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22 FEDERAL TRADE COMMISSION,

23 Plaintiff,

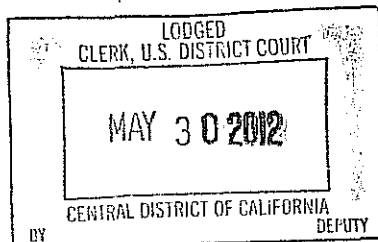
24 vs.

25 CONSUMER ADVOCATES GROUP
26 EXPERTS, LLC, *et al.*,

27 Defendants.

CV12-04736 DDP(cwx)
Case No.:

MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 PLAINTIFF'S *EX PARTE*
 APPLICATION FOR TEMPORARY
 RESTRAINING ORDER WITH
 ASSET FREEZE AND OTHER
 EQUITABLE RELIEF AND ORDER
 TO SHOW CAUSE



28

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1 I. INTRODUCTION

2 The Federal Trade Commission (“FTC”) respectfully moves for an *Ex Parte*
3 Temporary Restraining Order to stop a nationwide loan modification scam being
4 perpetrated by Defendants Consumer Advocates Group Experts, LLC (“CAG”),
5 Paramount Asset Management Corp. (“Paramount”), Advocates for Consumer
6 Affairs Expert, LLC (“ACA”), and Ryan Zimmerman (collectively “Defendants”).

7 Since at least October 2010, consumers facing foreclosure or behind on their
8 mortgages have lost millions to Defendants, who promise a forensic loan audit of
9 the consumer’s mortgage loan documents for \$1,995 to \$2,590, paid in advance.

10 This forensic loan audit is claimed to reveal flaws, enabling Defendants to
11 negotiate lower interest rates, payments, or principal. If they fail to obtain a loan
12 modification, Defendants promise a refund. However, Defendants do not obtain
13 loan modifications or give refunds. Many consumers learn, often too late, that
14 their homes will be foreclosed upon. Defendants’ misrepresentations violate
15 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Mortgage Assistance
16 Relief Services Rule, 15 C.F.R. Part 322 (“MARS Rule”), recodified as 12 C.F.R.
17 Part 1015 (“Regulation O”). Absent a TRO, Defendants will continue to deceive
18 consumers with impunity.

19 The FTC’s proposed TRO would freeze and preserve Defendants’ assets for
20 restitution to injured consumers, appoint a temporary receiver over Corporate
21 Defendants CAG, Paramount, and ACA, and permit limited expedited discovery.
22 Only this relief will prevent ongoing injury to consumers, destruction of evidence,
23 and dissipation of assets, and preserve the Court’s ability to provide effective final
24 relief to consumers.

25 II. DEFENDANTS

26 Individual Defendant Ryan Zimmerman runs the scam. He owns, directs,
27 and controls Corporate Defendants CAG, Paramount, and ACA.

1 A. CAG Defendants

2 Defendants CAG and Paramount share common ownership and an office
3 location.¹ Zimmerman is the officer of CAG and registrant for its domain name.²
4 He is also CEO, secretary, director, and registered agent for Paramount.³ Although
5 they have used different addresses, CAG and Paramount both operate out of 3699
6 Wilshire Blvd., Suite 200 in Los Angeles, CA.⁴ They also commingle corporate
7 funds. Several consumer checks made payable to CAG have been deposited into a
8 Paramount bank account.⁵ Defendant Zimmerman is a signatory on both CAG and
9 Paramount bank accounts and has signed checks on behalf of both.⁶

10 B. ACA Defendants

11 ACA operates out of 11870 Santa Monica Blvd., Suite 540, West Los
12 Angeles, CA 90025.⁷ Defendant Zimmerman is the sole member and manager of
13 ACA.⁸ Defendant Zimmerman applied for a post office box for ACA, identifying
14 himself as its officer and recipient of all ACA mail.⁹

15 III. DEFENDANTS' ILLEGAL BUSINESS PRACTICES

16 Defendants CAG, Paramount, and Zimmerman ("CAG Defendants") have
17 marketed and sold mortgage assistance relief services to consumers nationwide
18 since at least October 2010.¹⁰ Defendants ACA and Zimmerman ("ACA

21 ¹ Plaintiff's TRO Exhibit ("Exh.") 20 (Brannon-Quale) ¶¶ 4, 11 at 708, 710-11,
22 Att. A, H at 715-16, 974.

23 ² Exh. 20 (Brannon-Quale) ¶ 11.A.iii, 15, 16 at 711-12, Att. H, L at 974, 1016.

24 ³ Exh. 20 (Brannon-Quale) ¶ 4.c at 708, Att. A at 716.

25 ⁴ Exh. 20 (Brannon-Quale) ¶¶ 4.d, 11.A.ii at 708, 710, att. A, H at 715-16, 974.

26 ⁵ Exh. 20 (Brannon-Quale) ¶ 24, 27 at 713-14, Att. P at 1099-1100.

27 ⁶ Exh. 20 (Brannon-Quale) ¶¶ 19.a, 24.a at 713.

28 ⁷ Exh. 20 (Brannon-Quale) ¶ 7.d at 709, Att. D at 722.

⁸ Exh. 20 (Brannon-Quale) ¶ 7.c at 709, Att. D at 722.

⁹ Exh. 20 (Brannon-Quale) ¶ 11.B at 711, Att. I at 976.

¹⁰ Exh. 4 (Godsey-Crook) ¶ 3 at 106; Exh. 9 (Knight-Harris) ¶ 2 at 256.

1 Defendants”) have marketed and sold mortgage assistance relief services to
2 consumers nationwide since at least January 2012.¹¹

3 A. CAG Defendants

4 CAG Defendants advertise their mortgage assistance relief services on their
5 website, www.consumer-advocates-group.com.¹² Calling themselves “forensic
6 loan audit specialists,” they claim they will conduct an extensive examination of
7 the consumer’s loan documents, identify state and federal law violations,¹³ and use
8 the violations to negotiate a modified loan with the consumer’s lender.¹⁴ CAG
9 Defendants make the following claims on their website:

- 10 • Let us help you save your dream home; Your HOME!
- 11 • Up to 95% of mortgages may be legally unenforceable due to defects
12 like lost documents, improper notices, appraisal and/or predatory
13 lending... After our examinations, lenders suddenly get religion and
14 become much more cooperative in renegotiating...
- 15 • After the Audit and Review of the current terms of your predatory or
16 unaffordable loan, and documenting the Federal, State Violations and
17 Fraud your lender may have no other choice but to alter the payment
18 terms to make the loan affordable and equitable with a possible
19 princip[al] balance reduction as well.
- 20 • **CAN’T I DO THE LOAN MODIFICATION MYSELF?** You can,
21 but it’s highly recommended that you don’t. Over 87% of
22 homeowners fail in their attempt to modify their mortgage.¹⁵

23 CAG Defendants’ website also contains several testimonials:
24

25 ¹¹ Exh. 16 (Myers) ¶ 2, 3 at 411.

26 ¹² Exh. 20 (Brannon-Quale) ¶ 14 at 712, Att. J at 978-1013.

27 ¹³ Exh. 20 (Brannon-Quale) Att. J at 978, 998.

28 ¹⁴ Exh. 20 (Brannon-Quale) Att. J at 1000-01, 1002, 1007.

¹⁵ Exh. 20 (Brannon-Quale) Att. J at 987, 998, 1001, 1006.

