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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JEREMY JOHNSON, et al.

Defendants.

**Case No. 2:10-cv-02203-MMD-
GWF**

**PLAINTIFF FEDERAL TRADE COMMISSION'S MOTION
FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT
AND SUPPORTING MEMORANDUM**

1 Plaintiff Federal Trade Commission (“FTC”) respectfully moves this Court, pursuant to
 2 Federal Rule of Civil Procedure 15(a) and Rule 15-1 of this Court’s Local Rules of Civil
 3 Practice, for leave to file a First Amended Complaint For Permanent Injunction and Other
 4 Equitable Relief (the “Proposed Amended Complaint”), a copy of which is attached to this
 5 Motion as **Exhibit A**. In support of this motion, the FTC states as follows:

6 This case concerns the defendants’ enterprise (the “I Works Enterprise”) that deceptively
 7 marketed and enrolled consumers into Internet-based memberships and then repeatedly charged
 8 their credit cards or debited funds from their checking accounts without consumers’ knowledge
 9 or authorization for memberships the consumers never agreed to accept. In doing so, the I
 10 Works Enterprise violated the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 41 *et*
 11 *seq.*, the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. § 1693o(c), and Section 205.10(b)
 12 of Regulation E, 12 C.F.R. § 205.10(b) (“Regulation E”). The FTC seeks leave to file the
 13 Proposed Amended Complaint to ensure that Sharla Johnson, Kerry Johnson, and Barbara
 14 Johnson (the wife and parents of defendant Jeremy Johnson, respectively) – and the companies
 15 they own, control, or are titled in their name – are required to disgorge millions of dollars in
 16 assets that are traceable to funds obtained from the victims of the I Works Enterprise.
 17

18 I. STATEMENT OF FACTS

- 19 • On **December 21, 2010**, the FTC filed its ten-count Complaint [DE 1] against Jeremy
 20 Johnson, nine other individual defendants,¹ and the 61 companies, including I Works,
 21 Inc. (“I Works”), that comprised the I Works Enterprise.²
 22

23 ¹ The other individual defendants are Duane Fielding, Andy Johnson, Loyd Johnston, Scott Leavitt, Scott
 24 Muir, Bryce Payne, Kevin Pilon, Ryan Riddle, and Terrason Spinks.

25 ² The I Works enterprise includes: I Works, Inc.; Anthon Holdings Corp.; Cloud Nine Marketing, Inc.; CPA
 26 Upsell, Inc.; Elite Debit, Inc.; Employee Plus, Inc.; Internet Economy, Inc.; Market Funding Solutions, Inc.;
 Network Agenda, LLC; Success Marketing, Inc.; Big Bucks Pro, Inc.; Blue Net Progress, Inc.; Blue Streak
 Processing, Inc.; Bolt Marketing, Inc.; Bottom Dollar, Inc.; Bumble Marketing, Inc.; Business First Inc.; Business
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- 1 • The Complaint alleged that defendants operated a far-reaching Internet scheme that lured
2 consumers to websites that claimed to offer free or risk-free information about products
3 or services such as government grants to pay personal expenses (“grant product”) and
4 Internet-based money-making opportunities. These websites were replete with
5 misrepresentations about the availability of grants for personal expenses and the expected
6 profitability of the alleged Internet-based money-making opportunities.
- 7 • Specifically, the Complaint alleged that defendants violated the FTC Act by:
 - 8 (1) misrepresenting that government grants are available to individuals to pay for
9 personal expenses;
 - 10 (2) misrepresenting that consumers using defendants’ grant product were likely to
11 find and obtain government grants to pay personal expenses;
 - 12 (3) misrepresenting that users of defendants’ Internet-based money-making
13 opportunities were likely to earn substantial income;
 - 14 (4) misrepresenting that defendants’ offers were “free” and “risk-free,” when in
15 reality the offers were for expensive negative option plans with monthly
16 recurring fees;
 - 17 (5) failing to disclose, or disclose adequately, that defendants immediately
18 enrolled consumers, who agreed to pay a small fee, in defendants’ negative
19 option plans and billed the consumers’ credit cards or debited funds from their
20 bank accounts for a high one-time fee and the monthly charges associated
21 with the plans unless consumers canceled within a trial period of as few as
three days;
 - (6) misrepresenting that consumers using defendants’ grant product were likely to
obtain grants such as those obtained by the individuals whose testimonials
appeared on defendants’ government grant websites;
 - (7) misrepresenting that the positive articles and other web pages about
defendants’ grant and Internet-based money-making opportunities posted on
the Internet were independent reviews from unbiased consumers who had
successfully used defendants’ grant and Internet-based money-making
opportunities;

