UNDERSEAL

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FEDERAL TRADE COMMISSION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AH MEDIA GROUP, LLC, a Delaware Limited Liability Company,

HENRY BLOCK, individually, and as an officer of AH MEDIA GROUP, LLC,

ALAN SCHILL, individually, and as an owner of AH MEDIA GROUP, LLC,

Defendants,

and

ZANELO, LLC, a Puerto Rico Limited Liability Company,

Relief Defendant.

CV 19-4022 SK

Case No. _____

FILED UNDER SEAL

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

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I. INTRODUCTION

The Federal Trade Commission asks this Court to halt an online marketing scheme that uses deceptive "trial" offers to enroll unsuspecting consumers in expensive continuity plans for skin care products and dietary supplements. Defendants offer the trial for only a nominal shipping and handling charge, but after consumers make this payment, Defendants proceed to charge approximately $90 for the trial and an additional $90 each month for regular shipments of the products. Defendants have reaped more than $42 million from these unlawful marketing practices, which violate the Federal Trade Commission Act (the "FTC Act"), the Restore Online Shoppers' Confidence Act ("ROSCA"), the Electronic Fund Transfer Act ("EFTA"), and Regulation E.

Defendants offer the purported trials of their products on a group of nearly identical websites, each of which promises that consumers need to pay only a minimal shipping and handling fee (typically $4.99) to receive the product. In ordering the trial, consumers provide their credit or debit card information to pay the shipping and handling fee, but the websites explicitly state that this fee represents the total cost of the trial offer. Thus, consumers who order one of Defendants' trials expect to receive a single shipment of one product and to be charged one nominal shipping and handling fee.

Approximately two weeks later, however, Defendants automatically charge consumers the full price of the trial product: around $90. Defendants also enroll consumers in a continuity plan, charging them each month for regular shipments of the product. To make matters worse, Defendants often trick consumers into ordering a trial of a second product; when consumers click a box to complete their order, they are signed up for another trial sample of an additional product (for which they will ultimately pay full price) and yet another monthly continuity plan.

In sharp contrast to Defendants' prominent representations that the trial products are free but for nominal shipping and handling costs, language about the full price is hidden behind hyperlinks or nearly invisible text, if it appears at all. And when consumers try to get their money back, Defendants double-down on their fraudulent tactics. Consumers have difficulty

reaching a customer service representative, and when they do, Defendants refuse to provide refunds by pointing to an onerous (and poorly disclosed) refund policy. Further, when consumers dispute charges with their credit card companies, Defendants cite non-operational dummy websites—which contain much more prominent disclosures—to represent, falsely, that the charges were adequately disclosed.

Attempting to evade detection by law enforcement and maintain their scheme, Defendants use an ever-changing network of over 300 websites and more than 70 shell entities. Defendants establish payment processing accounts in the shell entities' names and then use those accounts to collect the unauthorized charges. Using numerous accounts allows Defendants to spread complaints and compliance enforcement across numerous entities that appear unrelated, and to ensure that as accounts get shut down for fraud there are ample backups to continue processing consumer payments. The unauthorized charges are then transferred from the shell entities' accounts to the Defendants.

Plaintiff's evidence of Defendants' illegal practices is overwhelming. It includes screenshots of Defendants' deceptive advertisements and websites; undercover purchases; hundreds of consumer complaints to government agencies and Better Business Bureaus; third-party records showing the structure of Defendants' enterprise; sworn statements from consumer victims; and sworn declarations from FTC investigators and a forensic accountant.

Taken together, the evidence demonstrates that Defendants' business is permeated with fraud and has caused substantial harm to consumers across the nation. The FTC therefore brings this motion for an *ex parte* temporary restraining order ("TRO") to halt Defendants' illegal practices, to freeze their assets, and to have a temporary receiver appointed over the business. Defendants' widespread pattern of deception, unauthorized charges to consumers' accounts, use of shell companies to disguise their identity, use of fraudulent documentation in merchant applications and consumer chargeback disputes, and other efforts to evade responsibility for their conduct all strongly suggest that they would hide or dissipate assets if they received notice of this

action. The requested relief is necessary and appropriate to preserve the Court's ability to provide effective final relief, including eventual restitution to the victims.

II. DEFENDANTS[1]

A. Corporate Defendant

AH Media Group, LLC ("AH Media") is a Delaware limited liability company formed in 2016.[2] Its principal place of business is in Greenwood Village, Colorado.[3] AH Media is at the center of Defendants' operation (the "AH Media Enterprise"). It markets its products through shell companies registered in Wyoming (the "Wyoming LLCs"), including those identified in Exhibit B to the Complaint. The AH Media Enterprise uses payment processing accounts set up in the names of the Wyoming LLCs,[4] but controlled by Henry Block ("Block").[5] Block then transfers the proceeds from bank accounts association with the Wyoming LLCs to AH Media's bank account at First National Bank (the "AH Media FNB Account").[6] Virtually all of the AH Media Enterprise's operating expenses are paid from the AH Media FNB Account, including

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[1] The FTC has filed 12 declarations in support of this Motion. The declarations, including exhibits and attachments, are Bates stamped FTC-TRO-0001 – 1418, in Plaintiff's Appendix of Declarations in Support of Plaintiff's Ex Parte Motion for Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue ("App."). Citations to the Appendix appear as "App." followed by a Bates number without the FTC-TRO prefix or any leading zeros (*e.g.* FTC-TRO-0267 would appear at App. 267). An index that provides the Bates range for each declaration is attached to this Memorandum as Attachment 1.

[2] Declaration of Yasser Dandashly, FTC Investigator ("Dandashly Decl."), Ex. 17 at App. 334.

[3] Dandashly Decl., Ex. 19 at App. 340-42.

[4] Dandashly Decl. ¶¶ 119-131 at App. 301-04 and Exs. 68-74 (merchant applications) at App. 917-1037.

[5] Dandashly Decl. ¶ 104 at App. 297 and Ex. 56 at App. 831-33 (Block signatory on Wyoming LLC accounts).

[6] Declaration of Thomas Van Wazer, FTC Forensic Accountant ("Van Wazer Decl."), ¶ 9 at App. 201 and Ex. 3 at App. 209-10 (showing flow of funds); Dandashly Decl. ¶¶ 101-131 at App. 297-340 (describing Defendants' use of shell companies) and Ex. 55 at App. 827-29 (summary table of Wyoming LLCs). AH Media has registered the various websites where Defendants market and sell their deceptive trial offers. Dandashly Decl.¶¶ 32-34 at App. 280 and Ex. 28-29 at App. 393-409 (Namecheap records showing websites registered to Defendants.).

advertising, manufacturing, and fulfillment expenses, as well as regular payments to the nominal owners of the Wyoming LLCs (the "shell owners").[7]

AH Media is jointly owned by Block and Alan Schill ("Schill") (collectively, the "Individual Defendants") through their companies, H Block Investments, LLC ("HBI") and XI Family, LP ("XI Family").[8]

AH Media continues to operate. For example, according to the bank records from March 2019, the most recent records available, the AH Media FNB Account received over $680,000, nearly all from various Wyoming LLCs.[9] Later, on April 29, 2019, AH Media filed a Periodic Report with the Colorado Secretary of State, where it is registered as a Foreign Entity.[10] The FTC also continues to receive consumer complaints about the AH Media Enterprise.[11]

B. Individual Defendants

Defendant Henry Block is the Manager of and Registered Agent for AH Media.[12] Block is also an authorized signer for the AH Media FNB Account.[13] Block was a signatory for at least

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[7] Van Wazer Decl. ¶¶ 10-11 at App. 201-02 and Ex. 8 at App. 228-34; Dandashly Decl. ¶¶ 149-151 at App. 308-09 and Ex. 81 at App. 1054-56.

[8] Block is the Managing Member of HBI, a Colorado limited liability company, which is a Member of and holds a 50% ownership interest in AH Media. Dandashly Decl. Ex. 18 at App. 336-38; Ex. 20 at App. 348-52. Block signed AH Media's Operating Agreement on behalf of HBI and is also the authorized signer for HBI's bank account. Dandashly Decl. Ex. 18 at App. 338; Ex. 88 at App. 1147-49. Schill signed the agreement on behalf of XI Family, LP ("XI Family"), a Delaware Limited Partnership, which is a Member of and holds a 50% ownership interest in AH Media. Dandashly Decl. Ex. 18 at App. 336-38; Ex. 21 at App. 355. Schill is the Managing Member of XI Management, LLC, a Delaware limited liability company, which is the General Partner of XI Family. Dandashly Decl. Ex. 18 at App. 336-38. Schill is also the sole Authorized Person for Relief Defendant Zanelo, LLC ("Zanelo"). Dandashly Decl. Ex. 22 at App. 358-59, Ex. 24 at App. 371.

[9] Dandashly Decl. ¶ 161 at App. 311 and Ex. 87 at App. 1133-45.

[10] Dandashly Decl. Ex. 19 at App. 340-46.

[11] Dandashly Decl. ¶ 170 at App. 314.

[12] Dandashly Decl. Exs. 18 & 19 at App. 336-46. Block also refers to himself as a "Partner" of AH Media Group. Dandashly Decl. Ex. 86 at App. 1117-31.

[13] Dandashly Decl. Ex. 56 at App. 831 (identifying Block as signor of First National Bank account x1128). First National Bank account x1128 is held in the name of AH Media Group. Van Wazer Decl. ¶ 3 at App. 198.

55 bank accounts in the name of various Wyoming LLCs that are part of the AH Media Enterprise, and he is listed as holding corporate positions in many of the Wyoming LLCs.[14] Block owns 50 percent of AH Media through HBI.[15] Block has received over $3.18 million from AH Media.[16]

Defendant Alan Schill has the authority to control AH Media through XI Family, which holds a 50 percent ownership interest in AH Media.[17] Schill signed AH Media's Operating Agreement on behalf of XI Family and XI Management, LLC ("XI Management").[18] AH Media sent Schill at least $1.7 million directly, and Schill's company, Zanelo, LLC, has also received over $2 million from AH Media.[19]

C. Relief Defendant

Zanelo, LLC ("Zanelo") is a Puerto Rico limited liability company organized on October 24, 2017.[20] Schill is the only authorized person identified in Zanelo's formation documents.[21] Bank accounts for the AH Media FNB Account show payments to Zanelo in excess of $2 million

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[14] Dandashly Decl. ¶¶ 105-06 at App. 298 and Ex. 55 at App. 827-29 (list of LLCs), Ex. 56 at App. 831-33 (signatory on bank accounts), and Ex. 57 at App. 835-88 (example organization documents showing LLCs for which Block is listed as member and treasurer).

[15] *See supra* at n.8.

[16] Between April 2016 and March 2019, the AH Media FNB Account transferred approximately $3.44 million to an HBI bank account and $40,601 to Block's personal bank account. Van Wazer Decl. ¶ 10 at App. 201-02 and Exs. 4 & 7 at App. 212-17, 226. HBI transferred $300,000 to the AH Media FNB Account between April 2016 and September 2016, so the net to HBI is slightly over $3.18. *Id.* n.3 at App. 202.

[17] Alan Schill is the Managing Member of XI Management, LLC, which is the General Partner of XI Family, LP, which, in turn, has a 50% interest in AH Media Group. Dandashly Decl. Ex. 18 at App. 336-38.

[18] *Id.*

[19] Van Wazer Decl. ¶ 10 at App. 201-02, Exs. 5 & 6 at App. 219-24.

[20] Zanelo has provided the following addresses relating to its operation: 875 Carr 693, Suite 105, Dorado, Puerto Rico and 7 Calle Manuel Rodriguez Sierra, Apartment 6, San Juan, Puerto Rico 00907. Dandashly Decl. Exs. 22 & 23 at App. 357-69.

[21] Van Wazer Decl. Ex. 22 at App. 357-60.

that are traceable to Defendants' deceptive practices[22] and to which Zanelo has no legitimate claim.

III. DEFENDANTS' ILLEGAL BUSINESS PRACTICES

A. Defendants' Online Marketing Is Deceptive and Unfair

Defendants' entire business model is based on deception. Defendants lure consumers into providing their billing information with false promises of a "$0.00" trial product for which consumers purportedly will pay only a nominal shipping and handling fee. Defendants fail to disclose that consumers' accounts will be charged the full price of the trial product after two weeks, or that Defendants will continue to be charged the full price of the product each month until consumers cancel. Defendants have bilked consumers out of over $42 million using this deceptive scheme.

