

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

HIGHER GOALS MARKETING LLC, a Florida
limited liability company, et al.,

Defendants.

Case No. 6:17-cv-2048-ORL-31-KRS

(E-Filed Nov. 30, 2017)

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
ITS EMERGENCY MOTION FOR A NOTICED TEMPORARY RESTRAINING
ORDER WITH ASSET FREEZE, APPOINTMENT OF A RECEIVER, OTHER
EQUITABLE RELIEF, AND AN ORDER TO SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

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I. INTRODUCTION

The Federal Trade Commission (“FTC”)¹ asks the Court to immediately halt an ongoing credit-card debt relief scam that has defrauded thousands of consumers throughout the United States.² Defendants bombard consumers with illegal robocalls, and then pitch a service that Defendants falsely promise will result in a permanent and substantial reduction in consumers’ interest rates, and save consumers thousands of dollars in interest payments (“rate-reduction services”). Defendants collect an illegal up-front fee that generally ranges from \$500 to \$5,000, but rarely, if ever, deliver the promised results.

This scheme is a copycat and direct outgrowth of another case filed in this Court: *FTC v. Life Management Services of Orange County, LLC*, No. 6:16-cv-982-Orl-41TBS (M.D. Fla. filed June 7, 2016). In that matter, the plaintiffs alleged that 18 defendants (the “Life Management Defendants”) used illegal robocalls to sell fraudulent rate-reduction services.³ On June 8, 2016, this Court entered an *ex parte* Temporary Restraining Order (“TRO”), which included immediate access to the Life Management Defendants’ boiler room

¹ Plaintiff submits four volumes of exhibits in support of this motion, including sworn declarations from 26 victims of Defendants’ scheme, an investigator from the FTC, and an expert in the credit-card and retail-banking industry. Exhibits are marked beginning with Plaintiff’s Exhibit 1 and cited with the abbreviation “PX” followed by the exhibit number.

² Between June 1, 2016 and June 30, 2017, Defendants sold bogus credit-card interest-rate reduction services to more than 1,500 individuals for more than \$2.1 million. PX 34 ¶ 10 (Decl. of FTC Forensic Accountant Emil George). The total harm is likely significantly higher, as the scheme is ongoing. Just two weeks ago, on November 16, 2017, the Orlando version of craigslist.org contained a job posting seeking to fill an “Entry Level Position.” PX 44. The posting asks interested parties to call “Melissa,” and Defendant Brandun Anderson has testified that Defendant Melissa Deese is responsible for posting advertisements on Craigslist. Brandun Anderson Dep. at 146:10-15 (Nov. 16, 2016). FTC Investigator Tyndall has also deduced that the intersection depicted in a map within the posting includes Corporate Defendant Higher Goals Marketing LLC’s principal place of business. PX 68 ¶ 25 (Decl. of FTC Investigator Reeve Tyndall).

³ PX 28 (Complaint, *FTC v. Life Management Services of Orange County*); see also *id.* at 3-7 (Summary of the Case). The Life Management Defendants also sold fraudulent debt-elimination services.

and the appointment of a receiver.⁴ After the immediate access, the receiver determined that the business could not be operated lawfully and ceased operations.⁵ As described below, four defendants in this matter—Lea A. Brownell, Melissa M. Deese, Wayne T. Norris, and Travis L. Teel—worked at the Life Management Defendants’ scam.⁶

Almost immediately after entry of the TRO, Norris, who was an upper-level manager in the Life Management Defendants’ enterprise,⁷ began working to open another boiler room selling the same bogus rate-reduction services. In late June 2016, Norris and his longtime friend, Defendant Brandun L. Anderson,⁸ co-founded Corporate Defendant Higher Goals Marketing LLC.⁹ In late July 2016, Norris’s former high-school classmate, Defendant Gerald D. Starr, Jr.,¹⁰ formed Corporate Defendant Sunshine Freedom Services LLC¹¹ to receive payments for rate-reduction services sold by Higher Goals Marketing.¹² Because

⁴ PX 29 (Temporary Restraining Order, *FTC v. Life Management Services of Orange County*, June 8, 2016).

⁵ See PX 31 at 20-22 (Receiver’s Initial Report, *FTC v. Life Management Services of Orange County*).

⁶ In the context of the *Life Management Services* matter, these Defendants did not appear to exercise significant “control” over the operation to warrant naming them.

⁷ See, e.g., Kara Andrews Dep. at 11:14-16 (Feb. 24, 2017) (noting that Norris, along with Kevin Guice, a defendant in the *Life Management Services* case, had authority over all the Life Management Defendants’ managers); Wayne Norris Dep. at 120:25-121:8 (Dec. 6, 2016) (invoking the Fifth Amendment when asked about his management responsibilities at the Life Management Defendants’ call center).

⁸ Norris and Anderson have known each other since 2007. Anderson Dep. at 17:3-25.

⁹ Anderson is listed as Higher Goals Marketing’s sole manager and registered agent on the company’s articles of organization. PX 26 (Articles of Organization, Higher Goals Marketing LLC). But Florida Department of State records show that Norris paid the fee to file those articles of organization, and Norris invoked the Fifth Amendment when asked at his deposition about this issue. See PX 59 (Higher Goals Marketing Filing Payment Record, June 28, 2016); Norris Dep. at 165:11-12. And, Norris’s mobile telephone number is listed as Higher Goals Marketing’s telephone number on the telemarketing surety bond that the company filed with the Florida Department of Agriculture and Consumer Services. Compare Norris Dep. at 11:14-15 with PX 35 at ¶ 14 (Decl. of Patricia Compton).

¹⁰ Norris Dep. at 37:9-13.

¹¹ PX 27 at 2-3 (Articles of Organization, Sunshine Freedom Services LLC).

¹² Anderson Dep. at 83:5-87:16.

Anderson lacked experience in telemarketing fraudulent debt relief services,¹³ Higher Goals Marketing quickly brought in three of Norris's former colleagues from the Life Management Defendants' scam—Defendants Brownell, Deese, and Teel—to take on management roles in the new enterprise.¹⁴

Using the services of lead generators whom Norris knew from his work on earlier telemarketing scams,¹⁵ Defendants began robocalling consumers in July 2016.¹⁶ Between July 2016 and June 30, 2017, Defendants sold bogus rate-reduction services to more than 1,500 consumers, grossing over \$2.1 million.¹⁷

The FTC asks the Court to enter a TRO to halt Defendants' ongoing illegal conduct. The proposed TRO filed with the Court would enjoin Defendants' unlawful practices, freeze Defendants' assets, appoint a temporary receiver for both Corporate Defendants, and provide for certain expedited discovery. Such relief has been granted in several FTC law enforcement actions involving similar schemes.¹⁸

¹³ Anderson Dep. at 28:12-29:6; *id.* at 63:15-64:18.

¹⁴ *See infra* notes 60-75, 79-83.

¹⁵ Anderson Dep. at 31:3-25 (Norris referred Anderson to Dorian Mohammed for marketing); *id.* at 42:5-13 (Dorian Mohammed sends calls to consumers); PX 68 ¶¶ 31-32 (Dorian Mohammed is depicted in Norris Dep. Ex. 11, and Mohammad Ullah is depicted in Norris Dep. Ex. 12); Norris Dep. at 148:25-154:19 (Norris met the individuals in Dep. Exs. 11 & 12 at Green Savers while brokering merchant processing); *id.* at 159:9-14 (the individuals in Dep. Exs. 11 & 12 are lead generators); *id.* at 157:20-24 (the individuals in Dep. Exs. 11 & 12 work together); Kunz Dep. 77:10-79:9 (June 21, 2016) (Mohammad Ullah routed calls to Life Management Services of Orange County); PX 40 at 12-18 (sample checks from Higher Goals Marketing to Dorian Mohammad); PX 41 at 16-18 (checks from Higher Goals Marketing to NetVoip Communications); PX 68 ¶ 30 (Mohammad Ullah is the president of NetVOIP Communications).

¹⁶ Anderson Dep. at 116:1-4.

¹⁷ *See* PX 34 ¶ 10.

