

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MOBE Ltd., *et al.*,

Defendants.

Filed Under Seal

Case No. _____

**PLAINTIFF'S *EX PARTE* MOTION AND MEMORANDUM OF LAW IN SUPPORT
OF A TEMPORARY RESTRAINING ORDER AND ORDER TO
SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

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I. INTRODUCTION

The Federal Trade Commission (“FTC” or “Plaintiff”) moves this Court for an *ex parte* temporary restraining order (“TRO”) to immediately halt an internet marketing scam that has deceived and brought devastating losses to consumers nationwide.¹ The amount of money Defendants have taken from consumers to date through their illegal scheme is staggering—over \$125 million.

Defendants’ stock-in-trade is a purported “business education” program called “My Online Business Education” or “MOBE,” that claims to teach consumers how to launch their own online business and generate substantial income. Defendants claim to have a “proven” system for making money quickly and easily through internet marketing, which they promise to unveil to those who pay to join their program. Once consumers are lured into joining the program for a modest entry fee of \$49, Defendants apply a series of high-pressure tactics to induce consumers to buy their various membership level packages—starting at \$2,497 and progressively becoming more expensive—with the false promise that consumers will reap substantial returns on these “investments.” Defendants promise even greater returns to those consumers who upgrade to higher membership levels that cost tens of thousands of dollars more. To close the sale, Defendants even mislead consumers into believing that the MOBE program is risk-free and consumers can get their money back if not satisfied.

In reality, the vast majority of consumers who buy into the MOBE program and pay

¹ The FTC submits four volumes of exhibits, including declarations from 14 consumers, in support of this motion. References to exhibits appear herein as “PX [number], [page or paragraph or exhibit].”

for these memberships make very little to no money, and many experience crippling losses or mounting debts. Some consumers have individually lost as much as \$60,000 or more to Defendants. Although Defendants claim to offer a system for making substantial income quickly and easily, the only ones making that kind of money are Defendants and a few insiders. Defendants' CEO, Matthew Lloyd McPhee a/k/a Matt Lloyd, is unflinching about how they make this money—as he explained in a recent email, “you’re looking for a very unhappy group of people who are in physical or emotional pain, so you can help alleviate their pain in return for their money.”

Defendants' gross misrepresentations regarding how much purchasers of their program are likely to earn and their refund policies violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The entire business model is a fraud. To protect consumers and preserve assets for consumer redress to Defendants' victims, the FTC seeks an *ex parte* TRO that enjoins Defendants' unlawful conduct, freezes their assets, appoints a temporary receiver over the Corporate Defendants, requires Defendants to disclose their assets, and allows limited expedited discovery. The FTC also requests that the Court order Defendants to show cause why a preliminary injunction should not issue against them.²

II. DEFENDANTS' BUSINESS PRACTICES

Since at least 2013, Defendants have promoted the MOBE program with deceptive claims that consumers will earn substantial income from purchasing the program's offerings. The MOBE program has two core components: (i) a 21-step “business training” course; and

² The named Defendants are MOBE Ltd., a Malaysian corporation, eight shell companies, their CEO Matthew Lloyd McPhee, and two cohorts, Russell W. Whitney, Jr. and Susan Zanghi. *See infra*, Section III.

(ii) a series of membership offerings that are upsold throughout the course. Most consumers that purchase the membership packages are lured into the MOBE program through the 21-step course.³ Although the entry fee for the 21-step course is relatively modest—\$49 or less—as consumers progress through the steps, they are pitched additional and progressively more expensive membership offerings with the promise of earning substantial income.⁴ As explained below, Defendants use websites, emails and social media, and regularly host live events to bait and recruit consumers into their program.

A. Defendants’ 21-Step Course

The 21-step course, which Defendants refer to as My Top Tier Business System (MTTB) among other names, consists of a series of 21 videos complemented by periodic call sessions with Defendants’ sales agents who claim to be “business coaches.”⁵ However, the coaches’ primary objective is to push consumers to buy Defendants’ expensive membership offerings that range in price from \$2,497 to \$29,997.⁶ The coaches lead the consumers through the training course step-by-step, unlocking a few videos at a time. After watching a few videos, Defendants instruct consumers to contact their assigned coaches for private coaching sessions before progressing to the next set of videos.⁷

³ PX 25 (Matt Lloyd), ¶¶7-8.

⁴ *Id.*, ¶7; PX 2 (Conarton), ¶¶2-6; PX 3 (Coppola), ¶¶3-6; PX 6 (Freeman), ¶¶1-5; PX 7 (Hrouda), ¶¶6-9; PX 10 (Moyeda), ¶6 Through a pre-recorded video, Matt Lloyd told an undercover FTC Investigator that her coach will help her make “six figures or multiple six figures, even beyond that....” PX 22, Ex. X, at FTC-MOBE-001586.

⁵ *Id.*; see also PX 83 (Mobe.com’s current job openings seek “Wanted Coach Superstars Who can Sell”); PX 7 (Hrouda), ¶8 & Ex. 5.

⁶ PX 83; PX 1 (Cervantez), ¶¶8, 16; PX 3 (Coppola), ¶6; PX 8 (Hsu), ¶¶ 6-7.

⁷ PX 3, ¶4; PX 6, ¶3; PX 22, Ex. C at FTC-MOBE-000748-55. Defendants’ coaches examine what consumers have taken away from the videos, and assign “homework” to ensure that consumers have understood the sales pitch conveyed in the videos. PX 22, Ex. DD at FTC-MOBE-001766 & Ex. LL at FTC-MOBE-002282-87; PX 7, ¶7.

The 21-step videos, all of which are narrated by MOBE's founder, Matt Lloyd, are replete with grandiose promises of income and wealth that anyone can attain so long as they purchase the various membership offerings pitched throughout the videos.⁸ For example, in Step 1, Matt Lloyd claims "it's much easier than people might imagine" to sell a product which pays a \$10,000 commission.⁹ In Step 3, Matt Lloyd claims it is "possible to learn everything you need to know to become a multi-millionaire. It's simply you getting the right training and then actually taking action."¹⁰ In Step 6, he claims that with the "right marketing system" consumers can "realistically generate \$100,000 in [their] first year online."¹¹ Matt Lloyd says repeatedly that MOBE has "a brand, a system, things that are proven to work."¹²

As consumers progress through the 21-step videos, Matt Lloyd eventually reveals that MOBE's system consists of earning commissions by selling MOBE memberships to other consumers. Matt Lloyd explains to consumers that "all you have to do is generate leads" and MOBE will follow up with the leads, sell the product, provide customer service, and then pay commissions on the sales that MOBE makes to those leads.¹³ According to Matt Lloyd,

⁸ As Matt Lloyd claims in these videos, "I'll show you how you can leverage funnels that have paid out millions and millions of dollars in commissions to people just like you who went through this training," and "[y]ou have a system that you are going to learn throughout these steps that will actually do it for you, and all you need to do is put leads in the system. That's really all it is." PX 22, Ex. K at FTC-MOBE-000853 (Step 1) & Ex. L at FTC-MOBE-000899-900 (Step 2).

⁹ PX 22, Ex. K at FTC-MOBE-000866 (Step 1).

¹⁰ PX 22, Ex. M at FTC-MOBE-001067. Consumers soon discover that "taking action" means paying thousands of dollars for Defendants' membership offerings. PX 1, ¶13; PX 2, ¶¶5-6; PX 3, ¶6; PX 4, PX 6, ¶8; PX 7, ¶11; PX 8, ¶¶6-8; PX 9, ¶4 PX 12, ¶11; PX 13, ¶6. In an email to one consumer, Defendants wrote: "You have to TAKE ACTION and do something in order to change your life" and "for you to get to that NEXT LEVEL ... you need to join my Titanium and Platinum mastermind program." PX 7, Ex. 10.

¹¹ PX 22, Ex. R at FTC-MOBE-001276 (Step 6).

¹² *Id.*, at FTC-MOBE-001280 (Step 6).

¹³ *Id.*, at FTC-MOBE-001285 (Step 6) & Ex. L, at MOBE-000899-900 (Step 2).

consumers who purchase the MOBE memberships can “tap into this already proven business model” that has paid more than 67 million in commissions.¹⁴ Defendants explain that, to be eligible to earn the thousands of dollars in commissions per sale from the MOBE program, consumers are required to purchase memberships that range in price from \$2,497 to \$29,997.¹⁵

In a sworn affidavit filed in federal court, Matt Lloyd admitted that the 21-step system is “integral to MOBE’s overall system and business plan,” and is the “essential precursor to all of the revenue MOBE generates” because it provides a “platform for selling other MOBE products and services.”¹⁶ In other words, the 21-step course is a highly effective sales pitch for selling Defendants’ membership offerings.

B. Defendants’ Membership Offerings

Defendants have arranged the 21-Step videos to induce consumers to buy and constantly upgrade their membership levels as they proceed through the course. The MOBE program has five membership levels or tiers—Silver, Gold, Titanium, Platinum and Diamond—at different price points. Defendants claim that each membership level pays out a standard commission fee when that membership is sold to the consumer’s referral, as follows:¹⁷

¹⁴ *Id.*, Ex. R, at FTC-MOBE-001280 (Step 6) & FTC-MOBE-001257.

¹⁵ PX 78 (Compensation Plan); PX 2, ¶7; PX 3, ¶¶5-8; PX 6, ¶¶7-10; PX 11, ¶4; PX 9, ¶ 3;

¹⁶ PX 25, ¶¶ 6-7. In August 2016, MOBE sued Digital Altitude LLC (“Digital Altitude”) and its founder Michael Force (a former employee of MOBE)—for allegedly copying the 21-step videos nearly verbatim. *MOBE Ltd. v. Digital Altitude, et al.*, 2:16-cv-05708 (C.D. Cal.), ECF DE#1 (August 1, 2016 complaint), ¶41-49.

¹⁷ PX 78, at FTC-MOBE-004280 & FTC-MOBE-004288.

