

**ROBB EVANS & ASSOCIATES LLC**

**Receiver of**

**Universal Premium Services, Inc. AKA Premier Benefits, Inc.**

**Consumer Reward Network, Inc.**

**Star Communications LLC**

**Membership Services Direct, Inc. AKA Continuity Partners Inc.**

**Connect2USA, Inc., et al.**

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**Federal Trade Commission v. Universal Premium Services, Inc, et al.  
CASE No. CV06-0849 SJO (OPx)**

**Amended Order Granting Plaintiff Federal Trade Commission's  
Application for Preliminary Injunction and  
Appointment of Permanent Receiver**

**Filed March 17, 2006**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Federal Trade Commission,  
  
Plaintiff(s),  
  
v.  
  
Universal Premium Services, Inc., et al.,  
  
Defendant(s).

NO. CV 06-0849 SJO (OPx)

**AMENDED ORDER GRANTING PLAINTIFF  
FEDERAL TRADE COMMISSION'S  
APPLICATION FOR PRELIMINARY  
INJUNCTION AND APPOINTMENT OF  
PERMANENT RECEIVER**

On February 21, 2006, this Court granted Plaintiff Federal Trade Commission's ("FTC") *Ex Parte* Application for Temporary Restraining Order ("TRO") With Asset Freeze, Appointment Of Temporary Receiver, And Other Equitable Relief And Order to Show Cause Why A Preliminary Injunction Should Not Issue And A Permanent Receiver Should Not Be Appointed (hereinafter, the "*Ex Parte* TRO Application").<sup>1</sup> The *Ex Parte* TRO Application was made on the grounds that

<sup>1</sup> Concurrent with the filing of the Complaint, the FTC filed the *Ex Parte* TRO Application for an Order enjoining Defendants from continuing their alleged fraudulent sales practices and other ancillary equitable relief, including: (1) an asset freeze; (2) appointment of temporary receiver; (3) immediate access to Defendants' business premises and records; (4) an accounting; (5) immediate production of documents; (6) limited expedited discovery; and (7) an order to show cause why a preliminary injunction should not issue and why a permanent receiver should not be appointed. In view of the compelling evidence submitted by FTC, this Court found good cause

1 defendants Universal Premium Services, Inc. (a.k.a. Premier Benefits, Inc.); Consumer Reward  
 2 Network, Inc.; Star Communications LLC; Membership Services Direct, Inc. ("Membership  
 3 Services Direct") (a.k.a. Continuity Partners, Inc.); Connect2USA, Inc. (collectively, "Corporate  
 4 Defendants"), and individual defendants Brian K. MacGregor ("Brian MacGregor"), Harijinder  
 5 Sidhu, Joseph F. LaRosa, Jr. ("Joseph LaRosa"), Pranot Sangprasit, William Thomas Heichert  
 6 ("William Heichert"), Michael Howard Cushing ("Micheal Cushing"), Paul P. Tosi ("Paul Tosi"), and  
 7 Manh Cao (collectively, "Individual Defendants") (Corporate Defendants and Individual  
 8 Defendants are herein collectively referred to as "Defendants") have engaged, and continue to  
 9 engage in deceptive acts and practices in or affecting commerce, in violation of Section 5(a)  
 10 of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.  
 11 (Complaint, ¶¶ 36, 40-52). Through this action, FTC seeks, *inter alia*, restitution and rescission  
 12 of contract to redress consumer injury and disgorgement of Defendants' ill-gotten gains. *Id.* ¶ 57.

13 Presently before this Court is FTC's Application for Preliminary Injunction And Appointment  
 14 Of Permanent Receiver ("Application For Preliminary Injunction"). In addition to the evidence FTC  
 15 filed in support of its *Ex Parte* Application For TRO, FTC submits further evidence to demonstrate  
 16 that good cause exists to issue a preliminary injunction, appoint a permanent receiver, and to  
 17 permit other equitable relief to prevent continued consumer injury from Defendants' alleged illegal  
 18 activity. The additional evidence includes FTC's: (1) Supplemental Brief In Support Of FTC's  
 19 Application For Preliminary Injunction And Appointment Of Receiver ("Supplemental Brief");(2)  
 20 Second Declaration Of Bret Smart, an FTC investigator ("Second Smart Decl."); and (3) Second  
 21 Declaration of David Kirkman, a North Carolina Assistant Attorney General. This Court is also in  
 22 receipt of Robb Evans & Associates LLP's Report Of Temporary Receiver For The Period From  
 23 February 22, 2006 Through March 3, 2006 ("Temporary Receiver's Report"). The following  
 24 defendants filed Oppositions to FTC's Application For Preliminary Injunction: (1) Joseph LaRosa,  
 25 Pranot Sangprasit, William Heichert, Michael Cushing, Paul Tosi, and Manh Cao (hereafter, the  
 26