¹⁸ *See, e.g.,* *FTC v. Life Management Services of Orange County, LLC*; *FTC v. All US Mktg. LLC*, No. 6:15-cv-01016-ORDL-28GJK (M.D. Fla. June 22, 2015); *FTC v. Innovative Wealth Builders, Inc.*, No. 8:13-CV-00123-VMC-EAJ (M.D. Fla. Jan. 14, 2013); *FTC v. WV Universal Mgmt., LLC*, No. 12-CV-1618 (M.D. Fla. Oct. 29, 2012); *FTC v. A+ Fin. Ctr., LLC*, No. 12-CV-14373 (S.D. Fla. Oct. 23, 2012).

II. DEFENDANTS' BUSINESS PRACTICES

A. Defendants Make Illegal Telemarketing Calls to Locate Victims

Defendants use an automated dialer to place telephone calls that play a prerecorded message to consumers throughout the United States.¹⁹ These robocalls tell consumers to “press one” to speak with a live operator about lowering their credit-card interest rates. Defendants send these robocalls to consumers regardless of whether they are on the National Do Not Call Registry.²⁰ In fact, Defendants have never even paid the annual fee to access the National Do Not Call Registry.²¹

Defendants' use of robocalls to contact consumers is illegal regardless of whether consumers' telephone numbers are listed on the National Do Not Call Registry.²² Consumers whose telephone numbers are so listed are doubly harassed, as they should not be receiving any telemarketing calls from Defendants, let alone robocalls.²³

B. The Deceptive Pitch: Defendants Guarantee Credit-Card Interest-Rate Reductions That Are Substantial and Permanent

Consumers who “press 1” are transferred to a call center staffed by Defendants' telemarketers.²⁴ To conceal their identity, Defendants' telemarketers often tell consumers

¹⁹ See PX 1 ¶ 5 (Decl. of Brian Clayton); PX 2 ¶ 5 (Decl. of Cynthia Roma); PX 5 ¶ 5 (Decl. of Donna Ottesen); PX 7 ¶ 5 (Decl. of Evelyn Angst); PX 9 ¶ 5 (Decl. of Kay Nichols); PX 15 ¶ 5 (Decl. of Rose Williams); PX 17 ¶ 4 (Decl. of Steven Seeger); PX 19 ¶ 6 (Decl. of Yvonne Johnson); PX 22 ¶ 5 (Decl. of Janice Domke); PX 25 ¶ 4 (Decl. of Wanda A. Watkins); see also Randi Stickles Dep. at 273:21-274:3 (Oct. 20, 2016).

²⁰ See, e.g., PX 1 ¶ 3; PX 2 ¶ 3; PX 5 ¶ 3; PX 7 ¶ 3; PX 9 ¶ 3; PX 15 ¶ 3; PX 19 ¶ 4; PX 22 ¶ 3.

²¹ PX 68 ¶¶ 5-10.

²² See *infra* Section IV(B)(2)(d).

²³ *Id.*

²⁴ PX 2 ¶ 5; PX 5 ¶ 5; PX 7 ¶ 5; PX 9 ¶ 6; PX 15 ¶ 6; PX 19 ¶ 6; PX 22 ¶ 5; PX 25 ¶ 4.

that they work for “Card Qualification Program” (“CQP”), or “Interest Reduction Program” (“IRP”), rather than Higher Goals Marketing.²⁵

After confirming that a consumer’s credit-card balances, interest rates, and available credit meet Defendants’ criteria, Defendants guarantee that they can substantially and permanently lower the consumer’s credit-card interest rates.²⁶ Defendants also represent that their rate-reduction services will save consumers thousands of dollars.²⁷

C. Defendants’ Rate-Reduction Services Do Not Deliver the Promised Results

Defendants sometimes initiate telephone conference calls with consumers and their credit-card Issuers and request a lower interest rate on consumers’ existing credit cards.²⁸

These calls are rarely successful because credit-card Issuers will generally agree only to a modest reduction in a consumer’s interest rate, if they will agree to any reduction at all.²⁹

In other instances, Defendants obtain new credit cards that have a low introductory rate (“Promotional-Rate Cards”) and help consumers transfer their existing balances to those

²⁵ See PX 3 ¶ 2 (Decl. of Dina Schaub) (consumer understood that she was dealing with “IRP” or “Interest Rate Program”); PX 11 ¶ 2 (Decl. of Marian Lang) (consumer understood that she was dealing with “IRP” or “Interest Reduction Program”); PX 18 ¶ 2 (Decl. of Tammie Rable) (consumer understood that she was dealing with “IRP” or “IPR”); PX 25 ¶ 2 (consumer understood that she was dealing with “IRP” or “Interest Rate Program”); PX 20 ¶ 2 (Decl. of Kent D. Lipps) (consumer understood that he was dealing with “Card Qualification Program”); *see also* PX 40 at 11 (consumer check showing payment for “CQP Transfer Card”).

²⁶ PX 2 ¶¶ 11-12; PX 3 ¶¶ 9-10; PX 4 ¶ 4 (Decl. of Donald R. Faison); PX 5 ¶¶ 12-13; PX 6 ¶ 5 (Decl. of Ellen Elizabeth Hughes); PX 8 ¶ 6 (Decl. of Jane C. Foster); PX 9 ¶¶ 12-13; PX 10 ¶ 7 (Decl. of Lorna Sideman); PX 12 ¶ 8 (Decl. of Nancy Russo); PX 13 ¶ 4 (Decl. of Penelope A. Wade); PX 14 ¶ 5 (Decl. of Richard Pender); PX 15 ¶¶ 14-15; PX 16 ¶ 7 (Decl. of Sharon Lang); PX 18 ¶¶ 10-11; PX 19 ¶¶ 10-11; PX 20 ¶ 7; PX 21 ¶ 4 (Decl. of Josephine Sgambelluri); PX 23 ¶ 4 (Decl. of Amanda Pliant); PX 24 ¶ 8 (Decl. of Martha M. Price); PX 25 ¶ 11; PX 48 ¶ 4 (Decl. of Barbara A. Owens).

²⁷ PX 3 ¶ 11; PX 4 ¶ 5; PX 6 ¶ 7; PX 8 ¶ 7; PX 10 ¶ 8; PX 13 ¶ 5; PX 14 ¶ 6; PX 16 ¶ 8; PX 18 ¶ 12; PX 19 ¶ 12; PX 20 ¶ 8; PX 21 ¶ 5; PX 23 ¶ 5; PX 48 ¶ 5. In fact, Defendants’ “Closer Script” filed with the Florida Department of Agriculture and Consumer Services (“DOACS”) directs employees to guarantee consumers they will get out of debt “3-5 times faster,” save them at least \$2500, and have “absolutely no out of pocket expense.” PX 35 ¶ 13; *id.* at p. 26-27 (Exhibit 5).

²⁸ PX 6 ¶ 16; PX 14 ¶ 11; PX 20 ¶ 18; PX 24 ¶ 14.

²⁹ See PX 33 ¶¶ 40-41 (Decl. of Industry Expert Lisa Wilhelm); PX 36 ¶ 9 (Decl. of Gail Kilmer, Regulatory Managing Director at Citibank, N.A.); *see also* PX 6 ¶ 16; PX 14 ¶ 11; PX 20 ¶ 18; PX 24 ¶ 14.

cards.³⁰ But Promotional-Rate Cards offer only temporarily low interest rates, which increase dramatically at the end of the promotional term.³¹ Promotional-Rate Cards also may require consumers to pay a balance-transfer fee of up to 5%.³² Some consumers have realized that their Promotional-Rate Cards offered only a temporary interest-rate reduction and have brought this issue to Defendants' attention.³³ Defendants claim that they will obtain permanently low interest rates for consumers by either: (1) convincing the Promotional-Rate Card Issuers to extend the promotional interest rate indefinitely;³⁴ or (2) repeatedly rolling over the consumer's debt to new Promotional-Rate Cards until the consumer's credit-card balance is paid off.³⁵

Defendants do not (and cannot) deliver on their promises using Promotional-Rate Cards. Issuers will not extend the term of a Promotional-Rate Card because the increased rates offset the cost of offering a zero-percent or other low interest rate during the promotional period.³⁶ Defendants also cannot predict the terms that Issuers will be offering months or years in the future, or whether a given consumer will qualify for a given card at a

³⁰ See, e.g., PX 4 ¶¶ 12-13; PX 8 ¶¶ 16-18; PX 13 ¶¶ 9-13; PX 20 ¶¶ 20-26; PX 22 ¶¶ 9-18; PX 23 ¶¶ 11-12; PX 48 ¶ 12. Cf. PX 16 ¶ 24 (Defendants failed to lower consumer's interest rates on 10 of 12 credit-cards); PX 21 ¶¶ 6, 12-13 (consumer fails to obtain lower interest rates on \$39,000 of \$50,000 credit card debt); PX 48 ¶ 12 (Defendants transfer some but not all of consumers' credit-card debt to new Promotional-Rate Cards).