Membership Tier	Cost	Commission Opportunity
Silver ¹⁸	\$2,497	\$1,250
Gold	\$4,997	\$2,500
Titanium	\$9,997	\$3,300
Platinum	\$16,667	\$5,500
Diamond	\$29,997	\$10,000

According to Defendants' compensation plan, consumers are not eligible to receive commissions on the sale of memberships above their own level.¹⁹ For example, if the consumer only purchased the Titanium membership by that point, that consumer is not eligible to earn commissions on the sale of any Platinum or Diamond memberships that his or her referral might buy.²⁰

Defendants' memberships are progressively tiered to enable Defendants to extract the maximum amount of money from each consumer victim. In order to be a Diamond member, the consumer must have paid for the Platinum membership first, and so forth. Thus, as Matt Lloyd acknowledged in a sworn declaration, it requires an "investment" of about \$60,000 to get to the Diamond level.²¹

Defendants dangle the bigger commission opportunities on the higher-level, more expensive memberships to entice consumers to upgrade. Defendants tell consumers that most of the income the consumer hopes to earn will come from buying the more expensive

¹⁸ Prior to September 2016, Defendants marketed and sold an entry level membership product called the MOBE License Rights Program or "MLR" for \$2,497. PX 42, at FTC-MOBE-003424. The MLR offering appears to have been discontinued and replaced with the Silver membership level in September 2016. PX 94 (MOBE's Facebook group page for Silver membership announcing that "all former MLR members have been upgraded to receive the Silver Masterclass training").

¹⁹ PX 78, at FTC-MOBE-004280-81.

²⁰ *Id.*

²¹ PX 25, ¶8. According to Matt Lloyd, Defendants have sold over 1,000 Platinum memberships and 500 Diamond memberships. PX 22, Ex. Y, at FTC-MOBE-001667.

memberships.²² For example, in a sales call in which an FTC undercover investigator participated, one of Defendants' coaches told the consumers on the call that "90 percent of your income will come from Titanium, Platinum, and Diamond conference profits, not your Silver profits."²³ The coach explained that the Titanium and Platinum revenue would provide the means for MOBE members to pay for their weddings, help their kids be debt free, and pass money onto their grandkids, while the Diamond membership will "build your retirement income" and "build your wealth."²⁴

Due to the progressively expensive fee structure for the membership offerings, consumers may run out of money by the time they are prepped to buy the Titanium or higher-level memberships. According to Defendants, this is no reason to stop.²⁵ For these consumers, Defendants propose a "financing" strategy that consists of opening up credit card lines and raising limits on existing credit cards to pay for their membership fees.²⁶ To those consumers who feel wary about carrying a large amount of credit card debt, Defendants' advice to them is blunt: "Don't ask for the price of the shovel when you're digging for gold."²⁷

²² PX 22, Ex. BB, at FTC-MOBE-001729 (In Step 10, Matt Lloyd claims: "we've paid out over \$67 million in commission. Most of that money has actually come from Titanium, Platinum, and other additional back-end training programs, but mostly from these ones."); PX 22, Ex. LL, FTC-MOBE-002306 (During an undercover call, MOBE's coach told an FTC investigator: "your Diamond Mastermind profits that your phone team makes on your behalf, that's going to build your retirement income. That's going to build your wealth.").

²³ PX 22, Ex. LL, at FTC-MOBE-002305.

²⁴ *Id.*, at FTC-MOBE-002305.

²⁵ PX 22, Ex. GG, at FTC-MOBE-001930-31 (Step 13 video). As Matt Lloyd tells consumers, "it's never a question of if you can come up with the funding. The question is always if the desire is strong enough." Matt Lloyd goes on to explain in this video that if consumers had a rare disease and needed an expensive life-saving treatment, they would certainly be able to come up with the investment. *Id.*

²⁶ *Id.*, at FTC-MOBE-001954-55; PX 2, ¶15; PX 6, ¶¶13-14; PX 8, Ex. 5 (MOBE's "credit card negotiation scripts" distributed at Titanium Mastermind).

²⁷ PX 22, Ex. GG, at FTC-MOBE-001944.

C. Deceptive Recruiting Materials

Defendants widely advertise the MOBE program through websites, online banner ads, emails, social media, direct mailers, and live events, consistently using deceptive claims about earning substantial income.²⁸ For example, Defendants have concocted and promoted other “21-systems” such as the “Internet Funnel System,” “Patriot Funnel System,” or the “Ultimate Retirement Breakthrough.”²⁹ The website and banner ad for the Internet Funnel System, for example, invite the viewer to discover how a “poisoned, brain-damaged man ... RAKES IN A 6-FIGURE INCOME FROM HOME ... and how you can too, GUARANTEED!”³⁰ Defendants claim that these are “funnels” for the 21-step course.³¹

Defendants supply these deceptive materials to their affiliates and encourage them to disseminate the materials to the broader public.³² Defendants also encourage their affiliates to copy, paste and send “done-for-you” email templates and “done-for-you” articles that Defendants have created to promote the MOBE program.³³ As Matt Lloyd attests, “MOBE actively encourages MTTB System customers to refer additional customers to MOBE who in

²⁸ PX 84, at pp.6-16, 37-38, 72-76 (banner ads and “email swipes” for various 21-step funnels and live events captured from mobeaffiliatesupport.com); PX 88 (MTTB System website capture); PX 89 (select webpages from internetfunnelssystem.com); PX 90 (select webpages from patriotfunnelssystem.com); PX 91 (select webpages from ultimateretirementbreakthrough.com).

²⁹ PX 84, at FTC-MOBE-004314-15 (“This is access to a 21-system that will deposit \$1,250, \$3,300, \$5500, and event \$10,000 checks into your bank account WITHOUT you ever having to pick up the phone”).

³⁰ *Id.*, at FTC-MOBE-004335.

³¹ *Id.*, at FTC-MOBE-004314-15.

³² *Id.*, at FTC-MOBE-004317; PX 25, ¶7.

³³ One email template that Defendants created and were encouraging the affiliates to “copy, paste and send” read as follows: “If you’re ready to see your business take off even faster, I have a great opportunity for you today ... It’s called The Laptop Lifestyle System [INSERT YOUR AFFILIATE LINK], and it has paid regular people like you over \$103 million in commissions.” PX 22, Ex. OO, at FTC-MOBE-002422-31. The Laptop Lifestyle System is another branded “offering” Defendants created to lure consumers into the MOBE program. PX 92.

turn purchase additional products and services from MOBE.”³⁴ In fact, Defendants have created a virtual mosaic of similarly deceptive ad copy, email templates and pre-drafted articles and made them available to MOBE members on www.mobeaffiliatesupport.com, a website that is controlled, operated and updated by Defendants.³⁵

D. Defendants’ Live Events

Like the 21-step videos, Defendants’ live events are used to recruit consumers into the MOBE program. As Matt Lloyd describes them, MOBE’s live events are “a major part of our customer acquisition strategy. In fact, there’s hardly a weekend that goes by when MOBE is not hosting a three-day training and sales event somewhere in the world.”³⁶ Indeed, Defendants have a multi-day live event that is currently scheduled for June 15, 2018 here in Orlando, Florida.³⁷

Defendants’ live events strategy starts with a free “preview event”—called the IM Freedom Workshop—which is typically held in major cities in the U.S. once or twice a month.³⁸ During this event, Defendants deliver a presentation focusing on the amount of money consumers can make through MOBE’s “revolutionary ‘system’ that has paid out over

³⁴ PX 25, ¶7. In one revealing email to MOBE affiliates, Matt Lloyd wrote: “If you want to make millions, look for huge markets full of people with enormous problems..... You’re looking for a very unhappy group of people who are in physical or emotional pain, so you can help alleviate their pain in return for their money.” PX 22, Ex. OO, at FTC-MOBE-002398-2406 & FTC-MOBE-002391-97 (“Your job is to get their heart to see and believe that the benefits you’re offering are so much better than the money in their wallet”).

³⁵ PX 84; PX 43. MOBE also claims to own “multiple trademarks and branded offerings, such as: Internet Funnel Systems, 45 Minute Paydays and My Top Tier Business.” PX 90. The FTC has confirmed that Defendants have applied for trademark registrations over these “branded offerings” with the United States Patent & Trademark Office (“PTO”). PX 53; PX 54; PX 55; PX 56; PX 57; PX 58; PX 63.

³⁶ PX 22, Ex. FF, at FTC-MOBE-001852 (Step 12 video).

³⁷ PX 87, at FTC-MOBE-004411-23 (Supercharge Summit event notice for Orlando in June 2018).

³⁸ PX 20, Ex. B; PX 85.

\$70 million in commissions.”³⁹ MOBE’s Director of Event Sales, Defendant Russell W. Whitney (“Russ Whitney”), regularly appears and speaks at these events. During one event that an undercover FTC investigator attended, Russ Whitney asked the audience:

How many of you in this room are willing to commit five to 10 hours a week to work a proven system that can generate you a guaranteed give, 10, \$20,000 plus each and every single month?⁴⁰

In the course of this hour-long presentation, Russ Whitney reiterated several times that Defendants have a “proven” system for generating a “guaranteed” \$5,000, \$10,000 or \$20,000 in monthly income.⁴¹ When audience members took the bait, they were directed to the back of the room to register for Defendants’ upcoming three-day “training” seminar called the “Home Business Summit.”⁴² The registration fee for the Home Business Summit is typically \$497.⁴³

At the Home Business Summit, Defendants deliver their signature sales pitch—how consumers who have no experience with online marketing can make substantial income if they have the right system, and why MOBE is the right system for them.⁴⁴ As Matt Lloyd describes the objective of the Home Business Summit: “Now, of course, we really focus on the MOBE consultant program. We explain to them the advantages of becoming certified in Silver, Gold, Titanium, Platinum and even the Diamond programs.”⁴⁵

Defendants also promote and host live events they call “Supercharge Summits” and

³⁹ PX 85 (IM Freedom Workshop event notice scheduled for January 23-25, 2018 in Orlando, Florida).

⁴⁰ PX 20, Ex. D, at FTC-MOBE-000618.

⁴¹ *Id.*, at FTC-MOBE-000623 & MOBE-FTC-000626-27.

⁴² PX 20, ¶15.

⁴³ PX 78, at FTC-MOBE-004287.

⁴⁴ PX 1, ¶10; PX 12, ¶¶7-9; PX 14, ¶¶25-26.

⁴⁵ PX 22, Ex. FF, at FTC-MOBE-001854 (Step 12 video).