22 Loan Success, Inc.; Cold Bay Media, Inc.; Costnet Discounts, Inc.; CS Processing, Inc.; Cutting Edge Processing,
23 Inc.; Diamond J Media, Inc.; Ebusiness First, Inc.; Ebusiness Success, Inc.; Ecom Success, Inc.; Excess Net
24 Success, Inc.; Fiscal Fidelity, Inc.; Fitness Processing, Inc.; Funding Search Success, Inc.; Funding Success, Inc.;
25 GG Processing, Inc.; GGL Rewards, Inc.; Highlight Marketing, Inc.; Hooper Processing, Inc.; Internet Business
26 Source, Inc.; Internet Fitness, Inc.; Jet Processing, Inc.; JRB Media, Inc.; LifeStyles for Fitness, Inc.; Mist
Marketing, Inc.; Money Harvest, Inc.; Monroe Processing, Inc.; Net Business Success, Inc.; Net Commerce, Inc.;
Net Discounts, Inc.; Net Fit Trends, Inc.; Optimum Assistance, Inc.; Power Processing, Inc.; Premier Performance,
Inc.; Pro Internet Services, Inc.; Razor Processing, Inc.; Rebate Deals, Inc.; Revive Marketing, Inc.; Simcor
Marketing, Inc.; Summit Processing, Inc.; The Net Success, Inc.; Tranfirst, Inc.; Tran Voyage, Inc.; Unlimited
Processing, Inc.; and xCel Processing, Inc.

- 1 (8) failing to disclose that the positive reviews of defendants' grant and Internet-
2 based money-making opportunities were created and posted by defendants or
3 their agents; and
4 (9) charging consumers' credit cards and debited their bank accounts without
5 their authorization for defendants' Forced Upsells that were extra products
6 bundled with the products sold by defendants' marketing partners and clients.

- 7
- 8 • The Complaint also alleged that defendants violated EFTA and Regulation E by debiting
9 consumers' bank accounts on a recurring basis without obtaining written authorization
10 signed or similarly authenticated by the consumers for preauthorized electronic fund
11 transfers from their accounts, and by failing to provide these consumers with a copy of
12 the written authorization.
 - 13 • On **January 12, 2011**, the FTC filed an Emergency *Ex Parte* Motion for a Temporary
14 Restraining Order ("TRO") along with a Motion for a Preliminary Injunction ("PI") [DE
15 42].
 - 16 • On **January 13, 2011**, this Court issued a TRO that, among other things, included a
17 freeze on the assets of the 61 corporate defendants and individual defendant Jeremy
18 Johnson, in order to preserve the possibility of redress to the numerous victims of the I
19 Works Enterprise. The TRO also appointed Robb Evans of Robb Evans and Associates,
20 LLC ("Receiver") as temporary receiver over the corporate defendants and the assets of
21 Jeremy Johnson (the "Receivership Defendants").
 - 22 • On **February 10, 2011**, after extensive briefing and a full-day hearing, the Court issued a
23 PI continuing the asset freeze, receivership, and appointing Robb Evans as a permanent
24 receiver for the Receivership Defendants.
 - 25 • On **February 8, 2011**, the Receiver filed his Report of Temporary Receiver's Activities
26 [DE 127], and on **February 3, 2012**, he filed the Report of Receiver's Financial