- 1 • They . . . saved my home. I received a 3.25% 30 yr fixed... CAG put
2 together my package in 30 days and got me APPROVED in under 90
3 days!
- 4 • I went from a very high payment and upside down in my loan to a
5 56K principal reduction and they cut my payment by 45%. Wow, I
6 was so relieved and I am happy with their process.
- 7 • They saved my home and got me down from a 8.25% to a 3.875% 30
8 yr fixed.
- 9 • Their key relationships and strategies really make a difference... We
10 received a 2.75% 30 yr Fixed after only waiting 90 days.
- 11 • ... they saved my home and cut my payments in HALF!!!¹⁶

12 For more information, consumers can call the toll-free number on the
13 website, or fill in their contact information and receive a call back from a CAG
14 representative.¹⁷

15 On the phone, CAG promises a 100% chance that CAG will uncover a state
16 or federal law violation in the consumers' loan documents¹⁸ and use it to obtain
17 loan modifications.¹⁹ They often tell consumers that there is a 90%²⁰ or 100%²¹

24
25 ¹⁶ Exh. 20 (Brannon-Quale) Att. J at 1008-09.

26 ¹⁷ Exh. 20 (Brannon-Quale) Att. J at 1011.

27 ¹⁸ Exh. 8 (Johnson) ¶ 4 at 243.

28 ¹⁹ Exh. 14 (Wilcox) ¶ 5, 6 at 374-375; Exh. 17 (Redding) Att. A at 448-49.

²⁰ Exh. 5 (Gulli) ¶ 4 at 148.

²¹ Exh. 4 (Godsey-Crook) ¶ 3 at 106; Exh. 10 (Ludwig) ¶ 4 at 282.

1 chance that they will obtain a loan modification from the consumers' lenders,²² or
2 the consumers will receive a refund, minus a \$700-\$750 processing fee.²³

3 CAG Defendants also claim they can get the monthly payment or interest
4 rate reduced by a certain amount.²⁴ They told one consumer that CAG could cut
5 her interest rate to as low as two percent and her monthly payment to \$1,500.²⁵
6 Another consumer was promised a 50% cut in her payment.²⁶ Yet another was told
7 that CAG would lower his interest rate to two percent and his payment from
8 \$1,600 to \$400 per month.²⁷

9 Salespeople claim CAG's special relationships with lenders help it obtain
10 loan modifications.²⁸ CAG Defendants' website also states that CAG has
11 "extensive experience" and "close working relationships with mortgage lenders."²⁹
12 CAG tells consumers not to contact their lenders³⁰ or even make their mortgage
13 payments once CAG starts the negotiation process.³¹

14
15 ²² Exh. 2 (Burley) ¶ 5 at 43 ("positive" that CAG could obtain a loan modification
16 and save consumer's house); Exh. 14 (Wilcox) ¶ 7, 10 at 374-75; Exh. 17
17 (Redding) Att. B at 486 ("we don't take cases... that we don't think we could
18 win").

18 ²³ Exh. 5 (Gulli) ¶ 6 at 149; Exh. 6 (Herr) ¶ 6 at 193; Exh. 7 (Horn) ¶ 5 at 219
19 (guaranteed full refund); Exh. 9 (Knight-Harris) ¶ 6 at 257; Exh. 14 (Wilcox) ¶¶ 6,
20 7, 14 at 374-75; Exh. 17 (Redding) Att. B at 483.

20 ²⁴ Exh. 3 (Casey) ¶¶ 6,7 at 80 (monthly mortgage payment would be lowered from
21 \$1,200 to \$631); Exh. 7 (Horn) ¶ 3 at 218 (interest rate to 2.5%); Exh. 9 (Knight-
22 Harris) ¶ 5 at 256-57 (interest rate to 2%).

22 ²⁵ Exh. 1 (Bowser) ¶ 3 at 26.

23 ²⁶ Exh. 8 (Johnson) ¶ 4 at 243.

23 ²⁷ Exh. 12 (Medley) ¶ 4 at 351.

24 ²⁸ Exh. 1 (Bowser) ¶ 3 at 26 (CAG had success working with Countrywide
25 consumers); Exh. 2 (Burley) ¶ 3, 5 at 42-43; Exh. 4 (Godsey-Crook) ¶ 3 at 106;
26 Exh. 9 (Knight-Harris) ¶ 5 at 256-57 ("inside track" on getting loan modification);
27 Exh. 13 (Starks) ¶ 3 at 358; Exh. 17 (Redding) Att. A at 458.

27 ²⁹ Exh. 20 (Brannon-Quale) Att. J at 1002.

28 ³⁰ Exh. 1 (Bowser) ¶ 4 at 27; Exh. 2 (Burley) ¶ 6 at 44; Exh. 7 (Horn) ¶ 5 at 219;
Exh. 12 (Medley) ¶ 6 at 352; Exh. 3 (Casey) ¶ 11 at 81.

1 CAG promises to begin processing the loan modification once it receives its
2 fee, typically \$2,000 to \$2,590,³² paid up front or in two installments.³³ Once the
3 consumer agrees to sign up for CAG's services, the consumer receives a Client
4 Welcome Pack including a financial worksheet, loan modification information
5 worksheet, and hardship letter instructions.³⁴

6 The Welcome Pack advises consumers:

7 **Block out all lender calls, and under no circumstances should you**
8 **speak to the collection department or any other department at**
9 **your lender during our case preparation.**³⁵

10 The Welcome Pack also states that the entire process will take approximately 120
11 to 180 days to complete,³⁶ and guarantees a 100% refund of the service fee (minus
12 a \$750.00 processing fee).³⁷

13 B. ACA Defendants

14 ACA Defendants have marketed their mortgage assistance relief services via
15 the website, www.aca-portal.com.³⁸ ACA Defendants' website claims that ACA
16 has a "team of seasoned real estate professionals [with] over 25 years experience in
17 loan origination, mortgage processing, escrow and bank underwriting with some of

18 ³¹ Exh. 2 (Burley) ¶ 6 at 44.

19 ³² Exh. 1 (Bowser) ¶ 4 at 26 (\$2,195); Exh. 2 (Burley) ¶ 6 at 44 (\$2,000); Exh. 5
20 (Gulli) ¶ 4 at 148 (\$2,300); Exh. 8 (Johnson) ¶ 5 at 243 (\$2,400); Exh. 10 (Ludwig)
21 ¶ 5 at 283 (\$2,590); Exh. 13 (Starks) ¶ 5 at 359 (\$2,500).

22 ³³ Exh. 1 (Bowser) ¶ 4 at 26; Exh. 2 (Burley) ¶ 7 at 44; Exh. 3 (Casey) ¶ 9 at 81;
23 Exh. 5 (Gulli) ¶ 5 at 148; Exh. 6 (Herr) ¶ 5 at 192; Exh. 10 (Ludwig) ¶ 5 at 283;
24 Exh. 9 (Knight-Harris) ¶ 6 at 257; Exh. 13 (Starks) ¶ 5 at 359.

25 ³⁴ Exh. 4 (Godsey-Crook) ¶ 8 at 108.

26 ³⁵ Exh. 4 (Godsey-Crook) Att. C at 125.