“Masterminds,” which are further occasions to promote and sell higher-level MOBE memberships or other costly products. The Supercharge Summit targets consumers who already purchased a MOBE membership and are not receiving the substantial income that was promised.⁴⁶ When consumers show up to the event, Defendants pitch the higher-level memberships or mentorship programs as the way to start making money.⁴⁷ Matt Lloyd and Russ Whitney have personally attended Supercharge Summits to pitch MOBE’s expensive memberships and other products.⁴⁸ According to one Florida resident who attended the Supercharge Summit held in Orlando in December 2017, Defendants provided “blank” commission checks to MOBE members and told them to write in how much they wanted the check to be, so that Defendants could take photos of these members with their checks and place them in their promotional materials.⁴⁹

At the Mastermind events, Defendants also aggressively pitch Diamond memberships.⁵⁰ When Defendants run out of membership levels to sell, they pitch mentorship program packages that cost \$25,000, \$50,000 and \$100,000.⁵¹ In their promotional brochures, Defendants tell consumers that the program benefits for these expensive private mentorships include “your own finished product and sales funnel for life

⁴⁶ PX 87 (Supercharge Summit event notices). The flyer for the event invites MOBE members to attend if they wish to learn how to “double, triple ... or even quadruple your income as a MOBE partner ... in just 3 days.” *Id.*

⁴⁷ PX 6, ¶¶24; PX 9, ¶5-6.

⁴⁸ *Id.*; PX 49, at FTC-MOBE-003699-3700.

⁴⁹ PX 6, ¶25.

⁵⁰ PX 8, ¶¶12-13, 27-28; PX 22, Ex. FF, at FTC-MOBE-001855-56 (In Step 12 video, Matt Lloyd says: “we do recommend that people who attend these, if they haven’t yet been to a Platinum or Diamond, we are going to mention that, we are going to promote those because that’s what we’re here for. We are here to get as many entrepreneurs through our core curriculum training as possible”).

⁵¹ PX 78, at FTC-MOBE-004289; PX 8, ¶¶27-28.

... [that] could easily bring in \$1 million (or more) per year for your online business.”⁵²

E. Consumers Do Not Make Substantial Income from the MOBE Program

Contrary to Defendants’ claims that consumer who join the MOBE program will make substantial income easily and quickly, the harsh reality is that most consumers make very little to no money in this program.⁵³ The few consumers who are able to earn some commissions rarely earn enough to offset the thousands of dollars they spent on their own memberships. Sadly, many consumers discover too late that they are not going to make money with the MOBE program.⁵⁴ Some consumers have lost their entire savings to Defendants, while others have incurred substantial debt following Defendants’ “financing” strategy.⁵⁵

For example, after receiving Defendants’ assurances that he would quickly make his money back, one consumer victim was left with \$80,000 on credit cards that he opened at Defendants’ behest to pay for his Diamond membership.⁵⁶ Another consumer victim spent close to \$60,000 and took money out of her retirement account to pay for the MOBE memberships.⁵⁷ According to one consumer victim lured into MOBE while she was looking to earn a living to provide for her family, “[r]ather than making any money, MOBE has only

⁵² PX 8, Ex. 8A, at FTC-MOBE-000422.

⁵³ PX 1, ¶34; PX 2, ¶40; PX 3, ¶12; PX 6, ¶28; PX 7, ¶19; PX 8, ¶41, PX 9, ¶17; PX 10, ¶24; PX 13, ¶10; PX 14, ¶28.

⁵⁴ PX 1, ¶34; PX 2, ¶40; PX 3, ¶12; PX 6, ¶28; PX 7, ¶19; PX 8, ¶41, PX 9, ¶17; PX 10, ¶24; PX 13, ¶10; PX 14, ¶28.

⁵⁵ PX 2, ¶40; PX 6, ¶28; PX 8, ¶39.

⁵⁶ PX 2, ¶26. This same consumer victim subsequently learned that his recruiter “had to file for bankruptcy because she couldn’t afford to pay back the credit cards she had used to pay for MOBE.” PX 2, ¶40. Sadly, he learned of this after he had already spent his life savings and incurred substantial credit card debt to pay for his MOBE membership purchases. PX 2, ¶40.

⁵⁷ PX 10, ¶24.

put me in further debt.”⁵⁸

Defendants know the truth about how much money consumers will actually make using the MOBE program. For example, Defendants’ website contains an inconspicuous link to a webpage titled “Income Disclosure” that purports to provide data on how much purchasers of MOBE memberships actually earn. Defendants’ income statement, for the period 2014 to 2015, states in fine print that the “average Consultant, which includes both active and inactive, generates less than \$250 per year,”⁵⁹ which translates to about \$21 per month. The fine print in Defendants’ income statement for the period 2016 to 2017 states that the “average Active MOBE Consultant generates less than \$700 per year in commissions,”⁶⁰ which is less than \$60 a month.

Most purchasers of MOBE memberships are unlikely to see the sobering income data buried in Defendants’ income “disclosure,” which is only accessible via an inconspicuous link on their website mobe.com.⁶¹ Instead, what consumers do see and hear are Defendants’ unqualified claims that consumers can “realistically generate \$100,000” in their first year in the MOBE program.⁶² Indeed, during an undercover purchase, a MOBE coach told an FTC

⁵⁸ PX 8, ¶41.

⁵⁹ PX 79. Buried in fine print within this same document, Defendants go on to contradict the entirety of their own deceptive earnings representations by noting: “Affiliate marketing is just like any business. It takes hard work to make substantial income. Affiliate marketing is no different. Some affiliates make no money at all.” Defendants’ attempt at disclaiming their bald earnings misrepresentations through inconspicuous disclaimers is unavailing. *See FTC v. Washington Data Resources*, 856 F. Supp.2d 1247, 1274-75 (M.D. Fla. 2012), *aff’d* 704 F.3d 1323 (11th Cir. 2017).

⁶⁰ PX 80.

⁶¹ PX 83, at FTC-MOBE-004300 (mobe.com home page as of May 2018); PX 88. As seen from the mobe.com home page and even the 21-step course registration page, the link to Defendants’ income “disclosure” is non-descript and barely noticeable. *Id.*; *see also* PX 2, ¶44 (consumer victim was unable to find “any data about average income, or percentages of people who reached certain income levels” when searching on the MOBE website and looking online).

⁶² PX 22, Ex. R, at FTC-MOBE-001276.

investigator and several consumers present on the call that the goal of making \$1.2 million was “very achievable,” but made no mention of Defendants’ true income statistics.⁶³ Surely, consumers who join and purchase the MOBE memberships are not paying thousands of dollars for the opportunity to make a few hundred dollars a year—in other words, to lose all but a tiny fraction of their investment.⁶⁴

F. Deceptive Refund Practices

The registration and billing page for the 21-step course claims that the MOBE program is “satisfaction guaranteed” and “100% risk free” because it carries a “30 Day Money Back Guarantee.”⁶⁵ Defendants’ expressly state: “We Guarantee You’ll Be Satisfied With Your Course And Coaching In 30 Days, Or We’ll Happily Give You Your Money Back.”⁶⁶ Defendants’ coaches reiterate these false refund promises orally when pressuring consumers to buy the memberships.⁶⁷

Once consumers make their payments, Defendants require them to sign form “membership” contracts in order to start earning the purported commissions promised with that membership.⁶⁸ Contrary to Defendants’ pre-purchase representations about refunds, these post-purchase agreements contain, in fine print using non-descript terms, highly

⁶³ PX 22, Ex. LL, at FTC-MOBE-002298 & Ex. HH, at FTC-MOBE-002067-68 (In Step 14 video, Matt Lloyd describes “tak[ing] your company from six figures to seven figures and seven figures to eight figures and beyond,” and touts the \$60,000 Rolex watch MOBE members can earn if they make \$1,000,000 in sales, but fails to mention the figures contained in the income disclosure).

⁶⁴ PX 1, ¶34; PX 2, ¶48; PX 3, ¶12; PX 6, ¶28; PX 7, ¶19; PX 8, ¶41, PX 9, ¶17; PX 10, ¶24; PX 13, ¶10; PX 14, ¶28.

⁶⁵ PX 88.

⁶⁶ *Id.*

⁶⁷ PX 3, ¶6 (told she had 1 year to reclaim refund); PX12, ¶ 16 (money back guarantee).

⁶⁸ PX 1, ¶18; PX 12, ¶14; PX 8, ¶9; PX 22, ¶¶57-61 & Ex. V, at FTC-MOBE-001540-50.

onerous cancellation and refund policies.⁶⁹ One version of this agreement states that the consumer is required to produce proof that she implemented at least three of Defendants’ “proven” lead-generating strategies (*e.g.*, placing banner ads, Facebook ads, solo ads) consistently each month for a 12-month period and still failed to make a single sale.⁷⁰ Another version of Defendants’ post-purchase agreement contains language stating that the consumer waives any cancellation or refund rights, in direct contravention of Defendants’ initial risk-free and money-back claims.⁷¹ The post-purchase form agreements also reference an external link to Defendants’ “Terms and Conditions” webpage, which confusingly states that “once three business days has passed from the time of the Mastermind event purchase all sales are final.”⁷²

Ultimately, when dissatisfied consumers complain about the program and seek refunds, Defendants engage in evasive tactics or invoke their onerous post-purchase agreements to deny refunds.⁷³ One consumer victim, who spent close to \$60,000 on MOBE and requested a refund, recounted that her coach “tried to talk [her] out of it.” When she persisted, Defendants directed her to an online refund claim form, which she filled out three separate times and which Defendants never answered.⁷⁴ Another consumer victim was later told, after her purchase and when she sought to reclaim her money, that MOBE’s policy was

⁶⁹ PX 1, Ex. 2; PX 12, Ex. C; PX 7, Ex. 7; PX 8, Ex. 2; PX 22, Ex. V, at FTC-MOBE-001547.

⁷⁰ PX 7, Ex. 7.

⁷¹ One consumer was required to sign a post-purchase Platinum membership agreement that stated (on page 4 in a 9-page agreement) that “ALL EVENT TICKETS PURCHASED ARE NON-REFUNDABLE” and “ALL SALES ARE FINAL.” PX 1, Ex. 2; PX 12, Ex. C; PX 7, Ex. 7; PX 8, Ex. 2.

⁷² PX 83, at FTC-MOBE-004301-03 (Mobe.com Terms & Conditions webpage as of May 2018).

