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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

VISION SOLUTION MARKETING LLC, also doing business as VSM BUSINESS SERVICES, LLC, VSM GROUP, AND VSMHUB.COM, a Utah limited liability company,

VSM GROUP LLC, a Nevada limited liability company,

RYZE SERVICES, LLC, also doing business as Business Finance Pro, a Utah limited liability company,

SPECIALIZED CONSULTING SOLUTIONS LLC, a Utah limited liability company,

JARED RODABAUGH, individually and as a principal and owner of VISION SOLUTION MARKETING LLC, VSM GROUP LLC, AND RYZE SERVICES, LLC, and

Case No. 2:18-cv-00356-CW

PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE, APPOINTMENT OF RECEIVER, AND OTHER EQUITABLE RELIEF AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

JUSTIN LARSEN, individually and as a principal and owner of VISION SOLUTION MARKETING LLC, VSM GROUP LLC, RYZE SERVICES, LLC, AND SPECIALIZED CONSULTING SOLUTIONS LLC,

Defendants.

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I. INTRODUCTION AND REQUESTED RELIEF

Plaintiff Federal Trade Commission ("FTC") respectfully moves the Court for a temporary restraining order ("TRO") and other relief to immediately halt Defendants' deceptive marketing schemes to bilk consumers. For more than four years, Defendants have deceptively sold a variety of purported business development services to consumers who want to start an online business from home.

At their core, Defendants' schemes all involve false claims that consumers can make thousands of dollars a month if they purchase a program from Defendants. For example, one of Defendants' salesmen promised consumers they would make at least $3,000 to $5,000 per month if they bought a program that he claimed in a recorded sales call would ensure their success: "we don't have any students we've built the business for that have ever failed. There's just – there's literally no way to fail."[1] These claims are false. Most consumers who purchase Defendants' programs do not end up with a functional online business, earn little or no money, and end up heavily in debt. Many of the purported services Defendants offer are not provided at all, and others do little to help consumers start an online business, let alone make thousands of dollars a month. For instance, Defendants' purported "business coaching" program provides basic information about selling products on sites like eBay that is often available on the Internet for free. Similarly, Defendants' purported "corporate structuring" service consists of registering a limited liability company in Utah for every consumer who buys a program, even though nearly all of them live in other states around the country.[2] In the end, consumers who set out to make

[1] Declaration of Florence Hogan ("Hogan Decl.") Ex. W at 55-57 (FTC-VSM 303-05). Plaintiff has submitted 17 declarations with exhibits in support of this Motion, which are Bates stamped FTC-VSM 000001-001443. An index that provides the Bates range for each declaration is attached to this Motion. The index also specifies the Volume and Tab numbers of each declaration in the paper service and courtesy copies of the exhibit Appendix.

[2] *See, e.g.*, Declaration of Jean Bridge ("Bridge Decl.") ¶¶ 1, 11 (Virginia resident); Declaration of Anne Colby ("Colby Decl.") ¶¶ 1, 25 (Indiana resident); Declaration of Richard Studebaker ("Studebaker Decl.") ¶¶ 1, 21

extra money for retirement or launch a new career typically end up with little more than burdensome credit card debt from Defendants' fees. These fees can be as much as $13,995 or more for one program, and consumers often purchase more than one.

Since Defendants' deceptive schemes began around January 2014, Defendants have unlawfully taken over $8 million from consumers.[3] The victims include one individual who filed for bankruptcy after Defendants charged over twenty thousand dollars to personal credit cards they convinced her to obtain.[4] Others are retirees who have lost their savings after paying Defendants and other telemarketers for various programs pitched as necessary to start an online business.[5]

The two individual defendants, Jared Rodabaugh ("Rodabaugh") and Justin Larsen ("Larsen"), are the principals and owners of the defendant LLCs (the "Corporate Defendants"). Both are directly involved in the operation of the deceptive schemes and therefore are personally liable for them. In operating the deceptive schemes, Rodabaugh and Larsen (the "Individual Defendants"), do everything from fighting attempts by consumers to have credit card charges reversed to managing the bank accounts of the Corporate Defendants. One of them even forwards mail from a Las Vegas mailbox used by at least one of the Corporate Defendants to his house in Utah.

(Colorado resident); Hogan Decl. ¶¶ 4-13 (97% of LLCs set up by Defendants for apparent purchasers of one of their programs have principal addresses outside of Utah).

[3] Declaration of Thomas Van Wazer ("Van Wazer Decl.") ¶¶ 8-13.

[4] Declaration of Theresa Griffin-Jones ("Griffin-Jones Decl.") ¶¶ 14-15, 19, 22, 27 (filed for bankruptcy).

[5] Studebaker Decl. ¶¶ 3, 60 (retiree, dependent on social security benefits, lost his savings); Declaration of Ralph Hallock ("Hallock Dec.") ¶¶ 3,63 (retiree over 80 years old who incurred more than $100,000 in credit card charges from a number of telemarketers, including Defendants).

Requested Relief: Defendants' conduct violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as well as the Telemarketing Sales Rule, which the FTC adopted pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. To protect consumers and preserve assets for consumer redress to Defendants' victims, the FTC seeks a TRO that enjoins Defendants from selling purported business services, freezes their assets, appoints a temporary receiver over the Corporate Defendants, permits the temporary receiver and FTC staff immediate access to Defendants' business premises and records, requires Defendants to disclose their assets, and allows limited expedited discovery. The FTC also requests that the Court order Defendants to show cause why a preliminary injunction should not issue against them.

II. STATEMENT OF FACTS

A. Defendants' Deceptive Business Practices

1. The Three-Phase Sales Process

The Defendants' schemes revolve around a three-phase sales process in which consumers are continually lured into spending additional money through a variety of false or misleading claims about building an online business from home. In the first phase, consumers purchase a program on the Internet, typically for $97 or less (the "Online Offer"). These programs promise to show consumers "EXACTLY how" to start "making money online"[6] and also make false or unsubstantiated claims about how much consumers can expect to earn.[7]

Although Defendants coordinate with the sellers of the Online Offer programs, Defendants do not sell the Online Offers themselves. Instead, they purchase the contact information provided by consumers in connection with the Online Offers and use it in the second phase of the process.[8] In the second phase, Defendants call consumers and tell them that the way to launch their business is with the help of a business coach (the "Business Coaching Program").[9] These pitches, which can last for multiple hours,[10] rely on false claims about the income consumers can expect to make, the guidance they can expect to receive, and other misrepresentations about the program.[11] Defendants sell the Business Coaching Program under the name "VSM Group" for as much as $13,995 or more.[12] Rodabaugh and Larsen used the corporate defendants VSM Group LLC and Vision Solution Marketing LLC to receive consumer

[6] Declaration of John McCourt ("McCourt Decl.") Ex. B at 1 (FTC-VSM 785).
[7] *See* Section II.A.2.
[8] Van Wazer Decl. ¶ 23.
[9] Colby Decl. ¶ 8; McCourt Decl. ¶ 7.
[10] McCourt Decl. ¶ 6 (call with VSM Group lasted "approximately two hours"); Reese Decl. ¶ 4 (call with VSM Group lasted between "90 minutes to 2 hours").
[11] *See* Section II.A.3.
[12] Reese Decl. ¶¶ 8-10, Ex. B (FTC-VSM 743).

payments for the Business Coaching Program.[13] In January 2018, Larsen submitted a telemarketing registration application for a new company, defendant Specialized Consulting Solutions LLC, to sell the Business Coaching Program.[14]

In the third phase, Defendants' representatives tell consumers that they need to spend even more to launch their business and need to purchase a variety of services from Defendants in order to succeed (the "Upsell Services"). These purported upsells include: (a) specialized assistance to structure and develop a business, including assistance to incorporate the business, prepare taxes, establish merchant accounts to allow the business to accept credit card payments, and preparation of a "professional" business plan; (b) specialized assistance with and access to lenders to obtain corporate credit; and/or (c) specialized access at discounted prices to product shippers and wholesalers for an ecommerce business.[15] The Upsell Services, many of which are not ultimately provided to consumers at all, are also sold in phone calls to consumers under the names "Ryze Services" and, more recently, "VSM Business Services."[16] These phone calls, which also rely on false income claims, typically take place a few weeks after consumers purchase the Business Coaching Program.[17] Defendants' initial package of Upsell Services is sold for as much as $9,995[18] but consumers can end up paying even more for additional upsells