27 ³⁶ Exh. 10 (Ludwig) ¶ 6 at 283; Exh. 7 (Horn) ¶ 4 at 218-19 (CAG would lower
28 rate to 2.5% within 3 months); Exh. 9 (Knight-Harris) ¶ 5 at 256-57 (loan mod
would take 3 months); Exh. 12 (Medley) ¶ 6 at 352 (4 months); Exh. 17 (Redding)
Att. A at 462-63 (90 to 120 days).

³⁷ Exh. 4 (Godsey-Crook) ¶ 6 at 107.

³⁸ Exh. 20 (Brannon-Quale) ¶ 17 at 712.

1 the country's top independent mortgage brokerages."³⁹ They also claim ACA has
2 a "network of experienced certified forensic loan auditors" who specialize in
3 identifying deceptive, fraudulent, abusive, and predatory lending practices in the
4 consumer's mortgage loan documents.⁴⁰ ACA Defendants claim that as a result of
5 the forensic loan audit, ACA may be "successful in wiping out large portions of
6 princip[al]... [t]ypically 50-80%!"⁴¹ They further represent that in "most cases the
7 interest and payment will be reduced permanently."⁴² The website directs
8 consumers to fill out an online request form or call a toll-free number.⁴³

9 During the sales pitch, the ACA salesperson says the consumer is virtually
10 guaranteed a loan modification. One consumer was told that her lender had
11 already approved a loan modification, which would reduce her interest rate to
12 2.75%, reduce her principal by 15%, and lower her monthly mortgage payment
13 from \$1,059 to \$616.⁴⁴ Another consumer was told that his lender had approved a
14 loan modification that would reduce his interest rate from 6.25% to 2.125% and his
15 monthly mortgage payment from \$4,000 to \$1,840.⁴⁵ Consumers are told that the
16 approved loan modification will be secured once the consumer pays the fee,⁴⁶
17 typically \$1,995 to \$2,450.⁴⁷ ACA salespeople further instruct consumers to stop
18 making monthly mortgage payments,⁴⁸ contacting their lenders,⁴⁹ or responding to
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20

21 ³⁹ Exh. 20 (Brannon-Quale) Att. M at 1019.

22 ⁴⁰ Exh. 20 (Brannon-Quale) Att. M at 1019.

23 ⁴¹ Exh. 20 (Brannon-Quale) Att. M at 1025.

24 ⁴² Exh. 20 (Brannon-Quale) Att. M at 1025.

25 ⁴³ Exh. 20 (Brannon-Quale) Att. M at 1025.

26 ⁴⁴ Exh. 15 (McIntyre) ¶¶ 3, 4 at 383.

27 ⁴⁵ Exh. 16 (Myers) ¶¶ 2, 4, 6 at 411-12.

28 ⁴⁶ Exh. 15 (McIntyre) ¶ 6 at 383; Exh. 16 (Myers) ¶ 5 at 412.

⁴⁷ Exh. 15 (McIntyre) ¶ 6 at 383; Exh. 16 (Myers) ¶ 5 at 412.

⁴⁸ Exh. 15 (McIntyre) ¶ 8 at 384.

⁴⁹ Exh. 15 (McIntyre) ¶ 8 at 384; Exh. 16 (Myers) ¶ 10 at 414.

1 the lenders' notices or correspondence.⁵⁰ Consumers are also guaranteed a full
2 refund of the fee if ACA fails to obtain the promised loan modification.⁵¹

3 Those who sign up receive a "Start-up Pack,"⁵² which includes a financial
4 worksheet, loan modification information worksheets, hardship letter
5 instructions,⁵³ and a fee agreement guaranteeing a "100% refund of the service fee"
6 if the consumer does not receive a loan modification or other identified solution.⁵⁴

7 C. Defendants Fail to Deliver

8 Defendants fail to deliver on their promises. After consumers pay the
9 substantial up-front fees, they do not obtain loan modifications or have their
10 mortgage payments substantially reduced.⁵⁵ Many consumers learn that
11 Defendants never contacted their lenders⁵⁶ or contacted them initially but never
12 followed up.⁵⁷ They learn, often too late, that their homes will be foreclosed
13 upon.⁵⁸ Many consumers are unable to obtain refunds from Defendants.⁵⁹

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16 ⁵⁰ Exh. 15 (McIntyre) ¶ 8 at 384; Exh. 16 (Myers) ¶ 10 at 414.

17 ⁵¹ Exh. 15 (McIntyre) ¶ 6 at 383; Exh. 16 (Myers) ¶ 6 at 412-13.

18 ⁵² Exh. 15 (McIntyre) ¶ 10 at 385; Exh. 16 (Myers) ¶ 11 at 414, Att. D at 428.

19 ⁵³ Exh. 15 (McIntyre) Att. C at 398-406; Exh. 16 (Myers) Att. D at 428-34.

20 ⁵⁴ Exh. 15 (McIntyre) Att. B at 391; Exh. 16 (Myers) Att. B at 420.

21 ⁵⁵ Exh. 1 (Bowser) ¶ 13 at 29; Exh. 2 (Burley) ¶ 22 at 49; Exh. 3 (Casey) ¶ 21 at
22 83; Exh. 5 (Gulli) ¶ 17 at 151; Exh. 6 (Herr) ¶ 17 at 194; Exh. 8 (Johnson) ¶ 14 at
23 245; Exh. 9 (Knight-Harris) ¶ 10 at 258; Exh. 10 (Ludwig) ¶ 15 at 286; Exh. 12
24 (Medley) ¶ 13 at 354; Exh. 13 (Starks) ¶ 15 at 361; Exh. 14 (Wilcox) ¶ 27 at 379;
25 Exh. 15 (McIntyre) ¶¶ 21, 22 at 388; Exh. 16 (Myers) ¶ 22 at 417.

26 ⁵⁶ Exh. 3 (Casey) ¶ 18 at 83; Exh. 4 (Godsey-Crook) ¶ 16 at 110; Exh. 13 (Starks) ¶
27 11 at 360.

28 ⁵⁷ Exh. 5 (Gulli) ¶ 11 at 150; Exh. 14 (Wilcox) ¶ 24 at 378.

⁵⁸ Exh. 2 (Burley) ¶ 13 at 46; Exh. 5 (Gulli) ¶ 17 at 151; Exh. 6 (Herr) ¶¶ 13, 17 at
194; Exh. 8 (Johnson) ¶¶ 13-14 at 245; Exh. 13 (Starks) ¶ 11 at 360; Exh. 14
(Wilcox) ¶ 18 at 376.

⁵⁹ Exh. 1 (Bowser) ¶ 10 at 28; Exh. 3 (Casey) ¶ 21 at 83; Exh. 4 (Godsey-Crook) ¶
17 at 110; Exh. 5 (Gulli) ¶ 17 at 151; Exh. 6 (Herr) ¶ 17 at 194; Exh. 7 (Horn) ¶ 17
at 222; Exh. 8 (Johnson) ¶ 14 at 245; Exh. 10 (Ludwig) ¶ 15 at 286; Exh. 9

1 IV. LEGAL ARGUMENT

2 The Court should issue a TRO to prevent continued harm, dissipation of
3 assets, and destruction of evidence, and preserve the Court's ability to provide
4 effective and final relief to the injured. The Court is authorized to grant this relief
5 under Section 13(b) of the FTC Act.