1 Reconstruction [DE 464], which was supported by a four-volume Appendix of Exhibits
2 [DE. 465-468].

- 3 • The Receiver’s reports detail Jeremy Johnson’s transfer, without independent
4 consideration, of millions of dollars in funds and assets to: (1) his wife, Sharla Johnson;
5 (2) his parents, Kerry and Barbara Johnson; and (3) companies that Sharla, Kerry, and
6 Barbara Johnson control, or are titled in their names – Orange Cat Investments, LLC;
7 Zibby, LLC; Zibby Flight Service, LLC; KV Electric, Inc.; and the KB Family Limited
8 Partnership (collectively, the “Proposed Relief Defendants”). The Receiver’s reports and
9 evidence obtained by the FTC show that the transferred assets are traceable to the I
10 Works Enterprise, and that the Proposed Relief Defendants have no legitimate claim to
11 those assets.
12

13 **II. ARGUMENT**

14 **1. Justice Requires Granting Leave to File the Proposed Amended Complaint**

15 Rule 15(a)(2) of the Federal Rules of Civil Procedure permits amendments and provides
16 that the “court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). *See*
17 *also, Foman v. Davis*, 371 U.S. 178, 182 (U.S. 1962); *DCD Programs, Ltd., et. al. v. Leighton*,
18 833 F.2d 183, 186 (9th Cir. 1987).

19 Justice is served by allowing the FTC to file the Proposed Amended Complaint so that
20 Proposed Relief Defendant will not be unjustly enriched by ill-gotten funds and assets traceable
21 to the I Works Enterprise’s law violations. Justice is further served by allowing the FTC to seek
22 the funds and assets held by the Proposed Relief Defendants in order to increase the pool of
23 funds for potential redress to the millions of consumers victimized by the I Works Enterprise.
24
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26

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2 **2. None of the Factors That May Militate Against Allowing the FTC to**
3 **Amendment Its Complaint Exist Here**

4 The Rule's policy of favoring amendments to pleadings should be applied with "extreme
5 liberality." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981) (citing *Rosenburg Brothers*
6 *& Co. v. Arnold*, 283 F.2d 406 (9th Cir. 1960)). Courts in the Ninth Circuit generally permit
7 plaintiffs to amend their complaints unless: (1) there is undue delay in seeking leave; (2)
8 allowing amendment will prejudice the opposing party; (3) leave to amend is sought in bad faith;
9 or (4) amendment would be futile because the proposed amended complaint cannot cure
10 deficiencies in the original complaint. *DCD Programs, Ltd.*, 833 F.2d at 186; *Webb*, 655 F.2d at
11 980; *Wright v. Incline Vill. Gen. Improvement Dist.*, 597 F. Supp. 2d 1191, 1210 (D. Nev. 2009).
12 None of these factors exists here.

13 This is the FTC's first request for leave to amend, and it is submitted to the Court in
14 advance of its January 22, 2013 deadline for amending pleadings or adding parties. *See* Joint
15 Amended Discovery Plan and Order [DE 675].

16 No prejudice will result to the defendants by filing the Proposed Amended Complaint at
17 this time. Discovery has not yet closed and will remain open until April 2, 2013, for fact
18 discovery and June 21, 2013, for expert discovery [DE 675]. This leaves ample time to complete
19 any additional discovery needed. Additionally, the Proposed Amended Complaint only adds
20 relief defendants, thus should result in little, if any, additional discovery and in no way will delay
21 the resolution of this matter.

22 There is no evidence of bad faith on the part of the FTC. The Proposed Amended
23 Complaint is based on evidence obtained during ongoing discovery and is meant to seek
24 adequate relief for the consumers that the I Works Enterprise victimized. Moreover, the
25

1 Proposed Amended Complaint is not futile, as the Court has previously identified no deficiencies
2 in the original Complaint.

3 Finally, granting leave to file the Proposed Amended Complaint would serve the public's
4 interest by helping to ensure that the ill-gotten funds and assets that Jeremy Johnson gratuitously
5 transferred to the Proposed Relief Defendants go back to the consumers who rightfully owned
6 them.

7 WHEREFORE, the FTC respectfully requests that the Court issue an order granting the
8 FTC leave to file the attached Proposed Amended Complaint.

9
10 Dated: January 18, 2013

11
12 Respectfully submitted,

13 /s J. Ronald Brooke, Jr.
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CERTIFICATE SERVICE

I hereby certify that I have on January 18, 2013, caused the foregoing document to be served on the following via the ECF system:

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