[13] Hogan Decl. ¶¶ 32-34; Declaration of Eric Babcock ("Babcock Decl.") ¶¶ 5-8; Van Wazer Decl. ¶ 12.
[14] Watson Decl. ¶¶ 13-14.
[15] *See, e.g.*, Colby Decl. ¶¶ 16-18 (attaching Ex. K from Defendants' representative that summarized the services offered) (FTC-VSM 630); Declaration of Jessica K. Dale ("Dale Decl.") ¶ 18 (attaching as Ex. H the same summary of services from Defendants' representative that Ms. Colby received) (FTC-VSM 38); Hogan Decl. Ex. W at 11-58 (FTC-VSM 259-306) (transcript of call Ms. Dale had with Defendants' representative (David), who falsely pretends to work for another company, in which David describes Defendants' purported Upsell Services).
[16] *See* Section II.B.4. Studebaker Decl. ¶ 11, Ex. N (FTC-VSM 954); Declaration of Lidia Dolan ("Dolan Decl.") Ex. G (FTC-VSM 881); Colby Decl. ¶ 19, Ex. M (FTC-VSM 638); Reese Decl. ¶ 14, Ex. E (FTC-VSM 749).
[17] Dolan Decl. ¶¶ 6, 9 (purchased a Business Coaching Program on August 9, 2016 and received a call about the Upsell Services on September 8, 2016); Declaration of Molly McLaughlin ("McLaughlin Decl.") ¶¶ 5, 11 (purchased a Business Coaching Program on January 14, 2016 and was contacted about the Upsell Services on February 10, 2016).
[18] Dolan Decl. ¶ 9; McLaughlin Decl. ¶ 14.

to Defendants or affiliated telemarketers.[19] Rodabaugh and Larsen used the corporate defendants Vision Solution Marketing LLC and Ryze Services LLC to receive consumer payments for these Upsell Services.[20] The chart below provides an overview of the three-phase process.

Summary of Three-Phase Sales Process

	Phase 1: Online Offer	**Phase 2: Business Coaching Program**	**Phase 3: Upsell Services**
How Marketed and Purchased	Online	Telephone	Telephone
Timing of Call With Consumer	NA	Shortly after Online Offer purchase	A few weeks after Business Coaching Program purchase
Cost	$97 or less	Up to $13,995	Up to $9,995 (initial upsell)
Entities/DBAs that Contract with Consumers	Third party entities that coordinate with Defendants	"VSM Group"[21]	• Vision Solution Marketing LLC • Ryze Services, LLC • VSM Business Services
Core Purported Services	Training materials and "step-by-step" instructions "to generate the kind of income you want" online[22]	• One-on-one business coaching • Ecommerce website	Specialized: • business structuring • tax services • help establishing merchant accounts • business plan • access to lenders • access to product shippers

When Defendants started their scheme, Defendants mainly sold Upsell Services as opposed to the Business Coaching Program. They sold the Upsell Services using contact

[19] McLaughlin Decl. ¶¶ 20-31; Colby Decl. ¶¶ 31-32, 36-38, 51, 53; Reese Decl. ¶ 18.
[20] Bridge Decl. ¶ 8, Ex. B (FTC-VSM 821) (Vision Solution Marketing); Studebaker Decl. ¶ 11, Ex. N (FTC-VSM 954) (Ryze Services); Dolan Decl. Ex. G (FTC-VSM 880) (Ryze Services).
[21] Defendants' Business Coaching Program agreements with consumers refer to "VSM Group." Colby Decl. Ex. E (FTC-VSM 597). Defendant VSM Group LLC is a Nevada LLC. "VSM Group" is also a Utah registered DBA of Defendant Vision Solution Marketing LLC. Hogan Decl. ¶¶ 20-21.
[22] McCourt Decl. Ex. B at 1 (FTC-VSM 785).

information or leads from another telemarketer that sold the Business Coaching Program, Internet Teaching & Training and Specialists, LLC ("ITT").[23] In the fall of 2016, Defendants began purchasing consumer leads from the sellers of the Online Offers and selling the Business Coaching Program.[24] Since that time, Defendants have sold both the Business Coaching Program and Upsell Services. Defendants spent over $1.8 million buying leads from the sellers of Online Offers between September 2016 and May 2017.[25]

2. The Deceptive Online Offer (Phase 1) Sets Up the Business Coaching Program Pitch (Phase 2)

The deceptive Online Offers are marketed by various entities that promote them as a way to successfully make money from home online. Using names like Home Job Source[26] or Work at Home (WAH) Institute,"[27] these entities' websites tout their programs as a way to make millions online. For example, Home Job Source's homepage tells the purported "True Story" of someone who makes $10 million a year online and whose "lessons" allegedly form the "core components" of the program for people who "want to practically guarantee their success on the Internet."[28]

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[23] Several consumers who provided declarations about the Upsell Services had previously purchased a Business Coaching Program from ITT, including Jean Bridge, Lidia Dolan, Molly McLaughlin, Richard Studebaker, and Mary Alice Wolf.

[24] Van Wazer Decl. ¶ 23. Also around this time, in the fall of 2016, one of ITT's principals made arrangements to make a recording of one of Defendants' Upsell Services sales calls, using friends who posed as consumers. Dale Decl. ¶¶ 3, 11-15. Among other things, the recording revealed that one of Defendants' representatives was pretending to work for ITT. Hogan Decl. Ex. W at 35-36 (FTC-VSM 283-84). Banking records indicate Defendants' representative was being paid through a company by Defendants at the time the recording was made. Van Wazer Decl. ¶ 22. Moreover, the representative's email signature indicates he worked for "VSM Group" as did emails from other VSM employees. Colby Decl. Exs. I, F (FTC-VSM 624, 603).

A transcript of this call and a copy of the recording are attached to Investigator Hogan's declaration as Exhibits W and X, respectively (FTC-VSM 249, 311). To protect the privacy of the participants, the transcript has been redacted, and the same portions of the call were silenced by FTC Technical Computer Forensic Examiner Richard Kaplan. Kaplan Decl. ¶¶ 11-12. The audio copy of the recording referenced in the Declaration of Jessica Dale is not silenced to obscure all of the redactions. As a result, the FTC has not submitted the audio recording referenced in Ms. Dale's declaration but can make it available to the Court or counsel, if necessary.

[25] Van Wazer Decl. ¶ 23.

[26] McCourt Decl. Ex. B (FTC-VSM 785).

[27] Colby Decl. Exs. A, B (FTC-VSM 582-84).

[28] McCourt Decl. Ex. B at 3-5 (FTC-VSM 787-90).

However, once consumers pay $97 or less for an Online Offer program, they immediately get a pitch for a Business Coaching Program that costs much more. For instance, an *introductory* email from the Work at Home Institute told consumers that getting a coach was the first thing they should do: "The first and most important step is speaking to one of our expert consultants. . . . We highly suggest you take advantage of this opportunity . . . and see if you qualify for our advanced coaching program."[29] The Home Job Source Online Offer made a similar pitch, claiming that "[c]oaching and mentoring has been the backbone behind the prosperity of millions of wealthy and mega-successful individuals."[30]

Although Online Offer programs emphasize the importance of business coaching, they also suggest that coaching is only available to a select few. Specifically, they claim that consumers need to "apply" to see if they "qualify" to take advantage of this "Elite" or "advanced" training.[31] One of the purported "Requirements to Qualify," according to one Online Offer, is financial resources.[32] These claims foreshadow Defendants' Business Coaching Program sales pitch in which Defendants pretend to conduct a qualification process in which they review a consumer's financial condition and available credit. The real purpose of this review is to determine how much Defendants can charge consumers.

Although Defendants do not actually sell the Online Offer programs, they often coordinate with those who do. For example, introductory emails from the Work at Home Institute used to indicate that coaching was "Offered by VSM Group, LLC."[33] The Work at

[29] Colby Decl. Ex. B at 1 (FTC-VSM 584).
[30] McCourt Decl. Ex. C at 9 (FTC-VSM 803). The Welcome section of Home Job Source's website touts coaching as a way to obtain success faster: "Read the next page to discover with my help how you might be able to join my **VIP Success Team and Coaching Program** to ensure your success even faster! It really is the ultimate in speeding up your learning curve." McCourt Decl. Ex. B at 5 (FTC-VSM 789) (emphasis in original).
[31] McCourt Decl. Ex. B at 6-7 (FTC-VSM 791-92), Ex. C at 9 (FTC-VSM 803); Colby Ex. B at 1 (FTC-VSM 584).
[32] McCourt Decl. Ex. C at 9 (FTC-VSM 803).
[33] Colby Decl. Ex A at 1 (FTC-VSM 582).