6 A. Section 13(b) of the FTC Act Authorizes the Requested Relief

7 The Court may grant temporary, preliminary, and permanent relief pursuant
8 to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), 28 U.S.C. § 1651(a), and Fed.
9 R. Civ. P. 65(b). Section 13(b) of the FTC Act authorizes a district court to grant
10 permanent injunctions to enjoin violations of the FTC Act in "proper cases."⁶⁰ The
11 Ninth Circuit has recognized that any case alleging violations of a law enforced by
12 the FTC constitutes a proper case for which injunctive relief may be sought.⁶¹ This
13 includes the MARS Rule.⁶² In actions under Section 13(b), the district court may
14 exercise the full breadth of its equitable authority, imposing additional relief, such
15 as consumer restitution, if necessary, to accomplish complete justice.⁶³ Incident to

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19 (Knight-Harris) ¶ 10 at 258; Exh. 12 (Medley) ¶ 13 at 354; Exh. 13 (Starks) ¶ 13 at
20 360-61; Exh. 15 (McIntyre) ¶¶ 17, 21 at 387-88.

21 ⁶⁰ As in *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1110 (9th Cir. 1982), a routine
22 fraud case may be brought under second proviso of Section 13(b), without being
23 conditioned on first proviso requirement that the FTC institute an administrative
24 proceeding. See also *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir.
25 1984) ("Congress did not limit the court's powers under the final proviso of
26 13(b)").

27 ⁶¹ *FTC v. Evans Products Co.*, 775 F.2d 1084, 1086-87 (9th Cir. 1985); *Singer, Inc.*,
28 668 F.2d at 1113 (9th Cir. 1982).

⁶² 12 U.S.C. § 5538.

⁶³ *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346-47 (9th Cir. 1989)
(affirming district court's power to freeze assets and appoint a receiver); *Singer*,
668 F.2d at 1113 (preliminary injunction with asset freeze affirmed).

1 its authority to issue permanent injunctive relief, this Court has inherent equitable
2 power to grant all preliminary relief necessary to effectuate ultimate relief.⁶⁴

3 B. The FTC Meets the Applicable Standard for Injunctive Relief.

4 The evidence submitted by the FTC meets the standard for issuing a TRO
5 and a preliminary injunction. Section 13(b) of the FTC ACT allows a district court
6 to grant the Commission a preliminary injunction “upon a proper showing that,
7 weighing the equities and considering the Commission’s likelihood of ultimate
8 success, such action would be in the public interest.”⁶⁵

9 Unlike the determination of whether to grant a preliminary injunction to a
10 private party, in statutory enforcement cases where the government has the met the
11 likelihood of success prong of the preliminary injunction test, the usual
12 prerequisite of irreparable injury is presumed because the passage of the statute
13 implies a finding by Congress that violations will harm the public.⁶⁶ Therefore,
14 further inquiry into irreparable injury is unnecessary.⁶⁷

15 To grant the FTC a preliminary injunction, the Court must (1) find a
16 likelihood that the FTC will ultimately succeed on the merits and (2) balance the
17 equities.⁶⁸ As set forth below, the FTC is likely to succeed in proving Defendants
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20 ⁶⁴ *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009) (“The district court has
21 broad authority under the FTC Act ‘to grant ancillary relief necessary to
22 accomplish complete justice’”); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th
23 Cir. 1994); *Singer*, 668 F.2d at 1113.

24 ⁶⁵ 15 U.S.C. § 53(b).

25 ⁶⁶ *U.S. v. Nutri-cology, Inc.*, 982 F.2d 394, 398 (9th Cir. 1992) (quoting *U.S. v.*
26 *Odessa Union Warehouse Co-op*, 833 F.2d 172, 175 (9th Cir. 1987).

27 ⁶⁷ *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999); *FTC v.*
28 *Warner Communications, Inc.*, 742 F.2d 1156, 1159 (9th Cir. 1984); *Odessa Union*,
833 F.2d at 175 (agency enforcing statute authorizing injunction “not required to
show irreparable injury”).

⁶⁸ *Affordable Media*, 179 F.3d at 1233 (quoting *Warner Communications*, 742 F.2d
at 1160); *World Wide Factors*, 882 F.2d at 346.

1 are violating the FTC Act and the MARS Rule and will continue to do so absent
2 court intervention, and the public interest favors entry of the requested Order.

3 **1. The FTC is likely to succeed on the merits.**

4 a. Defendants violate Section 5 of the FTC Act.

5 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
6 deceptive acts or practices in or affecting commerce.” An act or practice is
7 “deceptive” within the meaning of Section 5 if first, there is a representation,
8 omission, or practice that, second, is likely to mislead consumers acting reasonably
9 under the circumstances, and third, the representation, omission, or practice is
10 material to the consumer’s payment decision.⁶⁹

11 A misleading impression “is material if it ‘involves information that is
12 important to consumers and, hence, likely to affect their choice of, or conduct
13 regarding, a product.’”⁷⁰ A finding of deception normally justifies an inference of
14 materiality.⁷¹ Express claims are presumed material, so consumers are not required
15 to question their veracity in order to be deemed reasonable.⁷² Implied claims are
16 also presumed material if there is evidence that the seller intended to make the
17 claim⁷³ or if the claims go to the heart of the solicitation or the central
18 characteristics of the product or service offered.⁷⁴

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21 ⁶⁹ *Stefanchik*, 559 F.3d at 928; *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1199
(9th Cir. 2006); *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001).

22 ⁷⁰ *Cyberspace.com*, 453 F.3d at 1201 (quoting *Cliffdale Associates, Inc.*, 103
23 F.T.C. 110, 165 (1984)).

24 ⁷¹ *FTC v. Colgate-Palmolive*, 380 U.S. 374, 391-92 (1965); *American Home*
25 *Products Corp. v. FTC*, 695 F.2d 681, 688 n. 11 (3d Cir. 1982); *Simeon*
Management Corp. v. FTC, 579 F.2d 1137, 1146 (9th Cir. 1978).

26 ⁷² *Pantron*, 33 F.3d at 1095-96.

27 ⁷³ *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992).

28 ⁷⁴ *Southwest Sunsites, Inc.*, 105 F.T.C. 7, 149 (1985), *aff’d*, 785 F.2d 1431 (9th Cir.
1986). *See also FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 604 (9th Cir. 1993) (no
loophole for implied deceptive claims).

1 A claim is deemed made if consumers, acting reasonably, would interpret
2 the statements to contain that message.⁷⁵ A solicitation capable of being
3 interpreted in a misleading way is construed against the maker of the solicitation.⁷⁶
4 In determining what messages may reasonably be ascribed to a statement or
5 statements, the Court is to consider the overall net impression.⁷⁷

6 Here, Defendants have violated Section 5(a) by making a series of false
7 claims to induce consumers to purchase mortgage assistance relief services.
8 Defendants misrepresent that (1) they generally will obtain for consumers
9 mortgage loan modifications that will make their payments substantially more
10 affordable; (2) Defendants' forensic loan audit will yield a loan modification for
11 each consumer; and (3) failing that, they will refund the fee.

12 (1) Defendants misrepresent that they will obtain loan
13 modifications for consumers.

14 Defendants virtually guarantee loan modifications. CAG salespeople have
15 assured consumers that there is a 100% chance that Defendants will obtain a loan
16 modification,⁷⁸ and website testimonials bolster this claim.⁷⁹ ACA Defendants
17 represent that they have already obtained a loan modification, which has been
18 approved by the consumer's lender.⁸⁰

19 ⁷⁵ *Kraft, Inc.*, 114 F.T.C. 40, 120 (1991).