³¹ See PX 48 ¶ 15 (consumer's promotional term expired in August 2017 and is now paying 15% interest rate on credit-card debt); PX 20 ¶ 34 (promotional term expired in September 2017 and consumer is now paying 23.99% interest rate on a portion of existing credit-card debt); PX 13 ¶ 13 (promotional term expired in October 2017, interest rate increased to 13.99%); see also PX 4 ¶ 12; PX 8 ¶ 16-18; PX 22 ¶¶ 9-18; PX 23 ¶ 12.

³² PX 33 ¶¶ 24-26 & Figure B; *id.* ¶ 33; see also PX 4 ¶ 13; PX 8 ¶ 17; PX 13 ¶ 9; PX 20 ¶ 10.

³³ PX 4 ¶ 15; PX 20 ¶¶ 21-25; PX 22 ¶¶ 9-18; PX 23 ¶ 10.

³⁴ PX 20 ¶ 25.

³⁵ PX 4 ¶ 15; PX 20 ¶ 25; PX 22 ¶ 20. Cf. PX 8 ¶ 18-21 (Defendants stop returning consumer's call after obtaining a new Promotional-Rate Card for her).

³⁶ PX 33 ¶¶ 22, 47.

future date.³⁷ And, Issuers are generally less likely to approve successive Promotional-Rate Cards, both because Issuers do not want customers who will leave before the post-promotional interest rates kick in, and because repeated applications for Promotional-Rate Cards lower a consumer's overall creditworthiness.³⁸ For these reasons, consumers also almost never save thousands of dollars, especially after paying Defendants' high up-front fees.³⁹

D. Defendants Use a Shell Company to Collect Illegal Up-Front Fees, And Often Instruct Consumers to Pay Using a Credit-Card Cash Advance

Defendants request an up-front fee for their rate-reduction services that generally ranges from \$500 to \$5,000.⁴⁰ In many instances, Defendants urge consumers to pay the up-front fee by taking a cash advance on their credit cards.⁴¹ Defendants do not inform consumers that credit-card Issuers often charge a fee for cash-advance transactions, and may charge a higher interest rate on this type of credit-card debt.⁴² Alternatively, Defendants ask consumers to pay the up-front fee through credit-card checks.⁴³ Because Defendants use these non-traditional payment methods rather than directly charging consumers' credit cards, consumers are unable to take advantage of their credit-card chargeback rights under federal

³⁷ *Id.* ¶¶ 46-59.

³⁸ The FTC is not aware of any instance in which Defendants have lowered a consumer's interest rate and then maintained that rate beyond the initial promotional period by obtaining a second (or other successive) round of Promotional-Rate Cards in that consumer's name.

³⁹ *See, e.g.*, PX 4 ¶ 16, PX 6 ¶ 20, PX 8 ¶ 22, PX 13 ¶ 15, PX 20 ¶ 35, PX 21 ¶ 14, PX 23 ¶ 14, PX 48 ¶ 16.

⁴⁰ Anderson Dep. at 41:17-24.

⁴¹ *See, e.g.*, PX 9 ¶ 18; PX 14 ¶¶ 13-15; PX 16 ¶¶ 14-15.

⁴² PX 33 ¶ 61.

⁴³ Credit-card Issuers often send consumers these checks along with routine correspondence, such as consumers' credit-card statements. In other instances, credit-card Issuers send these checks directly to Defendants after a three-way telephone call in which Defendants, the Issuer, and the consumer participate. *See, e.g.*, PX 20 ¶ 16; PX 22 ¶ 15.

law.⁴⁴ Further, by demanding payment in this manner, Defendants avoid having to open and maintain an active credit-card-processing merchant account, which banks and payment processors generally monitor for fraud.⁴⁵

After consumers take a cash advance, Defendants usually instruct them to send a check or money order made out to “Sunshine Freedom Services” or “SFS,”⁴⁶ which is a shell company.⁴⁷ By doing so, Defendants further conceal Higher Goals Marketing’s role in the scheme and reduce the likelihood that consumers file complaints about the company to law-enforcement agencies and the Better Business Bureau. Defendants use couriers such as UPS and FedEx to pick up checks and money orders from consumers’ residences, and have them delivered to mail drops located in the Orlando area.⁴⁸ By using the address of a mail drop on UPS or FedEx labels, Defendants conceal the location of their call center from consumers.

III. DEFENDANTS

A. Corporate Defendants

Defendant **Higher Goals Marketing LLC** is a Florida limited liability company organized in June 2016, with its principal place of business at 2400 North Forsyth Road, Suite 207, Orlando, Florida 32807.⁴⁹ Higher Goals Marketing employs the telemarketers

⁴⁴ See Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, and Regulation Z, 12 CFR § 226, *et seq.*

⁴⁵ PX 33 ¶ 62.

⁴⁶ Anderson Dep. 84:21-85:20; *id.* at 153:25-154:4.

⁴⁷ *Id.* at 153:25-154:22.

⁴⁸ PX 37 ¶¶ 10-16 (Shah Decl.); *id.*, Exhibits C & D (pp. 12-27).

⁴⁹ PX 26, p. 4.

who pitch Defendants' rate-reduction services and the personnel who try to lower customers' credit-card interest rates.⁵⁰

Defendant **Sunshine Freedom Services LLC** is a Florida limited liability company that has identified its principal place of business in corporate filings as 5240 Curtis Boulevard, Cocoa, Florida 32927.⁵¹ Sunshine Freedom Services is a shell company with no known employees or business location.⁵² The only purpose of Sunshine Freedom Services is to open bank accounts, receive payments for rate-reduction services sold by Higher Goals Marketing, and transfer those funds to accounts held by Higher Goals Marketing.⁵³ Bank records show more than \$1.7 million in such transfers between July 2016 and June 2017.⁵⁴

B. Individual Defendants

Brandun L. Anderson was deposed in the *Life Management Services* case and has admitted to being the owner of Higher Goals Marketing,⁵⁵ the company's articles of organization also identify him as its sole manager.⁵⁶ During his deposition, Anderson testified that he is the sole signer on all bank accounts for Higher Goals Marketing,⁵⁷ and bank records show that his signature appears on paychecks issued to the enterprise's

⁵⁰ PX 35 ¶¶ 20 & 32; *id.* at Compton Ex. 11.

⁵¹ PX 27, p. 4.

⁵² The company's filings with the Florida Department of State list a residential address as its principal place of business. *See id.*

⁵³ Anderson Dep. at 84:21-24; *id.* at 85:7-89:2; *id.* at 91:8-18.

⁵⁴ PX 34 ¶ 11.

⁵⁵ Anderson Dep. at 29:18-19.

⁵⁶ PX 26, p. 4.

⁵⁷ Anderson Dep. at 148:25-149:2.

telemarketers and lead generators.⁵⁸ Between July 2016 and June 2017, Anderson received approximately \$291,000 in check payments from the enterprise.⁵⁹

Lea A. Brownell is a manager at Higher Goals Marketing.⁶⁰ Brownell previously worked for the Life Management Defendants, was at the call center when the receiver conducted the court-ordered immediate access, and was deposed during discovery in the *Life Management Services* case.⁶¹ Brownell testified that she supervises Higher Goal Marketing’ “financial advisors,” that is, the telemarketers who speak with consumers and attempt to lower those consumers’ credit-card interest rates.⁶² Brownell also closes sales for Higher Goals Marketing.⁶³ Brownell similarly was a closer for the Life Management Defendants and has admitted misleading consumers about those defendants’ debt relief services and otherwise violating the Telemarketing Sales Rule (“TSR”).⁶⁴ Brownell received more than \$100,000 from the enterprise between July 2016 and June 2017.⁶⁵

Melissa M. Deese is a manager at Higher Goals Marketing and is responsible for overseeing the company’s fronters⁶⁶ and closers.⁶⁷ Deese has also prepared the telemarketing scripts that Higher Goals Marketing filed with Florida Department of

⁵⁸ PX 40 at 12-18 (sample checks from Higher Goals Marketing to Dorian Mohammad); *see also supra* n. 15.