Home Institute program is no longer being offered, following an enforcement action brought by the FTC in the Southern District of Texas.[34]

3. Defendants' Deceptive Business Coaching Program (Phase 2)

The deceptive Business Coaching Program pitch builds on the misrepresentations by the Online Offer programs about coaching being an opportunity for only a select few. As part of a purported screening process, Defendants' representatives selling the Business Coaching Program ask consumers about their financial condition and available credit.[35] After this review, which often includes getting a spouse on the phone to discuss his/her financials, consumers are sometimes told they have been "picked" and are congratulated.[36] In truth, the purported screening process is simply a ruse to get consumers to reveal their financial status and allow Defendants to tailor their pricing to the consumer's available resources.[37]

The core misrepresentations made by Defendants in selling the Business Coaching Program revolve around false promises that Defendants have a proven method for making money online. These claims induce consumers to buy the Business Coaching Program and help Defendants downplay the thousands of dollars they charge. Defendants do this by claiming that

[34] *See* Stipulated Order for Permanent Injunction and Money Judgment, *FTC v. Bob Robinson, LLC et al.*, No. 17-CV-02411 (Dec. 7, 2017 S.D. Tex.) (permanent injunction barring defendants from selling any Business Coaching Program) (ECF No. 34).

[35] Reese Decl. ¶ 6 (the representative claimed "VSM Group was particular on who they did business with and needed to pre-screen my wife and me" and then asked about "our finances, including the current balances and limits of our credit cards"); McCourt Decl. ¶ 6 ("During the call, we were asked about our debts and our credit cards."); Watson Decl. Ex. G at FTC-VSM 496-98 (telemarketing script calls for representatives to tell consumers that they "can't work with everyone" and that they are trying to determine whether the consumer is a "good candidate" before asking extensive questions about income, expenses, debts, savings, retirement funds, and available credit on each credit card).

[36] Reese ¶ 6; Watson Decl. Ex. G at FTC-VSM 497 (telemarketing script instructs the caller to "[g]et spouse on phone now if you can," schedule another call with the couple together, or get information about the spouse's financial condition).

[37] *Compare* Colby Decl. ¶ 9 (consumer paid $6,675) *with* McCourt Decl. ¶ 7 (consumer paid $8995) *with* Declaration of Trisha Parker ("Parker Decl.") ¶ 7 (consumer paid $12,995 after being told by representative that price corresponded to a blended option between "aggressive" and "moderate" program levels) *with* Reese Decl. ¶ 10 (consumer paid $13,995).

consumers will be able to pay off any debt from the purchase quickly using revenue from their new business.

For instance, one consumer and his wife were told they would be able to "start making money right away" to pay off credit card charges for the $13,995 purchase.[38] This couple was assured that they could "start out" making up to $5,000 a month and that they "could make a lot more money" the more they worked.[39] Other consumers were told that purchasing the program would result in a six-figure annual income or that they would make $1,000 "within a few weeks."[40] Similarly, consumers have been told that buying the Business Coaching Program will allow them to "retire and live off the income from the business."[41]

Even when consumers express doubts about these claims, Defendants' representatives reassure them that they will make money. One consumer told one of Defendants' representatives that he was not good at sales, but Defendants' telemarketer told him not to worry. The representative assured him that his coach would be able to help him, just as a coach had helped a grandmother who never sold a thing before purchasing the program.[42] Likewise, when one consumer told a representative he did not know anything about websites, the representative assured him that Defendants would run his website while the consumer was trained.[43]

During the lengthy sales pitch, Defendants claim that personalized, one-on-one coaching will lead to consumers' success and that Defendants will build them or help build them a website

[38] Reese Decl. ¶ 7.
[39] Reese Decl. ¶ 7.
[40] Colby Decl. Ex. D at 2 (FTC-VSM 592) (consumer's handwritten notes of call with Defendants' representative state, "over 12 mo 6 figure income"); Colby ¶ 8; McCourt ¶ 6. *See also* Griffin-Jones Decl. ¶¶ 14 ("He offered coaching sessions that he said would make my business earn thousands of dollars per month."); Parker Decl. ¶ 8 (consumer told her goal to make $60,000 a year "was very doable").
[41] Reese Decl. ¶ 7.
[42] McCourt Decl. ¶ 7.
[43] Reese Decl. Decl. ¶ 4.

to successfully sell products.[44] Defendants claim that their program is so foolproof that the credit card charges consumers incur will not even be their own. Rather, according to Defendants, any debt from the purchase of the Business Coaching Program can be paid off so quickly that consumers will effectively be using "other people's money" or "OPM" to buy the program.[45]

The reality experienced by consumers who purchase the Business Coaching Program is, in fact, much different. The one-on-one coaching[46] turns out to mostly provide basic information about selling products on eBay or posting links on Amazon.[47] In addition, the information conveyed in the weekly 30-minute "coaching" sessions can often be obtained online from those sites for free.[48] Moreover, some consumers do not receive a website at all,[49] and others get a basic template that cannot host many products.[50] In sum, the Business Coaching Program does not teach consumers how to run an online business,[51] let alone provide them with an operational or successful one.[52]

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[44]Reese ¶ 8; McCourt ¶ 6; Colby Decl. ¶ 8, Ex. D (FTC-VSM 591-94).
[45] McCourt Decl. ¶ 6; Colby Decl. ¶ 8, Ex. D (FTC-VSM 591). This phrase also appears in scripts that Specialized Consulting Solutions LLC submitted to the Division of Consumer Protection of the Utah Department of Commerce in January 2018. Watson Decl., Ex. G at FTC-VSM 505 (instructing callers to "Go Over OPM"). The script also claims that anyone who follows the program will succeed: "If you do it right, you're going to get results." *Id.*
[46] The purported coaching for Defendants' Business Coaching Program is provided by Learning Systems, LLC. Babcock Decl. Ex. F (FTC-VSM 554).
[47] Colby Decl. ¶ 68 ("I paid for coaching sessions and programs that were useless, that basically taught me how to post links to Amazon, and only instructed me to sell items from my home on eBay."); McCourt Decl. ¶ 9; Reese ¶ 21.
[48] McCourt Decl. ¶ 9 ("All the coaching sessions we received related to selling items on eBay. I found the coaching sessions about eBay to be very basic. I could have received the same information from eBay for free.").
[49] McCourt Decl. ¶ 11 ("We never received a website or any software as promised.").
[50] Reese Decl. ¶ 20 (Two months after purchasing the program, "I accessed the website and was disappointed because it appeared to be just a basic template website that limited the number of products I could place or sell on the site.")
[51] Reese Decl. ¶ 21 ("The training I received was limited to once a week and did not teach me how to run an online business."); Reese Ex. L (FTC-VSM 777) ("We've learned nothing about running an online business and now we're out thousands of dollars.").
[52] Reese Decl. ¶ 29 ("I made no money from the VSM Group program. Nor did I ever obtain an operational ecommerce business.").

As a result, most consumers never even come close to making back the thousands they invested in the Business Coaching Program[53] and are often saddled with credit card debt. As a consumer who spent over $20,000 on the Corporate Defendants' programs put it, "My credit was ruined as a result of this experience."[54] Another consumer, who wanted to make extra money as her husband neared retirement, paid Defendants nearly $14,000 and "maxed out" her credit cards after buying the Business Coaching Program, the Upsell Services, and others.[55] When she sought a refund in September 2017 following an attempt by an affiliated company to transfer her husband's retirement account, the Corporate Defendants only offered her $5,000 of the $14,000 she paid for their programs.[56] In another example, a salesperson referred a consumer to a company that opened six credit cards in her name, which the Corporate Defendants then used to charge over $22,000 for the Business Coaching Program and the Upsell Services.[57] The consumer declared bankruptcy in late 2017.[58]

4. Defendants' Upsell Services (Phase 3)

Despite assurances from Defendants' representatives that the Business Coaching Program alone will enable consumers to develop a successful business, consumers who buy that program are soon told that they need to spend more if they want to be successful in ecommerce. Within a few weeks of starting their Business Coaching Program, consumers get calls from Defendants' representatives, who often claim that the Business Coaching Program is merely educational and