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27 existed to employ these measures to prevent continued consumer injury, dissipation of assets,  
 28 and destruction of evidence, and the preservation of this Court's ability to provide effective final  
 relief to Defendants' victims.

1 "LaRosa Opposition"); (2) Membership Services Direct and Brian MacGregor (hereafter, the  
2 "MacGregor Opposition"); (3) Harijinder Sidhu (hereafter the "Sidhu Opposition"); and Christine  
3 MacGregor and Midwest Properties, Inc. (hereinafter, "Midwest Properties Opposition")<sup>2</sup>.

4 Upon review of the admissible evidence of record, the parties' contentions, relevant case  
5 law, and equitable considerations, this Court GRANTS FTC'S Application For Preliminary  
6 Injunction. FTC is to prepare a Proposed Preliminary Injunction With Asset Freeze, Appointment  
7 Of Permanent Receiver, And Other Equitable Relief ("Proposed Preliminary Injunction Order")  
8 consistent with this Court's Order as detailed below.

9 I. FACTUAL BACKGROUND

10 Since 2004, Defendants have allegedly engaged in a deceptive and abusive telemarketing  
11 campaign in which their telemarketers call consumers offering an attractive free item, such as  
12 "free" gift cards for use at major retailers, "shopping sprees," movie passes, or gas vouchers.  
13 Compl. ¶ 20. Defendants have allegedly carried out their "scam" through at least 5 entities—  
14 Defendants Premier Benefits, Inc., Consumer Reward Network, Inc., Star Communications LLC,  
15 Continuity Partners, Inc., and Connect2USA, Inc.<sup>3</sup> *Id.* ¶ 21.

16 The FTC avers that consumers are told that to receive the "free" items, they must pay a  
17 nominal shipping and handling fee, to be debited from their bank account. *Id.* ¶ 25.<sup>4</sup> Once  
18 Defendants' telemarketers have the consumers' bank account information, they allegedly engage  
19

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20  
21 <sup>2</sup> The Midwest Properties Opposition was filed on March 13, 2006, immediately before this  
22 Court heard oral argument on the instant Application For Preliminary Injunction. The issues raised  
in the Midwest Properties Opposition were considered in today's present ruling.

23 <sup>3</sup> According to FTC's Supplemental Brief, filed on March 3, 2006, Corporate Defendants are  
24 furthering their illegal acts through newly formed corporate entities, including "Merchant Risk  
25 Management, Inc.," "All Star Access, Inc.," Prime Time Ventures, Inc.," "Pantel One Corporation,"  
26 and "World Era Development Limited." There is an adequate showing that such entities are mere  
extensions of Defendants' current and/or former companies, and, to a large extent, are only  
changes in form—i.e., the name of the entity—but not substance—i.e., the product or service offered  
is substantively the same.

27 <sup>4</sup> The FTC has submitted evidence in the form of declarations showing that Defendants  
28 misrepresented that they will send consumers a valuable free item upon payment of a nominal  
shipping and handling fee. *Ex Parte* TRO Application at 13, n. 73.

1 in various deceptive and abusive tactics to induce consumers to enroll in membership "discount"  
2 programs through which the consumers' bank accounts are to be debited on a negative option  
3 basis (the "verification process" or "verification recording"). *Id.* ¶¶ 26-30.<sup>5</sup> Consumers report that  
4 the Defendants make numerous debits to the consumers' bank accounts, in amounts ranging from  
5 \$1.95 to \$149.90, but do not send the free item that they promised to the consumer. *Id.* ¶ 32.<sup>6</sup>  
6 Moreover, the Defendants make it difficult, if not impossible, for the consumers to obtain refunds  
7 and avoid additional debits to the consumers' bank accounts, despite the Defendants' previous  
8 representations that consumers may cancel their memberships and obtain refunds. *Id.* ¶¶ 33-35.