⁷³ PX 9, ¶18; PX 1, ¶ 21; PX 3, ¶13; PX 4, ¶20; PX 5, ¶¶7-10; PX 10, ¶23; PX 11, ¶19; PX 14, ¶19; PX 22, ¶88 & Ex. NN.

⁷⁴ PX 10, ¶21.

actually not a “satisfaction guarantee, but rather an ‘Implementing Strategies and they didn’t work’ policy.”⁷⁵ Yet another consumer who tried to cancel her Platinum membership the very next day after her purchase was told by Defendants’ representative that “all sales were final.”⁷⁶ Another consumer victim placed “multiple telephone calls to MOBE customer service” for a refund and never heard back, and was only able to get her money back by submitting a fraudulent charge dispute with her credit card company.⁷⁷ In some instances, Defendants have submitted their post-purchase agreements to contest chargebacks filed by consumers.⁷⁸

G. Recent FTC Enforcement Action against MOBE’s Competitor

Defendants’ program is, by their own admission, identical to a competitor’s program that was the subject of a recent FTC enforcement action, in which a district court has already issued a TRO and preliminary injunction against Digital Altitude, LLC and its owner, Michael Force (collectively, “Digital Altitude”). This admission is at the heart of a copyright infringement action MOBE, Ltd. filed against Digital Altitude in August 2016.⁷⁹ Michael Force previously worked for MOBE, but left the company to start Digital Altitude. In its lawsuit, MOBE, Ltd. claimed that Digital Altitude’s business model or marketing system—using the same step-by-step “training” method to upsell expensive high-ticket

⁷⁵ PX 14, ¶21.

⁷⁶ PX 11, ¶19.

⁷⁷ PX 12, ¶¶25-27; *see also* PX 4, ¶¶ 20-25 (“I had to put a stop on the payment before it was cashed”).

⁷⁸ PX 7, ¶24 & Ex. 14. Defendants have issued refunds on some occasions, but often after those consumers made persistent demands for refunds or threatened to contact law enforcement or the Better Business Bureau. PX 5, ¶¶ 7-10; PX 12, ¶¶25-29.

⁷⁹ *MOBE, Ltd. v. Digital Altitude, LLC, et al.*, 2:16-cv-05708 (C.D. Cal. filed Aug. 1, 2016).

offerings with the promise of commissions—was identical to theirs.⁸⁰ As such, MOBE, Ltd. sought to enjoin Digital Altitude from marketing its “knock off” program.”⁸¹ The parties ultimately settled that action in late 2017.

In January 2018, the FTC filed a complaint against Digital Altitude alleging that Digital Altitude violated Section 5 of the FTC Act by making misrepresentations about the amount of money purchasers of its purported business education program could earn.⁸² The FTC obtained a TRO that immediately halted Digital Altitude’s fraudulent business scheme, put the business under receivership, and froze the Digital Altitude defendants’ assets.⁸³ The court-appointed receiver found that Digital Altitude’s “education materials” – which include a set of online business education videos that MOBE, Ltd. claimed Digital Altitude copied nearly verbatim – “were of no real value” and that “Digital Altitude cannot be operated lawfully or profitably....”⁸⁴ Taking into account these preliminary findings from the receiver, the district court found sufficient cause to preliminarily enjoin Digital Altitude’s “knock off” business education program. Defendants here have continued to do business, undeterred by FTC’s action temporarily shutting down their copycat competitor.⁸⁵

H. Consumer Injury

Defendants have taken over \$125 million from consumers in just under three years

⁸⁰ *Id.*, ECF #1 (Complaint), ¶¶ 41-49; ECF #12 (MOBE Ltd.’s motion for preliminary injunction, dated August 4, 2016), at p. 11.

⁸¹ In its Motion for Preliminary Injunction, Defendants argued: “A comparison of Digital Altitude’s infringing Aspire Program reveals that the copyrighted and knock-off program is not only substantially similar, but in many circumstances identical....” *Id.*

⁸² *See FTC v. Digital Altitude LLC, et al.*, No. 18-cv-00729 (C.D. Cal. filed Jan. 29, 2018).

⁸³ *Id.*, ECF #34 (FTC’s ex parte TRO motion filed February 1, 2018), ECF #111 (Order on Preliminary Injunction entered Mar. 9, 2018).

⁸⁴ *Id.*, ECF #111, at pp. 7-8.

⁸⁵ *Id.*

through their illegal operation.⁸⁶ This figure is based on the FTC’s review of domestic bank account records only, and does not include any funds paid directly by consumers into Defendants’ foreign bank accounts.⁸⁷ In the 21-step videos, Matt Lloyd claims that the MOBE program has “generated over \$100,000,000 in revenue.”⁸⁸ According to the FTC’s review of consumer complaints submitted to the agency and to the Better Business Bureau, 168 consumers reported they were scammed by Defendants, with numerous consumers reporting losses of over \$20,000 or more.⁸⁹

III. DEFENDANTS

Defendants are a common enterprise comprised of a Malaysian corporation and eight shell companies—five of which are registered abroad and three in the United States—whose primary and shared purpose is to advance Defendants’ scheme in the United States and abroad, and three individuals with operational control and knowledge of the scheme.

A. Corporate Defendants

MOBE Ltd. (“**MOBE Ltd.**”) is a Malaysian company that currently operates out of Kuala Lumpur, Malaysia.⁹⁰ MOBE Ltd. was formed in early 2014, with Matt Lloyd as its founder and sole owner.⁹¹ MOBE Ltd. operates numerous active websites and Facebook

⁸⁶ PX 21 (Declaration of FTC’s Forensics Accountant), ¶9.

⁸⁷ *Id.*, ¶¶8-9.

⁸⁸ PX 22, Ex. K, at FTC-MOBE-000854 (Step 1).

⁸⁹ PX 22, ¶100; PX 10, ¶23; PX 8, ¶21; PX 2, ¶26; PX 6, ¶18; PX 13, ¶6; PX 11 ¶¶7,19.

⁹⁰ For the past several years, MOBE Ltd.’s headquarters was located at B1-28-8 No. 20 Soho Suites at KLCC, an apartment-style hotel in Kuala Lumpur, Malaysia. PX 81. As of May 2018, MOBE Ltd. appears to have relocated to what appears to be a virtual office in Kuala Lumpur. PX 83 (listing current address at Suite 8-1 & 8-2, Level 8, Menara CIMB No.1, Jalan Stesen, Sentral 2 Kuala Lumpur); PX 98.

⁹¹ PX 24, Ex. B (MOBE Ltd. certificate of incorporation and record of ownership).

group pages targeting consumers in the United States.⁹² MOBE Ltd. has held live events in this district and elsewhere in the United States to promote the MOBE program.⁹³ MOBE Ltd. is the registered owner of the “MOBE” trademark (Reg. Nos. 5069840, 5272735) and other marks associated with Defendants’ products, and the registered owner of the copyrights to the 21-step sales scripts.⁹⁴ MOBE Ltd. has an “F” rating from the Better Business Bureau (“BBB”).⁹⁵

While the eight corporate shell companies—**MOBEProcessing.com, Inc.** (“**MOBE USA**”), **Transaction Management USA, Inc.** (“**TM USA**”), **MOBETraining.com, Inc.** (“**MOBE Training USA**”), **MOBE Pro Limited** (“**MOBE UK**”), **MOBE Online Ltd.** (“**MOBE Mauritius**”), **9336-0311 Quebec, Inc.**, (“**MOBE Canada**”), **MattLloydPublishing.com Pty Ltd.** (“**MOBE Australia**”), and **MOBE Inc.** (“**MOBE Panama**”)—are registered or incorporated in countries different from MOBE Ltd., they are also solely owned by Matt Lloyd.⁹⁶ MOBE Ltd.’s websites hold out many of these corporate

⁹² The websites registered to and operated by Defendants include www.mobe.com, mobeaffiliatesupport.com, mttbsystem.com, patriotfunnelsystem.com, internetfunnelsystem.com and 7figurefreedomformula.com, toptiersideincome.com, 17minutesonly.com, 45minutepaydays.com, digitalmillionairesystem.com, among others. PX 43. Defendants’ Facebook group pages include “mattlloyd,” “mobecommunity,”

“mobelicenserights,” “titaniumprogram,” “platinumprogram” and “diamondprogram,” among others. PX 94.
⁹³ FTC has obtained payment records, contracts and meeting agendas that Defendants have furnished to various hotels they used to host their live events. *See, e.g.*, PX 44; PX 45; PX 46; PX 47; PX 48; PX 49.

⁹⁴ PX 53, 57, 59, 61, 62, 63 (U.S. trademark registrations for MOBE, My Online Business Education, PFS, 45 Minute Paydays, and HTAM); PX 26, Exs. 1 & 2.

⁹⁵ PX 95.

⁹⁶ *See, e.g.*, PX 64 to PX 74 (business registration records and proof of ownership for Corporate Defendants). Matt Lloyd is registered as the sole owner and president of the corporate shells, except MOBE Panama. *Id.* With respect to MOBE Panama, Matt Lloyd claimed in his curriculum vitae that he was MOBE Panama’s “Sole Owner” and described its business as “Marketing Education Training platform.” PX 42, at FTC-MOBE-003435-36. According to Defendants’ financial statements, Defendants grossed nearly \$3 million in sales from a merchant account called “Mobeorder.com” that is associated with MOBE Panama. *Id.*, at FTC-MOBE-003497.

shells as operating divisions of MOBE Ltd.⁹⁷ The corporate shells have opened merchant accounts and bank accounts to bill consumers of MOBE Ltd.'s products,⁹⁸ or otherwise have handled money taken from MOBE consumers.⁹⁹ According to balance sheets, these corporate entities have made inter-company transfers or loans to and between one another.¹⁰⁰ According to bank records reviewed by FTC's forensic accountant, Corporate Defendants have made over 250 separate inter-company transfers totaling over \$40 million between May 2015 to March 2018 between their domestic and foreign bank accounts.¹⁰¹ MOBE USA, in particular, has paid for MOBE Ltd.'s operating expenses in the United States, including hotel conference room fees for hosting the MOBE live events.¹⁰² The FTC's investigation has uncovered no evidence that any of these eight corporate shells has employees, products, or even websites separate from MOBE Ltd.