[53] Colby Decl. ¶ 67 (consumer only sold $150 worth of items from her home on eBay); McCourt Decl. ¶ 11 (consumer only sold $17 worth of makeup on eBay); Reese ¶ 29 ("I made no money from the VSM Group program."); Parker Decl. ¶ (consumer paid over $40,000 to Defendants and other telemarketers and worked "almost around the clock, over 70 hours a week, on my online business" during a six-month period, and only made $40 from selling items on eBay and "never made a sale from [her] online business").
[54] Reese Decl. ¶ 29.
[55] Colby Decl. ¶ 3, 26, 67.
[56] Colby Decl. ¶¶ 44-51, 63, 67.
[57] Griffin-Jones Decl. ¶¶ 13-22.
[58] Griffin-Jones Decl. ¶ 27.

that they need to spend more on the Upsell Services to build a business.[59] One of the Defendants' main sales representatives went so far as to claim that consumers should buy the Upsell Services because they would not make money using a Business Coaching Program. In a recorded Upsell Services sales call, this salesman said consumers who bought the Business Coaching Program from ITT are "stuck just listing things on eBay all the time. . . . Which isn't going to make anybody any money."[60] The salesman went on to pitch the purchase of purported Upsell Services, such as marketing, tax preparation, and other services, as a one-stop shop: "what we do here is actually build the entire business."[61]

a. Income Claims About the Upsell Services

As with the Business Coaching Program, Defendants misrepresent the earnings consumers can expect if they purchase the Upsell Services. Defendants' representatives frequently tell consumers they will make about $3,000 to $5,000 a month if they buy the Upsell Services.[62] Not only do consumers recall these claims being made, they also appear in contemporaneous notes taken by consumers[63] and a recording of one of the Upsell Services sales pitches.[64] In the recording, which was made in November 2016, Defendants' salesman characterized making $3,000 to $5,000 a month as essentially the minimum consumers should expect to make:

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[59] Hogan Decl. Ex. W at 36 (FTC-VSM 284). One of the Upsell Services sales representatives gave consumers a two column document and distinguished between the "Education" offered by the Business Coaching Program in the left-hand column and the purported "Business Services" offered as part of the Upsell Services program. Colby Decl. Ex. J (FTC-VSM 267); McLaughlin Ex. D (FTC-VSM 1069); Dale Decl. Ex. F (FTC-VSM 32).
[60] Hogan Decl. Ex. W at 36 (FTC-VSM 284).
[61] Hogan Decl. Ex. W at 36-37 (FTC-VSM 284-85).
[62] Dolan Decl. ¶ 9; Colby Decl. ¶ 18. Others recall similar claims, such as being promised they could make $5,000 or more a month about two months after purchasing the Upsell Services. Bridge Decl. ¶ 8. In some cases, consumers were told they would make back the amount they invested in a short period of time, thereby making a similar claim. Wolf Decl. ¶¶ 7-8 (consumer was told she could make back the coaching and upsell purchases totaling $12,700 in about three months).
[63] Dolan Decl. Ex. B (FTC-VSM 844) (consumer's handwritten notes of Upsell Services sales call state, "3-5000/month income"); Colby Decl. Ex. L at 2 (FTC-VSM 633) (consumer's handwritten notes of Upsell Services sales call state, "get business built 100% = income $3000-5000").
[64] Hogan Decl. Ex. W at 55-56 (FTC-VSM 303-04.

> 2017 is where you'll generate income on a month-to-month basis. And so what's nice about the design of this is that the students that we built the business for, that **the expected range of business revenue once the business is constructed is between 3-and 5,000 a month.** That's the expected range. Now, certainly, people have done more than that, but it's almost impossible to do less than that because you're going to have the product and the help that you need to sell the product to generate the sales.[65]

The salesman went on to make additional claims about the Upsell Services being foolproof:

> The other nice thing about this, we don't have any students we've built the business for that have ever failed. There's just – there's literally no way to fail.[66]

In reality, as described further below, Defendants provided little more than a limited liability company registered in Utah and further set up consumers to spend more on building a business.

b. The Purported Upsell Services

In the Upsell Services sales calls, Defendants' representatives tell consumers that deciding how to form their business is critical. They stress the tax and personal liability implications of decisions about how to "structure" the business and encourage consumers to rely on Defendants' expertise.[67] Consumers are told Defendants have expertise in tax matters and that consumers can avoid missteps by relying on tax "prep and readiness" services offered by Defendants.[68] Defendants also claim to be able to provide marketing services and a "professional" marketing plan and offer those services in their package, along with help getting merchant accounts, which allow businesses to accept credit and debit card payments.[69]

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[65] *Id.* (emphasis added).
[66] Hogan Decl. Ex. W at 57 (FTC-VSM 305).
[67] Hogan Decl. Ex. W at 46-49 (FTC-VSM 294-297).
[68] Hogan Decl. Ex. W at 47-48 (FTC-VSM 394-96); Dale Decl. Ex. H (FTC-VSM 38) (referring to tax "prep and readiness"); Colby Decl. Ex. K (FTC-VSM 627) (same).
[69] Hogan Decl. Ex. W at 50-53, 17-19 (FTC-VSM 398-301); Dale Decl. Ex. H (FTC-VSM 38) (referring to "Professional Business Plan"); Colby Decl. Ex. K (FTC-VSM 627) (same); Dolan Decl. Ex. B (FTC-VSM 844) (consumer's handwritten notes of Upsell Services sales call refer to "Professional" business plan).

Two of the purported Upsell Services are pitched using claims that Defendants have special relationships with third parties that will help consumers. One of these purported services is access to corporate credit, which Defendants go to great lengths to distinguish from personal credit.[70] Defendants' representatives claim that "for each and every student that we build the business for, . . . their attachment to us gives them access to lending."[71] In essence, Defendants claim to be able to "back door" a business loan for businesses that are just getting started.[72] Similarly, Defendants claim they have special relationships with drop shippers, which ship products to online customers of a business so that the business does not physically hold inventory. Defendants claim they have the "right relationships" with drop shippers that will save consumers time and money.[73]

c. The Reality

Unfortunately for the consumers who purchase the Upsell Services, Defendants' promises are little more than that. Instead of conducting an analysis of how to "structure" their businesses, the consumers who purchase the Upsell Services all get the same thing – a limited liability company registered in Utah. Defendants have registered hundreds of LLCs in Utah even though nearly all of their customers are individuals who reside in other states across the country.[74] Defendants, who created two Utah commercial registered agents for this purpose,[75]

[70] Hogan Decl. Ex. W at 29-33 (FTC-VSM 277-81).
[71] Hogan Decl. Ex. W at 34-35 (FTC-VSM 283).
[72] Hogan Decl. Ex. W at 27 (FTC-VSM 275) ("So essentially what we help people do is to establish or back door a business loan so that the expenses that they incur for education and business expenses are paid for by the business itself, which allows the business to occupy its own debt and pay its own debt down through its own income, not from income coming in from your car business or any other resource.").
[73] Hogan Decl. Ex. W at 17, 45 (FTC-VSM 265, 293) (Defendants' salesman claims they can "get around" drop shipping fees "if you have the right relationships").
[74] Hogan Decl. ¶¶ 4-13 (97% of LLCs set up by Defendants for apparent purchasers of their Upsell Services have principal addresses outside of Utah).
[75] Hogan Decl. ¶¶ 6, 9, 11.

register LLCs in Utah for consumers even when consumers request that they be created where they live.[76]

Defendants also do not conduct any analysis of consumers' tax needs and most obtain no "prep and readiness" services other than the creation of the LLC.[77] Similarly, Defendants regularly fail to provide consumers with help getting merchant accounts or a marketing plan, let alone a "professional" one.[78] When one consumer complained directly to Defendant Rodabaugh about the lack of marketing assistance, he referred her to another employee who told her to get additional credit to pay more for marketing services.[79]

The purported corporate credit assistance is far from a "back door" business loan. Rather, Defendants simply connect consumers with companies that take out numerous credit cards in a consumer's name in exchange for a hefty fee.[80] The consumer ends up with significant credit card debt for which they are personally liable as opposed to corporate credit that Defendants promise in their pitch.[81] Similarly, consumers still pay substantial fees to drop shippers and often end up having to research them on their own.[82]

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[76] McLaughlin Decl. ¶ 17 (consumer requested entity be created in Illinois where she lived but she got an LLC in Utah instead); Hallock Decl. ¶ 15 (elderly consumer did not understand why company name was reserved in Utah instead of Idaho where he lives).
[77] Reese Decl. ¶ 26, Ex. L (FTC-VSM 777); Hallock Decl. ¶¶ 9, 57-58, Exs. E, EE (FTC-VSM 1191, 1306).
[78] Reese Decl. ¶ 26, Ex. L (FTC-VSM 777); Bridge Decl. ¶¶ 8, 20; Studebaker Decl. ¶¶ 21, 39, Exs. M, AA (FTC-VSM 950, 1014)
[79] Bridge Decl. ¶¶ 8, 20.
[80] Colby Decl. ¶¶ 8, 26, 41, Ex. R (FTC-VSM 653-664) (Defendants' salesman referred consumer to company that took out seven lines of credit in her name with a limit of over $34,000 and charged her over $2,800 for the service). Studebaker Decl. ¶¶ 33-36 (after Defendant Rodabaugh encouraged consumer to apply for business credit, the salesman Rodabaugh connected consumer with suggested the consumer apply for "personal credit first").
[81] Colby Decl. ¶¶ 8, 41, Ex. R (FTC-VSM 654).
[82] Colby Decl. ¶¶ 36-37 (consumer paid over $6,000 for drop shipping service); Reese Decl. ¶ 18, Ex. I (FTC-VSM 762-66), ¶ 21 (consumer paid $6,000 to same drop shipping company that merely provided list of drop shippers; consumer called over 50 drop shippers on the list "but all would either not ship to a 3rd party or wanted to charge me an additional upfront fee").