9 Based on the foregoing allegations, the FTC filed this action against Defendants alleging:  
10 (1) violation of § 5(a) of the FTC Act, 15 U.S.C. § 45(a), by making material misrepresentations  
11 to consumers in the course of telemarketing membership programs (Claim 1); (2) violation of §  
12 310.3(a)(2)(iv) of FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.3(a)(2)(iv), by  
13 misrepresenting a material aspect of the nature or terms of their refund and cancellation policies  
14 (Claim 2); (3) violation of § 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii), by  
15 misrepresenting their affiliation with, or endorsement or sponsorship by, a person or government  
16 entity (Claim 3); (4) violation of § 310.4(a)(6) of the TSR, 16 C.F.R. § 310.4(a)(6), by causing the  
17 submission of the customer's billing information without the express informed consent of the  
18 customer (Claim 4); (5) violation of § 310.4(a)(1) of the TSR, 16 C.F.R. § 310.4(a)(1) by engaging  
19 in threats, intimidation, or the use of profane or obscene language (Claim 5); (6) violation of §  
20 310.4(b)(1)(iii)(A) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A), by initiating or causing a telemarketer  
21 to initiate an outbound telephone call to a person when that person previously has stated that he

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22  
23 <sup>5</sup> As part of Defendants' efforts to obtain the consumers' bank account information,  
24 Defendants allegedly abuse and harass consumers by calling them repeatedly even after being  
25 requested to stop. *Ex Parte* TRO Application at 15, n. 80, 82. The FTC also alleges that  
26 Defendants deceive, threaten, and harass consumers to obtain their purported consent to debit  
27 their accounts for membership program fees. *Ex Parte* TRO Application at 17, n. 85. The FTC  
28 further avers that Defendants even debit the accounts of consumers who have hung up on  
29 Defendants' telemarketer or who have been specifically told they would not be charged. *Ex Parte*  
TRO Application at 19-20, n. 98.

<sup>6</sup> The FTC has proffered evidence showing that Defendants do not send consumers the  
promised free items. *See Ex Parte* TRO Application at 20, n. 99.

1 or she does not wish to receive an outbound telephone call made by or on behalf of the seller  
2 whose goods or services are being offered (Claim 6); and (7) violation of § 310.3(a), (c), or (d),  
3 and § 310.4 of the TSR, thereby violating § 310.3(b) of the TSR, 16 C.F.R. § 310.3(b) by assisting  
4 and facilitating an act or practice that violates the TSR.

5 II. LEGAL STANDARD AND DISCUSSION

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

7 The Court has the authority to grant the temporary, preliminary, and permanent equitable  
8 relief sought by the FTC. The second provision of § 13(b) of the FTC Act, 15 U.S.C. § 53(b),  
9 provides that "in proper cases[,] the Commission may seek, and after proper proof, the court may  
10 issue, a permanent injunction." *Id.* A "routine fraud case," such as the case at bar "is a proper  
11 case." *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982).

12 Section 13(b) also permits the Court to grant whatever additional, temporary, or preliminary  
13 relief is necessary to preserve the possibility of effective final relief. *Id.* at 1113-1114. Such relief  
14 may include an order freezing assets, a temporary restraining order enjoining practices, permitting  
15 expedited discovery and immediate access, and a preliminary injunction. *Id.*; *see also, FTC v.*  
16 *U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984) ("Congress did not limit the court's  
17 powers under the final proviso of § 13(b) and as a result[,] this [c]ourt's inherent equitable powers  
18 may be employed to issue a preliminary injunction, including a freeze of assets, during the  
19 pendency of an action for permanent injunctive relief.").

20 The exercise of this broad, equitable authority is particularly appropriate where, as here,  
21 the public interest is at stake. *See FTC v. Gem Merchandising Corp.*, 87 F.3d 466, 469 (11th Cir.  
22 1996). When the public interest is implicated, the courts' equitable powers "assume an even  
23 broader and more flexible character than when only a private interest is at stake." *Id.* (citations  
24 omitted).

25 In addition, § 19(b) of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant relief  
26 as it finds necessary to redress injury to consumers resulting from violations of a trade regulation  
27 rule, including the TSR. Congress provides that such relief may include, but should not be limited  
28

1 to, "rescission or reformation of contracts, the refund of money [and] return of property." 15  
2 U.S.C. § 57b(b).