⁵⁹ PX 34 ¶¶ 13, 15.

⁶⁰ Lea Brownell Dep. at 122:20-24 (Oct. 19, 2016); *id.* at 123:15-22; *id.* at 125:21-126:13; *see also* Anderson Dep. at 39:17-21; *id.* at 101:14-25; Stickles Dep. at 263:12-17.

⁶¹ PX 54; *see generally* Brownell Dep.

⁶² Brownell Dep. at 122:20-123:22; *id.* at 123:21-126:11.

⁶³ Anderson Dep. at 39:17-21; Stickles Dep. 257:17-259:25.

⁶⁴ Brownell Dep. at 147:6-25.

⁶⁵ PX 34 ¶ 16; *id.* at Attach. D.

⁶⁶ A “fronter” is the first telemarketer who speaks with consumers who “press one” after receiving a robocall.

⁶⁷ *See* Anderson Dep. at 39:13-17; *id.* at 49:18-13; *id.* at 162:5-11; *see also infra* n. 73 (examples of Deese invoking the Fifth Amendment when asked about her role at Higher Goals Marketing).

Agriculture and Consumer Services (“DOACS”).⁶⁸ These scripts are virtually identical to scripts filed with DOACS by the Life Management Defendants.⁶⁹ Higher Goals Marketing pays Deese a salary plus one percent of the enterprise’s gross revenue.⁷⁰

Deese previously worked at the Life Management Defendants’ call center as fronter, and was responsible for training new fronters hired by those defendants.⁷¹ While working for the Life Management Defendants, Deese kept multiple sets of telemarketing scripts at her desk, not just the scripts that the Life Management Defendants had submitted to DOACS.⁷² Deese was at the Life Management Defendants’ call center when the receiver conducted the immediate access and also sat for a deposition during discovery, at which she repeatedly invoked the Fifth Amendment when asked about her work for those Defendants.⁷³ Deese similarly invoked the Fifth Amendment when asked about Higher Goals Marketing,⁷⁴ yet testified that she would continue working for the company unless a court shut it down.⁷⁵

Gerald D. Starr, Jr. is the sole manager identified in Sunshine Freedom Services’ corporate filings and the sole signer listed on the company’s bank accounts.⁷⁶ Higher Goals Marketing pays Starr 2-6% of consumer payments that flow through the accounts of

⁶⁸ See Anderson Dep. at 48:4-7.

⁶⁹ PX 35 ¶ 34.

⁷⁰ Anderson Dep. at 48:11-23

⁷¹ Melissa Deese Dep. at 154:6-155:2 (Nov. 17, 2016) (taking the Fifth).

⁷² *Id.* at 154:3-24 (taking the Fifth); PX 68 ¶ 33.

⁷³ See, e.g., Deese Dep. at 21:18-21; *id.* at 24:24-25:2; *id.* at 30:10-20; *id.* at 31:7-32:21.

⁷⁴ See *infra* n. 141.

⁷⁵ See Deese Dep. at 179:23-180:21.

⁷⁶ PX 27; PX 68 ¶ 22.

Sunshine Freedom Services.⁷⁷ Between July 2016 and June 30, 2017, approximately \$134,000 in cash was withdrawn from accounts on which Starr is the sole signer.⁷⁸

Travis L. Teel is the sales manager at Higher Goals Marketing.⁷⁹ His responsibilities include payroll, sales, and ensuring delivery of consumer payments to mail drops controlled by the enterprise.⁸⁰ Teel received more than \$100,000 between July 2016 and June 2017 from Higher Goals Marketing.⁸¹ Teel previously worked for the Life Management Defendants and was at those defendants' call center when the receiver conducted the immediate access.⁸² Prior to working for the Life Management Defendants, Teel worked for another debt-relief scam sued by the FTC.⁸³

Wayne T. Norris has provided substantial assistance to the other Defendants' unlawful telemarketing scheme. Norris organized the telemarketing infrastructure that Defendants have used to bombard consumers with illegal robocalls,⁸⁴ assembled the

⁷⁷ See Anderson Dep. at 85:7-87:11. Between July 2016 and June 30, 2017, total deposits in accounts controlled by Sunshine Freedom Services totaled at least \$1.8 million. See PX 34 ¶ 11 (total wire transfers between Sunshine Freedom Services and Higher Goals Marketing was \$1,743,994). The difference between the incoming and outgoing sums suggests that Starr received between \$36,000 and \$108,000 during that period.

⁷⁸ PX 34 ¶ 14.

⁷⁹ Anderson Dep. at 32:7-13; *id.* at 38:9-24; *id.* at 153:2-4; *id.* at 162:5-11.

⁸⁰ Documentary evidence also demonstrates that Teel coordinates with couriers to pick up consumers' up-front fees. PX 37 ¶¶ 10-15; *id.*, Ex. C (pp. 12-18).

⁸¹ PX 34 ¶ 17.

⁸² PX 56.

⁸³ Prior to working for the Life Management Defendants, Teel worked with Gary Rodriguez, a defendant in *FTC v. All Us Marketing LLC*, No. 6:15-cv-1016-Orl-28GJK (M.D. Fla., filed June 17, 2015). Norris Dep. at 72:18-73:4.

⁸⁴ See *supra* notes 15 & 19.

managers to launch and oversee the enterprise,⁸⁵ and facilitated the creation of a shell company (Sunshine Freedom Services) to collect the scheme's illegal up-front fees.⁸⁶

Norris was previously an upper-level manager of the Life Management Defendants' enterprise. He learned about the lawsuit no later than June 13, 2016 (six days after filing)⁸⁷ and was deposed during the earlier litigation.⁸⁸ Norris testified that one of his responsibilities was to recruit his friends to start shell companies in their names, open bank accounts for the shell companies, and use the accounts to collect consumer payments.⁸⁹ Norris created eight shell companies in this fashion.⁹⁰ Norris also testified that he and the shell-company owners each received a percentage of the payments that flowed through the accounts.⁹¹ Before working for the Life Management Defendants, Norris worked for at least one other fraudulent debt-relief operation shut down by a federal court.⁹²

IV. THE COURT SHOULD ISSUE A TEMPORARY RESTRAINING ORDER

To put an immediate stop to Defendants' ongoing deceptive and unlawful practices and to preserve the possibility of effective final relief, the FTC requests that the Court issue a

⁸⁵ Norris Dep. at 165:8-19; *id.* at 166:12-17; Anderson Dep. at 34:7-11; *id.* at 38:9-39:16; *id.* at 47:25-48:7; *id.* at 61:8-14.

⁸⁶ Anderson Dep. at 83:5-17; *id.* at 84:21-24; *id.* at 154:2-22.

⁸⁷ Norris Dep. at 125:11-126:25.

⁸⁸ *See* Norris Dep. at 125:11-126:10.

⁸⁹ Norris Dep. at 36:4-14; *id.* at 174:8-174:5; *id.* at 231:5-16.

⁹⁰ Norris Dep. at 229:10-236:4.

⁹¹ *Id.* at 234:17-235:12.

⁹² Before Norris became a manager for the Life Management Defendants, he worked for Leroy Castine, a defendant in *FTC v. Ambrosia Web Design LLC*, CV 12-2248-PHX-FJM (D. Ariz. filed Oct. 22, 2012). PX 60; *see also* Norris Dep. at 40:21-45:16. In connection with this work, Norris brokered a merchant processing agreement between Castine and the defendants in a third FTC enforcement action—*FTC v. Green Savers*, No. 6:12-cv-1588 (M.D. Fla., filed Oct. 22, 2012). PX 65; *see also* Norris Dep. at 149:6-150:14. Norris also invoked the Fifth Amendment when asked about other companies he formed to provide services in the debt-relief industry. Norris Dep. at 184:6-8.

TRO with provisions for asset and document preservation, the appointment of a receiver, expedited discovery, and requiring Defendants to show cause why a preliminary injunction should not issue. As shown below, the Court has the authority to enter the relief sought, the materials submitted in support of this motion demonstrate that the FTC is likely to succeed on the merits, and the equities weigh in favor of the requested relief.