Purchasers of the Upsell Services typically are unable to generate regular revenue, pay off the cost of the Upsell Services, or develop an operational business.[83] One consumer, who primarily lived on Social Security benefits, did not make any sales but ended up with nearly $7,000 in credit card debt from his purchase of the Upsell Services.[84] Another consumer made no sales and eventually had to choose between paying credit card bills and paying her rent.[85]

These experiences are consistent with corporate registration records from the Utah Department of Commerce's Division of Corporations. These records show that the vast majority of LLCs that Defendants create for consumers do not exist for more than one year.

Of the 556 LLCs that appear to have been created for customers from October 2013 to November 2016, 75.5 percent of them had an expiration date that was one year after the issue date.[86] Overall, 84.7 percent of the 556 LLCs were either "Expired" or "Delinquent" as of late 2017 when records were provided by the Division of Corporations to the FTC.[87] This is consistent with the experiences of the consumer declarants, none of whom developed an operational business and therefore had no need to maintain an active LLC.[88]

[83] Colby Decl. ¶ 44-49, 67 (consumer only sold $150 worth of merchandise on eBay after incurring $28,000 in credit card charges and being asked to transfer retirement savings to a self-directed IRA account.); Reese Decl. ¶ 29 (consumer made no money and did not develop operational business); Bridge Decl. ¶ 24 ("my online business never materialized. . . . and the only thing I got out of this deal was credit card bills."); Dolan Decl. ¶ 23 ("purchasing these programs [including Defendants' Upsell Services] did not help me earn any money").
[84] Studebaker Decl. ¶¶ 3, 21, 60.
[85] McLaughlin Decl. ¶ 46.
[86] Hogan Decl. ¶¶ 4-15.
[87] Hogan Decl. ¶ 15. While there are some LLCs created by Defendants for consumers that are classified as "Active" by the Division of Corporations, that does not mean they are functioning businesses. For example, at least one LLC classified as active was created for a consumer declarant who never was able to create a functioning business. Hogan Decl. ¶ 16.
[88] *See* Note 83. The first annual report of a Utah LLC is due one year after the LLC is created. Utah Code § 48-3a-212(3)(a).

B. The Defendants

1. Defendants' Scheme from 2014 through 2017

From at least 2014 through 2017, Defendants' telemarketing schemes have been perpetuated through three of the Corporate Defendants: Vision Solution Marketing LLC ("Vision Solution Marketing"); Ryze Services, LLC ("Ryze Services"); and VSM Group LLC ("VSM Group"). Each of these Corporate Defendants received payments from consumers for Defendants' sales of the Business Coaching Program and/or the Upsell Services.[89]

Defendants Rodabaugh and Larsen have both been the principals, or members/managers of both Vision Solution Marketing and Ryze Services.[90] In addition, Defendant Larsen is a manager of VSM Group, while Defendant Rodabaugh filed a business name registration as the "applicant/owner" of VSM Group.[91] The Individual Defendants have been signatories on each of these three Corporate Defendants' bank accounts, and both Individual Defendants have received funds from Vision Solution Marketing and Ryze Services.[92]

Both Individual Defendants were involved in securing merchant accounts for the Corporate Defendants to process consumer payments for the Business Coaching Program and the Upsell Services.[93] The merchant accounts that each Individual Defendant secured incurred chargeback ratios that exceeded the 1% rate that is generally considered excessive by the credit

[89] Van Wazer Decl. ¶ 12, Table 2. Vision Solution Marketing has received consumer payments for both the Business Coaching Program and the Upsell Services, while VSM Group has received consumer payments for the Business Coaching Program and Ryze Services has received payments for the Upsell Services, *see* Notes 13, 20-21.
[90] Hogan Decl. ¶¶ 17-22.
[91] Hogan Decl. ¶¶ 20-21.
[92] Hogan Decl. ¶ 28, Ex. L at FTC-VSM 174-97; Van Wazer Dec. ¶ 20, Table 3.
[93] Hogan Decl. ¶¶ 30-39 (Larsen's February 2017 application for VSM Group); Babcock Decl. ¶¶ 4-9 (Rodabaugh's August 2013 application for Vision Solution Marketing). Rodabaugh and Larsen also submitted applications in March 2017 for additional merchant accounts for Vision Solution Marketing and VSM Group, respectively. Although their applications referred to different website domains, VSMTraining.com and VSMLibrary.com, the website content was the same. *Compare* Hogan Decl. ¶ 38 & Exhibit U (at FTC-VSM 237) *with* Babcock Decl. ¶¶ 10-11 & Exhibit D (at FTC-VSM 551).

card associations.[94] Rodabaugh himself directly interacted with consumers by phone and email, including consumers who complained, and contested chargeback requests in which consumers sought to reverse their credit card charges.[95] Likewise, Larsen played a role in credit card disputes with customers and was the contact person for a VSM Group payment processing account that had a significant volume of chargebacks.[96]

2. Defendants' Scheme Transitions to a Different Name in 2018

In January 2018, Larsen submitted a telemarketing registration application for the fourth Corporate Defendant, Specialized Consulting Solutions LLC ("Specialized Consulting Solutions").[97] The application, which sought approval to conduct telemarketing in Utah, contains scripts for the Business Coaching Program that reference the VSMLibary.com domain used by VSM Group.[98]

According to the Specialized Consulting Solutions telemarketing application, Vision Solution Marketing stopped telemarketing in January 2018,[99] and it was formally dissolved (along with Ryze Services) by Rodabaugh in early 2018.[100] The dissolution of Vision Solution

[94] Babcock Decl. ¶¶ 4, 6 (Vision Solution Marketing account Rodabaugh applied for processed $411,939 in sales and $42,372 in chargebacks, equaling a chargeback ratio over 10%); Hogan Dec. ¶ 33 (VSM Group account processed $2,332,334 in sales and $67,780 in chargebacks, equaling a chargeback ratio of 2.90%). *See FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1075 (C.D. Cal. 2012) (unpublished) (finding the average credit card chargeback rate is 0.2% and companies with rates over 1% are subject to monitoring by Visa), *aff'd in relevant part*, 815 F.3d 593 (9th Cir. 2016).

[95] Studebaker Decl. ¶¶ 19-20, 28, 33, 39, Ex. AA (FTC-VSM 1014) (Rodabaugh called consumer and set up appointment with telemarketer about Upsell Services); Bridge Decl. ¶ 20 (consumer complained to Rodabaugh about the lack of marketing assistance and he referred her to someone else); Reese Decl. ¶¶ 26-27, Ex. L (FTC-VSM 777) (consumer complained to Rodabaugh); McLaughlin Decl. ¶ 12, Ex. E (FTC-VSM 1071) (introductory email refers to Rodabaugh as "Client Relations Manager"); Babcock Decl. ¶ 7, Ex. E (FTC-VSM 540) (Rodabaugh responded to payment processor's email about consumers' chargeback requests).

[96] Hogan Decl. ¶¶ 32-34, Exs. R, S (FTC-VSM 216, 222).

[97] Watson Decl. ¶¶ 13-14.

[98] Watson Decl. ¶¶ 13-14, Ex. G at FTC-VSM 524); Hogan Decl. ¶¶ 37-38, Ex. U at FTC-VSM 234-44).

[99] Watson Decl. Ex. G at FTC-VSM 526.

[100] Hogan Decl. ¶ 17, Ex. C at FTC-VSM 119.