1. Each Step in the Purchase Flow of Defendants' Websites Is Designed to Mislead Consumers

Defendants have marketed a number of different products, including skin creams and dietary supplements.[23] Consumers initially encounter online advertisements for these products in a variety of ways. Many consumers come across the advertisements on social media.[24] Others see the advertisements when browsing the Internet, often as part of an article that includes an

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[22] Dandashly Decl. ¶ 10 at App. 201-02 and Ex. 5 at App. 219-20.
[23] Dandashly Decl. ¶ 27 at App. 279.
[24] Declaration of Paula Consolini, consumer witness ("Consolini Decl.") ¶ 4 at App. 18; Declaration of Lynette Langere Monchinski, consumer witness ("Langere Decl.") ¶ 3 at App. 93; Declaration of Bernadette Ramirez, consumer witness ("Ramirez Decl.") ¶ 3 at App. 160.

alleged celebrity endorsement for the product.[25] Many of the advertisements promote a free trial of Defendants' products.[26]

Consumers who click on the advertisements are automatically directed to Defendants' websites to order their trials.[27] Defendants' websites contain a series of deceptive pages, including: (a) landing pages that deceptively offer free trial products; (b) payment pages that reinforce the misrepresentation that the trials are free and do not impose further obligations on consumers; (c) upsell pages with "COMPLETE CHECKOUT" buttons that dupe consumers into additional unauthorized continuity plans; and (d) summary pages that again represent that the consumer is only obligated to pay a nominal shipping and handling fee for the trial.

a. The Landing Page

The ordering process is typically a multiple-step process, divided into several webpages. The first webpage (the "landing page") consists of a long, splashy advertisement for the product, with boxes where consumers can enter their contact information. Many of Defendants' websites also create a sense of urgency by representing that supplies are limited and that consumers need to act quickly, such as:[28]

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[25] Declaration of Tracy Crump, consumer witness ("Crump Decl.") ¶ 3 at App. 46 ("I was browsing the internet when I saw an advertisement about TV celebrity Joanna Gaines selling a set of skin cream products."); Declaration of Jean Hisle, consumer witness ("Hisle Decl.") ¶ 3 at App. 67 ("The ad said that Tone Fire Garcinia had been on Shark Tank"); Declaration of Diane Putterman ("Putterman Decl.") ¶ 2 at App. 149 ("The ad said that Christie Brinkley had endorsed the product"); Dandashly Decl. ¶ 74 at App. 290, Ex. 42 at App. 553; Declaration of David Gonzalez, FTC Investigator ("Gonzalez Decl."), ¶ 6 at App. 236, Ex. 9 at App. 240.

[26] Consolini Decl. ¶ 4 at App. 18; Hisle Decl. ¶ 3 at App. 67; Langere Decl. ¶ 4 at App. 93; Putterman Decl. ¶ 2 at App. 149.

[27] Dandashly Decl. ¶¶ 50-55 at App. 283-84, Ex. 36 at App. 517; Gonzalez Decl. ¶¶ 4-9 at App. 235-36, Ex. 9 at App. 240; Consolini Decl. ¶¶ 4-5 at App. 18; Crump Decl. ¶¶ 3-4 at App. 46; Hisle Decl. ¶¶ 3-4 at App. 67; Langere Decl. ¶¶ 3-4 at App. 93; Declaration of Kim Millikan, consumer witness ("Millikan Decl.") ¶¶ 2-3 at App. 112; Putterman Decl. ¶¶ 2-3 at App. 149.

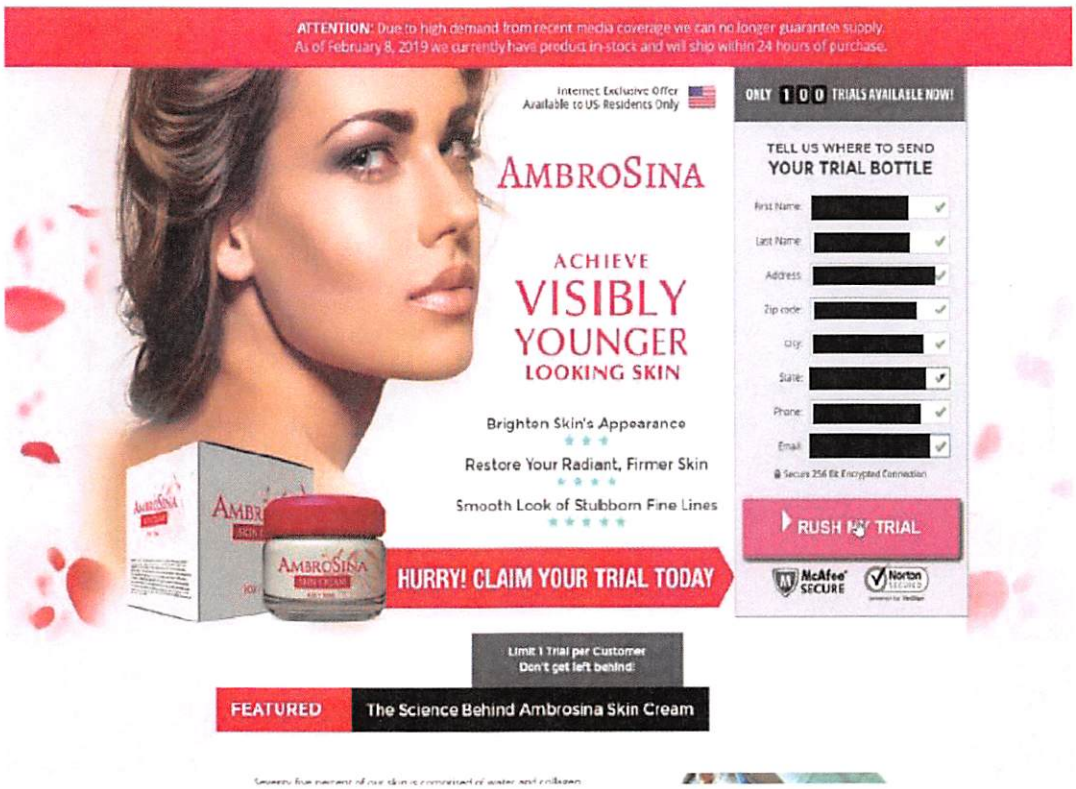
[28] Gonzalez Decl. Ex. 9-10 at App. 240-46; Dandashly Decl. Ex. 36 at App. 517; Ex. 46 at App. 574-78, 588-92, 600-04, 610-14, 624-28, 638-42.

- ATTENTION: Due to high demand from recent media coverage we can no longer guarantee supply. As of [today's date] we currently have product in-stock and will ship within 24 hours of purchase.
- ONLY [#] TRIALS AVAILABLE NOW!
- Limit 1 Trial per Customer

  Don't get left behind!
- [#] others are viewing this offer right now – [countdown clock]

The top of a landing page for one of Defendants' products, AmbroSina Skin Cream, is included here as an example in **Figure 1** below (the full landing page[29] contains many pages of busy content). A prominent bright pink graphic with large, capital letters, states in the middle of the page: "HURRY! CLAIM YOUR TRIAL TODAY."

FIGURE 1[30]



[29] Gonzalez Decl. Exs. 9-10 at App. 240-46.
[30] Gonzalez Decl. Ex. 10 at App. 242.

As is typical of Defendants' landing pages,[31] this one contains no visible disclosure informing consumers that the trial is, in fact, not free, or explaining the complicated terms and conditions of purchase.[32] Instead, the terms and conditions are buried in a separate, multi-page terms and conditions pop-up box accessible only by a small hyperlink at the bottom of a lengthy webpage, requiring the consumer to scroll the full length of the webpage to locate the hyperlink.[33]

b. The Payment Page

After consumers enter their contact information on the landing page and click a "RUSH MY TRIAL" or "ORDER NOW!" button, they are redirected to a second page (the "payment page").[34] **Figure 2** below is an example of the payment page for AmbroSina Skin Cream. The payment pages typically state that the consumer will "Just pay a small shipping fee."[35] The payment pages also request consumers' debit or credit card information specifically to cover the shipping and handling charge. Significantly, the payment pages generally list the "Price" of the trial product[36] as "$0.00," and state in large type that the consumer's "TOTAL" is equal to the cost of the shipping and handling fee, often $4.99.[37]

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[31] Dandashly Decl. Ex. 46 at App. 574-76, 588-90, 600-01, 610-12, 624-26, 638-40; Consolini Decl. ¶ 6 at App. 18; Crump Decl. ¶ 4 at App. 46; Hisle Decl. ¶ 4 at App. 67; Millikan Decl. ¶ 3 at App. 112; Putterman Decl. ¶ 3 at App. 149; Ramirez Decl. ¶ 4 at App. 160.

[32] Dandashly Decl. Ex. 46 at App. 576, 590, 601, 612, 626, 640.

[33] *See supra*, n. 28; *see also* Dandashly Decl. Ex. 49 at 758-800 (text of terms pop-up).

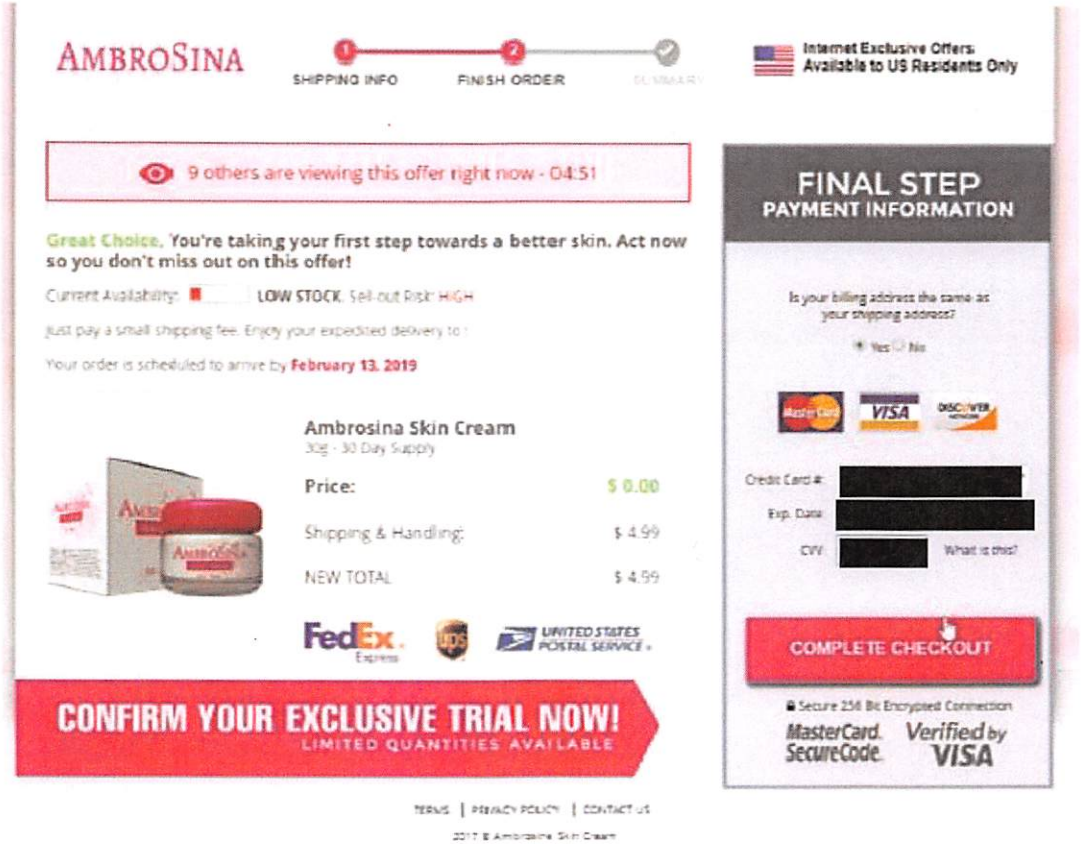
[34] Gonzalez Decl. Ex. 10 at App. 243; Dandashly Decl. Ex. 36 at App. 517 ; Ex. 46 at App. 578, 592, 604, 614, 628, 642.

[35] Some of Defendants' payment pages use a variant of this text, "Just Pay for Shipping," in bold font.