A. Section 13(b) of the FTC Act Authorizes the Court to Grant the Requested Relief

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides that “in proper cases the [FTC] may seek, and after proper proof, the court may issue, a permanent injunction.” Violations of Section 5(a) of the FTC Act present a “proper case” for injunctive relief under Section 13(b).⁹³ The FTC may also pursue injunctive relief for violations of the TSR.⁹⁴ Under its equitable powers, the Court may enter a TRO, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief.⁹⁵ Such ancillary relief may include an asset freeze and expedited discovery to preserve assets for eventual restitution to victimized consumers as well as the appointment of a receiver.⁹⁶

In determining whether to grant preliminary injunctive relief under Section 13(b) of the FTC Act, courts in the Eleventh Circuit consider two factors: (1) the likelihood of success

⁹³ See *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996).

⁹⁴ Violations of the TSR are considered violations of a rule issued under the FTC Act. A violation of such rules constitutes an unfair and deceptive act or practice in under Section 5(a) of the FTC Act. See 15 U.S.C. §§ 45(a), 57a(a)(1)(B), and 6102(c)(1); see also *United States v. Dish Network LLC*, No. 09-3073, 2017 U.S. Dist. LEXIS 85543 (N.D. Ill. June 5, 2017) (granting permanent injunctive relief for violations of the TSR).

⁹⁵ *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432 (11th Cir. 1984).

⁹⁶ *Id.* at 1432-34.

on the merits, and (2) whether the public equities outweigh any private equities.⁹⁷ This approach differs from the traditional four-pronged preliminary injunction standard. Unlike private litigants, the FTC does not need to prove irreparable injury, which is presumed to exist in a statutory enforcement action.⁹⁸

As explained below, the materials submitted in support of this motion show that the FTC has a likelihood of success in establishing that Defendants' conduct violates Section 5(a) of FTC Act⁹⁹ and multiple provisions of the TSR.¹⁰⁰ The record further demonstrates that the equities favor the requested relief.

B. The FTC Has Shown a Likelihood of Success on the Merits

1. Defendants' Deceptive Practices Violate the FTC Act (Counts One and Two)¹⁰¹

Section 5(a) of the FTC Act provides: “[U]nfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.” An act or practice is deceptive under Section 5(a) if it involves a material representation or omission that would likely mislead consumers acting reasonably under the circumstances.¹⁰² “A misrepresentation is material if it is likely to affect a consumer’s decision to buy a product or service.”¹⁰³

The FTC is not required to prove a defendant’s intent to deceive consumers in order

⁹⁷ *FTC v. Univ. Health*, 938 F.2d 1206, 1217 (11th Cir. 1991).

⁹⁸ *Id.* at 1218.

⁹⁹ 15 U.S.C. § 45(a) (prohibiting deceptive acts or practices in or affecting commerce).

¹⁰⁰ 16 C.F.R. Part 310 (2015).

¹⁰¹ These Counts run against all Defendants, except Norris.

¹⁰² *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *see also FTC v. Inbound Call Experts*, 14-81395-CIV-MARRA, 2014 U.S. Dist. LEXIS 182857, at *6-7 (S.D. Fla. Dec. 22, 2014).

¹⁰³ *FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 631 (6th Cir. 2014); *see also FTC v. Wash. Data Res.*, 856 F. Supp. 1247, 1273 (M.D. Fla. 2012).

to establish Section 5 liability.¹⁰⁴ Moreover, the value of the product or service sold is irrelevant to the Section 5 analysis; at issue is whether “the seller’s misrepresentations tainted the customer’s purchasing decisions.”¹⁰⁵

a. Defendants Misrepresent the Results Their Rate-Reduction Services Will Achieve for Consumers

Count One alleges that Defendants have made numerous false and misleading representations while selling debt relief services in violation of Section 5 of the FTC Act.

While pitching their purported rate-reduction services, Defendants represent that they will substantially and permanently lower consumers’ credit-card interest rates, and will save consumers thousands of dollars.¹⁰⁶ These claims are false because consumers who pay Defendants’ up-front fee almost never obtain these things.

Defendants’ misrepresentations are material because they relate directly to the effectiveness of Defendants’ rate-reduction services. Based on the consumer, expert, and industry declarations submitted in support of this motion,¹⁰⁷ the FTC has demonstrated a likelihood of success on the merits of Count One.

b. Defendants Fail to Disclose the True Cost of Their Rate-Reduction Services

Count Two alleges that Defendants violated Section 5 of the FTC Act by deceptively failing to disclose the full cost of their rate-reduction services. Specifically, Defendants fail

¹⁰⁴ *FTC v. Direct Benefits Group, LLC*, 6:11-cv-1186-Orl-28TBS, 2012 U.S. Dist. LEXIS 162696, *9 (M.D. Fla., Nov. 14, 2012); *see also Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1368 (11th Cir. 1988).

¹⁰⁵ *FTC v. IAB Mktg. Assocs., LP*, 746 F.3d 1228, 1235 (11th Cir. 2014). Relatedly, the existence of some satisfied customers is not a defense to Section 5 liability. *See FTC v. Wilcox*, 926 F. Supp. 1091, 1099 (S.D. Fla. 1995) (citing *FTC v. Amy Travel Service*, 875 F.2d 564, 572 (7th Cir. 1989)).

¹⁰⁶ *See supra* Section II(B).

¹⁰⁷ PX 1-25, 33, 36, 48.

to disclose that one of their rate-reduction methods—transferring consumers’ existing credit-card debt to a new Promotional-Rate Card—may result in the consumer paying a variety of bank fees, such as balance-transfer fees, which can total up to 5% of the transferred balance.¹⁰⁸ In addition, when pushing consumers to take a credit-card cash advance to pay their up-front fees, Defendants in many instances fail to inform consumers that Issuers often charge a fee for cash-advance transactions, and may charge a higher interest rate on this type of credit-card debt.¹⁰⁹

Defendants’ omissions relate directly to the price of their debt relief services and are therefore presumed material as a matter of law.¹¹⁰ As such, the FTC has demonstrated a likelihood of succeeding on the merits of Count Two of the Complaint.

2. Defendants have Violated the TSR (Counts Three Through Eight)¹¹¹

The TSR applies to Defendants because they are “sellers” or “telemarketers” of “debt relief services” who engage in “telemarketing,” as those terms are defined in the TSR.¹¹² Defendants or their agents initiate telephone calls to customers, making them “telemarketers,” and they offer to provide, or arrange for others to provide, services that alter the terms of a debt between a person and one or more unsecured creditors, thereby providing “debt relief services.”¹¹³ These services are offered in exchange for consideration, making

¹⁰⁸ See *supra* Section II(C).

¹⁰⁹ See *supra* Section II(D).

¹¹⁰ *In re Removatron Int’l Corp.*, 111 F.T.C. 206, 309 (1988), *aff’d* 884 F.2d 1489 (1st Cir 1989); see also *FTC v. Windward Mktg.*, 1:96-CV-615-FMH, 1997 U.S. Dist. LEXIS 17114, at *28 (N.D. Ga. Sept. 30, 1997).

¹¹¹ Here too, these Counts are against all Defendants, except Norris.

¹¹² 16 C.F.R. § 310.2.

¹¹³ 16 C.F.R. § 310.2(cc), (m).

Defendants “sellers” under the TSR.¹¹⁴

a. Defendants Misrepresent the Performance, Nature or Essential Characteristics of Their Debt Relief Services (Count Three)

The TSR prohibits Defendants from misrepresenting any material aspect of any debt relief service.¹¹⁵ Defendants falsely represent that their rate-reduction services will lower consumers’ interest rates substantially and permanently, and save consumers thousands of dollars.¹¹⁶ These misrepresentations violate the TSR.

b. Defendants Fail To Disclose Material Aspects of their Debt Relief Services (Count Four)

The TSR prohibits Defendants from omitting material aspects of their debt relief services, including its total cost.¹¹⁷ Defendants’ telemarketers fail to disclose that their rate-reduction services may require consumers to pay a variety of additional fees, including balance-transfer fees.¹¹⁸ Defendants’ failure to make this important mandatory disclosure violates the TSR.

c. Defendants Unlawfully Charge an Advance Fee for Their Debt Relief Services (Count Five)

The TSR also prohibits Defendants from requesting or collecting fees from a consumer for any debt relief service before (i) Defendants have renegotiated, reduced or otherwise altered the terms of at least one debt, and (ii) the consumer has made at least one

¹¹⁴ 16 C.F.R. § 310.2(aa).