20 ⁷⁶ *Simeon Management Corp.*, 579 F.2d at 1146 (quoting *Resort Car Rental
Systems, Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir. 1975)).

21 ⁷⁷ *Stefanchik*, 559 F.3d at 928; *Cyberspace.com*, 453 F.3d at 1200 (solicitation may
22 be likely to mislead by virtue of its net impression). Advertising's tendency to
23 deceive must be viewed as a whole, without emphasizing isolated words or phrases
24 apart from their context. *Removatron International Corp. v. FTC*, 884 F.2d 1489,
1496 (1st Cir. 1989).

25 ⁷⁸ Exh. 4 (Godsey-Crook) ¶ 3 at 106 (100% certainty that CAG could obtain a loan
26 modification); Exh. 2 (Burley) ¶ 5 at 43 ("positive" CAG would save his house);
27 Exh. 10 (Ludwig) ¶ 4 at 282 ("like a 100% chance" of successful loan
modification).

28 ⁷⁹ Exh. 20 (Brannon-Quale) Att. J at 1008-1010.

⁸⁰ Exh. 15 (McIntyre) ¶¶ 3, 4 at 382-83; PX 16 (Myers) ¶¶ 4, 6 at 412-13.

1 Second, Defendants claim that their extensive experience and special
2 relationships with mortgage lenders enable them to get successful loan
3 modifications. Defendants' websites and salespeople claim expertise and special
4 relationships with all major lenders.⁸¹

5 However, consumers report that Defendants fail to obtain loan modifications
6 after they pay Defendants the substantial up-front fees.⁸² Defendants'
7 representation that they will obtain loan modifications for consumers is false and
8 material, and violates Section 5 of the FTC Act.

9 (2) Defendants claim their forensic loan audit will yield a
10 loan modification.

11 In websites and sales pitches, Defendants claim their forensic loan audit will
12 produce a loan modification. Calling themselves "forensic loan audit
13 specialists,"⁸³ CAG Defendants promise a 100% chance that CAG will uncover a
14 state or federal law violation in the consumers' loan documents to negotiate a loan
15 modification with the consumer's lender.⁸⁴ ACA Defendants claim their "network
16 of experienced certified forensic loan auditors . . . wip[e] out large portions of
17 princip[al]... [t]ypically 50-80%!"⁸⁵ However, consumers do not obtain loan
18 modifications.⁸⁶ Defendants' representation is false and material and thus violates
19 Section 5 of the FTC Act.

20 (3) Defendants falsely promise refunds.

21 Defendants falsely promise to refund consumers' fees if they fail to obtain a
22 loan modification. CAG and ACA salespersons routinely guarantee a refund,⁸⁷ as
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24 ⁸¹ See *supra* notes 28, 29, 39 and accompanying text.

25 ⁸² See *supra* note 55.

26 ⁸³ Exh. 20 (Brannon-Quale) Att. J at 978.

27 ⁸⁴ See *supra* notes 18-19.

28 ⁸⁵ Exh. 20 (Brannon-Quale) Att. J at 1020, 1025.

⁸⁶ See *supra* note 55.

⁸⁷ See *supra* notes 23 and 51.

1 do the documents that they send consumers.⁸⁸ In reality, Defendants routinely
2 refuse to provide refunds.⁸⁹ Defendants' promise to provide refunds is false and
3 material, and thus, violates Section 5 of the FTC Act.

4 b. Defendants violate the MARS Rule.

5 Defendants violate virtually every provision of the MARS Rule. They
6 collect advance fees and make representations prohibited by the Rule. They also
7 fail to make disclosures required by the Rule.

8 **Section 322.5(a)** of the MARS Rule, effective January 31, 2011, prohibits
9 providers from requesting or receiving payment of any fee until the provider has
10 delivered an offer of mortgage relief from the consumer's lender or servicer and
11 the consumer has signed an agreement accepting this offer. Defendants requested
12 and received up-front fees after this date.⁹⁰ Consequently, Defendants are in
13 violation of Section 322.5(a) of the Rule.

14 **Section 322.3(a)** of the MARS Rule prohibits mortgage assistance relief
15 service providers from representing that consumers should not contact or
16 communicate with their lenders. Defendants repeatedly give that instruction
17 during their telephone sales pitches⁹¹ and in writing.⁹² Consequently, Defendants
18 are in violation of Section 322.3(a) of the MARS Rule.

19
20 ⁸⁸ Exh. 4 (Godsey-Crook) ¶¶ 6 at 107 (CAG's Client Welcome Pack guarantees a
21 100% refund of the service fee (minus a \$750.00 processing fee); Exh. 15
22 (McIntyre) Att. B at 391; Exh. 16 (Myers), Att. B at 420 (ACA's fee agreement
23 guarantees a 100% refund of the service fee if the consumer does not receive one
of the identified solutions from the consumer's lender).

24 ⁸⁹ See *supra* note 59.

25 ⁹⁰ Exh. 3 (Casey) ¶¶ 8, 13, 15 at 81-82 (payment made November 2011); Exh. 7
26 (Horn) ¶¶ 8-9 at 220 (payment made August 2011); Exh. 11 (McGee), Att. C at
27 343 (payment made Feb. 2011); Exh. 14 (Wilcox) ¶¶ 15, 17 at 376 (payment made
28 August 2011); Exh. 15 (McIntyre) Att. B at 396 (ACA consumer made payment
Feb. 2012); Exh. 16 (Myers) ¶ 9 at 413-14 (ACA consumer post dated check for
Feb. 27, 2012).

⁹¹ See *supra* notes 30, 49, 50.

1 **Sections 322.3(b)(1)** of the MARS Rule prohibits companies from
2 misrepresenting the likelihood of negotiating, obtaining, or arranging any
3 represented service or result. Defendants claim that (1) they will obtain loan
4 modifications for consumers and (2) they will obtain a loan modification as a result
5 of mistakes or law violations by the lender discovered during Defendants' forensic
6 audits.⁹³ Consequently, they are in violation of Section 322.3(b)(1) of the Rule.

7 **Section 322.3(b)(2)** of the MARS Rule prohibits companies from
8 misrepresenting “[t]he amount of time it will take the mortgage assistance relief
9 service provider to accomplish any represented service or result.” Defendants
10 routinely inform consumers that they will be able to obtain a loan modification by
11 a certain date or within a certain time frame.⁹⁴ Thus, they are in violation of
12 Section 322.3(b)(2) of the Rule.

13 **Section 322.3(b)(6)** of the MARS Rule prohibits companies from
14 misrepresenting the terms or conditions of any refund including the likelihood of
15 obtaining a full or partial refund, or the circumstances in which a full or partial
16 refund will be granted, for a mortgage assistance relief service. While Defendants
17 guarantee refunds,⁹⁵ they do not provide them.⁹⁶ Thus, Defendants are in violation
18 of Section 322.3(b)(6) of the Rule.

19 **Section 322.3(b)(10)** of the MARS Rule prohibits companies from
20 misrepresenting the amount of money or the percentage of the debt amount that a
21 consumer may save by using the mortgage assistance relief service. Defendants
22 routinely promise consumers that they can obtain loan modifications with certain

23 ⁹² Exh. 4 (Godsey-Crook) Att. C at 125.

24 ⁹³ See *supra* Section IV.B.1(a)(1) and (2).