[36] Many of Defendants' payment pages state that consumers will receive a 30-day supply of the trial product. *See* Dandashly Decl. Ex. 46 at App. 578, 592, 614, 628, 642. There are also some instances where the stated amount of the supply varies – e.g. a 45-day supply. *Id.* at App. 604.

[37] Dandashly Decl. Ex. 46 at App. 578, 592, 604, 614, 628, 642; Gonzalez Decl. Ex. 10 at App. 243; Dandashly Decl. Ex. 36 at App. 517.

Figure 2[38]



Unfortunately, consumers who enter their billing information and click a button to "COMPLETE CHECKOUT" or "RUSH MY TRIAL" do not receive a trial product for the shipping cost of $4.99 without further obligation.[39] Instead, approximately 14 days later, Defendants charge consumers the full price of the trial product – typically about $90.[40]

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[38] Gonzalez Decl. Ex. 10 at App. 243.

[39] Dandashly Decl. Ex. 46 at App. 578, 592, 604, 614, 628, 642.

[40] Gonzalez Decl. ¶¶ 13, 16, 18 at App. 237-38, Exs. 12 & 13 at App. 251-55 ($4.99 charge on Feb. 8, 2019; $89.92 charge on Feb. 25, 2019; $94.91 charge on Mar. 25, 2019); Dandashly Decl. ¶¶ 65-68 at App. 288-89, Ex. 40 at App. 533 ($4.99 charge on May 16, 2018; $89.92 charge on June 1, 2018); Carey Decl. ¶¶ 2-6 at App. 1; Consolini Decl. ¶¶ 7, 9-10 at App. 18-19, Att. B at App. 24-25; Crump Decl. ¶¶ 7-8 at App. 46-47, Att. B at App. 52; Hisle Decl. ¶¶ 5, 8 at App. 67-68, Att. C at App. 75; Langere Decl. ¶¶ 4, 6, 8 at App. 93-94, Att. B at App. 104-07; Millikan Decl. ¶¶ 5, 7, 11, 15, 23-24 at App. 112-15, Atts. B-E at App. 127-134; Putterman Decl.

Defendants also enroll consumers in a continuity program, sending additional shipments of the product each month and charging consumers'accounts the full price of each product shipped until consumers are able to cancel, dispute their charges, or otherwise halt payments.[41]

In contrast to Defendant's splashy graphics urging consumers to "RUSH MY TRIAL" and assurances that consumers will pay only a shipping and handling fee, Defendants hide any disclosures about the true cost of the trial product. Specifically, Defendants typically bury this information behind an unassuming hyperlink: to get information about the full price of the product and the continuity plan, a consumer would have to scroll all the way to the bottom of the page (through numerous bright, large text and graphics extolling the purported benefits of the product), click on a tiny "Terms" hyperlink, and then scroll through small-font legalese within a pop-up window.[42] On some websites, Defendants disclose basic information about pricing and the continuity plan in barely legible faint gray text near the bottom of the webpage, but even on those sites this language might appear only after consumers have already completed their orders.[43]

c. The Upsell Pages

After consumers enter their credit or debit card information on the payment page of one of Defendants' websites and click a "RUSH MY TRIAL" or "COMPLETE CHECKOUT" button,[44] they are directed to a third page (the "upsell page") with further misrepresentations

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¶¶ 4, 6 at App. 149, Att. 1 at App. 153; Ramirez Decl. ¶¶ 7, 12 at App. 161, Att. A at App. 165-66, Att. E at App. 176.

[41] Gonzalez Decl. ¶ 18 at App. 238, Ex. 13 at App. 255; Langere Decl. ¶¶ 4-15 at App. 93-95, Att. B at App. 104-07; Millikan Decl. ¶¶ 5, 7, 11, 15, 18-24, 27 at App. 112-16, Atts. B-E at App. 122-34.

[42] *See, e.g.*, Gonzalez Decl. Exs. 9 at App. 240; Dandashly Decl. Ex. 46 at App. 588-90.

[43] For a number of websites, the terms appear only on the order summary page, after the consumer has completed the order. Dandashly Decl. Ex. 46 at App. 586, 622, 636; Ex. 36 at App. 517. In limited cases, the terms appear in very small font on the payment page. *Id.* Ex. 46 at App. 642.

[44] Dandashly Decl. Ex. 46 at App. 578, 592, 604, 614, 628, 642.

aimed at tricking consumers into ordering an additional bogus "trial."[45] Defendants' upsell pages are designed to appear as the final step in ordering the original product when, in fact, clicking through an upsell page has the effect of adding an additional product and associated continuity plan to the order.[46]

As shown in **Figure 3** below, this page often tells consumers, "Wait! Your Order Is Not Complete!" and includes an image of a coupon for a free trial of an additional product, promising a "FREE TRIAL" for just the small cost of shipping and handling.[47] Below the coupon is a brightly colored button prominently labeled "COMPLETE CHECKOUT."

Figure 3[48]

[45] Gonzalez Decl. Ex. 10 at App. 244-45; Dandashly Decl. Ex. 36 at App. 517, Ex. 46 at App. 580-85, 594-97, 606-07, 616-21, 630-35, 644-49.
[46] Ramirez Decl. ¶¶ 5-7, 12 at App. 160-62; Dandashly Decl. Ex. 89 at App. 1153, 1172, 1246, 1250 (consumer complaints nos. 79173828, 94011361, 91117719, 94009881).
[47] Gonzalez Decl. Ex. 10 at App. 244; Dandashly Decl. Ex. 46 at App. 580, 594, 616, 630, 644.
[48] Gonzalez Decl. Ex. 10 at App. 244.

But rather than simply completing the consumer's order of the original trial product, clicking the "COMPLETE CHECKOUT" button adds the advertised upsell product to the consumer's order.[49] As with the original product, Defendants charge consumers the nominal shipping and handling fee for the additional product immediately, and then charge consumers the full price of the additional trial product – also around $90 – after two weeks.[50] Defendants also enroll consumers in a second continuity program that includes monthly shipments of, and charges for, the second product.[51]

As with the main free trial offer, Defendants bury the disclosures related to the upsell product's full price and associated continuity plan. Consumers can find the terms of the upsell offer, if at all, only by clicking on a small "Terms" hyperlink at the bottom of the upsell page, which launches a pop-up text box with pages of dense text.[52] Consumers are unlikely to see this language, and thus may not understand that, when they click "COMPLETE CHECKOUT," Defendants will send and bill them for an additional product.[53] The only way consumers can avoid the additional charges is to find and click on another faint hyperlink, such as the one in **Figure 3** stating "No, Thanks. I decline the offer."[54] Regardless of whether consumers find and click this link or click "COMPLETE CHEKOUT," Defendants then redirect them to a series of additional promotional web pages that make similar deceptive offers for other products.[55]

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[49] Ramirez Decl. ¶¶ 5-7, 12 at App. 160-62; Dandashly Decl. Ex. 89 at App. 1153, 1172, 1246, 1250 (consumer complaints nos. 79173828, 94009881, 91117719, 94011361).

[50] Carey Decl. ¶¶ 2-6, 15 at App. 1 & 3; Consolini Decl. ¶¶ 5, 7, 9-10 at App. 18-19; Crump Decl. ¶¶ 3-8 at App. 46-47; Hisle Decl. ¶¶ 4-5, 8 at App. 67-68.

[51] *See supra*, n. 50.

[52] Gonzalez Decl. Ex. 10 at App. 244-45; Dandashly Decl. Ex. 36 at App. 517, Ex. 46 at App. 580-85, 594-97, 606-07, 616-21, 630-35, 644-49.

[53] *See supra*, nn. 49 & 50.

[54] Gonzalez Decl. Ex. 10 at App. 244-45; Dandashly Decl. Ex. 36 at App. 517, Ex. 46 at App. 580-85, 594-97, 606-07, 616-21, 630-35, 644-49.

[55] The previous figures in this Memorandum show screenshots from an undercover purchase of AmbroSina skin cream. The order summary page for the AmbroSina skin cream purchase contained no visible terms on the page; terms were only available by clicking on a hyperlink at the bottom of the webpage. Figure 4 displays an image captured from a separate undercover purchase of Adelina skin cream. The Adelina order summary page did contain a disclosure, so

d. The Order Summary Pages

After consumers navigate through the upsell pages, Defendants direct them to a webpage listing the items ordered and associated charges (the "order summary page"). Defendants' order summary pages list only the price of the shipping and handling for the ordered trial products.[56] They list the price of the product as "$0.00," and the "Grand Total" reflects only the price of the shipping and handling fees.[57]

For example, **Figure 4** below depicts the order summary page during a purchase of Adelina skin cream.[58] The Adelina skin cream is listed as having a "$0.00" price and the "Grand Total" is $4.99, the cost of shipping and handling. Near the bottom of the page in **Figure 4**, below a summary of the cost, billing, and shipping information for the order, a block of faint grey text reads:

> By submitting, you consent to having read and agreed to our Terms & Conditions and after your 14 day trial period has expired, being enrolled in our membership program is $89.92 plus shipping per month. You can cancel any time by calling 877-202-7581.

This text is the smallest, least prominent, and least distinct font of the order summary page. As a result, consumers may not even see this language, let alone read it.[59]

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we provide it here for the Court's reference. Some of the upsell pages offer other skin care or dietary supplement products, or various magazine subscriptions. *See supra* at n.50.

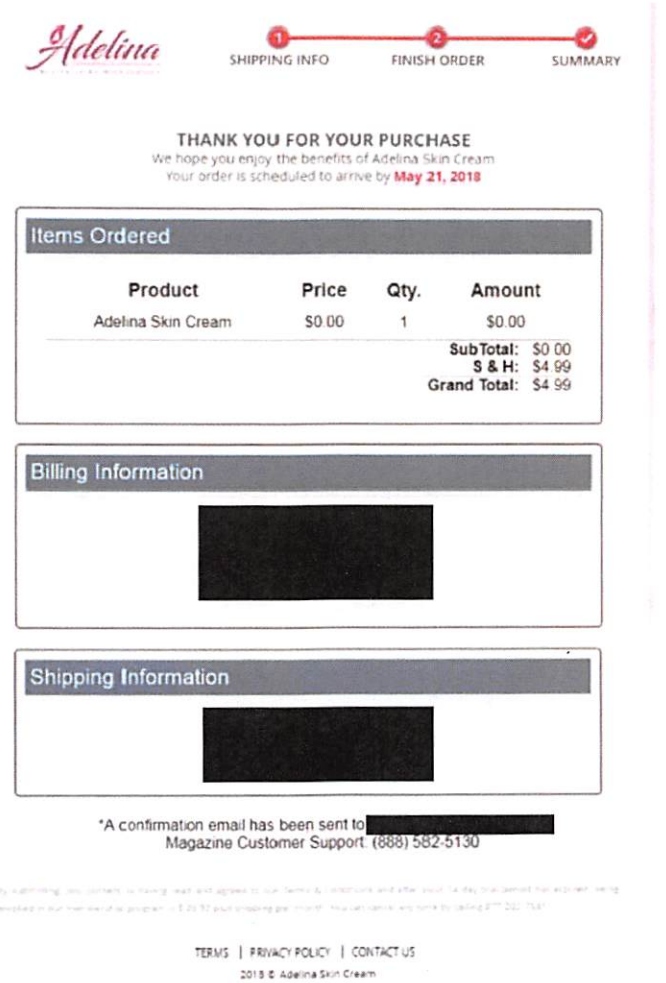
[56] Gonzalez Decl. Ex. 10 at App. 246; Dandashly Decl. Ex. 36 at App. 517.

[57] *Id.*

[58] Dandashly Decl. Ex. 36 at App. 517.

[59] Carey Decl. ¶ 2 at App. 1; Consolini Decl. ¶ 6 at App. 18 ("Although I looked carefully, I did not see any disclosure stating that I would receive additional shipments beyond the free trials, or that I would be responsible for any additional costs or entered into a subscription for either product."); Crump Decl. ¶ 4 at App. 46 ("The website for Amabella stated that I only had to pay $4.99 and $4.97 to try the Amabella Skin Cream and Amabella Eye Serum. I have a personal policy of never accepting trial offers where I would automatically be enrolled in an ongoing subscription; therefore, I always look for terms and conditions before I purchase anything that is a 'trial' offer. I reviewed the Amabella website closely to ensure that it was only a one-time purchase and not a trial."); Hisle Decl. ¶ 4 at App. 67; Langere Decl. ¶ 4 at App. 93; Millikan Decl. ¶ 3 at App. 112; Putterman Decl. ¶ 3 at App. 149; Ramirez Decl. ¶ 4 at App. 160.