3  
4 B. An Order Granting Preliminary Injunctive Relief Is Proper Because the FTC Is Likely  
5 to Succeed on the Merits and a Balancing of the Equities Tips in the FTC's Favor.

6 Because the FTC acts to safeguard the public interest, the standard for a TRO and  
7 preliminary injunctive relief under § 13(b) differs from that typically applied to private litigants.  
8 Section 13(b) "places a lighter burden on the Commission than that imposed on private litigants  
9 by the traditional equity standard; the Commission need not show irreparable harm to obtain a  
10 preliminary injunction." *FTC v. Warner Communications, Inc.*, 742 F.2d 1156, 1159-1160 (9th Cir.  
11 1984) (citing Conference Report No. 924, 93d Cong., 1st Sess. 11, *reprinted in* 1973 U.S. Code  
12 Cong. & Admin. News 2533). "In determining whether to grant a preliminary injunction under §  
13 13(b), a court must 1) determine the likelihood that the Commission will ultimately succeed on the  
14 merits and 2) balance the equities." *Warner Communications*, 742 F.2d at 1160.

15 1. The FTC Is Likely to Succeed on the Merits.

16 a. The Standard

17 Section 5(a) of the FTC Act, 15 U.S.C. § 45, makes it unlawful to engage in "unfair or  
18 deceptive acts or practices." The FTC adopted the TSR pursuant to 15 U.S.C. § 6102 which  
19 directed the Commission to prescribe rules prohibiting deceptive telemarketing or practices.  
20 Pursuant to § 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c) and Section 18(d)(3) of the FTC  
21 Act, 15 U.S.C. § 57a(d)(3),<sup>7</sup> violations of the TSR constitute unfair and deceptive acts or practices  
22 in or affecting commerce, in violation of 5(a) of the FTC Act, 15 U.S.C. § 45(a).  
23  
24  
25

26  
27 <sup>7</sup> Title 15 of the United States Code, section 57a(d)(3) provides that "When any rule under  
28 subsection (a)(1)(B) takes effect a subsequent violation thereof shall constitute an unfair or  
deceptive act or practice in violation of section 5(a)(1) of this Act [15 U.S.C. § 45(a)(1)], unless  
the Commission otherwise expressly provides in such rule."

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1                   b.     The TSR Claims Apply to Defendants Because They Are "Sellers" and  
2                   "Telemarketers" Engaged in "Telemarketing" to "Customers" as Those  
3                   Terms Are Defined in the TSR.

4                   Under the TSR, a "seller" is one "who, in connection with a telemarketing transaction,  
5 provides, offers to provide, or arranges for others to provide goods or services to the customer  
6 in exchange for consideration." 16 C.F.R. § 310.2. A "telemarketer," on the other hand, is one  
7 "who, in connection with telemarketing, initiates or receives telephone calls to or from a customer  
8 or donor." *Id.* "Telemarketing" is defined as "a plan, program, or campaign which is conducted  
9 to induce the purchase of goods or services . . . by use of one or more telephones and which  
10 involves more than one interstate telephone call." *Id.* A "customer" is one "who is or may be  
11 required to pay for goods or services offered through telemarketing." *Id.*

12                   As indicated in this Court previous order granting FTC *Ex Parte* TRO Application, causes  
13 of action 2 through 7 allege that Defendants violated various provisions of the TSR. TSR's  
14 provisions apply to the instant case because Defendants are "sellers" or "telemarketers" engaged  
15 in "telemarketing" as those terms are defined in the TSR, and each of the consumers who has  
16 been called by Defendants is a "customer," as defined in TSR § 310.2(l). Defendants do not  
17 dispute that they are "sellers" or "telemarketers" or that the individuals harmed are not considered  
18 "customers" as defined in the TSR.<sup>8</sup>