Marketing occurred less than a month after the FTC filed a complaint and stipulated judgment in the District of Nevada against ITT, which used to provide consumer leads to Defendants.[101]

Larsen is a signatory on the Specialized Consulting Solutions bank account.[102] Nearly all of the initial deposits into the Specialized Consulting Solutions bank account came from a VSM Group account.[103] On January 5, 2018, the day Vision Solution Marketing was dissolved, Specialized Consulting Solutions started paying people who worked for VSM Group.[104] In addition, Specialized Consulting Solutions paid rent for the same office suite previously occupied by Vision Solution Marketing.[105]

III. ARGUMENT

A. The FTC Act Authorizes the Requested Relief

The FTC is an independent agency of the United States government created by the FTC Act, 15 U.S.C. § 41 *et seq.* The FTC enforces Section 5(a) of the FTC Act, which prohibits "unfair and deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a). The FTC also enforces its Telemarketing Sales Rule ("TSR"), which prohibits deceptive and abusive telemarketing acts or practices. *See* 16 C.F.R. Part 310. "Any violation of the TSR is deemed a 'deceptive act or practice' in violation of Section 5(a) of the FTC Act." *FTC v. Med. Billers Network, Inc.*, 543 F. Supp. 2d 283, 305 (S.D.N.Y. 2008) (citing 15 U.S.C. § 6102(c)).

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[101] *See* Complaint, *FTC v. Internet Teaching and Training Specialists, LLC, et al.*, No. 17-CV-3047 (D. Nev. Dec. 12, 2017) (ECF No. 1). The complaint was resolved through a Stipulated Order. *See Id.* (ECF No. 8). As noted above, several consumers who provided declarations about the Upsell Services had previously purchased a Business Coaching Program from ITT, including Jean Bridge, Lidia Dolan, Molly McLaughlin, Richard Studebaker, and Mary Alice Wolf.

[102] Hogan Decl. ¶ 28, Ex. L at FTC-VSM 198.

[103] Van Wazer Decl. ¶ 17 (over 87% of funds into Specialized Consulting Solutions account in January and February 2018 came from VSM Group).

[104] Hogan Decl. ¶ 29, Ex. M at FTC-VSM 200-01; Colby Decl. ¶¶ 8, 62 (Sullivan and Watters); McCourt Decl. ¶ 6 (Bills); Reese Decl. ¶ 4 (Bills); Hogan Decl. ¶ 17, Ex. C. at FTC-VSM 119.

[105] Hogan Decl. ¶ 29, Ex. M at FTC-VSM 202, 204 (checks issued in January and February 2018 with "rent for 14193 Minuteman Drive Suite 200" written on the memo lines).

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), gives the Court authority to issue permanent injunctive relief to enjoin practices that violate any law enforced by the FTC and "any ancillary relief necessary to accomplish complete justice." *FTC v. Commerce Planet, Inc.*, 815 F.3d 593, 598 (9th Cir. 2016). Therefore, courts may grant relief including, among other remedies, a temporary restraining order, a preliminary injunction, an asset freeze, and the appointment of a receiver. *See FTC v. Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1203 n.6 (10th Cir. 2005) ("[Section] 13(b)'s grant of authority to provide injunctive relief carries with it the full range of equitable remedies."); *FTC v. IAB Mktg. Assocs., LP*, 746 F.3d 1228, 1230 (11th Cir. 2014) (affirming preliminary injunction with asset freeze based on violations of the FTC Act). As a result, District Courts in the Tenth Circuit have granted injunctive relief similar to that requested here. *See FTC v. Skybiz.com, Inc.*, No. 01-CV-396, 2001 WL 1673645, at *12 (N.D. Okla. Aug. 31, 2001) (unpublished) (granting preliminary injunction, including asset freeze, and appointing a receiver), *aff'd* 57 Fed. Appx. 374, 378 (10th Cir. 2003); *FTC v. Your Yellow Book, Inc.*, No. 14-CV-786, 2014 WL 4187012, at *8 (W.D. Okla. Aug. 21, 2014) (unpublished) (granting preliminary injunction and asset freeze following entry of a TRO).

B. A TRO and Preliminary Injunction are Appropriate and Necessary

1. The Standard for Relief

In determining whether to grant preliminary relief under Section 13(b), courts must "(1) determine the likelihood that the FTC will ultimately succeed on the merits and (2) balance the equities." *FTC v. Skybiz.com*, 2001 WL 1673645, at *8 (citing *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988)). Unlike traditional actions for an injunction, in cases where, as here, Congress has expressly provided for injunctive relief against those who violate a statutory prohibition, irreparable harm is presumed and need not be shown. *See Mical Commc'ns, Inc. v. Sprint Telemedia, Inc.*, 1 F.3d 1031, 1035-36 (10th Cir. 1993); *FTC*

v. World Wide Factors, Ltd., 882 F.2d 344, 347 (9th Cir. 1989). Since irreparable harm is presumed, the district court "need only find some chance of probable success on the merits." *FTC v. Skybiz.com*, 2001 WL 1673645, at *8 (citing *FTC v. World Wide Factors*, 882 F.2d at 347). *See also FTC v. Beatrice Foods Co.*, 587 F.2d 1225, 1229 (D.C. Cir. 1978).

2. The FTC is Likely to Succeed on the Merits

a. Defendants Violated Section 5 of the FTC Act

Section 5 of the FTC Act prohibits "deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a). An act or practice is deceptive "if it entails a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances." *FTC v. LoanPointe, LLC*, 526 Fed. Appx. at 700 (unpublished); *FTC v. Freecom Commc'ns*, 401 F.3d at 1203 (FTC must show there were "material representations *likely to mislead* ordinary consumers to their detriment") (emphasis in original); *FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009).

A representation is likely to mislead consumers if (1) the express or implied message conveyed is false, or (2) the maker of the message "lacked a reasonable basis for asserting that the message was true." *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1096 (9th Cir. 1999). "Where the [makers] lack adequate substantiation evidence, they necessarily lack any reasonable basis for their claims." *FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 8 (1st Cir. 2010). In determining whether a representation is likely to mislead consumers, courts consider the overall "net impression" it creates. *FTC v. Stefanchik*, 559 F.3d at 928; *FTC v. Freecom Commc'ns*, 401 F.3d at 1202 n.5 (consumer protection laws exist to protect consumers making purchasing decisions based on their "general impressions"). Claims of "potential" or "projected" earnings or rewards imply that such earnings are representative of what many consumers have achieved. *See FTC. v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000).

A representation, omission, or practice is material if it "involves information that is important to consumers and, hence likely to affect their choice of, or conduct regarding, a product." *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006). Express claims and deliberately made implied claims are presumed to be material, as are claims that go to the central characteristics of a product or service. *FTC v. Pantron I*, 33 F.3d at 1095-96. Courts have recognized that misrepresentations about "anticipated income" from business opportunities are "generally" material since they "strike at the heart of a consumer's purchasing decision." *FTC v. Freecom Commc'ns*, 401 F.3d at 1203.

i. Defendants Misrepresent Likely Earnings

As described above, Defendants' schemes rely on substantial misrepresentations about the likely income consumers can generate if they purchase the Business Coaching Program or the Upsell Services.[106] Defendants induce consumers to purchase these programs by falsely telling consumers on the phone that they will make thousands of dollars a month with these programs. Instead of earning thousands of dollars a month, consumers typically find themselves in debt and without a functioning business.[107] Thus, Defendants' earnings claims are false or unsubstantiated, and they are both likely to deceive and material to consumers. "Courts consistently conclude that misrepresentations regarding income potential are material and violate the FTC Act." *FTC v. Vemma Nutrition Co.*, No. 15-CV-01578, 2015 WL 11118111, at *5 (D. Ariz. Sept. 18, 2015) (unpublished); *see also FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d at 529 ("representations regarding the profit potential of a business opportunity are important to consumers, and therefore such are material misrepresentations in violation of Section 5"). To the extent there is fine print or subsequent disclaimers to the contrary, such disclaimers do not undo

[106] *See* Sections II.A.3, II.A.4.
[107] *Id.*

the effect of Defendants' misrepresentations. *FTC v. Freecom Commc'ns*, 401 F.3d at 1202 n.5 (consumer protection laws exist to protect consumers making purchasing decisions based on their "general impressions"); *FTC v. Minuteman Press, Inc.*, 53 F. Supp. 2d 248, 258 (E.D.N.Y. 1998) (finding Section 5(a) liability for "false gross sales and profitability claims" to prospective franchisees despite disclaimers in contracts with franchisees). Accordingly, the FTC is likely to prevail on Count One of its complaint.

ii. Defendants Misrepresent the Business Coaching Program and Upsell Services and Their Alleged Need for Financial Information

The FTC is also likely to prevail on its claims regarding Defendants' other misrepresentations. As described in detail above, Defendants provide consumers with basic information that could be obtained online as opposed to the personalized business coaching they promise.[108] They often fail to provide functioning ecommerce websites, and they induce consumers to purchase the Business Coaching Program by falsely claiming it is only open to select, qualified applicants.[109] This misrepresentation is coupled with a request for personal, financial information from the applicants to determine how much consumers can be charged for the Business Coaching Program.[110]

With respect to the Upsell Services, several of them are often not provided at all, such as marketing plans, tax services, and help establishing merchant accounts.[111] The purported specialized assistance with corporate credit and drop shippers leads consumers to incur further *personal* credit card debt and pay substantial sums for drop shipping services that often consist of lists of drop shippers.[112]

[108] *See* Notes 47-48.
[109] *See* Notes 49-50, 35-37.
[110] *See* Notes 35-37.
[111] *See* Notes 77-79.
[112] *See* Notes 80-82.