Figure 4[60]



Understandably, many consumers who went through this process to order trials of Defendants' products came away with the impression that they would be charged no more than the shipping and handling fee for the product.[61] The websites create and reinforce this impression by calling the offers "TRIALS" and/or showing the "TOTAL" cost as "$0.00."[62]

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[60] Dandashly Decl. Ex. 36 at 517.

[61] Carey Decl. ¶ 2 at App. 1; Consolini Decl. ¶ 6 at App. 18; Crump Decl. ¶¶ 4-5 at App. 46; Hisle Decl. ¶ 4 at App. 67; Langere Decl. ¶ 4 at App. 93; Millikan Decl. ¶ 3 at App. 112; Putterman Decl. ¶ 3 at App. 149; Ramirez Decl. ¶ 4 at App. 160; Dandashly Decl. ¶¶ 167-69 at App. 312-14.

[62] Gonzalez Decl. Ex. 10 at App. 242-46; Dandashly Decl. Ex. 36 at App. 517, Ex. 46 at App. 574-651.

Defendants' order summary pages, as illustrated by **Figure 4** above, reinforce this idea by listing the "Price" as "$0.00" and the "Grand Total" of the items ordered as the cost of shipping and handling.[63] Defendants sometimes send consumers confirmation emails after consumers request the trial product, but even these emails fail to disclose any costs other than the shipping and handling fees, and again fail to disclose the terms of the trial order.[64]

2. Defendants Do Not Adequately Disclose Their Onerous Return, Cancellation, and Refund Policies and Practices

Some of Defendants' websites include express representations that ordering the trial carries no commitments and imply that cancellation is easy.[65] In reality, Defendants significantly restrict consumers' abilities to obtain refunds and even to cancel the ongoing shipments. The undisclosed or poorly-disclosed restrictions on returns, cancellations, and refunds include:

- requiring consumers to call to cancel orders before the expiration of the trial period to avoid being charged the full price of the trial product, thus rendering the purported trial opportunity illusory;[66]
- making the trial period shorter than consumers would reasonably expect because the stated amount of time the product supply will last (typically 30 days) is longer than the trial period for the product (14 days), and by starting the trial period on the date of the order rather than the date consumers receive the products;[67]

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[63] *Id.*

[64] Defendants sometimes send consumers confirmation emails. Dandashly Decl. ¶ 77 at App. 291, Ex. 44 at App. 563-64; Ramirez Decl. ¶ 8 at App. 161, Att. B at App. 168-69. In some instances, Defendants send no such communication. *See, e.g.,* Consolini Decl. ¶ 6 at App. 18.

[65] Dandashly Decl. Ex. 46 at App. 604, 642.

[66] App. 19 at Consolini Decl. ¶ 12 at App. 19; Hisle Decl. ¶¶ 11-13 at App. 68 & Att. D at 77 (Defendants did not respond to email requests to cancel); Gonzalez Decl. ¶¶ 21-22 at App. 238-39 & Ex 15 at 268-70; Dandashly Decl. ¶¶ 65-72 at App. 288-90.

[67] Langere Decl. ¶ 7 at App. 94; Dandashly Decl. Ex. 41 at App. 541, Ex. 49 at App. 758-800.

- requiring consumers to call a customer service number in order to cancel or obtain a refund, while making it difficult for consumers to get through to customer service representatives;[68] and
- requiring consumers who receive continuity plan shipments to return the product unopened and at their own expense, and to call Defendants' customer service representatives to obtain a Return Merchandise Authorization before shipping the product, all within 30 days to avoid being charged.[69]

Defendants routinely refuse to provide consumers with refunds.[70] Even when consumers satisfy Defendants' convoluted rules and return the unopened products to Defendants, many consumers still are denied refunds.[71] Other consumers are promised refunds that never happen.[72] Even consumers who are offered refunds are typically only offered partial refunds, instead of full refunds.[73] Some consumers report that Defendants continue to charge them for additional products, even after they request cancellation, sometimes necessitating that consumers cancel their credit cards in order to avoid additional charges.[74]

In light of the difficulties described above, many consumers resort to calling their credit card companies to dispute Defendants' charges. Defendants' high credit card chargeback rates

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[68] Dandashly Decl. Ex. 49 at App. 758-800. Numerous consumers report difficulty contacting Defendants' customer service representatives. For example, consumers have trouble finding a working telephone number for Defendants' customer representatives or, when consumers do manage to find a number, they only reach a voicemail message or are placed on hold for prolonged periods of time. *See, e.g.*, Consolini Decl. ¶¶ 11-12 at App. 19-20; Crump Decl. ¶¶ 10-12 at App. 47; Hisle Decl. ¶¶ 12-13 at App. 68-69; Millikan Decl. ¶¶ 9-10, 19-22, 32 at App. 113-16.

[69] Consolini Decl. ¶ 13 at App. 20; Langere Decl. ¶ 6 at App. 93; Gonzalez Decl. Ex. 15 at App. 268-70; Dandashly Decl. Ex. 49 at App. 758-800.

[70] Carey Decl. ¶¶ 8-9 at App. 1-2; Millikan Decl. ¶ 20 at App. 114-15; Putterman Decl. ¶ 7 at App. 149-50; Ramirez Decl. ¶¶ 15-17 at App. 162.

[71] *See, e.g.*, Millikan Decl. ¶¶ 19-23 at App. 114-15.

[72] *See, e.g.*, Putterman Decl.¶¶ 8-9 at App. 150.

[73] *See, e.g.*, Crump Decl. ¶¶ 17-18 at App. 48; Langere Decl. ¶ 8 at App. 94.

[74] Carey Decl. ¶ 16 at App. 3; Langere Decl. ¶¶ 6, 8, 14 at App. 93-94; Millikan Decl. ¶¶ 27-28 at App. 115-16.

provide more evidence that consumers were unaware they were going to be charged for the products. In the United States, a chargeback rate greater than 1% is considered excessive. *FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1075 (C.D. Cal. 2012), *aff'd in relevant part by* 642 F. App'x 680 (9th Cir. 2016), *vacated and remanded on other grounds by* 815 F.3d 593 (9th Cir. 2016). The Wyoming LLCs often had chargeback rates well in excess of the average, sometimes exceeding 10%.[75] In many instances, card networks terminated Defendants' merchant accounts for violations of standards.[76]

B. Defendants' Perpetuated Their Scam Through Illegal Credit Card Laundering and Fraudulent Chargeback Dispute Practices

Defendants cannot maintain their flow of online sales without access to a means through which to process charges to consumers' credit and debit cards. To ensure such access, Defendants process credit and debit card charges through numerous different accounts opened in the names of the Wyoming LLCs, each of which is fronted by one of the shell owners recruited by Defendants to act as the principals on paper. Defendants also retain consumer funds and delay detection of their high chargeback rates (and subsequent possible merchant account termination) by disputing consumers' chargeback requests using fraudulent documentation.

1. Credit Card Processing Industry Background

A company that sells products (a "merchant") supplies goods or services to a consumer (a "cardholder"). To accept credit and debit card payments from the cardholder, merchants enter

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[75] TWP Investments (MID 3899000003483102) has a chargeback rate of 10.36%, KA Ketterlin (MID 3899000003198254) has a chargeback rate of 7.53%, GALB Investments (MID 3899000003345103) has a chargeback rate of 10.45%, and Piaz Investments (MID 3899000003366927) has a chargeback rate of 7.89%. Dandashly Decl. ¶ 174 at App. 315, Ex. 91 at App. 1270-1352 (chargeback summary records).

[76] At least 28 of Defendants' merchant accounts were flagged by MasterCard as "MATCH" hits. ("Member Alert to Control High Risk Merchants" ("MATCH") is a system created by MasterCard as a way to database terminated merchants.) Each of these merchant accounts were included on the MATCH list for "VIOLATION OF STANDARDS." Dandashly Decl.¶ 175 at App. 316, Ex. 92 at App. 1354-81.

into a contract (a "merchant services agreement" or "MSA") and open a merchant account with a bank (an "acquirer") that is a member of a credit card network such as Visa or MasterCard.[77] Credit card networks provide a system for exchanging payments by establishing rules for credit card transactions; acquirers agree to follow these rules.

The credit card networks prohibit "credit card laundering," also called "transaction laundering," "factoring," and "aggregation," which:

> occurs when a merchant who has entered into an MSA processes card transactions for the supply of goods or services by a third party who has not entered into an MSA. . . . In such a case, goods and services are being supplied by an entity which has not been scrutinized by the merchant acquirer: and often this will be precisely because the supplier does not want to be subject to scrutiny. [Laundering] can be a cloak for transactions which are illegal and with which the merchant acquirer would not wish to be associated if it knew of them: it would not enter into an MSA with such a supplier.[78]

Laundering "is regarded as a risk to the integrity of the system as a whole."[79] To manage that risk, it is critical that "the transactions processed by th[e] merchant should be settled by the merchant acquirer into a bank account in that merchant's name."[80]

Unscrupulous internet merchants frequently engage in credit card laundering by using shell companies or shell owners to obtain merchant accounts, and numerous federal courts have entered judgments—civil and criminal—against them.[81] By laundering charges through shell

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[77] *Paycom Billing Servs. v. MasterCard Int'l, Inc.*, 467 F.3d 283 at 285-86 (2d Cir. 2006) (providing background on credit card payment processing industry).

[78] *Lancore Servs. Ltd.*, No. [2009] EWCA Civ. 752, 2009 WL 2173222 (UK).

[79] *Id.* (internal citations omitted).

[80] *Id.* (internal citations omitted).

[81] *See, e.g. United States v. Johnson*, 731 F. App'x 638, 642-43 (10th Cir. Apr. 19, 2018) (affirming conviction for making false statements, but reversing and remanding for resentencing) (describing "strategy . . . to set up multiple merchant accounts in names other than" the true principal's, to ensure continued access to merchant accounts even when true merchant was unable to secure merchant accounts due to history of excessive chargebacks); Prelim. Inj. Order, *FTC v. Johnson*, No. 2:10cv-02203-RLH-GWF (D. Nev. Feb. 10, 2011), ECF No. 130 (ordering prelim. inj. against defendants who used shell companies to secure merchant accounts as part of

companies, merchants and their real principals are able to process more sales than otherwise allowed under sales volume caps imposed by banks on individual merchant accounts. Such merchants are also able to ensure that if one merchant account is shut down due to excessive chargebacks, others will continue to process consumers' payments.[82] In addition, individuals who may have been previously flagged by a bank or credit card association for engaging in unscrupulous practices may nonetheless be able to access the payment networks by using the shell owners to conceal their identities.

2. Defendants' Credit Card Laundering Practices

The Wyoming LLCs, referenced in Exhibit B to the Complaint, are shell companies.[83] AH Media is at the center of the operations of the Wyoming LLCs: AH Media registered the Wyoming LLC's websites,[84] Block paid to establish the corporate entities (at the time using an AH Media email address to do so) in Wyoming,[85] and Block registered the Wyoming LLCs as foreign entities in Colorado.[86] The Wyoming LLCs often share the same corporate addresses, and typically list Block as their corporate officer.[87] Moreover, the Wyoming LLCs' bank accounts divert funds to the AH Media FNB Account, which then pays the operating expenses of

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deceptive rebilling scheme); *see also FTC v. Triangle Media Corp.*, No. 18cv1388-MMA (NLS), 2018 U.S. Dist. LEXIS 144599 (S.D. Cal. Aug. 24, 2018) (granting prelim. inj. for rebilling issues and quoting receiver's finding that "Defendants have built a network of merchant accounts by forming shell companies and convincing ordinary people, for a minimum of $500 per month, to act as the 'front' (aka 'signer' or 'nominee') for the shell company and a merchant account in its name.").

[82] *See United States v. Johnson*, 732 F. App'x at 642-43 (describing credit card laundering as "strategy" that enabled defendants to continue to access credit card networks after true merchant was unable to acquire new merchant accounts).

[83] Dandashly Decl. ¶¶ 101-18, 147-55 at App. 297-301, 308-09.

[84] Dandashly Decl. Ex. 59 at App. 849-55 (example set of Wyoming LLCs).