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19                   <sup>8</sup> The LaRosa Opposition makes the passing argument that the FTC Act and TSR—the statutes  
20 giving rise to FTC's causes of action—are inapplicable here. Specifically, the La Rosa Opposition  
21 contends that the FTC Act and TSR, which relate to unfair or deceptive trade practices under  
22 federal law, do not preempt "distinct state law claims relating to unfair or deceptive trade practices  
23 regarding liability of officers, directors and employees for the acts of their business organizations."  
24 (LaRosa Opposition, 12:16-20). For support, the LaRosa Opposition relies chiefly on the  
25 Supreme Court decision, *CSX Transportation, Inc. v. Easterwood*, 507 U.S. 658 (1993). In *CSX*  
26 *Transportation*, a male truck driver was killed when struck by a train and his widow brought suit  
27 against the defendant railroad for negligence. *CSX Transportation*, 507 U.S. at 661. With respect  
28 to the issue of federal preemption, the Court held that regulations adopted by the Secretary of  
Transportation under the Federal Railroad Safety Act did not preempt requirements imposed by  
state common law of negligence regarding railroad's duty to maintain warning devices at a railroad  
crossing. *Id.* In arriving at its decision, the *CSX Transportation* Court examined whether the  
regulations adopted by the Secretary of Transportation in fact covered the same subject matter  
as state law, and if so, preemption applied. *Id.* at 675. A reading of *CSX Transportation* and the  
other cases cited in the LaRosa Opposition does not persuade this Court that state law controls,  
but only furthers this Court's opinion that the FTC Act and TSR govern this action. In full view of



1 c. The FTC Is Likely to Succeed on Claims 1, 2, and 3.

2 As stated above, the FTC Act makes it unlawful to engage in “unfair or deceptive acts or  
3 practices.” 15 U.S.C. § 45(a) (Claim 1). Likewise, the TSR makes it unlawful to misrepresent;  
4 the sale of goods or services, any material aspect of the nature or terms of the seller's refund,  
5 cancellation, exchange, or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv) (Claim 2). Further,  
6 the TSR makes it unlawful to misrepresent a seller's or telemarketer's affiliation with, or  
7 endorsement or sponsorship by, any person or government entity. 16 C.F.R. § 310.3(a)(2)(vii)  
8 (Claim 3).

9 1. *Defendants' misrepresentations to induce consumers to*  
10 *disclosure their bank account information*

11 Defendants fail to sufficiently dispute that they made numerous misrepresentations to  
12 consumers to induce them to disclose their bank account information so as to obtain  
13 authorizations to debit their bank accounts. Because Defendants' misrepresentations purportedly  
14 caused consumers to act to their detriment, each misrepresentation is central to the transactions  
15 and therefore material. *Ex Parte* TRO Application at 58. In many instances, each of these  
16 representations was also false. *Id.* Through Defendants' misrepresentations, it is likely that FTC  
17 will prove that Defendants engaged in deceptive practices in violation of § 5 of the FTC Act.

18 2. *Defendants' deceptive business practices*

19 As FTC further points out, Defendants fail to submit evidence of the existence of the  
20 “valuable items” that Defendants' telemarketers offered to consumers, such as \$200-\$500 gift  
21 cards, “shopping sprees” or gas vouchers. (See FTC's Supplemental Brief, 16:5-7). FTC staff  
22 did not find any inventory of such valuable items on Defendants' premises, and did not find  
23 evidence that these products were shipped by third parties on Defendants' behalf. (FTC's  
24 Supplemental Brief, 16:5-9; Second Smart Decl., ¶ 48). FTC's examination of Defendants'  
25 accounting records did not reveal entries for payment of any such inventory. (FTC's  
26

27 \_\_\_\_\_  
28 FTC's causes of action, the FTC Act and TSR substantially cover the subject matter of this  
litigation so as to preempt the state laws the LaRosa Opposition alludes to.

1 Supplemental Brief, 16:9-10; Second Smart Decl., ¶ 48). FTC staff discovered only approximately  
2 150 movie passes to two movie theater chains. (FTC's Supplemental Brief, 16:5-9; Second Smart  
3 Decl., ¶ 48). The failure of Defendants to demonstrate that it did not engage in deceptive  
4 business practices by offering valuable items it did not possess and did not intend to provide  
5 strongly weighs in favor of finding that FTC is likely to demonstrate that Defendants engaged in  
6 acts of misrepresentation in violation of the FTC Act.