Defendants' claims about the nature of the Business Coaching Program and Upsell Services are false and also material in that they are express and go to the central characteristics of the products and services they are selling. *See FTC v. Pantron I*, 33 F.3d at 1095-96. Not surprisingly, courts have found FTC Act violations where defendants failed to deliver a product at all or failed to deliver specialized services. *See FTC v. Bay Area Bus. Council, Inc.*, No. 02-CV-5762, 2004 WL 769388, at *11 (N.D. Ill. Apr. 9, 2004) (unpublished) (granting summary judgment against "Defendants [who] sold a product and failed to deliver that product in violation of the FTC Act"); *FTC v. Career Assistance Planning, Inc.*, No. 96-CV-2187, 1996 WL 929696, at *2-3 (N.D. Ga. Sept. 19, 1996) (unpublished) (granting summary judgment against principals of company that promised individualized scholarship information but delivered only generalized and often outdated scholarship lists that were not tailored to consumers' particular qualifications and interests). Accordingly, the FTC is likely to prevail on Counts Two, Three, and Four of its complaint.

b. Defendants Violated the Telemarketing Sales Rule (TSR)

In 1994, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act. 15 U.S.C. § 6101 *et seq*. The FTC then promulgated the TSR, 16 C.F.R. Part 310, which prohibits various deceptive telemarketing practices. *See* 16 C.F.R. § 310.3. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15, U.S.C. § 45(a).

Defendants are "sellers" and "telemarketers" engaged in "telemarketing" as defined by the TSR, 16 C.F.R. §§ 310.2(dd), (ff), and (gg). Defendants' Business Coaching Program and Upsell Services are "Investment Opportunit[ies]" under the TSR that are sold with

representations about "past, present, or future income, profit, or appreciation." 16 C.F.R. § 310.2(s). The TSR prohibits sellers and telemarketers from "[m]isrepresenting, directly or by implication, in the sale of goods or services" both of the following:

- "[a]ny material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability." 16 C.F.R. § 310.3(a)(2)(vi)
- "[a]ny material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer." 16 C.F.R. § 310.3(a)(2)(iii)

As discussed above, Defendants have made numerous misrepresentations about the earnings potential and profitability of the Business Coaching Program and the Upsell Services, along with misrepresentations about the central characteristics of those programs. As a result, the FTC is likely to prevail on Counts Five and Six of its complaint.

3. The Balance of Equities Favors Preliminary Injunctive Relief

In this case, there is a compelling public interest in halting Defendants' schemes to illegally take money from individuals seeking to build an online business. In addition, injunctive relief is critical to ensuring there are assets available to allow for redress for Defendants' victims, who lost thousands or tens of thousands of dollars. In contrast, Defendants have no legitimate interest in continuing to illegally take money from consumers. *See FTC v. World Wide Factors*, 882 F.2d at 347 (upholding district court finding that public interest outweighed hardship from requiring defendants to "comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment") (internal quotes omitted). As a result, the public interest, which is given greater weight in balancing the equities, far outweighs Defendants' interests in any event. *See FTC v. Skybiz.com*, 2001 WL 1673645, at *8 ("When a district court balances the hardships of the public interest against a private interest, the public

interest should receive greater weight.") (citing *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1236 (9th Cir. 1999)); *FTC v. World Travel Vacation Brokers*, 861 F.2d at 1029 (same).

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

"Where one or more corporate entities operate as a common enterprise, each may be held liable for the deceptive acts and practices of the others." *FTC v. LoanPointe, LLC*, No. 10-CV-225, 2011 WL 4348304, at *10 (D. Utah Sept. 16, 2011) (unpublished), *aff'd* 526 Fed. Appx 696 (10th Cir. May 8, 2013). *See also FTC v. Network Servs., Depot, Inc.*, 617 F.3d 1127, 1143 (9th Cir. 2010). To determine whether a common enterprise exists, courts look at a variety of factors, including whether there is common ownership and control, common employees, comingled funds, a sharing of resources, and unified advertising. *See FTC v. Network Servs. Depot,*, 617 F.3d at 1143; *FTC v. LoanPointe*, 2011 WL 4348304, at *10; *CFTC v. Wall Street Underground, Inc.*, 281 F. Supp. 2d 1260, 1271 (D. Kan. 2003); s*ee also Del. Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964) (where "the same individuals were transacting an integrated business through a maze of interrelated companies . . . the pattern and frame-work of the whole enterprise must be taken into consideration" and the companies were liable as a joint enterprise).

In this case, the Corporate Defendants were or are owned and controlled by two people, who are the Individual Defendants.[113] These two individuals, either alone or together, were or are the formal members of all of the Corporate Defendants, and they control all of the Corporate Defendants' bank accounts.[114] The same two people applied for merchant accounts to process payments for these entities, and they both submitted telemarketing applications for the Corporate Defendants to sell the Business Coaching Program and Upsell Services.[115] Three of the entities

[113] *See* Notes 90-96.
[114] *See* Notes 90-92.
[115] *See* Note 93; Watson Decl. ¶¶ 5, 11, 13.

have purchased consumer leads from the same source,[116] and the LLCs regularly transfer and co-mingle funds, including those used to pay employees.[117] Some of the advertising on the Internet for the entities is identical and uses the same stock photo and text.[118]

In addition, Defendants obscured which entity consumers were interacting with by, for instance, using "VSM Group" in their agreements with consumers, which could be VSM Group LLC or a DBA of Vision Solution Marketing.[119] They also intentionally indicated that the entity Vision Solution Marketing, which contacted consumers about the Upsell Services, was part of the same company that sold the Business Coaching Program ("VSM Group").[120] Therefore, in interacting with consumers and in interacting with each other, the Corporate Defendants operate as a single, common enterprise.

D. The Individual Defendants are Personally Liable

To obtain injunctive and monetary relief against individuals for injury to consumers resulting from a company's conduct, the FTC must establish that the individual (1) participated directly in the unlawful acts or practices or had authority to control them, and (2) had some knowledge, as defined below, of those acts or practices. *FTC v. Freecom Commc'ns*, 401 F.3d at 1204, 1207; *FTC v. Stefanchik*, 559 F.3d at 931. With respect to control, status as a corporate officer or active involvement in the business can be sufficient to establish authority to control unlawful acts or practices. *See FTC v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1080 (C.D. Cal. 2012) (citing *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989)). In addition, active involvement in a business is probative of control. *FTC v. Am. Standard*

[116] Van Wazer Decl. ¶ 8.
[117] Van Wazer Decl. ¶¶ 14-17; *see* Note 104.
[118] Babcock Decl. ¶¶ 10-12, Ex. E at FTC-VSM 551; Hogan Decl. ¶¶ 40-41, Ex. V at FTC-VSM 247.
[119] *See* Note 21.
[120] See Colby Decl. ¶ 10, Ex. F (FTC-VSM 603) Parker Decl. ¶ 13 (representative from Vision Solution Marketing told consumer he was with "VSM," and consumer "believed VSM was related to VSM Group because of the similarity in the business names and the way the programs were sold" to her).

Credit Sys., Inc., 874 F. Supp. 1080, 1089 (C.D. Cal. 1994) ("Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy").