[85] Dandashly Decl. ¶¶ 37-42 at App. 281, ¶¶ 92-93 at App. 294 (dummy site information), Ex. 52 App. 808-13 (list showing LLCs associated with dummy sites).

[86] Dandashly Decl. ¶ 114 at App. 300, Ex. 62 at App. 869-80 (payment records for LLCs).

[87] Dandashly Decl. ¶¶ 105-06 at App. 298, Ex. 55 at 827-29 (list of LLCs with addresses), Ex. 58 at App. 840-47 (example LLC).

the AH Media Enterprise.[88] Block is the sole authorized signor for each of the Wyoming LLCs' bank accounts.[89]

Similarly, the individuals behind each of the Wyoming LLCs purport to be principals and/or owners,[90] but they are merely shell owners. For example, they do not control the Wyoming LLCs' bank accounts.[91] Moreover, they receive only approximately 1% of the monthly revenue of their respective shell companies, and that amount is paid to them from the AH Media Group FNB Account.[92]

The AH Media Enterprise used the Wyoming LLCs to obtain merchant accounts, which then allowed the enterprise to accept credit and debit card payments from consumers. Numerous merchant account applications were submitted to multiple acquirers in the names of the Wyoming LLCs.[93] The applications include false representations that the Wyoming LLCs are the merchants and that the shell owners are the merchants' principals.[94] These representations are false because the true seller of each of these products is AH Media Group, with Block and Schill as its principals. AH Media Group pays all of the expenses related to the sales of the products and ultimately realizes the resulting profits.[95] Block exercises control over the Wyoming LLCs through, among other things, his authority over the Wyoming LLCs' bank

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[88] Van Wazer Decl. ¶ 9 at App. 201, Ex. 3 at App. 209-10; Dandashly Decl. ¶¶ 101-18, 147-55 at App. 297-301, 308-09.
[89] Dandashly Decl. ¶ 104 at App. 297, Ex. 56 at App. 831-33.
[90] Dandashly Decl. ¶¶ 105-06, 120 at App. 298, 301, Ex. 55 at App. 827-29, Ex. 57 at App. 835-38, Ex. 67 at App. 897-916.
[91] Dandashly Decl. ¶ 104 at App. 297, Ex. 56 at App. 831-33.
[92] Dandashly Decl. ¶¶ 158-59 at App. 310, Ex. 85 at App. 1104-15; *see also* Van Wazer Decl. Ex. 8 at App. 228-34 (showing payments to shell owners).
[93] Dandashly Decl. ¶¶ 124-25 at App. 302-03, Ex. 79 at App. 958-65.
[94] *See* Dandashly Decl. ¶¶ 102-118 at App. 297-301, Ex. 67 at App. 898-916 (example merchant applications for shell companies); *see also* Dandashly Decl. ¶ 149 (almost all money from shell companies flowed into AH Media).
[95] Dandashly Decl. ¶¶ 154-46 at App. 309-10.

accounts.[96] The identification of the Wyoming LLCs on the merchant accounts merely serves to obscure the fact that AH Media Group, and its principals, are the sellers of the products.

In their applications for merchant accounts, Defendants provide fake product names and reference fake "dummy" websites that they claim they use to sell their products.[97] The real websites that consumers encounter advertise products with different brand names and differ significantly from the dummy websites.[98]

For example, the FTC conducted an undercover order of a trial of Defendants' product Adelina Skin Cream from tryadelinaskin.com.[99] After the FTC placed its order, the FTC undercover credit card was charged using the merchant descriptor "KETTERLINCRM8442434364."[100] This billing descriptor matches the "DBA" field on the Merchant Processing Application ("MPA") for the Wyoming company KA Ketterlin.[101] But the KA Ketterlin MPA does not identify Adelina as its product, or tryadelinaskin.com as its business website.[102] Instead, KA Ketterlin purports to sell a product called "Ketterlin Skin Cream" and to use the website ketterlinskincream.com.[103] The ketterlinskincream.com website, an excerpt of which is shown in **Figure 5**, contains a much more prominent disclosure about the terms and conditions of the trial order (along with requiring consumers to check a box acknowledging their

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[96] Dandashly Decl. ¶ 104 at App. 297, Ex. 56 at App. 831-33.
[97] Dandashly Decl. ¶¶ 92-100 at App. 294-96, Ex 53 at App. 815-22. Defendants do not use the dummy websites to generate sales and consumers would be unlikely to ever encounter these websites. They appear to exist simply so that Defendants have something to use in support of the many merchant applications submitted in the names of the Wyoming LLCs. Unlike the websites Defendants use to generate sales, the dummy websites do not have "Secure Socket Layer" ("SSL"), a widely accepted cryptographic protocol designed to provide security when communicating over the internet needed for a website to accept payment credentials and sensitive cardholder data. *Id.* ¶¶ 39-42 at App. 281. All of the dummy sites feature unique products, but they share a nearly identical design and layout, as well as poor production value. *Id.* ¶¶ 92-100 at App. 294-96.
[98] Dandashly Decl. ¶¶ 94-95, 100 at App. 295-96.
[99] Dandashly Decl. ¶¶ 49-52 at App. 283-84, Ex. 36 at App. 517.
[100] Dandashly Decl. ¶ 121 at App. 302.
[101] Dandashly Decl. ¶¶ 121-22 at App. 302, Ex. 67 at App. 897-900.
[102] Dandashly Decl. ¶¶ 119-22 at App. 301-02,.
[103] Dandashly Decl. ¶¶ 121-22 at App. 302, Ex. 68 at App. 918-27.

agreement with the terms) than the tryadelinaskincream.com website, from which the FTC conducted its undercover order of the trial product.

Figure 5[104]

Defendants' use of shell companies and fake product names caused confusion among consumers who ordered trial products from Defendants.[105] Many consumers report that they were unsure who had charged their credit card, as the billing descriptor did not match the name of the product they ordered.[106] This also increased some consumers' difficulty in locating a functioning phone number to contact Defendants to cancel their orders or request a refund.[107]

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[104] Ex. 68 at App. 918
[105] Crump Decl. ¶¶ 7-8 at App. 46-47; Hisle Decl. ¶¶ 7-9 at App. 67-68.
[106] *See, e.g., id.*
[107] Crump Decl. ¶¶ 10-11 at App. 47; Horsch Decl. ¶¶ 7-11 at App. 83; Millikan Decl. ¶¶ 9-10 at App. 113.

Many of Defendants' merchant accounts were shut down, often due to their high chargeback rates,[108] but by churning through shell companies, shell owners, and merchant accounts, Defendants were able to delay detection by the payment processing system and maintain access to consumer payment cards. Defendants' unlawful, continuing access to card payments has prolonged the scam and expanded the scope of consumer injury. Defendants took more than $42 million from consumers in a three-year period alone.[109]

3. Defendants' Fraudulent Chargeback Dispute Practices

Defendants not only deceive acquirers in their applications for merchant accounts; they also make misrepresentations in correspondence with banks when they respond to consumer chargeback requests. For example, Defendants falsely represent (1) that customers have ordered products other than the ones customers actually ordered; (2) that customers ordered products through websites that had more prominent disclosures than the websites that consumers actually used; and (3) that consumers checked boxes to attest that they agreed to the terms and conditions.[110]

For example, consumer witness Tracy Crump ordered a trial of Amabella Skin Cream and Amabella Eye Serum.[111] She expected to pay only about $5 for shipping and handling for each of the products, and so was surprised when she was later charged an additional nearly $90 for each product.[112] Ms. Crump disputed the charge with her bank, only to learn that the bank ultimately denied her dispute because the company had provided rebuttal documents.[113] These documents contained pictures of websites that Ms. Crump had not visited, featuring the product

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[108] Dandashly Decl. ¶¶ 175 at App. 316; *see also* Ex. 92 at App. 1351-81 (chargeback data).
[109] Between April 2016 through March 2019, the Wyoming LLCs sent $42,220,591 to the AH Media FNB Account. Van Wazer Decl. ¶ 9 at App. 201, Ex. 3 at 209-10.
[110] Carey Decl. ¶ 13 at App. 2 & Att. D at App. 13-17; Consolini Decl. ¶ 16-17 at App. 20 & Att. F at App. 42-45; Crump Decl. ¶¶ 13-14 at App. 47-48 & Att. D at App. 57-58; Ramirez Decl. ¶¶ 13-14, 19-20 at App. 162-63 & Att. G at App. 181-93.
[111] Crump Decl. ¶¶ 3-5 at App. 46.
[112] Crump Decl. ¶¶ 3-5, 8 at App. 46.
[113] Crump Decl. ¶¶ 13-14 at App. 47-48.

"Piaz Skin Cream," not the Amabella products she had ordered and received.[114] The Piaz Skin Cream website submitted to the bank by the company contained terms and conditions that were not on the website that Ms. Crump visited when she placed her order.[115] Defendants have even added call-out boxes to highlight these terms on the dummy page they submitted to dispute Ms. Crump's request for a chargeback, indicating that Defendants are fully aware of how to properly inform consumers about relevant details for their trial offer.[116]

IV. THE FTC HAS SHOWN A LIKELIHOOD OF SUCCESS AND THE EQUITIES WEIGH IN FAVOR OF THE REQUESTED RELIEF

Defendants' deceptive scheme violates Section 5 of the FTC Act, 15 U.S.C. § 45(a), Section 4 of ROSCA, 15 U.S.C. § 8403, Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b). To prevent any further injury to consumers, the FTC asks that the Court issue the proposed TRO *ex parte*. The proposed TRO would enjoin Defendants' ongoing law violations and would provide other equitable relief designed to preserve the Court's ability to deliver monetary relief to victims at the conclusion of the case.

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

This case is brought under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) & 57(b). Section 13(b) gives district courts authority to grant both a permanent injunction against violations of any provisions of law enforced by the FTC, and "any ancillary relief necessary to accomplish complete justice." *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982). Ancillary relief may include a non-noticed TRO, a preliminary injunction, an asset freeze, and the appointment of a receiver. *Id.* at 1113 ("§ 13(b) provides a basis for an order freezing assets"); *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233-34 (9th Cir. 1999) (affirming preliminary injunction including asset freeze); *FTC v. Am. Nat'l Cellular, Inc.*, 810 F.2d 1511

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[114] Crump Decl. ¶ 14 at 47-48, Att. D at App. 57-58.
[115] *Id.*
[116] *Id.*

(9th Cir. 1987) (upholding appointment of receiver and asset freeze). Section 19 of the FTC Act also gives district courts jurisdiction to issue preliminary relief, *H.N. Singer*, 668 F.2d at 1110 ("It is clear that under this section [19] a district court has jurisdiction to issue a preliminary injunction."), and provides "a basis for the order freezing assets." *Id.* at 1112. Courts in the Ninth Circuit have found sufficient cause to grant *ex parte* TROs with asset freezes and receiverships in FTC cases brought against fraudulent continuity plans, like Defendants' operation. *See, e.g.*, *FTC v. Apex Capital Group*, No. 18-cv-09573 (C.D. Cal. Nov. 18, 2018) (granting *ex parte* TRO with asset freeze and receivership); *FTC v. Cardiff*, No. 18-cv-2104, 2018 U.S. Dist. LEXIS 188113 (C.D. Cal. Oct. 10, 2018) (same); *FTC v. Triangle Media Corp.*, 3:18-cv-1388 (S.D. Cal. June 25, 2018) (same) (Dkt. 11); *FTC v. Bunzai Media Grp., Inc.*, No. CV15-C4527-GW (PLAx), 2015 U.S. Dist. LEXIS 123139, at *1 (C.D. Cal. Sept. 9, 2015) (granting preliminary injunction and referencing *ex parte* TRO with asset freeze and receiver entered on June 17, 2015); *FTC v. RevMountain, LLC*, No. 17-cv-02000-APG-GWF (D. Nev. July 25, 2017) (granting *ex parte* TRO with asset freeze, in online rebilling scheme) (Dkt. 16).

B. The FTC Meets the Standard for Issuance of a Temporary Restraining Order

A temporary restraining order is appropriate where the FTC demonstrates (1) a likelihood of success on the merits, and (2) that the equities weigh in the FTC's favor. *FTC v. Affordable Media*, 179 F.3d at 1233 (9th Cir. 1999) (citing *FTC v. Warner Commc'ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)). As demonstrated below, the FTC has demonstrated that it will succeed on the merits of its claims and that the balance of the equities favors injunctive relief.