B. Individual Defendants

Defendant **Matthew Lloyd McPhee, a/k/a Matt Lloyd ("Matt Lloyd")**, is an

⁹⁷ PX 81. On websites promoting its various "funnels," MOBE Ltd. identifies MOBE USA, MOBE Canada, MOBE UK, and MOBE Mauritius as operating divisions and further points of contact for MOBE Ltd. PX 90 at p. 8; PX 62, at p. 37; PX 57, at p. 13.

⁹⁸ PX 22, ¶¶96-98 (listing of MOBE's merchant descriptors using Corporate Defendants' addresses in Australia, United Kingdom, and United States, and unspecified locations in Mauritius, Canada (Quebec), and Panama, among others); PX 35, 37, 40; PX 21, ¶9 (TM USA received about \$6 million in consumer funds through various bank accounts under its name).

⁹⁹ PX 21, ¶9 (MOBE Training USA received over \$2.6 million from TM USA and MOBE USA accounts); PX 30 (bank signing authorization card for Mobe Training USA).

¹⁰⁰ PX 21, ¶¶9, 11-13 (intercompany transfers involving Corporate Defendants' domestic and foreign bank accounts). In their 2017 balance sheet, Defendants list eight divisions comprising the "MOBE GROUP" with total assets over \$2 million dollars. PX 39, at FTC-MOBE-003068. MOBE Mauritius is a division of MOBE Ltd. and has made inter-company transfers or loans of over \$4.3 million to and from MOBE Ltd. PX 40, at FTC-MOBE-003192.

¹⁰¹ PX 21, ¶¶12-13.

¹⁰² For example, in October 2016, Defendants hosted a MOBE Supercharge Summit in Las Vegas, where Matt Lloyd and Russ Whitney attended and delivered presentations. PX 49, at FTC-MOBE-003700. Defendants incurred a bill of \$114,788 during this one event. *Id.*, at FTC-MOBE-003724-26 (Palms invoice). MOBE USA paid this invoice by wiring the payment in full out of its domestic bank account. *Id.*

Australian national who currently resides in Malaysia.¹⁰³ As noted above, he is the creator, founder, and owner of MOBE Ltd. and its various corporate shell companies. Matt Lloyd regularly appears in promotional videos for the MOBE program and is the narrator of the 21-step videos.¹⁰⁴ According to his sworn statement, Matt Lloyd devised the scripts used for the 21-step videos.¹⁰⁵ In his curriculum vitae, Matt Lloyd professes to have “[i]n-depth knowledge of Sales process and conversions” and describes his responsibilities to include “running the company as Sole Owner and managing 7 fully established independent divisions.”¹⁰⁶

Defendant **Russell W. Whitney, Jr., a/k/a Russ Whitney (“Russ Whitney”)**, is a Florida resident and served as MOBE Ltd.’s Director of Event Sales. Russ Whitney has worked with MOBE Ltd. since at least 2015 and has aggressively promoted the MOBE program in the United States.¹⁰⁷ Russ Whitney has direct and intimate knowledge of MOBE’s live event presentations and the content of the materials presented at those events, as he regularly speaks at these events.¹⁰⁸ He has worked alongside Matt Lloyd to, in Russ Whitney’s words, “build out” Defendants’ live events and their “training” program.¹⁰⁹ At these live events, Russ Whitney has propagated the same false earnings claims that are the

¹⁰³ PX 42, at FTC-MOBE-003437. In 2016, Matt Lloyd executed a lease purporting to establish his residence in Charlotte, North Carolina, which was submitted as part of a bank application. PX 32, at FTC-MOBE-002769-2781. Bank records also tie Matt Lloyd to an apartment in California. PX 30, at FTC-MOBE-002671 (address redacted by the FTC prior to filing).

¹⁰⁴ See, e.g., PX 22, ¶¶14, 35, 38, 40, 42, 46, 49, 50, 59, 63, 67, 70, 71, 73, 74, 76.

¹⁰⁵ PX 25, ¶10.

¹⁰⁶ PX 42, PX 42, at FTC-MOBE-003435-36.

¹⁰⁷ PX 22, Ex. RR (Russ Whitney expounds on his involvement with MOBE in a short video).

¹⁰⁸ PX 20, ¶¶14-15 & Ex. D.

¹⁰⁹ PX 22, Ex. RR. Russ Whitney has delivered in-person presentations at MOBE events attended by an FTC investigator and several consumer declarants. PX 20, ¶14; PX 6, ¶23; PX 8, ¶¶26-27.

hallmark of Defendants’ business strategy.¹¹⁰ Russ Whitney owns and controls at least one LLC that the FTC has been able to identify that has received funds from Corporate Defendants’ bank accounts.¹¹¹

Defendant **Susan Zanghi** is a North Carolina resident and a MOBE corporate representative. Since 2016, she has worked alongside Matt Lloyd to open merchant accounts and bank accounts in the United States used to bill and take payments from purchasers of MOBE Ltd.’s products.¹¹² Susan Zanghi has opened and has signatory authority on bank accounts associated with MOBE USA, TM-USA, and MOBE Training USA.¹¹³ MOBE employees refer to Susan Zanghi as “Matt Lloyd’s right-hand person.”¹¹⁴ Susan Zanghi has opened merchant accounts for MOBE USA that Defendants use to bill consumers.¹¹⁵ In bank account and merchant applications, Susan Zanghi describes her title as MOBE’s “Finance Manager” or “key executive with control over entity.”¹¹⁶ The BBB lists Susan Zanghi and her address as the point of contact for inquiries relating to MOBE Ltd., including customer complaints about MOBE submitted to the BBB.¹¹⁷ According to payment processor and bank records, notices of chargebacks submitted by dissatisfied consumers who purchased MOBE products and services were directed to Susan Zanghi.¹¹⁸ Susan Zanghi has also set up

¹¹⁰ PX 20, Ex. D, at FTC-MOBE-000623 & MOBE-FTC-000626-27.

¹¹¹ PX 21, ¶17; PX 75 (FL business registration record for Russ Whitney’s “Shark Speaker LLC”).

¹¹² PX 30; PX 31; PX 32; PX 33; P 34; PX 38; PX 40.

¹¹³ PX 30,;PX 32 (bank signature authorization cards).

¹¹⁴ PX 22, Ex. PP, at FTC-MOBE-002463.

¹¹⁵ PX 40.

¹¹⁶ *Id.*, at FTC-MOBE-003142-49; PX 34, at FTC-MOBE-002809 (described as “key executive with control of entity”); *see also* PX 38.

¹¹⁷ PX 95.

¹¹⁸ *See, e.g.*, PX 38, at FTC-MOBE-002866-67.

a separate LLC vehicle to route payments or transfers to her personal bank accounts.¹¹⁹

IV. THE COURT SHOULD ISSUE A TEMPORARY RESTRAINING ORDER

Plaintiff requests that the Court issue an *ex parte* TRO with provisions for asset and document preservation, the appointment of a receiver, expedited discovery, and an order to show cause why a preliminary injunction should not issue.

A. The FTC Act Authorizes 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.” *See FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 n.3 (11th Cir. 1996); *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1433 (11th Cir. 1984). By permitting the FTC to seek permanent injunctions, Congress also gave district courts authority to order all preliminary relief necessary to make permanent relief possible, including the power to enter a TRO, a preliminary injunction, and other ancillary, equitable relief. *U.S. Oil & Gas Corp.*, 748 F.2d at 1434. Such ancillary relief may include an asset freeze to preserve assets for eventual redress to victimized consumers, as well as the appointment of a receiver. *Id.* Courts in this district and elsewhere have granted such TROs and other injunctive relief in cases involving routine fraud or a straightforward deceptive practice.¹²⁰

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

¹¹⁹ PX 76 (business registration record for “Geer Up Marketing LLC”).

¹²⁰ *See, e.g., FTC v. J. Williams, LLC*, No. 6:16-cv-2123 (M.D. Fla. Dec. 13, 2016); *FTC v. Life Mgmt. Servs. of Orange County, LLC*, No. 16-cv-982 (M.D. Fla. Jun. 8, 2016); *FTC v. D&S Mktg. Solutions, LLC*, No. 16-cv-1435 (M.D. Fla. Jun. 8, 2016); *FTC v. All US Mktg, LLC*, No. 6:15-cv-1016 (M.D. Fla. Jun. 22, 2015); *FTC v. E.M. Systems & Services, LLC*, No. 8:15-cv-1417 (M.D. Fla. Jun. 17, 2015); *FTC v. Digital Altitude LLC*, No. 2:18-cv-00729-JAK-MRW (C.D. Cal. Mar. 9, 2018).

merits, and (2) whether the public equities outweigh any private equities. *FTC v. IAB Mktg. Assocs. LP*, 746 F.3d 1228, 1232 (11th Cir. 2014). Unlike private litigants, the FTC does not need to prove irreparable injury, which is presumed in a statutory enforcement action. *FTC v. USA Beverages, Inc.*, 05-cv-61682, 2005 WL 5654219, at *5 (S.D. Fla. Dec. 5, 2005) (citation omitted); *IAB Mktg. Assocs.*, 746 F.3d at 1232.

B. The FTC Is Likely to Succeed on the Merits

Section 5 of the FTC Act empowers the agency to prevent “deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a). To establish liability under Section 5(a), the FTC must establish that (1) there was a representation, (2) the representation was likely to mislead consumers acting reasonably under the circumstances, and (3) the representation was material. *FTC v. Tashman*, 318 F. 3d 1273, 1277 (11th Cir. 2003) (citation omitted).