25 ⁹⁴ See *supra* note 36; Exh. 16 (Myers) ¶ 3 at 411-12 (ACA consumer told that the
26 foreclosure process, which was scheduled for Feb. 2, 2012 would be halted
27 immediately); Exh. 15 (McIntyre) ¶¶ 5-6 at 383 (ACA consumer told that the
lender was “all ready to go” with the loan mod once she paid the up-front fee).

28 ⁹⁵ See *supra* notes 23, 51.

⁹⁶ See *supra* note 59.

1 interest rates, monthly mortgage payments, and principal reductions.⁹⁷ However,
2 Defendants fail to obtain loan modifications for consumers.⁹⁸ Thus, Defendants
3 violate Section 322.3(b)(10) of the MARS Rule.

4 **Section 322.3(c)** of the MARS Rule requires that any company making
5 representations about the benefits, performance, or efficacy of its services must
6 have “competent and reliable evidence” supporting these representations.

7 Defendants claim that (1) they will obtain mortgage loan modifications that will
8 make consumers’ payments substantially more affordable; (2) it will take a certain
9 amount of time for Defendants to accomplish the mortgage loan modification; and
10 (3) consumers will save a certain amount of money or percentage of the debt
11 amount by using Defendants’ mortgage assistance relief service. Defendants
12 cannot provide competent or reliable evidence to support these representations.
13 Thus, they are in violation of Section 322.3(c) of the Rule.

14 Finally, Defendants fail to make disclosures required by the Rule. **Sections**
15 **322.4(a)(1)** and **(2)** of the MARS Rule require providers to disclose the following
16 statements in every general commercial communication:

- 17 • “(Name of company) is not associated with the government, and our
18 service is not approved by the government or your lender.”
- 19 • “Even if you accept this offer and use our service, your lender may
20 not agree to change your loan.”

21 **Section 322.4(b)** of the MARS Rule requires providers to disclose the
22 following statements in their consumer-specific commercial communications:

- 23 • “You may stop doing business with us at any time. You may accept
24 or reject the offer of mortgage assistance we obtain from your lender
25 [or servicer]. If you reject the offer, you do not have to pay us. If you
26

27 _____
28 ⁹⁷ See *supra* notes 24-27, 44-45.

⁹⁸ See *supra* note 55.

1 accept the offer, you will have to pay us (insert amount or method for
2 calculating the amount) for our services.”

- 3 • “(Name of company) is not associated with the government, and our
4 service is not approved by the government or your lender.”
- 5 • “Even if you accept this offer and use our service, your lender may
6 not agree to change your loan.”

7 **Section 322.4(c)** of the MARS Rule requires mortgage assistance relief
8 providers to disclose the following statement in all general commercial
9 communications, consumer-specific commercial communications, and other
10 communications if they represent that the consumer should discontinue making
11 payments: “If you stop paying your mortgage, you could lose your home and
12 damage your credit rating.”

13 Defendants have not made any disclosures required by the Rule.
14 Consequently, Defendants are in violation of Sections 322.4(a)(1) and (2),
15 322.4(b), and 322.4(c) of the MARS Rule.

16 2. The Equities Tip Decidedly in the FTC’s Favor.

17 In balancing the equities, the “public interest should receive greater weight”
18 than private interests.⁹⁹ This is particularly true where a Defendant’s business is
19 rooted in deception, for “[a] court of equity is under no duty ‘to protect illegitimate
20 profits or advance business which is conducted [illegally].’”¹⁰⁰

21 The public interest in halting Defendants’ violations and preserving assets
22 for monetary remedy far outweighs any interest defendants may have in continuing
23 to mislead consumers. Defendants have no legitimate interest in continuing to
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27 ⁹⁹ *Affordable Media*, 179 F.3d at 1236; *Warner Communications*, 742 F.2d at 1165.

28 ¹⁰⁰ *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977) (quoting *FTC v. Thomsen-King & Co.*, 109 F.2d 516, 519 (7th Cir. 1940)).

1 deceive consumers and violate federal law.¹⁰¹ Compliance with the law is not an
2 unreasonable burden.¹⁰² The equities strongly favor the proposed TRO.

3 **3. Defendants will continue to violate the FTC Act and the**
4 **MARS Rule absent court intervention.**

5 Despite attention from two law enforcement authorities, Defendants
6 continue to market, promote, and sell mortgage assistance relief services. In May
7 2010, the Maryland Commissioner of Financial Regulation entered a Cease and
8 Desist Order against Defendant Zimmerman, which prohibited him from engaging
9 in credit services business activities, including contracting to provide loan
10 modification or similar services.¹⁰³ After Maryland's action, Defendant
11 Zimmerman simply continued the business under the CAG name, which was
12 created in December 2010.¹⁰⁴ In July 2011, the California Department of Real
13 Estate ("CA DRE") sent letters to all addresses associated with Defendant CAG.¹⁰⁵
14 The letters informed CAG that it was in violation of the California Business and
15 Professions Code for providing loan audit and modification services without a real
16 estate license.¹⁰⁶ Defendants ignored the CA DRE's letter.¹⁰⁷ Defendants have
17 continued the deceptive practices and Defendant Zimmerman recently started
18 another illegal loan modification business under the ACA name.¹⁰⁸ Based on

19
20 ¹⁰¹ *FTC v. Sabal*, 32 F.Supp.2d 1004, 1009 (N.D. Ill. 1998) (citing *World Wide*
21 *Factors*, 882 F.2d at 347).

22 ¹⁰² *World Wide Factors*, 882 F.2d at 347 (affirming the district court's finding that
23 "there is no oppressive hardship to defendants in requiring them to comply with the
24 FTC Act, refrain from fraudulent representation or preserve their assets from
25 dissipation or concealment").

26 ¹⁰³ See Declaration of Miry Kim Pursuant to Fed. R. Civ. P. 65(b) in Support of
27 Plaintiff's *Ex Parte* Application for TRO ("Kim Dec.") at ¶ 14.

28 ¹⁰⁴ Exh. 20 (Brannon-Quale) ¶ 6 at 709.

¹⁰⁵ Exh. 19 (Williams) ¶ 5 at 519.

¹⁰⁶ Exh. 19 (Williams) Att. B at 705-707.

¹⁰⁷ Exh. 19 (Williams) ¶ 6 at 520.

¹⁰⁸ Exh. 20 (Brannon-Quale) ¶ 7 at 709.

1 Defendants' behavior, Defendants will continue to violate the FTC Act and the
2 MARS Rule absent a preliminary injunction.

3 C. CAG and Paramount are Jointly and Severally Liable.

4 Corporate Defendants CAG and Paramount are jointly and severally liable
5 for the consumer injury they caused because they operate as a common
6 enterprise.¹⁰⁹ To determine whether a common enterprise exists, "the pattern and
7 frame-work of the whole enterprise must be taken into consideration."¹¹⁰ A host of
8 factors may demonstrate the existence of a common enterprise including: common
9 control, shared officers, shared office space, commingling of funds, unified
10 advertising and whether business was transacted through a maze of interrelated
11 companies.¹¹¹ No one factor is dispositive, and all factors need not be present to
12 justify a finding of common enterprise.¹¹²

13 Here, the evidence supports a finding that Defendants CAG and Paramount
14 operate as a common enterprise. First, they have common ownership. Defendant
15 Zimmerman is the owner of both CAG and Paramount.¹¹³ Second, CAG and
16 Paramount have shared locations. They have both operated out of 3699 Wilshire
17 Blvd., Suite 220, Los Angeles, CA 90010.¹¹⁴ Furthermore, CAG and Paramount
18 have commingled funds. Consumer checks payable to CAG were deposited in
19

20 ¹⁰⁹ *FTC v. J.K. Publ'ns, Inc.*, 99 F.Supp.2d 1176, 1202 (C.D. Cal. 2000).