The knowledge requirement does not require a showing of intent to defraud. *See FTC v. Freecom Commc'ns*, 401 F.3d at 1207 (citing *FTC v. Amy Travel Serv.*, 875 F.2d at 574). Rather, the FTC needs to show an individual had or should have had knowledge or awareness of the misrepresentations. *Id.* This burden can be met by showing "actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth." *Id.* (internal quotes omitted). In examining knowledge, the "degree of participation in a corporate defendant's affairs can be probative." *FTC v. Consumer Health Benefits Ass'n.*, No. 10-CV-3551, 2012 WL 1890242, at *5 (E.D.N.Y. May 23, 2012) (unpublished) (citing *FTC v. Amy Travel Serv.*, 875 F.2d at 574). In particular, being a senior manager is particularly probative in closely-held companies. *See 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."). In addition, courts have considered "awareness of consumer complaints . . . sufficient to establish the 'knowledge'" requirement for individual liability. *FTC v. Lights of Am., Inc.*, No. 10-CV-1333, 2013 WL 5230681, at *50 (C.D. Cal. Sept. 17, 2013) (unpublished). Likewise, courts have considered high credit card chargeback rates probative of knowledge. *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1102 (9th Cir. 2014); *FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1075 (C.D. Cal. 2012) (unpublished) (finding the average credit card chargeback rate is 0.2% and companies with rates over 1% are subject to monitoring by Visa), *aff'd in relevant part*, 815 F.3d 593 (9th Cir. 2016).

In this case, the Individual Defendants are the members or owners of all of the Corporate Defendants, and they are both actively involved in the running of their schemes. Introductory emails to consumers referred to "Jared R." and "Justin L." or Rodabaugh by his full name.[121] Defendant Larsen had VSM Group's mail forwarded to his house,[122] and both Rodabaugh and Larsen were signatories on the Corporate Defendants' key bank accounts.[123]

Both of the Individual Defendants were aware of consumer complaints that resulted from their schemes. Larsen hired a company to fight chargeback requests, and he was the contact person for a payment processing account with significant chargeback rates.[124] Similarly, one of the payment processing accounts set up by Rodabaugh had significant chargebacks,[125] and consumers complained to Rodabaugh by email and phone.[126] As a result, both principals of these closely-held entities had knowledge of consumer complaints and therefore were aware of the misrepresentations being made to consumers. Accordingly, the Individual Defendants are personally liable for the deceptive representations made to consumers, each of whom had thousands of dollars taken by the Corporate Defendants.

E. An Asset Freeze, Appointment of a Temporary Receiver, and Immediate Access to the Defendants' Premises are Necessary to Preserve Effective Relief

1. The Requested Relief

The permanent relief the FTC seeks includes redress for consumer victims who have lost money as a result of Defendants' schemes. To ensure the possibility of such relief, the proposed TRO is designed to preserve the status quo, pending a hearing on preliminary injunctive relief.

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[121] Hallock Decl. Ex. E (FTC-VSM 1191); McLaughlin Decl. Ex. E (FTC-VSM 1071); Studebaker Decl. Ex. V (FTC-VSM 980).
[122] Hogan Decl. ¶¶ 24-25.
[123] Hogan Decl. ¶ 28.
[124] Hogan Decl. ¶ 34, Exs. R, S (FTC-VSM 216, 222).
[125] Babcock Decl. ¶¶ 4, 6 (Vision Solution Marketing account Rodabaugh applied for processed $411,939 in sales and $42,372 in chargebacks, equaling a chargeback ratio over 10%).
[126] *See* Notes 79-95.

The proposed Order would: (1) freeze assets of the Individual Defendants and the Corporate Defendants; (2) appoint a receiver over the Corporate Defendants; (3) allow immediate access to records, order financial disclosure, and authorize expedited discovery; and (4) temporarily prohibit Defendants from selling business services to consumers. Such relief is appropriate in cases in which the FTC exercises its authority under Section 13(b) of the FTC Act. *See FTC v. Skybiz.com*, 2001 WL 1673645, at *8 (appointment of receiver, asset freeze, and other measures authorized "to make permanent relief possible") (citing *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1433-34 (11th Cir. 1984); *FTC v. Freecom Commc'ns*, 401 F.3d at 1203 n.6 ("[Section] 13(b)'s grant of authority to provide injunctive relief carries with it the full range of equitable remedies.").

2. An Asset Preservation Order is Necessary

The purpose of an asset freeze is to preserve funds for consumers. *FTC v. H.N. Singer*, 668 F.2d 1107, 1113 (9th Cir. 1982) (an asset freeze is appropriate where the objective is "to obtain restitution of moneys fraudulently obtained"). In considering whether assets will be dissipated during a case, courts consider the nature of the conduct at issue. In one leading case, for instance, the Second Circuit found an asset freeze was justified because of "the fraudulent nature of" the defendants' violations, which meant the district court "could not be assured" that the defendants "would not waste their assets prior to refunding public investors' money." *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972). In addition, courts can consider whether the amount of frozen assets will be sufficient to compensate consumers. *See FTC v. AMG Servs., Inc.*, No. 12-CV-00536, 2016 WL 1275612, at *5 (D. Nev. Mar. 31, 2016) (unpublished) (asset freeze was justified because likely monetary relief exceeds the "ability to pay"); *FTC v. IAB Mktg. Assocs.*, 972 F. Supp. 2d 1307, 1313-14 (S.D. Fla. 2013) (continued

asset freeze was justified because "Defendants' monetary liability greatly exceeds the frozen funds.").

Here, Defendants engaged in a multi-year effort to take money from consumers through various deceptive practices. Defendants' core claims that consumers will earn thousands of dollars a month with their programs are blatantly false and often preyed on consumers' lack of knowledge about ecommerce. Indeed, one of Defendants' own salesmen admitted in a recording that selling on eBay, which was a main feature of the Business Coaching Program, "isn't going to make anybody any money."[127] Defendants' conduct is the type of behavior that has prompted courts to order asset freezes to ensure that the remaining assets will not be dissipated. *SEC v. Manor Nursing*, 458 F.2d at 1101, 1106. An asset freeze is also necessary here because Defendants have already spent a substantial amount of the over $8 million they took from consumers. Defendants spent $1.8 million to purchase leads from the sellers of the Online Offers alone.[128]

3. The Appointment of a Receiver and Expedited Discovery Will Help Identify and Preserve Assets, and a Temporary Prohibition on Selling Business Services Is Appropriate

Appointing a receiver is critical to ensuring consumers can ultimately get relief. Where corporate defendants have engaged in deception, "it is likely that, in the absence of the appointment of a receiver to maintain the status quo, the corporate assets will be subject to diversion and waste to the detriment of" consumers victimized by the fraud. *SEC v. First Fin. Group*, 645 F.2d 429, 438 (5th Cir. 1981). A temporary receiver can preserve records and make an accounting that will assist in identifying and securing corporate assets and records. The

[127] Hogan Decl. Ex. W at 36 (FTC-VSM 284).
[128] Van Wazer Decl. ¶ 23 (from September 2016 to May 2017).

receiver can also review the Defendants' records expeditiously to help identify injured consumers.

In order to locate assets, the FTC further requests expedited discovery, including immediate access to Defendants' business premises and records and financial reporting by Defendants. District courts are authorized to depart from normal discovery procedures and fashion discovery by order to meet particular needs in particular cases. Fed. R. Civ. P. 1, 26(d), 34(b). Moreover, the prompt and full disclosure of the scope and financial status of the Defendants' business operations is necessary to ensure that the Court is fully advised regarding (1) the full range and extent of the Defendants' law violations, (2) the identities of the injured consumers, (3) the total amount of consumer injury, and (4) the nature, extent, and location of Defendants' assets.

Finally, prohibiting Defendants from selling business services for the duration of the TRO is appropriate in this case. Courts have imposed such restrictions in cases involving the deceptive sale of work-at-home schemes. *See FTC v. Capital Enterprises, Inc.*, No. 15-CV-8407 (S.D.N.Y. Nov. 3, 2015) (ECF No. 16) (granting ex parte TRO with ban on bogus work-at-home employment programs, asset freeze, and expedited discovery); *FTC v. Global U.S. Res.*, No. 10-CV-1457 (D. Conn. Sept. 13, 2010) (ECF Nos. 13, 5-3) (same). Here, Defendants' deceptive conduct is well-documented, and the consequences to consumers, who may incur insurmountable debt if they purchase Defendants' programs, are severe. To protect consumers, the Court should temporarily prohibit Defendants from selling business services.

IV. CONCLUSION

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

Respectfully submitted,

Dated: May 1, 2018

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*Volume and Tab numbers refer to the service and courtesy copies of the Appendix, which are in paper form. Plaintiff's motion refers to exhibits to declarations by Bates numbers with the prefix "FTC-VSM" which are referenced above.