1. The FTC is Likely to Succeed on the Merits

To demonstrate that it is likely to succeed on the merits, the FTC need only present evidence that it has "some chance of probable success." *FTC v. World Wide Factors,* 882 F.2d 344, 347 (9th Cir. 1989) (citation omitted). Here, the overwhelming evidence shows that: (1) Defendants engage in unfair and deceptive practices that violate Section 5(a) of the FTC Act; (2) Defendants make unauthorized charges on consumers' credit and debit cards in violation of

ROSCA; and (3) Defendants make unauthorized deductions from consumers' bank accounts in violation of EFTA and Regulation E. The evidence also shows that the Individual Defendants are individually liable for these practices and that Relief Defendant Zanelo should disgorge its ill-gotten gains. Accordingly, the FTC is likely to succeed on the merits of its claims.

e. Defendants Are Violating the FTC Act

By deceptively obtaining consumers' payment information, charging them without authorization, laundering those charges through merchant accounts opened in the name of entities other than AH Media, and disputing chargeback requests using fraudulent documentation, Defendants have violated Section 5(a) of the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a). Defendants' practices are both deceptive and unfair.

i. Defendants' Practices Are Deceptive

An act or practice is deceptive if (1) there is a representation, omission, or practice, that (2) is material, and (3) is likely to mislead consumers acting reasonably under the circumstances. *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994); *see FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1199 (9th Cir. 2006). A representation, omission, or practice is material if it "'involves information that is important to consumers and, hence, [is] likely to affect their choice of, or conduct regarding, a product.'" *FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006) (quoting *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 165 (1984)). Express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service, are presumed to be material. *Pantron I,* 33 F.3d at 1096.

In determining whether a practice is likely to mislead consumers acting reasonably, the Court determines the overall "net impression" that Defendants' representations make upon consumers. *Cyberspace.com*, 453 F.3d at 1200. Fineprint disclosures do not overcome a deceptive net impression. *See Cyberspace.com*, No. C00-1806L, 2002 U.S. Dist. LEXIS 25564, *8-9 (W.D. Wash. July 10, 2002) (holding that a fine print disclosure was inadequate to escape liability), *aff'd*, 453 F.3d at 1200 (collecting cases where deception found because fine print

disclosures were inadequate). Consumer reliance upon express claims is presumptively reasonable. *FTC v. Five-Star Audio Club, Inc.*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) (citation omitted).

Here, Defendants have materially misled consumers about their "risk free" trials. At every stage, Defendants misrepresent the price of the trial offer. Defendants falsely state that the consumer will only pay for shipping and handling to receive a trial of Defendants' product. In reality, Defendants charge consumers the full price, around $90, for a 30- or 45-day supply of the product. This express representation is presumed to be material, and goes to a critical aspect of the transaction: price. *FTC Policy Statement on Deception*, 103 F.T.C. 175, 182 (1983); *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992).

Defendants reinforce this misrepresentation by failing to adequately disclose several material terms including: (1) the total cost of the product; (2) that consumers will be charged the full cost of the trial product after 14 days; (3) that the consumer is automatically enrolled in a continuity program; (4) the total cost of the continuity program shipments; and (5) the frequency and duration of the recurring charges. Courts in this circuit addressing similar continuity plan schemes have concluded that failing to disclose this information violates the law. In one case, a district court found that "information that purchasers would be automatically enrolled in continuity programs upon their purchase of the [products] is material, and Defendants' failure to disclose this information to consumers is likely to mislead the consumers acting reasonably under the circumstances." *FTC v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1074 (C.D. Cal. 2012). Another district court, in granting a preliminary injunction, found that defendants who offered "sample bottles or one-month supplies of a product" likely violated the law by failing to disclose material terms. *FTC v. Health Formulas, LLC*, No. 2:14-cv-01649, 2015 U.S. Dist. LEXIS 59387, at *28-29 (D. Nev. May 6, 2015). Describing conduct that mirrors the Defendants' conduct in this case, the court observed that:

> many of Defendants' websites do not adequately disclose that customers will be charged the full price of the product if they do not cancel within fourteen days despite the fact that

the offer often states that it is for a month's supply of product, or that customers will be charged periodically for new shipments of product unless they affirmatively take action to cancel.

In addition, Defendants misrepresent to consumers who have ordered a trial of Defendants' product that, by clicking a "COMPLETE CHECKOUT" button, they will merely finalize their order of the initial trial product. In fact, clicking the "COMPLETE CHECKOUT" button typically adds another upsell product to the order, resulting in additional charges and enrollment in yet another continuity program. Further, as with the original product, Defendants fail to disclose material terms regarding the full price of the upsell product and associated continuity plan.

ii. Defendants' Practices Are Unfair

An act or practice is unfair under Section 5 of the FTC Act if: (1) it causes, or is likely to cause, substantial injury to consumers that (2) is not reasonably avoidable by consumers and (3) is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n). "Substantial injury" is demonstrated where defendants do a "small harm to a large number of people." *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1157-58 (9th Cir. 2010) (quotation marks and citation omitted). Harm is not reasonably avoidable where consumers could not make a free or informed choice. *Id.* at 1158. An act or practice is not outweighed by countervailing benefits to consumers or competition where it is not accompanied by an increase in services or benefits to consumers, or by benefits to competition. *FTC v. JK Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1201 (C.D. Cal. 2000).

Defendants charged consumers without their authorization, taking pains to hide information about these charges behind tiny hyperlinks and nearly invisible text, often revealing it only after consumers had already provided their billing information. The practice is unfair. First, Defendants caused substantial injury, taking at least $42 million from over 100,000

unsuspecting consumer victims.[117] Second, these charges were not reasonably avoidable by consumers, since Defendants used a host of practices to prevent consumers from realizing that they would be charged. *Neovi*, 604 F.3d at 1158; *Ideal Fin. Solutions*, 2015 U.S. Dist. LEXIS 86348, at *30-31. Further, Defendants made it difficult for consumers to mitigate their injuries, as Defendants set up roadblocks preventing them from receiving full refunds.[118] Finally, fraudulently separating consumers from their money has no countervailing benefits. *See, e.g., FTC v. Amazon,* No. C14-1038-JCC, 2016 U.S. Dist. LEXIS 55569, at *22 (W.D. Wash. Apr. 26, 2016) (in unauthorized billing case, "cost-benefit prong . . . easily satisfied"); *FTC v. Inc21.com,* 745 F. Supp. 2d 975, 1004 (N.D. Cal 2010) ("[I]t cannot be said that defendants' 'customers' benefitted at all from services that they never agreed to purchase, didn't know were being provided to them, and never wanted in the first place."). The cost of Defendants' practice of charging consumers without authorization, on the other hand, is significant and concrete: monetary loss to consumers in the millions of dollars. It is well-established that such conduct constitutes an unfair practice in violation of Section 5 of the FTC Act: "Courts regularly find unauthorized billing to be unfair." *Ideal Fin. Solutions*, 2015 U.S. Dist. LEXIS 86348, at *30 & nn.140-41 (collecting cases).[119]

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[117] Van Wazer Decl. ¶ 9 at App. 201, Ex. 3 at App. 209-10; Dandashly Decl. ¶ 135 at App. 305. Consumer injury was substantial on an individual level as well; one consumer complained that she lost nearly $180 to the AH Media Enterprise, which caused substantial hardship as she is a senior citizen living on a fixed income, and is still paying off the charges. Horsch Decl. ¶ 14 at App. 84. *See also FTC v. Ideal Fin. Solutions, Inc.*, No. 2:13-cv-00143-JADGWF, 2015 U.S. Dist. LEXIS 86348, at *30 (D. Nev. June 30, 2015) ("[T]aking consumers' funds without authorization causes substantial injury, even when the amount taken is relatively small.").

[118] *See supra* Sections III.A.2, III.B.2, III.B.3; *see also Ideal Fin. Solutions*, 2015 U.S. Dist. LEXIS 86348, at *31 (finding that defendants violated the FTC Act based on unauthorized charges where "the consumers' ability to pursue potential avenues toward mitigating the injury was obstructed by [defendant's] customer service staff. . . .").

[119] *See also FTC v. Global Mktg Grp., Inc.*, 594 F. Supp. 2d 1281, 1288-89 (M.D. Fla. 2008); *JK Publ'ns, Inc.*, 99 F. Supp. 2d at 1202-03; *Neovi*, 604 F.3d at 1157; *FTC v. Commerce Planet Inc.*, No. SACV 09-01324-CJC(RNBx), 2011 WL 13225087, at *2 (C.D. Cal. Sept. 8, 2011).

Defendants also unfairly injured consumers by engaging in credit card laundering. Defendants ensured continuing access to the credit card networks by systematically and egregiously making false statements to acquirer banks. Indeed, in merchant applications, they went so far as to submit dummy websites to deceive payment processors about their practices. Defendants then used these unlawfully-obtained merchant accounts to process consumer payments, and transferred the money from the consumer sales to the AH Media FNB Account. This allowed AH Media to evade the credit card networks' risk management rules, prolonging Defendants' ability to process consumer payments, and dramatically magnifying the scope of consumer injury. Consumers could not reasonably avoid the injury: consumers never authorized the payments they made, and were in no position to prevent Defendants from furthering the fraud by using shell companies to launder charges. Credit card laundering has no countervailing benefit to consumers or to competition; on the contrary, credit card laundering undermines the entire payment processing system and efforts to ensure its stability.

Additionally, Defendants unfairly injured consumers by submitting fraudulent documentation to dispute consumer chargeback requests. In at least some cases, Defendants' actions prevented consumers from receiving refunds and allowed Defendants to retain those funds. Consumers could not avoid this harm; they could not predict that Defendants would falsify documentation in order to prevent the consumers from receiving a refund. And, as with credit card laundering, the use of false documentation has no countervailing benefits to consumers or competition.

f. Defendants Are Violating ROSCA

Defendants' billing practices also violate ROSCA,[120] which prohibits charging consumers for goods or services sold online through a negative option feature like Defendants' continuity plan, unless the seller meets certain conditions. A negative option feature is "'a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or

[120] A violation of ROSCA is treated as a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57(a). 15 U.S.C. § 8404.

to cancel the agreement is interpreted by the seller as acceptance of the offer.'" *FTC v. Credit Bureau Ctr., LLC*, 325 F. Supp. 3d 852, 862 (N.D. Ill. 2018) (quoting 16 C.F.R. § 310.2(w)). Specifically, Section 4 of ROSCA, 15 U.S.C. § 8403, requires the seller (1) to clearly and conspicuously disclose all material terms of the transaction, (2) to obtain the consumer's express informed consent before making the charge, and (3) to provide a simple mechanism to stop recurring charges.

Defendants have failed to satisfy all three of these requirements. First, Defendants fail to disclose clearly and conspicuously the material terms of their continuity plans before obtaining consumers' billing information. Instead, their terms, as another court in this Circuit described with respect to similar disclosures, "are either buried in fine print on the payment page . . . or are stated in Terms and Conditions documents that consumers are not required to read." *See FTC v. Health Formulas, LLC*, 2015 U.S. Dist. LEXIS 59387, at *48; *cf. Barrer v. Chase Bank United States, NA.*, 566 F.3d 883, 892 (9th Cir. 2009) ("clear and conspicuous disclosures" are disclosures that a reasonable consumer "would notice and understand").

Second, Defendants routinely charge consumers' accounts on a monthly basis as part of a continuity plan without obtaining their express informed consent. Because Defendants have not disclosed to consumers the material terms of their offers, they do not obtain consumers' express informed consent before charging them. *Health Formulas, LLC*, 2015 U.S. Dist. LEXIS 59387, at *48. Moreover, after violating ROSCA in connection with the initial "trial" offer, Defendants violate it again by failing to obtain express informed consent to the additional upsell charges resulting from Defendants' deceptive upsell pages.