¹¹⁵ 16 C.F.R. § 10.3(a)(2)(iii).

¹¹⁶ *See supra* Section II(B).

¹¹⁷ 16 C.F.R. § 310.3(a)(2)(i), (x).

¹¹⁸ *See supra* Sections II(C)-(D).

payment under the new terms.¹¹⁹ Nonetheless, Defendants request an up-front fee generally ranging from \$500 to \$5,000 for their rate-reduction services.¹²⁰ This practice violates the TSR.

d. Defendants Violate the Do Not Call and Robocall Provisions of the TSR (Counts Six, Seven, and Eight)

Defendants have initiated, or caused a telemarketer to initiate, numerous unsolicited telemarketing calls (i) to telephone numbers on the National Do Not Call Registry, (ii) that deliver prerecorded messages (i.e., robocalls).¹²¹ These calls violate the TSR.¹²² In addition, Defendants have placed these calls without paying the annual fee to access the National Do Not Call Registry; this also violates the TSR.¹²³

3. The FTC Has Demonstrated a Likelihood of Success in Proving that Defendant Norris Violated the TSR by Assisting and Facilitating the Unlawful Acts and Practices of the Other Defendants (Count Nine)

Pursuant to 16 C.F.R. § 310.3(b), it is a violation of the TSR “for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or Section 310.4 of [the TSR].” To find liability under this provision, the FTC must show more than “casual or incidental help to the telemarketer,

¹¹⁹ 16 C.F.R. § 310.4(a)(5)(i).

¹²⁰ *See supra* Section II(D).

¹²¹ 16 C.F.R. §§ 310.4(b)(1)(iii)(B) & 310.4(b)(1)(v)(A).

¹²² 16 C.F.R. § 310.4(b)(1)(iii)(B); 16 C.F.R. § 310.4(b)(1)(v)(A).

¹²³ 16 C.F.R. § 310.8.

but does not need to show a direct connection between the assistance and the misrepresentation[.]”¹²⁴

As explained below, Norris’s work has been critical to the success of Defendants’ illegal enterprise, which would not exist without him. Indeed, drawing upon his experience in connection with the Life Management Defendants scam and defendants in other FTC cases, Norris set out to forge Higher Goals Marketing as a copycat operation.

Deposition testimony establishes that Norris organized the enterprise’s telemarketing infrastructure,¹²⁵ and brought in lead generators that he had known and used while working for the Life Management Defendants.¹²⁶ Defendants have used these lead generators to bombard consumers with illegal telemarketing calls since July 2016.¹²⁷

Deposition testimony also demonstrates that Norris brought in and set up the management team to operationalize the scheme, including Defendants Brownell, Deese, and Teel, who worked with Norris for the Life Management Defendants.¹²⁸ Brownell, Deese, and Teel played important roles in getting Defendants’ enterprise off the ground, and they continue to oversee all aspects of the scheme, including hiring, training, and supervising telemarketers, collecting illegal up-front fees from consumers, and managing Defendants’

¹²⁴ *FTC v. Partners in Health Care Ass’n*, 189 F. Supp. 3d 1356, 1369 (S.D. Fla. 2016); *see also FTC v. Consumer Health Benefits Ass’n*, No. 10 Civ. 3551(ILG)(RLM), 2012 U.S. Dist LEXIS 72161, at *18 (E.D.N.Y. May 23, 2012) (“The threshold for what constitutes substantial assistance is low.”); Telemarketing Sales Rule Statement of Basis and Purpose, 60 Fed. Reg. 43,842, 43,852 (Aug. 23, 1996) (listing examples of substantial assistance).

¹²⁵ Anderson Dep. at 141:17-142:2.

¹²⁶ *Supra* n.15.

¹²⁷ Anderson Dep. at 116:1-4.

¹²⁸ *Supra* n. 85.

relationship with their lead generators.¹²⁹ Eventually, Higher Goals Marketing hired 15 other telemarketers who had worked for Norris and the Life Management Defendants.¹³⁰

Norris also provided substantial assistance by designing the scheme to use a shell company (Sunshine Freedom Services) to collect fees, thereby minimizing consumer complaints about Higher Goals Marketing to law enforcement agencies and the Better Business Bureau. Furthermore, Norris facilitated the creation of Sunshine Freedom Services by bringing in a high-school friend (Starr) to serve as that shell company's owner.¹³¹ Norris had used a similar method to create *eight* shell companies in the *Life Management Services* matter.¹³² The ruse has been largely successful here, just as it was in the *Life Management Services* matter: 19 of the 26 consumer declarants understood that they were dealing with a company other than Higher Goals Marketing.¹³³

Defendants' enterprise mirrors the Life Management Defendants' enterprise in several other important ways—both schemes use fake names to mask their identity, and use mail drops to hide their location;¹³⁴ both do not charge a consumer's credit card, making it

¹²⁹ See *supra* notes 60-65 (Brownell), 66-75 (Deese), 79-83 (Teel).

¹³⁰ Notwithstanding that prior relationship, 15 telemarketers who worked for the Life Management Defendants submitted license applications in connection with their work for Higher Goals Marketing wherein they stated that they had not previously worked for a business involved in pending litigation and subject to a preliminary injunction in a case involving deceptive trade practices. PX 35 ¶ 23; *id.*, at Compton Exs. 12-26 (pp. 73-117).

¹³¹ See Norris Dep. at 37:14-16; Anderson Dep. at 89:5-22; see also *supra* notes 10-12.

¹³² *Supra* notes 89-92.

¹³³ PX 2 ¶ 2 (Sunshine Freedom Services); PX 3 ¶ 2 (IRP, Interest Rate Program, Sunshine Freedom Services); PX 4 ¶ 2 (Sunshine Freedom Services); PX 5 ¶ 2 (company did not identify itself); PX 7 ¶ 2 (Sunshine Freedom Services); PX 9 ¶ 2 (Sunshine Freedom Services); PX 11 ¶ 2 (IRP, Interest Rate Program); PX 13 ¶ 2 (SFS); PX 14 ¶ 2 (SFS); PX 16 ¶ 2 (Sunshine Freedom Services); PX 17 ¶ 2 (Sunshine Freedom Services); PX 18 ¶ 2 (IRP, IPR, Credit Card Advocate); PX 19 ¶ 2 (SFS or SSS); PX 20 ¶ 2 (Card Qualification Program); PX 22 ¶ 2 (SFS); PX 23 ¶ 2 (Sunshine Freedom Services); PX 24 ¶ 2 (Sunshine Freedom Services); PX 25 ¶ 2 (IRP, Interest Rate Program); PX 48 ¶ 2 (SFS).

¹³⁴ Compare PX 31 pp. 18-19, 22, with *supra* n. 25, 46-48, 133.

more difficult for consumers to exercise their chargeback rights to obtain refunds.¹³⁵ By requiring payment by cash advances and checks rather than charging credit cards, Defendants also avoid having a merchant account and the attendant scrutiny of such accounts by banks and payment processors.¹³⁶ The similarity between the two scams is unsurprising, as Norris conceded at his deposition that, with the Life Management operation shut down by court order, he “did not mind assisting” Anderson in starting a business that would have competed directly with it.¹³⁷ This testimony, combined with the acts described above, shows that Norris knew or consciously avoided knowing that the other Defendants were engaged in the conduct described in Counts Three through Seven.

C. The Equities Favor the Requested Relief

In balancing the equities, “public equities must receive far greater weight” than private interests.¹³⁸ The public equities in this matter include protecting consumers who could be victimized by Defendants’ ongoing scheme, and preserving Defendants’ assets to redress consumers who have already lost money purchasing Defendants’ bogus rate-reduction services.¹³⁹ These public equities far outweigh any remote interest Defendants may have in continuing to operate their unlawful business.¹⁴⁰

¹³⁵ Compare PX 31 pp. 18-19, with *supra* Section II(D).

¹³⁶ See PX 33 ¶ 62.

¹³⁷ Norris Dep. at 261:8-24.

¹³⁸ *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1028-1029 (7th Cir. 1988); see also *FTC v. Weyerhaeuser Co.*, 665 F.2d 1072, 1083 (D.C. Cir. 1981) (“When the [FTC] demonstrates a likelihood of ultimate success, a countershooting of private equities along would not suffice to justify denial of a preliminary injunction.”).