21 ¹¹⁰ *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964) (quoting *Art*
Nat'l Mfrs. Distrib. Co. v. FTC, 298 F.2d 476, 477 (2d Cir. 1962)).

22 ¹¹¹ *See FTC v. Neovi, Inc.*, 598 F.Supp.2d 1104, 1116 (S.D. Cal. 2008); *J.K.*
23 *Publ'ns*, 99 F.Supp.2d at 1201-02; *See also FTC v. Network Servs. Depot, Inc.*, 617
24 F.3d 1127, 1142-43 (9th Cir. 2010) ("entities constitute a common enterprise when
25 they exhibit... strongly interdependent economic interests or the pooling of assets
and revenues").

26 ¹¹² *FTC v. Kennedy*, 574 F.Supp.2d 714, 722 (S.D. Tex. 2008) ("It is not necessary
27 that the FTC prove any particular number of entity connections and any specific
connection.").

28 ¹¹³ *See supra* notes 2-3.

¹¹⁴ *See supra* note 1.

1 Paramount bank accounts.¹¹⁵ Zimmerman is also the signatory on both CAG and
2 Paramount bank accounts.¹¹⁶ Accordingly, CAG and Paramount are jointly and
3 severally liable for the consumer injury they have caused.

4 D. Defendant Ryan Zimmerman is Liable for the Corporate Defendants’
5 Practices.

6 The FTC is likely to succeed in demonstrating that Individual Defendant
7 Ryan Zimmerman is individually liable for the practices of Corporate Defendants
8 CAG, Paramount, and ACA. Like businesses, individuals who perpetrate such acts
9 are subject to injunctive and equitable liability.¹¹⁷ An individual may be subject to
10 injunctive relief for the corporate defendants’ violations of the FTC Act if he either
11 (a) participated in the challenged conduct or (b) had authority to control it.¹¹⁸

12 Individual defendants may also be held liable for restitution based on
13 corporate misconduct if they had actual knowledge of material misrepresentations,
14 were recklessly indifferent to the falsity of the misrepresentations, or were aware
15 of a high probability of fraud and intentionally avoided the truth.¹¹⁹ An
16 individual’s “degree of participation in business affairs is probative of
17 knowledge.”¹²⁰ The FTC does not need to prove subjective intent to defraud.¹²¹

18 Defendant Zimmerman is individually liable for the Corporate Defendants’
19 deceptive acts. First, Zimmerman had authority to control the Corporate
20 Defendants. Zimmerman is CEO, secretary, director, and registered agent for
21 Paramount.¹²² He is an officer of CAG.¹²³ He is the sole member and manager of

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23 ¹¹⁵ Exh. 20 (Brannon-Quale) ¶ 27 at 714.

24 ¹¹⁶ See *supra* note 6.

25 ¹¹⁷ *FTC v. INC21.Com Corp.*, 745 F.Supp.2d 975, 1000 (N.D. Cal. 2010).

26 ¹¹⁸ *Cyberspace.com*, 453 F.3d at 1202 (9th Cir. 2006).

27 ¹¹⁹ *FTC v. Network Services Depot*, 617 F.3d 1127, 1138-39 (9th Cir. 2010).

28 ¹²⁰ *Affordable Media*, 179 F.3d at 1234-35

¹²¹ *Affordable Media*, 179 F.3d at 1234-35.

¹²² Exh. 20 (Brannon-Quale) ¶ 4.c at 708, Att. A at 715-16.

¹²³ Exh. 20 (Brannon-Quale) ¶ 11.A.iii at 710-11.

1 ACA.¹²⁴ As signatory on both CAG and Paramount corporate accounts, he has
2 deposited consumer checks, written checks to employees, and withdrawn money
3 from the corporate accounts.¹²⁵

4 Second, he had knowledge of the representations. He set up CAG's
5 deceptive website.¹²⁶ He applied for mail service for ACA and is listed as the
6 recipient of all ACA consumer mail.¹²⁷ He also applied for mail service for
7 CAG.¹²⁸ BBB consumer complaints were sent to the CAG address, which further
8 establishes that Zimmerman was the recipient of consumer complaints.¹²⁹
9 Consequently, Ryan Zimmerman has had authority to control the Corporate
10 Defendants and knowledge of their representations. Thus, he should be
11 individually liable for the Corporate Defendants' deceptive acts.

12 E. The Requested Relief Should be Issued *Ex Parte*.

13 A TRO may be granted without notice if it appears notice will result in
14 irreparable injury and the applicant certifies the reason why. Fed. R. Civ. P. 65(b).
15 It is particularly appropriate where giving notice could result in an inability to
16 provide any relief at all.¹³⁰ *Ex parte* TROs are granted in such cases to serve the
17 "underlying purpose of preserving the status quo and preventing irreparable harm
18 just so long as is necessary to hold a hearing, and no longer."¹³¹

19 An applicant can justify its request for *ex parte* relief in a number of ways.
20 These include showing a likelihood that the defendants will dissipate assets in the
21

22 ¹²⁴ Exh. 20 (Brannon-Quale) ¶ 7.c at 709.

23 ¹²⁵ Exh. 20 (Brannon-Quale) ¶¶ 19.a, 24.a, 28 at 713-14, Att. N, O at 1030-1098 .

24 ¹²⁶ Exh. 20 (Brannon-Quale) ¶ 16 at 712, Att. L at 1016.

25 ¹²⁷ Exh. 20 (Brannon-Quale) ¶ 11.B at 710-11, Att. I at 976.

26 ¹²⁸ Exh. 20 (Brannon-Quale) ¶ 11.A at 710-11, Att. H at 974.

27 ¹²⁹ Exh. 18 (Pelgone) Att. A at 494-518.

28 ¹³⁰ *In re Vuitton et Fils S.A.*, 606 F.2d 1, 4-5 (2d Cir. 1979).

¹³¹ *Reno Air Racing Association, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir.
2006) (quoting *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 439
(1974)).

1 absence of such relief.¹³² Additionally, an applicant also can support its request by
2 showing that without such relief “defendants would have disregarded a direct court
3 order... within the time it would take for a hearing.”¹³³

4 Here, the threat of irreparable harm meets the Rule 65(b) standard for *ex*
5 *parte* preliminary relief. If Defendants were given notice of the TRO, Defendants’
6 past behavior indicates they would attempt to evade detection. Despite two state
7 law enforcement actions, Defendants have not stopped their deceptive practices.¹³⁴
8 They have moved to a variety of locations.¹³⁵ They have also introduced a layer of
9 names between themselves and anyone who might investigate their activities. For
10 instance, “Legalzoom.com, Inc.” is listed as CAG’s and ACA’s agents for service
11 of process in their corporate documents filed with the California Secretary of
12 State.¹³⁶ Defendant Zimmerman does not appear on any of the CAG corporate
13 documents even though he owns CAG.¹³⁷

14 Furthermore, there is considerable risk that Defendants will dissipate or
15 conceal assets and destroy documents identifying injured consumers. Already
16 Defendants have made large cash withdrawals and transfers from accounts
17 associated with CAG and Paramount bank accounts.¹³⁸ Zimmerman withdrew
18 \$302,907.34 between January 2010 and January 2011 from one account alone.¹³⁹
19 The FTC’s experience shows that defendants engaged in similar schemes will
20 withdraw funds from bank accounts and move or shred documents upon learning
21

22
23 ¹³² See *Affordable Media, LLC*, 179 F.3d at 1236-37.