In determining whether a representation is deceptive, courts consider the “overall net impression rather than the literal truth or falsity” of the representation. *FTC v. World Patent Mktg.*, No. 17-cv-20848, 2017 U.S. Dist. LEXIS 130486, *38 (S.D. Fla. Aug. 16, 2017) (citation omitted); *FTC v. NPB Adver., Inc.*, 218 F. Supp. 3d 1352, 1358 (M.D. Fla. 2016) (the “overall impression” and “not an isolated word or phrase” determines the representation conveyed) (citation omitted). A solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures. *FTC v. RCA Credit Services*, 727 F. Supp. 2d 1320, 1329 (M.D. Fla. 2010) (quoting *FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006)). A representation is also likely to mislead consumers if the express or implied message conveyed is false, or the maker of the representation lacked a reasonable basis for asserting that the message was true. *FTC v.*

Nat'l Urological Group, Inc., 645 F. Supp. 2d 1167, 1190 (N.D. Ga. 2008) *aff'd* 356 F. App'x 358 (11th Cir. 2009); *Tashman*, 318 F.3d at 1276 (“unfortunately for [defendant’s] customers, [defendant] has no basis for many of its claims”). Claims of potential or projected earnings or rewards imply that such earnings are representative of what many consumers have achieved. *FTC v. Febre*, No. 94-C-3625, 1996 WL 396117, *2 (N.D. Ill. 1996), *aff'd* 128 F.3d 530 (7th Cir. 1997) (earnings claims found deceptive where undisputed evidence established the “earnings claims far exceed the amounts normally received by program participants”); *National Dynamics Corp. v. FTC*, 492 F.2d 1333, 1335 (2d Cir. 1974), *cert. denied*, 419 U.S. 993 (1974) (prohibiting defendant from making “deceptive use of unusual earnings claims realized only by a few”); *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) (“it would have been reasonable for consumers to have assumed that the promised rewards were achieved by the typical Five Star participant”).

A misrepresentation is material if it is likely to affect a consumer’s decision to buy a product or service.¹²¹ Moreover, express claims, or deliberately made implied claims used to induce the purchase of defendants’ products or services, are presumed to be material. *FTC v. Transnet Wireless*, 506 F. Supp.2d 1247, 1267 (S.D. Fla. 2007); *NPB Adver., Inc.*, 218 F. Supp. 3d at 1358 (“Because an express claim inherently misleads a consumer, an express claim is presumptively material.”) (citation omitted). Courts have consistently maintained

¹²¹ The pivotal question for materiality is whether the seller’s misrepresentations “tainted the customer’s purchasing decision.” *IAB Mktg. Assocs.*, 746 F.3d at 1235 (citation omitted). Moreover, the value of the product or service sold is entirely irrelevant to the Section 5 analysis. *FTC v. Inbound Call Experts*, No. 14-cv-81395, 2014 U.S. Dist. LEXIS 182857, *7-8 (S.D. Fla. Dec. 23, 2014); *FTC v. Partners in Health Care Ass’n*, 189 F. Supp. 3d 1356, 1367 (S.D. Fla. 2014) (“Worthlessness ... is not an element of a claim for deceptive practices”). 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)).

that misrepresentations about the potential or likely earnings from a business venture are material.¹²²

Neither proof of intent to deceive nor subjective reliance by each victim is required for a finding of liability in an FTC action. *FTC v. Windward Mktg.*, No. 96-cv-615F, 1997 WL 33642380, *28 (N.D. Ga. Sept. 30, 1997). “A presumption of actual reliance arises once the Commission has proved that the defendant made material misrepresentations, that they were widely disseminated, and that consumers purchased the defendants’ products or services.” *Transnet*, 506 F. Supp. 2d at 1267 (quoting *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 605 (9th Cir. 1993)). On the other hand, proof that consumers are actually deceived is “highly probative to show that a practice is likely to mislead consumers....” *FTC v. Direct Benefits*, 6:11-cv-1186, 2013 WL 3771322, at *8 (M.D. Fla. July 18, 2013) (citation and quotation marks omitted).

The FTC is likely to prevail on Count I of the complaint, which alleges that Defendants misrepresented that purchasers of their products or membership offerings would earn or were likely to earn substantial income. As demonstrated above, Defendants falsely represent to consumers the level of income consumers can expect to earn by joining Defendants’ program, purchasing their various membership offerings, and then promoting those same memberships to others. Defendants’ promotional materials and sales pitches are

¹²² See, e.g., *FTC v. American Entertain Distribs*, No. 04-cv-22431, 2012 WL 12964783, at *6 (S.D. Fla. Aug. 31, 2012) (“representations that go to the heart of a consumer’s decision to purchase a new business opportunity are material”); *USA Beverages*, 2005 WL 5654219, at *6 (representations about likely earnings are material); *FTC v. Transnet Wireless*, 506 F. Supp. 2d 1247 (S.D. Fla. 2007) (defendants’ charts detailing the average amount of earnings that “consumers could expect to make” were material and likely to mislead); *FTC v. Wolf*, No. 94-cv-8119, 1996 WL 812940, *5 (S.D. Fla. Jan. 31, 1996) (“potential income of the venture,” “success of other investors,” and “attractive level of training and ongoing support” are among the “issues at the heart of an investor’s purchasing decision.”) (citation omitted).

replete with grossly exaggerated earnings claims, including Matt Lloyd’s claims in the 21-step videos that consumers can “realistically generate \$100,000” in their first year in the MOBE program. Defendants even state on their websites, in their written materials and at live events that their earnings claims are “guaranteed.” As demonstrated by Defendants’ own income statements—inconspicuously posted on their website—most consumers who purchase Defendants’ program make little to no money. This is borne out in the numerous consumer complaints brought to the FTC and the 14 declarations from consumers whose experience with the MOBE program ended in much the same way—they never made any of the substantial income that Defendants promised and never made back the money they paid into the MOBE program. Many consumers have lost tens of thousands of dollars.¹²³

The FTC is also likely to prevail on Count II of the complaint, which alleges that Defendants misrepresented that purchases in the MOBE program were refundable without conditions. Defendants expressly claimed on various registration pages for the 21-step course—including MTTB System, Patriot Funnel System, Internet Funnel System, Ultimate Retirement Breakthrough, and elsewhere—that the MOBE program was “100% risk free” with a “30 Day Money Back Guarantee,” and Defendants’ coaches reiterated these false claims with respect to the membership offerings. When dissatisfied consumers came back for their refunds, however, Defendants denied, evaded, or refused to honor such requests, often invoking inconspicuous provisions in post-purchase agreements that sought to waive cancellation rights or imposed onerous and cost-prohibitive conditions to qualify for a

¹²³ See *supra*, Section II (E).

refund.¹²⁴ In light of these practices, Defendants’ “risk free” and “money back guarantee” claims are false and misleading.

C. The Equities Tip Decidedly in the Public’s Favor

Where, as here, public and private equities are at issue, public equities far outweigh private equities. *See USA Beverages*, 2005 WL 5654219, at *8; *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1028-29 (7th Cir. 1988). The FTC has shown a strong likelihood of prevailing on every count in the complaint.¹²⁵ The public equities in this matter include protecting consumers who may be victimized by Defendants’ ongoing scheme and preserving assets to provide redress to consumers who have lost substantial amounts of money by purchasing Defendants’ bogus products. By contrast, Defendants have no legitimate interest in continuing their scam. The equities tip decidedly in the public’s favor.

D. The TRO Should Extend to All Defendants

1. The Corporate Defendants Are Subject to Joint and Several Liability as a Common Enterprise

Defendants are jointly and severally liable for the others’ deceptive acts and practices where the court finds the existence of a common enterprise. *Wash. Data Resources*, 856 F. Supp. 2d at 1271. Courts look to a variety of factors in determining whether a common enterprise exists among corporate defendants, including (1) common control; (2) sharing of office space and officers; (3) commingling of corporate funds and failure to maintain

¹²⁴ Even assuming that the “disclaimer” regarding Defendants’ refund policy was “timely,” which it was not here, it is not adequate to avoid liability when the pertinent language is “inconspicuously buried” or vague and fails to change the deceptive net impression. *Washington Data Resources*, 856 F. Supp. 2d at 1274-75 (citation omitted).

¹²⁵ The equities test also works on a “sliding scale” such that the “greater the plaintiff’s success on the merits, the less harm she must show in relation to the harm defendant will suffer if the preliminary injunction is granted.” *FTC v. Lifewatch Inc.*, 176 F. Supp. 3d 757, 778 (N.D. Ill. 2016).

separation of companies; (4) whether business is transacted through a maze of interrelated companies; (5) unified advertising; and (6) other evidence that reveals that no distinction exists between the corporate defendants. *Nat'l Urological Grp.*, 645 F. Supp. 2d at 1182.

As set forth in Section III.A, *supra*, the Corporate Defendants share common ownership under Matt Lloyd, inter-mingle finances and consumer funds between one another, have unified advertising, and operate towards a common, united purpose, which is to market and sell the MOBE program to consumers.¹²⁶ Matt Lloyd is the registered CEO and sole owner, or de facto owner, of all Corporate Defendants.¹²⁷ The Corporate Defendants have represented in their books and balance sheets that they are an integrated or interdependent business unit that makes substantial and recurring inter-company transfers.¹²⁸ The Corporate Defendants have opened a host of merchant accounts that are all used to bill consumers purchasing MOBE's program and the memberships.¹²⁹ The corporate shells, such as MOBE USA, have paid MOBE Ltd.'s operating expenses.¹³⁰

2. Individual Defendants Are Personally Liable

Individual Defendants Matt Lloyd, Susan Zanghi and Russ Whitney are individually liable for the Corporate Defendants' violations of the FTC Act. To obtain injunctive relief against individuals for consumer harm resulting from Corporate Defendants' conduct, FTC must show that individual defendants either directly participated or had authority to control

¹²⁶ PX 90 at p. 8; PX 62, at p. 37; PX 57, at p. 13.

¹²⁷ *Supra*, Section III(A). While MOBE Panama appears to be registered to a straw owner, in his curriculum vitae, Matt Lloyd has claimed that he is the bona fide owner and executive of this offshore company. PX 42, at FTC-MOBE-003435-36.

¹²⁸ PX 39, at FTC-MOBE-003068; PX 40, at FTC-MOBE0-003187-89; PX 21, ¶¶11-13.

¹²⁹ PX 22, ¶¶94-96; PX 35; PX 37; PX 40 at FTC-MOB-003369-70; PX 81.

¹³⁰ PX 49, at FTC-MOBE-003724-26.

the acts or practices of the Corporate Defendants. *IAB Mktg. Assocs.*, 746 F.3d at 1232-1233 (11th Cir. 2014). To obtain monetary relief, Plaintiff must further show that the individual defendants possessed some knowledge of these acts or practices. *Gem Merch. Corp.*, 87 F.3d at 470 (citation omitted); *Direct Benefits*, 2013 WL 3771322, at *19. (citation omitted).