Third, Defendants fail to provide a simple mechanism for cancelling the continuity plan.[121] *See Health Formulas, LLC*, 2015 U.S. Dist. LEXIS 59387 at *49. Even when consumers do figure out the process to cancel and find the correct number to call, they report

[121] *See supra* at Section III.A.2.

difficulty in reaching Defendants' representatives, and are sometimes charged even after they have cancelled.[122]

g. Defendants Are Violating the EFTA and Regulation E

The EFTA and its implementing regulation, Regulation E, regulate the circumstances under which a merchant may make regularly recurring debits from a consumer's bank account. EFTA and Regulation E require that before a merchant may make such recurring debits, it must obtain a written authorization signed or similarly authenticated by the consumer. 15 U.S.C. § 1693e(a); 12 C.F.R. § 205.10(b). For an authorization to be valid, the terms of the preauthorization transfer must be "clear and readily understandable," and the authorization "should evidence the consumer's identity and assent to the authorization." *CFPB Official Staff Cmt. to Reg. E*, 12 C.F.R. Part 205, Supp. I, ¶ 10(b), cmts. (5) and (6). Moreover, a copy of the authorization must be provided to the consumer. 15 U.S.C. § 205.10(b). These protections ensure that consumers' consent to recurring debits will be knowing and informed. A consumer's rights under EFTA cannot be waived. 15 U.S.C. § 16931.

Defendants' business practices fail to comply with EFTA. Because Defendants do not adequately disclose the terms of their continuity plan and that consumers will be charged monthly, consumers did not knowingly authorize Defendants to make recurring debits from their bank accounts.[123] Moreover, consumers do not receive a copy of any purported authorization for debits to their bank accounts.[124]

2. The Balance of Equities Strongly Favors Injunctive Relief

The FTC's interest in protecting the public interest outweighs Defendants' interests in continuing these deceptive practices. "[P]ublic equities receive far greater weight" than private equities. *FTC v. Warner Commc'ns, Inc.*, 742 F.2d 1156, 1165 (9th Cir. 1984). Defendants have operated their deceptive scheme since at least 2016, and have received over $42 million in ill-

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[122] *Id.*
[123] *See supra* at ns.62-65.
[124] *Id.*

gotten gains from consumers. Because the conduct is ongoing, it is nearly certain that future violations will occur absent injunctive relief.[125] The public's interest in immediately halting this conduct and preventing the victimization of additional consumers far outweighs any interest Defendants may have in continuing their unlawful practices. On the contrary, there can be "'no oppressive hardships to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment.'" *FTC v. World Wide Factors*, 882 F.2d at 347 (quoting and affirming district court's balance of equities). Finally, as described in Section V below, each form of requested ancillary relief, including an asset freeze and receivership, is warranted in light of Defendants' egregious, continuous violations of the law and long-running attempts to evade scrutiny.

3. Defendants Block and Schill Are Individually Liable for Defendants' Practices

Individual defendants may be held liable for injunctive relief where the FTC demonstrates that (1) the corporation committed misrepresentations or omissions upon which a person might reasonably rely, resulting in consumer injury, and (2) the individual defendant participated directly in the unlawful acts or practices or had authority to control them. *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170-71 (9th Cir. 1997); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989).

In order to hold individual defendants liable for monetary equitable relief, the FTC must also show that the "individual had knowledge that the corporation or one of its agents engaged in dishonest or fraudulent conduct, that the misrepresentations were the type upon which a reasonable and prudent person would rely, and that consumer injury resulted." *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1101 (9th Cir. 2014) (internal quotations omitted). To show knowledge, "the FTC must show that a defendant had actual knowledge of material misrepresentations, was recklessly indifferent to the truth or falsity of a misrepresentation, or had

[125] *See supra* Section II.A.

an awareness of a high probability of fraud along with an intentional avoidance of the truth." *Id.* at 1101-02 (brackets and internal quotations omitted). "The FTC need not show that a defendant intended to defraud consumers for that individual to be personally liable." *Id.* at 1102.

The evidence establishes a high likelihood that Block and Schill are liable for injunctive and equitable monetary relief. The first element—that the corporation has engaged in unlawful practices—is established for the reasons described above.

The second element is established because Block and Schill had both the authority to control the corporation and participated in the unlawful acts and practices. Both Block and Schill were fifty percent owners of AH Media, giving them the legal authority to control the corporation. *See FTC v. Am. Standard Credit Sys., Inc.*, 874 F. Supp. 1080, 1089 (C.D. Cal. 1994) ("An individual's status as a corporate officer and authority to sign documents on behalf of a corporate defendant can be sufficient to demonstrate the requisite control.") Their ownership stakes are particularly important given AH Media's closely-held nature and pervasive fraud. *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973) ("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."); *see also FTC v. LoanPointe, LLC*, No. 2:10-CV-335DAK, 2011 U.S. Dist. LEXIS 104982, at *26 (D. Utah Sept. 16, 2011) ("A corporate officer is presumed to be in control of a small, closely held corporation, and assuming the duties of a corporate officer is probative of an individual's participation or authority.") Moreover, both individual defendants participated in the enterprise, receiving millions of dollars from AH Media's corporate coffers. *FTC v. Ivy Capital, Inc.*, No. 2:11-CV-283 JCM (GWF), 2013 U.S. Dist. LEXIS 42369, at *41 (D. Nev. Mar. 26, 2013) ("Participation can include an individual working at and drawing a salary from the company, even if the individual is not involved in day-to-day operations."), *aff'd in part, vacated in part*, 616 Fed. Appx. 360 (9th Cir. 2015) (mem.) (affirming finding of individual liability but vacating remedy that would permit double recovery from defendant).

Both Block and Schill knew about the unlawful practices, at a minimum intentionally avoiding the evidence of a high level of fraud. Block was centrally involved with the fraudulent practices, acting as the authorized signatory for the AH Media FNB Account, as well as for dozens of bank accounts related to the scheme, including those that are nominally held by the shell companies. Block is also listed as an officer of the Wyoming LLCs,[126] and coordinated the establishment of these entities.[127] He also registered and paid for the websites used to further Defendants' scheme.[128] Moreover, Block coordinated the distribution of funds from the AH Media FNB Account to himself, his holding company, Schill, and Zanelo.[129]

Schill had knowledge of the fraud by virtue of his ownership stake, collection of profits, and the pervasive fraud of AH Media. Schill owned half of AH Media Group, and he and his company Zanelo (which he set up using an AH Media email account) received more than $3.25 million from the scheme.[130] He had legal authority over AH Media and profited handsomely from its misconduct as the company churned through hundreds of websites, dozens of shell companies and merchant accounts with strikingly high chargeback rates, and was the subject of numerous consumer complaints. There "were myriad red flags that would have led a reasonable person to suspect that something was amiss" at AH Media, but at a minimum, Schill "continued to turn a blind eye toward the problems." *FTC v. Network Serv's Depot, Inc.*, 617 F.3d 1127, 1140-41 (9th Cir. 2010) (finding individuals liable where they "failed to undertake even modest due diligence" and deliberately constructed an information wall). Instead, despite "ample opportunity to take action and discover the fraud," Schill, at the very least, "intentionally avoided learning the truth, comfortable with the huge . . . income" he received. *J.K. Publications, Inc.*, 99 F. Supp. 2d 1174, 1207 (C.D. Cal. 2000) (finding that, even assuming individual defendant

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[126] Dandashly Decl. ¶¶ 105-06 at App. 298, Exs. 55-57 at App. 826-33.
[127] Dandashly Decl. ¶¶ 109-112 at App. 299, Ex. 59 at App. 848-55.
[128] *Id.*
[129] Dandashly Decl. ¶ 160 at App. 311, Ex. 86 at App. 1117-31.
[130] *See* Dandashly Decl. ¶ 21 at App. 277, Ex. 24 at App. 371 (LLC formation records showing alan@ahmediagroup.net as contact for registered agent and sole authorized person); Van Wazer Decl. ¶ 10 at App. 201-02 (summarizing payments to Zanelo and Schill from AH Media).

did not read paperwork she filled out, she had knowledge given was on notice of fraud given her access to documents, "huge $4 million income," and red flags that the company was fraudulent).

C. The Relief Defendant Has Received Ill-Gotten Gains and Does Not Have a Legitimate Claim to Those Assets

Relief Defendant Zanelo should not be permitted to keep more than $2 million in unearned transfers it received from the unlawful corporate scheme. "[F]ederal courts can be employed to recover ill-gotten gains for the benefit of the victims of wrongdoing, whether held by the original wrongdoer or by one who has received the proceeds of the wrong." *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1273 (S.D. Fla. 2007) (quoting *CFTC v. Kimberlynn Creek Ranch*, 176 F.3d 187, 192 n.4 (4th Cir. 2002)). Indeed, "[t]he disgorgement of funds received as a result of deceptive, unfair, or abusive practices is proper where 'it is established that the relief defendant possesses property or profits illegally obtained and the relief defendant has no legitimate claim to them.'" *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 1009 (N.D. Cal. 2010) (quoting *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1020 (N.D. Ind. 2000)).

Here, substantial profits from the fraud were shifted to Relief Defendant through repeated direct transfers from the AH Media FNB account. Bank records show transfers in excess of $2 million from the AH Media FNB account to Zanelo's account.[131] There is no evidence that Zanelo provided any services to the AH Media Enterprise. Zanelo has no legitimate claim to Defendants' ill-gotten gains, which are subject to disgorgement and preservation for consumer redress.

[131] Van Wazer Decl. ¶ 10 at App. 201-02, Ex. 5 at 219-20.

V. AN *EX PARTE* TRO WITH ASSET FREEZE AND A RECEIVER IS ESSENTIAL

The FTC is likely to succeed in proving that Defendants are engaging in deceptive and unfair practices in violation of the FTC Act, ROSCA, and EFTA, and that the balance of equities favors the public. Preliminary injunctive relief is thus justified.

Through the present application, the FTC seeks temporary and ancillary relief in order to avoid continuing consumer injury while this action is pending, and to preserve the possibility of consumer redress.132 Achieving these dual aims requires the appointment of a temporary receiver, an immediate freeze of Defendants' and Relief Defendant's assets, and expedited discovery. Absent such relief, there is a substantial risk that Defendants will continue to operate their deceptive scheme, destroy documents, and dissipate or conceal their ill-gotten assets in an attempt to preclude satisfaction of any final order, including monetary relief.

A. Conduct Relief to Protect Consumers From Being Victimized During the Pendency of This Case Is Appropriate in Light of Defendants' Pervasive Illegal Conduct

To prevent ongoing consumer injury, the proposed TRO prohibits defendants from continuing to engage in their unlawful conduct, including: misrepresenting the material terms of an offer (Proposed Order § 1); failing to comply with ROSCA with respect to negative option continuity plans (Proposed Order § II); failing to obtain authorization required under EFTA (Proposed Order § III); and misrepresentations to obtain merchant accounts and contest chargebacks (Proposed Order § IV). These requested prohibitions do no more than require Defendants to comply with the FTC Act, ROSCA, and EFTA, and are appropriate given Defendants' long-running and pervasive violations of the law.

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[132] Specifically, the requested conduct prohibitions in the proposed TRO require only that the Defendants comply with the FTC Act, ROSCA, and EFTA and Regulation E.

B. An Asset Freeze and Appointment of a Receiver Are Warranted to Prevent the Dissipation of Assets and Destruction of Evidence

As part of the permanent relief in this case, Plaintiff will seek equitable monetary relief, including consumer redress or disgorgement of ill-gotten gains. To preserve the availability of funds to allow for the possibility for monetary relief, Plaintiff requests that the Court issue an order requiring the preservation of assets and evidence. *See* Proposed Order §§ VI (asset freeze), V (requiring asset holders and third parties to preserve assets and materials), and IX-X (requiring foreign asset repatriation). Appointing a receiver over the corporate defendant is also warranted to effectuate asset protection and compliance with the requested injunction. *See* Proposed Order §§ XIV-XXIII.

The requested relief is well within the Court's equitable authority. *See, e.g. FTC v. U.S. Oil & Gas Corp.*, 748 F2d 1431, 1432 (11th Cir. 1984) (finding that under Section 13(b) a "district court has the inherent power of a court of equity to grant ancillary relief, including freezing assets and appointing a receiver); *FTC v. HN. Singer, Inc.*, 668 F.2d 1107, 1112-13 (9th Cir. 1982) (finding a court's authority under Section 13(b) includes "all the inherent equitable power . . . for the proper and complete exercise" of the court's equitable jurisdiction).

Where a business is permeated by fraud, courts have found a strong likelihood that assets may be dissipated during litigation. *See, e.g. SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972) ("Because of the fraudulent nature of appellants' violations, the court could not be assured that appellants would not waste their assets prior to refunding public investors money."). Likewise, in such circumstances a receivership may be necessary because "[t]o allow Defendants to control their frozen assets and to operate their deceptive scheme would create an unreasonable risk that effective relief would be frustrated." *FTC v. Skybiz.com, Inc.*, No. 01-CV-396-K(E), 2001 U.S. Dist. LEXIS 26175, at *33-34 (N.D. Okla. Aug. 31, 2001).

