceivable that the trial court should have permitted

25
 26 ¹¹⁷ *Id.* ¶ 17, Att. J.

27 ¹¹⁸ *Id.* ¶¶ 11-14, Atts. D-G (calculating that Corporate Defendants made payments of:
 \$390,000.00 to Andre and Gloria Frere jointly; \$263,491.87 to Justin Frere; \$137,285.21 to
 Gloria Frere; and \$73,408.00 to Sonoma Stainless, Inc.); Ortiz Att. J.

28 ¹¹⁹ *See supra*, Section V.A.