Authority to control may be evidenced by “active involvement in the business affairs and the making of corporate policy, including assuming the duties of a corporate officer.” *Wilcox*, 926 F. Supp. at 1104 (*quoting Amy Travel*, 875 F.2d at 573); *Windward Mktg.*, 1997 WL 33642380, at *5. Bank signatory authority or the acquisition of services on behalf of a corporation also evidences authority to control. *See FTC v. USA Financial LLC*, 415 Fed. Appx. 970, 974-95 (11th Cir. 2011). Courts consider the “control that a person actually exercises over given activities,” and thus an individual defendant does not have to be an officer or even employee to control corporate activities. *Windward Mktg.*, 1997 WL 33642380, at *5.

The knowledge element supporting monetary relief is satisfied if the individual had actual knowledge of the material misrepresentations, was recklessly indifferent to the truth or falsity of the representations, or was aware of a high probability that the business was engaged in fraud and intentionally avoided learning the truth. *Transnet*, 506 F.Supp.2d at 1270 (*citing Amy Travel Service*, 875 F.2d at 574). Circumstantial evidence is sufficient to establish that an individual defendant has “requisite knowledge” of the deceptive or fraudulent practices. *Wiand v. Wells Fargo Bank, N.A.*, 938 F. Supp. 2d 1238, 1244 (M.D. Fla. 2013). An individual’s receipt of consumer complaints is probative of knowledge. *Partners In Health Care*, 189 F. Supp. 3d at 1368; *FTC v. Cyberspace.com, LLC*, 453 F.3d

1196, 1202 (9th Cir. 2006). The “degree of participation in business affairs is also probative of knowledge.” *FTC v. RCA Credit Servs*, No. 08-cv-2062, 2010 WL 2990068, *13 (M.D. Fla. Jul. 29, 2010) (quoting *Amy Travel Service*, 875 F.2d at 574).

Matt Lloyd is the CEO and sole owner of the Corporate Defendants, and someone who, in his own words, is “running” these companies and “[t]aking executive decisions.”¹³¹ These facts alone should suffice to establish personal liability. Indeed, a “heavy burden of exculpation rests on the chief executive and primary shareholder of a closely held corporation whose stock-in-trade is overreaching and deception.” *Windward Mktg.*, 1997 WL, at *13 (quoting *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973)). By his own admission, Matt Lloyd created the scripts for the 21-Step videos, all of which he has narrated and made available on Defendants’ websites. *RCA Credit Servs*, 2010 WL 2990068, at *13 (individual defendant found liable where, among other things, he was depicted as the “talking head” in animated video). Matt Lloyd has signatory authority over the Corporate Defendants’ bank accounts and is able to control the flow of money in Defendants’ operation.¹³² In addition to his clear authority to control and his direct participation, Matt Lloyd also knows that Defendants’ exaggerated claims about earnings potential are false because, among other things, he has the data showing the actual earnings of purchasers of MOBE memberships.¹³³

Russ Whitney is also individually liable for the harm consumers suffered due to Defendants’ misrepresentations. Russ Whitney directly played a vital role in “building out”

¹³¹ PX 42, at FTC-MOBE-003435-36.

¹³² PX 30; PX 31; PX 32; PX 33; PX 34; PX 42.

¹³³ PX 79; PX 80.

MOBE's live events in the U.S. and ensnaring further victims into their scheme. *RCA Credit Servs.*, 2010 WL 2990068, at *5 (“degree of participation in business affairs is probative of knowledge”) (citation omitted). Speaking at these live events, Russ Whitney has unabashedly made false statements about the “guaranteed” income consumers will earn through the MOBE program.¹³⁴ *FTC v. FTN Promotions, Inc.*, No. 8:07-cv-1279, 2008 WL 821937, at *3 (M.D. Fla. Mar. 26, 2008) (considering an individual's involvement in the review of marketing scripts probative of knowledge). Tellingly, Russ Whitney once told his audience: “There is no get [rich] quick scheme out there” and “We are not a get rich quick scheme.” Yet, in the very same speech, he claimed to have “proven systems, techniques and strategies on how you can generate a guaranteed five, 10, 20,000 [dollars] plus each and every month.”¹³⁵ In short, Russ Whitney knew or at minimum was recklessly indifferent to whether his earnings representations were false or unfounded. *Transnet*, 506 F. Supp. 2d at 1271 (finding that “personal participation underscores knowledge” in a case where defendant “pitched customers” and “promised unsubstantiated high profits and the securement of profitable locations”). In his role as Director of Event Sales, Russ Whitney also knew these representations formed the crux of Defendants' scheme.¹³⁶ *See FTC v. Jordan Ashley, Inc.*,

¹³⁴ *See, e.g.*, PX 20, Ex. D, at FTC-MOBE-000599-600; PX 22, Ex. SS, at FTC-MOBE-002497 (“make sure you follow the path that we have already paved for you and make sure you follow our step-by-step processes. If you do, you can become one of our next six and seven figure earners literally within the next six months to one year”).

¹³⁵ PX 20, Ex. D, at FTC-MOBE-000626-27. Russ Whitney also delivered in-person presentations at various MOBE Supercharge Summits and Masterminds. PX 49 (2016 LV Supercharge Summit agenda); PX 6, ¶¶23; PX 8, ¶¶26-27;

¹³⁶ Russ Whitney is well versed in Defendants' signature bait and switch tactics. Speaking about internet marketing, Russ Whitney once explained: “So many amateur internet marketers that have not been trained and educat[ed] by us always put too much information in their advertisement or they give the entire offer away in their advertisement. The whole point of an advertisement is to keep the person wanting more, to get the person to take action and click on your advertisement.” PX 20, Ex. D at 36.

No. 93-civ-2257, 1994 WL 200775, at *3 (S.D. Fla. Apr. 5, 1994) (“it is simply not plausible to suppose that [the defendant] did not know” about the misrepresentations when they “formed a central part of that business and contributed greatly to its success”).

Susan Zanghi is also individually liable for the harm caused by Defendants’ deceptive business practices. As MOBE Ltd.’s “finance manager,” Susan Zanghi signed contracts with Defendants’ banks and payment processors and opened bank and merchant accounts in the name of MOBE USA, MOBE Training USA, and TM-USA, enabling Defendants to bill and collect money from consumers.¹³⁷ Susan Zanghi is the signatory on over a dozen bank accounts held by Corporate Defendants in the U.S.¹³⁸ These factors are sufficient to demonstrate that she had the requisite “authority to control” at the very least. *See USA Financial*, 415 Fed. Appx. at 974-75 (finding authority to control where individual defendant signed checks, bank applications and resolutions on the corporation’s behalf); *FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d 1176, 1206 (C.D. Cal. 2000) (actively participating in acts crucial to the success of the fraudulent scheme, including obtaining merchant bank accounts, can also support a finding of direct participation). Susan Zanghi also had constructive, if not actual, knowledge that Defendants were engaged in fraud. The BBB lists her name and address as MOBE Ltd.’s point of contact consumer complaints submitted to the BBB.¹³⁹ *FTC v. Willms*, No. 11-cv-0828, 2011 WL 4103542, at *5 (W.D. Wash. Sept. 13, 2011) (“Consumer complaints are highly probative of whether a practice is deceptive”). The evidence also suggests that Susan Zanghi was alerted to chargebacks made on the U.S.

¹³⁷ *See, e.g.*, PX 30; PX 31; PX 32; PX 33; PX 34; PX 40.

¹³⁸ PX 30; PX 31; PX 32; PX 33; PX 34; PX 40.

¹³⁹ PX 95.

merchant accounts she opened for the Corporate Defendants.¹⁴⁰

V. AN EX PARTE TRO WITH INJUNCTIVE RELIEF, ASSET FREEZE, APPOINTMENT OF RECEIVER AND OTHER RELIEF IS NECESSARY

The proposed TRO orders Defendants to put an immediate stop to the unlawful practices challenged in the Complaint. This relief would serve the public interest by preventing further harm to the public. The FTC also asks this Court for an asset freeze on all of Defendants' assets as well as the appointment of a temporary receiver over the Corporate Defendants.

A. An Asset Freeze Is Necessary and Warranted

An asset freeze is within the Court's equitable powers. See *IAB Mktg.*, 746 F.3d at 1234 (“[A] district court may order preliminary relief, including an asset freeze, that may be needed to make permanent relief possible”) (citation omitted). The Eleventh Circuit has repeatedly upheld the authority of district courts to order an asset freeze to ensure the possibility of consumer redress. *Id.*; *Gem Merch. Corp.*, 87 F.3d at 469; *U.S. Oil & Gas*, 748 F.2d at 1433-34. “The FTC’s burden of proof in the asset-freeze context is relatively light.” *IAB Mktg.*, 746 F.3d at 1234. All that is necessary is a “reasonable approximation of a defendant’s ill-gotten gains.” *Id.*; *World Travel Vacation Brokers*, 861 F.2d at 1031 (when a district court determines that the FTC is likely to prevail on the merits, it has a “duty to ensure that ... assets ... [are] available to make restitution to the injured customers”). Moreover, the “FTC does not need to present evidence that the assets will be dissipated;

¹⁴⁰ PX 38, at FTC-MOBE-002856-2972. In one chargeback dispute involving Susan Zanghi, the cardholder complained that while he “purchased services to teach him how to market online ... lessons were not as described, did not teach [cardholder], was dishonest ploy ... merchant refused to resolve.” *Id.*, at FTC-MOBE-002957.

rather it need show only a concern that the Defendants' assets will disappear." *World Patent Mktg.*, 2017 U.S. Dist. LEXIS 130486, at *55; *see USA Financial*, 415 Fed. Appx. at 975 (upholding asset freeze in the absence of likelihood of dissipation where FTC established that frozen funds were profits from defendants' illegal activities). "Dissipation does not necessarily mean that assets will be spirited away in secret; rather, it means that less money will be available for consumer redress." *World Patent Mktg.*, 2017 U.S. Dist. LEXIS 130486, at *56 (payment for legal fees and living expenses "constitutes a dissipation ... as these expenditures would deplete the assets available for consumer redress"). "An asset freeze may be imposed where the possibility of dissipation of assets exists." *USA Beverages*, 2005 WL 5654219 at *9.