The appointment of a temporary receiver for the Corporate Defendant is also appropriate. "The district court's exercise of its equity power in this respect is particularly necessary in instances in which the corporate defendant, through its management, has defrauded members of

the investing public." *SEC v. First Fin. Group,* 645 F.2d 429, 438 (5th Cir. 1981); *see also In the Matter of McGaughey,* 24 F.3d 904, 907 (7th Cir. 1994) (appointment of receiver is "an especially appropriate remedy in cases involving fraud and the possible dissipation of assets").

Defendants' conduct warrants an asset freeze and appointment of a receiver over the Corporate Defendant. First, there is ample evidence that Defendants ran a fraudulent continuity plan program that was wholly reliant on fraud. Hence, there is a particularly strong basis for relief that will take control of the Defendants' operation—and its unlawful proceeds—out of the hands of the Defendants. *See Skybiz.com*, 2001 U.S. Dist. LEXIS 26175, at *33-34.

Second, in addition to the fraudulent nature of Defendants' scheme, they have engaged in a slew of evasive conduct—including the establishment of dozens of shell companies that were used to fraudulently obtain merchant accounts and the creation of dummy websites used to deceptively thwart chargeback disputes—indicating a substantial likelihood that assets will be dissipated and evidence will be destroyed or spoiled if Defendants maintain control of their enterprise.

Finally, Defendants' apparent funds appear to be a "mere pittance" compared to the more than $42 million in revenue from consumer victims, and "it is extremely unlikely that the frozen assets will be adequate to redress consumer injuries, which supports maintaining the asset freeze." *FTC v. Triangle Media Corp.*, No. 18cv1388-MMA (NLS), 2018 U.S. Dist. LEXIS 144599, at *22 (S.D. Cal. Aug. 24, 2018). Given that "defendants perpetrated a fraud on many consumers and therefore are likely liable for a substantial sum in restitution and/or disgorgement," and there is "ambiguity surrounding defendants' financial circumstance…a broad asset freeze is appropriate." *FTC v. Career Info. Serv's, Inc.*, No. 1:96-CV-1463-ODE, 1996 U.S. Dist. LEXIS 21207, at *14 (N.D. Ga. June 21, 1996). This is particularly true given the more than $6.7 million that has been transferred to the Individual Defendants and their personally owned entities. *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1031 (7th Cir. 1988) (finding asset freeze for individuals appropriate where there was "a good deal of shifting of assets" from the Corporate Defendants "to the individual defendants"); *see also*

Johnson v. Couturier, 572 F.3d 1067, 1085 (9th Cir. 2009) (upholding asset freeze and observing that an individual who has "impermissibly awarded himself" funds that are not rightfully his "is presumably more than capable of placing assets in his personal possession beyond the reach of a judgment.")

In light of Defendants' systematic fraud, their wide-ranging attempts to evade detection, and the relative paucity of funds available for redress or disgorgement, there is a high risk of asset or evidence destruction absent strong temporary relief. Hence, the provisions in the proposed order imposing an asset freeze, receivership, and allowance of an immediate access are warranted to temporarily preserve assets and evidence.

C. The Court Should Enjoin Defendants From Destroying Evidence and Allow Plaintiff to Take Limited Expedited Discovery

The proposed order contains a provision directing Defendants to preserve records, including electronic records, and evidence. Proposed Order Section XII (requiring preservation of records). It is appropriate to enjoin Defendants charged with deception from destroying evidence, and doing so would place no significant burden on them. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990) (characterizing such orders as "innocuous").

Plaintiff also seeks leave of Court for limited expedited discovery, including allowing Plaintiff to seek discovery on the location of documents and assets and affirmative requirements on Defendants to produce financial statements. *See* Proposed Order Sections VII(C)-(D) (requiring financial institutions to provide information concerning frozen accounts), VIII (financial disclosures required by Defendants), XI (permitting Plaintiff to obtain credit reports), XIII (requiring Defendants to report new business activity), and XXIV (expedited discovery). District courts are authorized to fashion discovery to meet the needs of the particular case. Federal Rules of Civil Procedure 26(d), 33(a), and 34(b) authorize the Court to alter default provisions, including applicable time-frames, that govern depositions and production of documents. Narrow expedited discovery provisions reflect the Court's broad and flexible authority in equity to grant preliminary emergency relief in cases involving the public interest.

See, e.g. Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 276 (N.D. Cal. 2002) (applying "good cause" standard in permitting expedited discovery, and noting "that courts have recognized that good cause is frequently found in cases involving claims of infringement and unfair competition"); *Fed. Express Corp. v. Fed Espresso, Inc.*, No. 97-cv-1219RSP/GJD, 1997 U.S. Dist. LEXIS 19144, at *6 (N.D.N.Y. Nov. 24, 1997) (quoting Fed. R. Civ. P. 26(d) commentary that early discovery "will be appropriate in some cases, such as those involving requests for a preliminary injunction").

Here, expedited discovery is warranted to locate assets, identify documents, and ensure compliance with the other provisions of the order. This is particularly true given the Defendants' use of dozens of shell companies, merchant accounts, and shell owners—all of which raise issues concerning the potential location of assets and materials, and pose a danger that Defendants will likely attempt to circumvent any emergency relief that this Court grants.

D. The Temporary Restraining Order Should be Issued *Ex Parte* to Preserve the Court's Ability to Fashion Meaningful Relief

The substantial risk of asset dissipation and document destruction in this case, coupled with Defendants' ongoing and deliberate statutory violations, justified *ex parte* relief. Federal Rule of Civil Procedure 65(b) permits this Court to enter *ex parte* orders upon a clear showing that "immediate and irreparable injury, loss, or damage will result," if notice is given. *See also Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) (noting, in patent infringement context, that *ex parte* orders are proper in a "very narrow band of cases" where the plaintiff shows "that defendants would have disregarded a direct court order and disposed of the goods within the time it would take for a hearing . . . and must support such assertions by showing that the adverse party has a history of disposing of evidence or violating court orders or that persons similar to the adverse party have such a history.").

There are compelling reasons that establish a likelihood that Defendants, if given notice, will disregard a court order and destroy evidence or dissipate assets. As noted in Section IV.A above, numerous courts have granted similar *ex parte* relief in cases involving continuity plan

frauds mirroring Defendants' operation. Here, the Defendants have already taken numerous steps to circumvent the guardrails that would prevent them from continuing their fraud: using shell companies to shield their true identify, processing payments across dozens of merchant accounts to evade detection and replace accounts that get terminated for fraud, and using bogus documentation to respond to credit card chargebacks. Defendants have shown that when faced with compliance requirements or meritorious disputes, their answer is to double-down on their fraudulent practices to keep the money coming in. Such conduct places this case in the small category of matters where *ex parte* relief is appropriate.

VI. CONCLUSION

For the reasons set forth above, the FTC respectfully requests that the Court grant its motion for an *ex parte* TRO and require that Defendants show cause why a preliminary injunction should not issue.

Dated: July 10, 2019

Respectfully submitted,

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FEDERAL TRADE COMMISSION

APPENDIX INDEX

Declaration/ Exhibit	Beginning Bates Number
Carey Declaration	FTC-TRO-0001
Consolini Declaration	FTC-TRO-0018
Crump Declaration	FTC-TRO-0046
Hisle Declaration	FTC-TRO-0067
Horsch Declaration	FTC-TRO-0082
Langere Declaration	FTC-TRO-0093
Millikan Declaration	FTC-TRO-0112
Putterman Declaration	FTC-TRO-0149
Ramirez Declaration	FTC-TRO-0160
Rossie Declaration	FTC-TRO-0194
Van Wazer Declaration	FTC-TRO-0198
Exhibit 1	FTC-TRO-0203
Exhibit 2	FTC-TRO-0206
Exhibit 3	FTC-TRO-0208
Exhibit 4	FTC-TRO-0211
Exhibit 5	FTC-TRO-0218
Exhibit 6	FTC-TRO-0221
Exhibit 7	FTC-TRO-0225
Exhibit 8	FTC-TRO-0227
Gonzalez Declaration	FTC-TRO-0235
Exhibit 9	FTC-TRO-0240
Exhibit 10	FTC-TRO-0241
Exhibit 11	FTC-TRO-0247
Exhibit 12	FTC-TRO-0251
Exhibit 13	FTC-TRO-0254
Exhibit 14	FTC-TRO-0256
Exhibit 15	FTC-TRO-0261
Dandashly Declaration	FTC-TRO-0273
Exhibit 16	FTC-TRO-0323

Declaration/ Exhibit	Beginning Bates Number
Exhibit 17	FTC-TRO-0333
Exhibit 18	FTC-TRO-0335
Exhibit 19	FTC-TRO-0339
Exhibit 20	FTC-TRO-0347
Exhibit 21	FTC-TRO-0353
Exhibit 22	FTC-TRO-0356
Exhibit 23	FTC-TRO-0361
Exhibit 24	FTC-TRO-0370
Exhibit 25	FTC-TRO-0374
Exhibit 26	FTC-TRO-0378
Exhibit 27	FTC-TRO-0388
Exhibit 28	FTC-TRO-0392
Exhibit 29	FTC-TRO-0394
Exhibit 30	FTC-TRO-0410
Exhibit 31	FTC-TRO-0420
Exhibit 32	FTC-TRO-0422
Exhibit 33	FTC-TRO-0431
Exhibit 34	FTC-TRO-0434
Exhibit 35	FTC-TRO-0445
Exhibit 36	FTC-TRO-0517
Exhibit 37	FTC-TRO-0518
Exhibit 38	FTC-TRO-0520
Exhibit 39	FTC-TRO-0524
Exhibit 40	FTC-TRO-0532
Exhibit 41	FTC-TRO-0535
Exhibit 42	FTC-TRO-0553
Exhibit 43	FTC-TRO-0554
Exhibit 44	FTC-TRO-0562
Exhibit 45	FTC-TRO-0565
Exhibit 46	FTC-TRO-0573

Declaration/ Exhibit	Beginning Bates Number
Exhibit 47	FTC-TRO-0652
Exhibit 48	FTC-TRO-0756
Exhibit 49	FTC-TRO-0757
Exhibit 50	FTC-TRO-0801
Exhibit 51	FTC-TRO-0805
Exhibit 52	FTC-TRO-0807
Exhibit 53	FTC-TRO-0814
Exhibit 54	FTC-TRO-0823
Exhibit 55	FTC-TRO-0826
Exhibit 56	FTC-TRO-0830
Exhibit 57	FTC-TRO-0834
Exhibit 58	FTC-TRO-0839
Exhibit 59	FTC-TRO-0848
Exhibit 60	FTC-TRO-0856
Exhibit 61	FTC-TRO-0860
Exhibit 62	FTC-TRO-0868
Exhibit 63	FTC-TRO-0881
Exhibit 64	FTC-TRO-0886
Exhibit 65	FTC-TRO-0890
Exhibit 66	FTC-TRO-0894
Exhibit 67	FTC-TRO-0896
Exhibit 68	FTC-TRO-0917
Exhibit 69	FTC-TRO-0928
Exhibit 70	FTC-TRO-0957
Exhibit 71	FTC-TRO-0966
Exhibit 72	FTC-TRO-0979
Exhibit 73	FTC-TRO-0980
Exhibit 74	FTC-TRO-0990
Exhibit 75	FTC-TRO-1038
Exhibit 76	FTC-TRO-1041

Declaration/ Exhibit	Beginning Bates Number
Exhibit 77	FTC-TRO-1044
Exhibit 78	FTC-TRO-1046
Exhibit 79	FTC-TRO-1048
Exhibit 80	FTC-TRO-1051
Exhibit 81	FTC-TRO-1053
Exhibit 82	FTC-TRO-1057
Exhibit 83	FTC-TRO-1087
Exhibit 84	FTC-TRO-1099
Exhibit 85	FTC-TRO-1103
Exhibit 86	FTC-TRO-1116
Exhibit 87	FTC-TRO-1132
Exhibit 88	FTC-TRO-1146
Exhibit 89	FTC-TRO-1150
Exhibit 90	FTC-TRO-1265
Exhibit 91	FTC-TRO-1269
Exhibit 92	FTC-TRO-1353
Exhibit 93	FTC-TRO-1382