¹³⁹ See *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) .

¹⁴⁰ See *id.* at 347 (affirming lower court’s finding that “there is no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment”).

In willful and brazen defiance of the rule of law, no less than four defendants who worked for the now-shuttered Life Management Defendants’ scam—Brownell, Deese, Norris and Teel—plied the “trade” they learned there to set up a copycat operation causing significant consumer harm. Indeed, despite direct confrontation from the FTC about Higher Goals Marketing’s business practices during the depositions of Anderson, Brownell, Deese, and Norris in the *Life Management Services* litigation, the copycat Higher Goals Marketing operation proceeds undeterred. Perhaps not surprisingly, Defendants Anderson, Deese, and Norris invoked the Fifth Amendment when asked about Defendants’ enterprise during those depositions.¹⁴¹ Defendant Deese even testified that she would continue working for the enterprise unless a court shut it down.¹⁴² Given this record, there is a strong likelihood that Defendants will continue defrauding consumers without strong injunctive relief.

V. THE TRO AND PRELIMINARY INJUNCTION SHOULD EXTEND TO ALL DEFENDANTS

A. Corporate Defendants are Jointly and Severally Liable as a Common Enterprise for Violations of the FTC Act

Corporate Defendants are jointly and severally liable for violations of the FTC Act when the “structure, organization, and pattern of a business venture reveal a common enterprise or a maze of integrated business entities.”¹⁴³ This Court looks to a variety of factors when making this determination, including (1) common control; (2) shared offices

¹⁴¹ Anderson Dep. at 78:14-19, *id.* at 81:3-24; *id.* at 82:14-15; *id.* at 131:15-16; Deese Dep. at 21:18-21; *id.* at 24:24-25:2; *id.* at 30:10-20; *id.* at 31:7-32:21; *id.* at 66:8-67:22; *id.* at 109:18-20; *id.* at 112:20-113:13; *id.* at 113:24-114:24 *id.* at 126:25-127:4; *id.* at 128:24-129:7; *id.* at 142:10-17; *id.* at 143:25-144:8; *id.* at 147:5-7; *id.* at 151:19-24; *id.* at 155:9-22; *id.* at 157:12-158:12; *id.* at 159:22-160:2; *id.* at 176:2-4; *id.* at 177:10-21; *id.* at 177:25-178:8; *id.* at 178:23-179:10; Norris Dep. at 152:17-22.

¹⁴² See Deese Dep. at 179:23-180:21.

¹⁴³ *FTC v. Lanier Law*, No. 16-16524, 2017 U.S. App. LEXIS 21886, at *17-*18 (11th Cir. Nov. 2, 2017).

and staff; (3) commingling of funds; (4) shared expenses; and (5) shared marketing.¹⁴⁴

Higher Goals Marketing and Sunshine Freedom Services are integrated entities working as a common enterprise. The companies operate under common control, despite having different officers. Anderson, the registered owner of Higher Goals Marketing, testified at his deposition that he determines the amount of money that Starr, the registered owner of Sunshine Freedom Services, is allowed to withdraw from Sunshine Freedom Services' bank accounts.¹⁴⁵ Anderson also testified that Starr transfers funds from Sunshine Freedom Services' bank accounts to Higher Goals Marketing's bank accounts at Anderson's direction.¹⁴⁶ The companies share an office location and staff. Sunshine Freedom Services is a shell company that was set up exclusively to collect consumer payments for Defendants' rate-reduction services.¹⁴⁷ It has no office location aside from Higher Goals Marketing's call center, and no staff apart from Higher Goals Marketing's telemarketers. Indeed, Higher Goals Marketing's telemarketers often instruct consumers to make checks payable to "Sunshine Freedom Services" or "SFS."¹⁴⁸ The companies also commingle funds, which are used to pay the companies' shared expenses, including payroll, rent, and marketing.¹⁴⁹ For these reasons, the Corporate Defendants' easily satisfy the common enterprise factors.

¹⁴⁴ *FTC v. Wash. Data Res.*, 856 F. Supp. 2d at 1271-1272.

¹⁴⁵ Anderson Dep. at 86:20-87:16.

¹⁴⁶ *Id.*; see also *supra* Section III(A)-(B).

¹⁴⁷ *Supra* n. 53.

¹⁴⁸ See Anderson Dep. at 84:21-85:20; *id.* at 153:25-154:4; PX 12 ¶¶ 10-13 (consumer is told that SFS is a division of HGMC); see also PX 3 ¶ 2; PX 6 ¶¶ 10-12; PX 7 ¶¶ 15-16; PX 13 ¶ 7; PX 14 ¶ 22; PX 16 ¶ 22; PX 17 ¶ 16; PX 19 ¶ 16; PX 22 ¶ 16; PX 23 ¶ 9; PX 24 ¶ 16; PX 48 ¶ 11.

¹⁴⁹ *Supra* n. 15.

B. Anderson, Brownell, Deese, Teel, and Starr Are Subject to Monetary and Injunctive Relief for Corporate Defendants' Unlawful Acts

To obtain injunctive relief against individuals for consumer harm from a company's conduct, the FTC must show that the individual defendants participated directly in the unlawful acts or practices or had authority to control them.¹⁵⁰ To obtain monetary relief, the FTC must also show that the individual defendants had some knowledge of these acts or practices.¹⁵¹ Having signing authority on corporate accounts evidences control.¹⁵² Authority to control may also be evidenced by "active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer."¹⁵³ The FTC may satisfy the knowledge prong by showing actual knowledge of the misrepresentations, reckless indifference to the truth or falsity of the representations, or awareness of a high probability of fraud coupled with an intentional avoidance of the truth.¹⁵⁴

In this case, Defendants Anderson and Starr are managers of the two Corporate Defendants, and signatories on bank accounts where millions of dollars of scheme proceeds have been deposited or transferred.¹⁵⁵ Defendants Brownell, Deese, and Teel are day-to-day managers of the scheme's call center.¹⁵⁶ These facts establish that Defendants Anderson, Brownell, Deese, Teel, and Starr have participated in or controlled the enterprise's actions.

¹⁵⁰ See *FTC v. IAB Mktg. Assocs. LP*, 746 F.3d at 1232-1233; *FTC v. Amy Travel Serv.*, 875 F.2d at 573.

¹⁵¹ See *Gem Merch. Corp.*, 87 F.3d at 470; *FTC v. Amy Travel Serv.*, 875 F.2d at 573.

¹⁵² *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1270 (S.D. Fla. 2007) ("An individual's status as a corporate officer gives rise to a presumption of ability to control a small, closely-held corporation.") (citations omitted).

¹⁵³ *FTC v. Wilcox*, 926 F. Supp. at 1104 (quoting *Amy Travel*, 875 F.2d at 573).

¹⁵⁴ See *Transnet Wireless*, 506 F. Supp. 2d at 1270.

¹⁵⁵ See *supra* Section III(B); PX 34 ¶¶ 9-11.

¹⁵⁶ See *supra* notes 60-75, 79-83.

The evidence also demonstrates that these Defendants either had some knowledge of the unlawful scheme, or were at least aware that the enterprise was likely engaging in fraud and took no steps to learn the truth. Defendant Anderson invoked the Fifth Amendment when asked questions about the enterprise's business practices,¹⁵⁷ and admittedly uses another company (Sunshine Freedom Services) to collect payments for services that his telemarketers sell to consumers.¹⁵⁸ Defendants Brownell, Deese, and Teel worked for the Life Management Defendants and witnessed that business being shut down for fraud;¹⁵⁹ they nonetheless signed on with their former manager (Norris) to start another business selling the same bogus rate-reduction services. Deese also invoked the Fifth Amendment on numerous occasions when asked about her work at Higher Goals Marketing.¹⁶⁰ Defendant Starr, a longtime friend of Norris, was likely told about the unlawful nature of this enterprise, given that Norris had briefed shell-owners in the *Life Management Services* case about the potential risks of that operation.¹⁶¹ More importantly, the very structure of the enterprise, which Starr helped to build, demonstrates that Starr had knowledge that Corporate Defendants were defrauding consumers. Starr created a shell company that accepted millions of dollars in consumer payments for services that neither he nor Sunshine Freedom Services provided, wired over \$1.7 million dollars to Anderson in just eleven months,¹⁶² and opened post office

¹⁵⁷ See *supra* n. 141.