A temporary asset freeze is appropriate here to preserve the status quo, ensure that funds do not disappear during the course of this action, and preserve Defendants' assets for final relief. Defendants have defrauded consumers of enormous sums of money—*i.e.*, more than \$125 million dollars.¹⁴¹ *See, e.g., USA Beverages*, 2005 WL 5654219, at *9 (ordering an asset freeze because the "scope of the monetary liability ... provides considerable motivation for defendants to place their assets beyond the Court's reach" and defendants have "already moved large sums of money paid by [Defendants'] victims to Costa Rica").

Defendants have received substantial distributions from the MOBE scheme. For example, Russ Whitney said he has made \$1.6 million from MOBE.¹⁴² According to an FTC forensic accountant's review of Defendants' domestic bank records, Matt Lloyd has moved

¹⁴¹ PX 21, ¶9.

¹⁴² PX 22, Ex. QQ, at FTC-MOBE-002482. Through Shark Speaker LLC, Russ Whitney controls several bank accounts that has received at least \$318,000 from MOBE USA and TM USA in just over 9 months.¹⁴² PX 21, ¶17.

at least \$8 million of consumer money from these accounts into overseas bank accounts that he owns or controls.¹⁴³ In addition to spending millions of dollars of consumer funds to cover operating expenses for Defendants’ fraudulent enterprise,¹⁴⁴ Defendants have also spent significant sums of this money to purchase resort properties in Costa Rica and Fiji.¹⁴⁵ Many of the Corporate Defendants are also located abroad with offshore bank accounts that are receiving substantial transfers of consumer money collected by their U.S. counterparts.¹⁴⁶

In short, Defendants have the means—and have used those means—to transfer consumer funds to their offshore accounts in Malaysia, Panama, Australia, and Canada.¹⁴⁷ Not only have Defendants transferred substantial sums received from consumers to overseas bank accounts, but they also claim to have a seminar—the “asset protection summit”—that will teach people how to hide assets in order to avoid satisfying a legal judgment.¹⁴⁸ An asset freeze as to all Defendants will ensure that whatever funds Defendants have not already dissipated are available for consumer redress.¹⁴⁹ Without an asset freeze, the thousands of

¹⁴³ *Id.*, ¶16.

¹⁴⁴ Defendants claim to spend “well over a million dollars per month on media buys.” PX 22, Ex. OO, at FTC-MOBE-002415. Defendants spent over \$110,000 to host one Supercharge Summit event in Las Vegas in October 2016 and arranged VIP rooms for Matt Lloyd and Russ Whitney at this event. PX 49, at FTC-MOBE-003699 & FTC-MOB003726.

¹⁴⁵ PX 22, Ex. OO, at FTC-MOBE-002442-43 & FTC-MOBE-002451.

¹⁴⁶ PX 21, ¶12.

¹⁴⁷ *Id.* In *World Patent Marketing*, the district court found a concern that assets will be dissipated because defendant had the “infrastructure and means to move millions of dollars around among his self-described holding companies.” *World Patent Mktg.*, 2017 U.S. Dist. LEXIS 1230486, at *56. The same is true in this case.

¹⁴⁸ PX 22, Ex. Y, at FTC-MOBE-001656-57 (In the Step 9 video, Matt Lloyd says: “In the world that we live in, with a lot of lawsuits, especially in America, that is fact. So learning about asset protection and arranging your affairs so that your assets are safe, it’s really important”).

¹⁴⁹ The asset freeze should extend to all Corporate and Individual Defendants here with equal force. Where “neither the distinct portion of the harm [defendant] caused nor [defendant’s] relative contribution to the undivided harm can be determined,” it is appropriate to hold all defendants jointly and severally liable. *FTC v. WV Universal Processing*, 877 F.3d 1234, 1241 (11th Cir. 2017) (published opinion).

consumer victims of Defendants' scheme face a substantial risk that insufficient funds will be left for restitution.

B. Appointment of a Receiver Is Necessary and Warranted

The appointment of a receiver is also critical. In similar actions involving fraudulent conduct, courts have regularly exercised their equitable powers under Section 13(b) of the FTC Act to appoint a temporary receiver to prevent further diversion of funds that may otherwise be used for consumer redress.¹⁵⁰ The appointment of a receiver will help to preserve any remaining funds held by Defendants.¹⁵¹

Moreover, appointment of a receiver over the Corporate Defendants is necessary because Defendants' business is permeated with fraud and the Individual Defendants cannot be trusted to operate the business lawfully. Under the control of Individual Defendants, the Corporate Defendants have been engaged in years of deceptive practices that have caused and continue to cause monetary harm. Individual Defendants have persisted in operating the MOBE enterprise deceptively despite receiving repeated complaints from consumers,¹⁵² and

We note that in a recent unpublished decision in another FTC action filed in this district, the Eleventh Circuit vacated portions of an asset freeze that froze one individual defendant's assets beyond that individual's revenue from the scam. *FTC v. Vylah Tec LLC*, No. 2:17-cv-228-UA-MRM 2018 WL 1211948, (11th Cir. Mar. 8, 2018) (unpublished opinion). The reasoning set forth in the unpublished *Vylah Tec* ruling does not impact the FTC's requested asset freeze on the Individual Defendants in this case because *Vylah Tec* and the two decisions upon which it relied only addressed asset freezes in the context of disgorgement, not restitution. In this case, the FTC seeks to hold the Individual Defendants jointly and severally liable for restitution—*i.e.*, the total amount consumers lost in the MOBE scheme.

¹⁵⁰ See, e.g., *FTC v. Nat'l Payment Processing LLC*, No. 15-cv-03811-AT (N.D. Ga. Nov. 3, 2015); *FTC v. E.M. Systems & Services, LLC, et al.*, No. 15-cv-01417-SDM-EAJ (M.D. Fla. June 17, 2015); *FTC v. Pinnacle Mktg.*, No. 13-cv-03455 (N.D. Ga. Oct. 21, 2013); *FTC v. Info. Mgmt. Forum, Inc.*, No. 6:12-cv-986-GAP-KRS (M.D. Fla. June 28, 2012); *FTC v. Digital Altitude, LLC, et al.*, No. 18-cv-00729 (C.D. Cal. Mar. 9, 2018).

¹⁵¹ Where corporate defendants and their managers and officers have engaged in deception, "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" consumers victimized by the fraud. *SEC v. First Fin. Group.*, 645 F.2d 429, 438 (5th Cir. 1981).

¹⁵² See, e.g., PX 1, ¶¶35-43; PX 8 ¶40; PX 2, ¶¶45-47; PX 3, ¶15; PX 8, ¶18; PX 7, ¶25.

despite FTC’s action obtaining a temporary injunction shutting down their admitted copycat competition for engaging in similar deception.¹⁵³

A court-appointed receiver is necessary to determine whether Defendants’ business can be operated lawfully. In the FTC’s action against Digital Altitude, the court-appointed receiver concluded that Digital Altitude’s business education program—the same one that Defendants have previously alleged was a “knock off” of the MOBE program—could not be operated lawfully and profitably.¹⁵⁴ The MOBE program may not be viable if potential purchasers no longer hear Defendants’ gross earnings misrepresentations and instead are informed of the sobering earnings data Defendants currently hide in their inconspicuous income “disclosures.”¹⁵⁵

In addition, a receiver can take steps to try to secure Defendants’ business records, marshal additional resources to identify consumer victims, and assist with the recovery of Defendants’ wrongfully obtained assets, including the significant sums that Defendants transferred to bank accounts located outside of the United States.¹⁵⁶ *See USA Beverages*, 2005 WL 5654219, at *9 (“an asset freeze coupled with the appointment of a receiver gives the Receiver, and the FTC, a tool for searching for additional assets”). Without a receiver, Defendants are likely to hide or dissipate assets, destroy evidence, and engage in other acts

¹⁵³ *FTC v. Digital Altitude, LLC, et al.*, No. 18-cv-00729 (C.D. Cal. Mar. 9, 2018) (order granting preliminary injunction against Digital Altitude).

¹⁵⁴ *Id.*

¹⁵⁵ The MOBE program and membership offerings comprise a substantial share of Defendants’ revenues. Matt Lloyd claims that “about 80 percent” of the commissions MOBE has paid come from selling the training programs that cost over \$2,000. PX 22, Ex. L, at FTC-MOBE-000939. Matt Lloyd also claims that MOBE sells other products through a website called mobemarketplace.com. *Id.*, Ex. N at FTC-MOBE-001153-54. A court-appointed receiver can assess whether there are any products that Defendants can sell legally and profitably.

¹⁵⁶ If a temporary receiver is appointed, Plaintiff recommends that the receiver’s bond be set at \$35,000—an amount that is consistent with what other courts in recent FTC enforcement actions have set.

that subvert the Court's ability to award effective final relief.

C. Limited Expedited Discovery Is Necessary and Warranted

District courts are authorized to depart from normal discovery procedures and fashion a discovery schedule that meets the needs of a particular case. To locate wrongfully obtained assets, FTC further requests that the Court permit expedited discovery on Defendants. Expedited discovery is necessary to ensure that the FTC, the Court-appointed receiver, and the Court are fully apprised of the nature, location, status, and extent of Defendants' assets, business transactions and operations, and to discover documents reflecting these business transactions and operations.

D. TRO Should Be Issued *Ex Parte*

The Court should issue an order *ex parte* where "providing notice to the defendant would render fruitless the further prosecution of the action." *AT&T Broadband v. Tech Commc'ns, Inc.*, 381 F.3d 1309, 1319-20 (11th Cir. 2004). As set forth in the FTC's Certification of Support of Ex Parte Motion for TRO Pursuant to Rule 65(b), defendants involved in similar frauds have dissipated assets and destroyed documents after receiving advanced notice of federal action. To carry out their illegal enterprise, Defendants have created numerous shell companies and foreign bank accounts to help them transfer money out of the United States quickly and easily. Moreover, Defendants' words and actions betray a deep disregard for the law. Accordingly, it is in the interest of justice to provide the requested *ex parte* relief to maintain the status quo and preserve this Court's ability to award full and effective final relief.

VI. CONCLUSION

For the foregoing reasons, the FTC requests that the Court grant this Motion, issue the proposed TRO *ex parte*, and require Defendants to show cause why a preliminary injunction should not issue against them.

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Respectfully submitted,

/s/ Sung W. Kim

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