24 ¹³³ *Reno Air Racing Ass’n*, 452 F.3d at 1131.

25 ¹³⁴ See Discussion *supra* Section IV.B.3.

26 ¹³⁵ Exh. 20 (Brannon-Quale) ¶¶ 4.d, 7.d, 11.A.ii at 708-710, att. A, D, H at 715-16,
27 722, 974.

28 ¹³⁶ Exh. 20 (Brannon-Quale) ¶¶ 6.b, 7.b at 709, Att. C, D at 719, 721.

¹³⁷ Exh. 20 (Brannon-Quale) ¶¶ 6, 11.A.iii at 709-11, Att. C at 719-20.

¹³⁸ Exh. 20 (Brannon-Quale) ¶¶ 21, 26 at 713-14.

¹³⁹ Exh. 20 (Brannon-Quale) ¶ 28 at 714.

1 of impending legal action.¹⁴⁰ District Courts therefore have regularly granted the
2 FTC *ex parte* relief in similar cases. Issuing the TRO *ex parte* in this case is
3 indispensable to preserving the status quo and securing full and effective relief
4 pending a hearing on the preliminary injunction.

5 F. An Asset Freeze is Needed to Preserve Assets for Consumer Redress.

6 To preserve the availability of funds for injured consumers, the FTC
7 requests that the Court issue an order requiring the preservation of assets and
8 evidence. Such an order is well within the Court's authority.¹⁴¹ An asset freeze is
9 appropriate once the Court determines that the FTC is likely to prevail on the
10 merits and restitution would be an appropriate final remedy.¹⁴²

11 "A party seeking an asset freeze must show a likelihood of dissipation of the
12 claimed assets, or other inability to recover monetary damages, if relief is not
13 granted."¹⁴³ In *Johnson v. Couturier*, the Ninth Circuit upheld an asset freeze
14 because plaintiffs had established they were "likely to succeed in proving that
15 [Defendant] impermissibly awarded himself tens of millions of dollars."¹⁴⁴ Courts
16 have also concluded that an asset freeze is justified where a Defendant's business
17 is permeated with fraud.¹⁴⁵

18 Here, an asset freeze is necessary to preserve assets for consumer redress.
19 CAG Defendants took in at least \$3 million dollars from consumers in the span of
20 two years,¹⁴⁶ then made large withdrawals, including Zimmerman's \$302,907.34,

21
22 ¹⁴⁰ See Kim Dec. ¶¶ 17-18 (citing numerous instances of such conduct).

23 ¹⁴¹ *Singer*, 668 F.2d at 1113 ("§ 13(b) provides a basis for an order freezing
assets").

24 ¹⁴² *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1031 (7th Cir.
25 1988).

26 ¹⁴³ *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009).

27 ¹⁴⁴ *Johnson*, 572 F.3d at 1085.

28 ¹⁴⁵ See, e.g., *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2nd Cir.
1972); *SEC v. R.J. Allen & Assoc., Inc.*, 386 F.Supp. 866, 881 (S.D. Fla. 1974).

¹⁴⁶ Exh. 20 (Brannon-Quale) ¶¶ 20, 25 at 713-14.

1 and substantial other transfers to various accounts.¹⁴⁷ If frozen, those assets can be
2 located and inventoried.

3 G. A Receiver Will Halt the Injury and Locate and Preserve Business
4 Assets and Records.

5 The FTC seeks appointment of a temporary receiver over the Corporate
6 Defendants. This Court has inherent power to appoint a receiver as an incident to
7 its statutory authority to issue permanent injunctions under Section 13(b) of the
8 FTC Act.¹⁴⁸ Appointment of a receiver is necessary when the corporate
9 defendant's management has defrauded the public.¹⁴⁹

10 With Defendants in control of their business, evidence will likely be
11 destroyed and the fruits of their fraud will be dissipated. A neutral receiver would
12 prevent further harm to consumers, and locate and secure assets and records, but
13 not disrupt any legitimate business activity. A receiver would also help assess the
14 extent of the fraud, trace its proceeds, prepare an accounting, and make an
15 independent report of Defendants' activities to the Court.

16 H. Immediate Access and Limited Expedited Discovery are Appropriate.

17 The proposed TRO directs the receiver to provide both the FTC and
18 Defendants with reasonable access to Corporate Defendants' premises (which may
19 be necessary to prepare for a preliminary injunction hearing), and provides the
20 FTC with immediate access to locate quickly and efficiently assets Defendants
21 have wrongfully taken from consumers, identify possible additional defendants,
22 locate documents pertaining to Defendants' business, and locate Defendants,

23 ¹⁴⁷ Exh. 20 (Brannon-Quale) ¶¶ 21, 26, 28 at 713-14, Att. N, O at 1030-1098.

24 ¹⁴⁸ *FTC v. U.S. Oil & Gas*, 748 F.2d 1431, 1432 (11th Cir. 1984), *See, e.g. FTC v.*
25 *Advanced Management Services NW LLC*, CV-10-148-LR (E.D. Wa. May 10,
26 2010) (*ex parte* TRO with asset freeze and two receivers).

27 ¹⁴⁹ *SEC v. First Financial Group of Texas*, 645 F.2d 429, 438 (5th Cir. 1981)
28 (“hardly conceivable that the trial court should have permitted those who were
enjoined from fraudulent misconduct to continue in control of [the corporate
defendant]’s affairs”).

1 should they attempt to evade service. Specifically, the FTC seeks permission to
2 conduct depositions with forty-eight hours' notice, and to issue requests (or
3 subpoenas) for production of documents on five days' notice for these purposes.
4 District courts may depart from normal discovery procedures,¹⁵⁰ particularly as
5 preliminary relief in a case involving the public interest.¹⁵¹

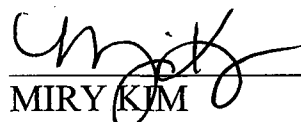
6 To protect the effectiveness of the Court's asset freeze and temporary
7 receivership, the Defendants should be ordered to produce financial records and
8 information, and financial institutions and other third parties served with the TRO
9 should be ordered to disclose whether they hold any of Defendants' assets.

10 V. CONCLUSION

11 Defendants have caused and likely will continue to cause substantial public
12 injury by violating the FTC Act and the MARS Rule. Two states have tried,
13 unsuccessfully, to stop Defendant Ryan Zimmerman from continuing the scam.
14 Zimmerman has ignored the States' enforcement actions and created new,
15 deceptive companies. The FTC respectfully requests the proposed TRO to protect
16 the public from further harm and help ensure effective relief for those harmed.

17 Dated: May 30, 2012

18 Respectfully Submitted,

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20 _____
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26 ¹⁵⁰ See Fed. R. Civ. P. 26(d), 30(a)(2), 33(a), and 34(b) (courts may alter standard
27 provisions).

28 ¹⁵¹ Equitable powers are broader if the public interest is involved. *Porter v.*
Warner Holding Co., 328 U.S. 395, 398 (1946).