¹⁵⁸ Anderson Dep. at 86:20-87:16; see also *supra* Section III(A).

¹⁵⁹ PX54 (Receiver questionnaire signed by Brownell on June 9, 2016); PX 55 (Deese); PX 56 (Teel).

¹⁶⁰ See *supra* n. 141.

¹⁶¹ Norris Dep. at 233:7-25.

¹⁶² PX 34 ¶ 11.

boxes¹⁶³ so that consumers would not know the enterprise's location. Under such stark facts, even if Starr did not have actual knowledge of the fraud, he has to have had an awareness of a high probability of fraud coupled with an intentional avoidance of the truth.

These facts demonstrate that Anderson, Brownell, Deese, Teel and Starr, either know that the enterprise is engaged in fraudulent conduct, are recklessly indifferent to the enterprise's deceptive practices, or have intentionally avoided knowing about the activities of the Corporate Defendants' copycat scam. These Defendants should therefore be held liable for monetary relief.

C. Defendant Norris is Subject to Injunctive and Monetary Relief for Assisting and Facilitating the Other Defendants' Unlawful Conduct

Norris has violated the TSR by providing substantial assistance to the other Defendants' telemarketing scheme. Indeed, Norris's conduct has been crucial to the scheme's creation and ongoing operation, which has defrauded well over 1,500 people for more than \$2.1 million.¹⁶⁴ Norris can and should be permanently enjoined from such conduct.

TSR violations can also be remedied through monetary relief, which is permitted under the Court's equitable powers.¹⁶⁵ Indeed, the Court may enter any relief necessary to redress injury to consumers caused by TSR violations, including "rescission or reformation of contracts [and] the refund of money or return of property."¹⁶⁶ Here, the FTC seeks

¹⁶³ PX 37 ¶6; *id.*, at Ex. A (pp. 3-9).

¹⁶⁴ PX 34 ¶¶ 9-10.

¹⁶⁵ *See* 15 U.S.C. § 6105(b).

¹⁶⁶ 15 U.S.C. §§ 57b(a)(1) & (b).

restitution for the victims of Defendants' scam. The Court may accordingly hold Norris liable for the total consumer harm in this matter.¹⁶⁷

D. An Asset Freeze Is Necessary For All Defendants

To preserve the possibility of final relief, the FTC asks the Court to freeze all Defendants' assets and to order an immediate accounting to prevent concealment or dissipation of assets pending a final resolution. Courts in this Circuit have repeatedly ordered asset freezes to preserve the possibility of consumer redress.¹⁶⁸ An asset freeze should be imposed where (1) there is a likelihood of success on the merits and (2) the defendants will dissipate assets absent an injunction.¹⁶⁹ Here, an asset freeze will preserve the status quo, ensuring funds that have not already been dissipated are available for consumer redress.

Defendants have reconstituted the very scam shut down by this Court in the *Life Management Services* matter and have defrauded well over 1,500 consumers for more than \$2.1 million since June 2016.¹⁷⁰ Defendants have used a shell company to hide their ill-gotten gains and have taken large distributions from the enterprise.¹⁷¹ Defendants have already withdrawn approximately \$374,000 from the enterprise in just eleven months.¹⁷² Without an asset freeze, there is a serious risk that there will be no funds left for consumer

¹⁶⁷ See, e.g., *FTC v. HES Merch. Servs. Co.*, 6:12-cv-01618-ACC-KRS (M.D. Fla. filed Oct. 26, 2016) (Doc. 296) (finding violation of 16 C.F.R. 310.3(b) and holding defendant liable for total harm caused by the enterprise); see also *FTC v. Lake*, 181 F. Supp. 3d 692, 703 (C.D. Cal. 2016) (same).

¹⁶⁸ See *FTC v. Gem Merch. Corp.*, 87 F.3d at 469-70; *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d at 1434.

¹⁶⁹ See *World Travel Vacation Brokers*, 861 F.2d at 1031.

¹⁷⁰ PX 34 ¶¶ 9-10.

¹⁷¹ See generally PX 34; *supra* Section III(B).

¹⁷² In the *Life Management Services* case, the plaintiffs alleged consumer harm of over \$15.6 million, but were only able to freeze approximately \$113,000. PX 28 ¶ 17; PX 31, p. 23.

redress. As such, an asset freeze is necessary to prevent Defendants' continued misuse of consumers' money, and preserve the Court's ability to provide effective relief for consumers.

E. Appointing a Receiver Will Assist the Court's Ability to Provide Effective Final Relief

Appointing a receiver for the Corporate Defendants is also critical, and the FTC seeks this relief pursuant to the Court's equitable powers under Section 13(b) of the FTC Act.¹⁷³ Such an appointment is appropriate when, as here, Defendants have defrauded the public and have dissipated corporate funds that could be used for consumer redress.¹⁷⁴

As noted above, Defendants' copycat business is permeated with fraud. Defendants caused more than \$2 million in consumer harm in less than one year and structured their enterprise to mirror one that had been recently shut down by this Court for nearly identical conduct.

The evidence also establishes that Defendants have dissipated funds that could be used for consumer redress. Defendant Anderson, in particular, routinely withdraws cash from the enterprise for personal use (in addition to the six-figure salary he pays himself).¹⁷⁵ In October 2016 alone, Anderson withdrew over \$45,000 in cash, and failed to identify any expenses of the enterprise that he paid with that cash.¹⁷⁶ Anderson also admits that he quickly spends cash withdrawals from the enterprise on personal items such as car parts and

¹⁷³ See *U.S. Oil & Gas*, 748 F.2d at 1432.

¹⁷⁴ See, e.g., *FTC v. World Patent Mktg.*, No. 17-cv-20848-GAYLES, 2017 U.S. Dist. LEXIS 130486, at *57 (S.D. Fla. Aug. 16, 2017) ("When a defendant has used deception to obtain money from consumers, it is likely that, in the absence of the appointment of a receiver to maintain the status quo, the corporate assets will be subject to diversion and waste to the detriment of victims.") (citations omitted).

¹⁷⁵ PX 34 ¶¶ 13, 15 (Anderson received about \$291,000 in check payments between June 2016 and June 2017).

¹⁷⁶ Anderson Dep. at 106:22-107:8.

gambling.¹⁷⁷ And bank records show that Defendants have withdrawn \$374,000 in cash from the enterprise in just eleven months.¹⁷⁸ Anderson also admits to using the debit card connected with Higher Goals Marketing's corporate bank accounts for personal use including groceries, restaurants,¹⁷⁹ and alcohol.¹⁸⁰ Appointment of a receiver will preserve Corporate Defendants' remaining funds, and a receiver can marshal additional resources to identify consumer victims for partial redress. A receiver can also assist the Court in assessing the extent of Defendants' fraud and provide information to consumers ensnared in Defendants' rate-reduction scheme. Moreover, without a receiver, there is substantial risk that Defendants will hide assets, compromising the Court's ability to provide effective final relief.

F. Limited Expedited Discovery

The proposed TRO requires that Defendants (and third parties) produce financial records and other documents, respond to interrogatories, and sit for depositions on short notice. It also requires financial institutions and others served with the order to disclose whether they are holding any of Defendants' assets. These expedited discovery provisions will assist in implementing the asset freeze and preventing the further dissipation of assets.

VI. CONCLUSION

For these reasons, the FTC respectfully requests that the Court grant this motion for a TRO with an asset freeze, appointment of a temporary receiver, and other equitable relief.

¹⁷⁷ Anderson Dep. at 104:7-105:10.

¹⁷⁸ PX 34 ¶¶ 12; *id.* Attach. A & B.

¹⁷⁹ Anderson Dep. at 93:10-14 ("Do you use the card for like personal things for things like personal groceries? A: Yes. Q: Restaurants, things like that? A: Yes.").

¹⁸⁰ Anderson Dep. at 104:3-6.

Dated: November 30, 2017.

Respectfully submitted,

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FEDERAL TRADE COMMISSION

Certificate of Service

The undersigned counsel for the Federal Trade Commission certifies that on November 30, 2017, he provided a copy of the foregoing Memorandum of Points and Authorities to a process server for hand delivery, along with the Complaint and Summons in this action, on each of the following Defendants:

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