7 In addition, FTC offers Defendants' telemarketing sales scripts as evidence to corroborate  
8 FTC's claim that Defendants engage in deceptive business practices. Said scripts evince  
9 Defendants' continual attempts to, among other things, delay or thwart a customer's ability to  
10 cancel their memberships. (Second Smart Decl., ¶ 13, p. 236 (script); TRO Exh. 18 Miller ¶ 12,  
11 p. 154 (consumer told to "keep checking in"); Second Smart Decl., ¶ 13, Exh. p. 232 (customer  
12 not allowed to cancel immediately, but had to wait)). FTC contends that Defendants' use of such  
13 scripts and questionable other tactics resulted in consumers filing hundreds complaints. For  
14 example, at Merchant Risk Management's office suit, FTC found over eight file cabinet drawers  
15 worth of complaints in two rooms, (Second Smart Decl., ¶ 24), and at Pantel One Corporation's  
16 offices, for the seven-day period from February 11, 2006 through February 17, 2006, there were  
17 approximately 193 consumer complaint letters received by mail about All Star Access,  
18 approximately 400 consumer complaint letters about Star Communications, approximately 135  
19 consumer complaint letters about Consumer Reward Network, and numerous letters from State  
20 Attorney General offices, the Better Business Bureau and private attorneys complaining about  
21 these companies business practices. (Second Smart Decl., ¶ 25).

22 The telemarketing sales scripts and questionable tactics used by Defendants appear to  
23 result in undue prejudice consumers. The existence of such evidence weighs in favor of finding  
24 that FTC is likely to demonstrate that Defendants engaged in unfair and deceptive business  
25 practices in violation of the FTC Act.

26  
27 3. *Defendants misrepresent their affiliation with other business*  
28 *entities in their telemarketing calls in violation of the TSR*

1 Defendants fail to adequately demonstrate a bona fide affiliation with retailers such as Wal-  
2 Mart, Macy's, or the government. Upon inspecting Defendants' business records, FTC staff found  
3 documents indicating that Defendants have also misrepresented their affiliation with Consumers  
4 Union, Health Net, Inc., Health Net of Arizona, Inc., and JC Penney, all of whom have demanded  
5 that Consumer Reward Network and Star Communications stop misrepresenting their affiliation  
6 with these entities. (FTC's Supplemental Brief, 17:2-6; Second Smart Decl., ¶ 26, Exh. 19, pp.  
7 302-05 and ¶27, Exh. 20, pp. 306-09).

8 In light of such evidence, it is likely that FTC will prevail in demonstrating that  
9 Defendants falsely affiliated itself with other companies and the government in violation of the  
10 TSR.

11  
12 d. FTC Is Likely to Succeed on Claims 4 and 5.

13 The TSR also prohibits telemarketers and sellers from engaging in abusive telemarketing  
14 acts and practices, which are defined to include, *inter alia*, (1) threats, intimidation, or the use of  
15 profane or obscene language, 16 C.F.R. §§ 310.4(a)(1) and (2) causing billing information to be  
16 submitted for payment without the express informed consent of the customer or donor, 16 C.F.R.  
17 § 310.4(a)(6).

18 As the consumer declarations establish, Defendants caused customers' billing information  
19 to be submitted for payment without the express and informed consent of the customer. See,  
20 e.g., Ex. 9, Kanduri ¶3. The consumer declarations also establish that Defendants' telemarketers  
21 used threats, intimidation, and profane or obscene language in their telemarketing calls to  
22 consumers. See, e.g., Ex. 23, Saylor, ¶¶ 2-6 (telemarketer badgered and harassed consumer to  
23 the point where she ended up agreeing to his offer simply to get him to stop calling). Thus,  
24 Defendants may have violated TSR §§ 310.4(a)(1) and (6).

25 e. The FTC Is Likely to Succeed on Claim 6.

26 Section 310.4(b) of the TSR prohibits telemarketers from initiating any outbound telephone  
27 call to a person when that person previously has stated that he or she does not wish to receive  
28

1 an outbound telephone call made by or on behalf of the seller whose goods or services are being  
 2 offered.

3 Defendants' telemarketers continued to call consumers who had previously asked them  
 4 to stop calling. See, e.g., Ex. 8 Joslyn ¶¶ 3, 7, 8 (consumer received at least 12 of Defendants'  
 5 telemarketing calls in two days following her first request that the company stop calling). These  
 6 calls were made in violation of TSR § 310.4(b)(1)(iii)(A).

7 f. FTC Is Likely to Succeed on Claim 7.

8 The TSR prohibits any person from providing substantial assistance or support to any seller  
 9 or telemarketer when that person knows or consciously avoids knowing that the seller or  
 10 telemarketer is engaged in any act or practice that violates the TSR. 16 C.F.R. §§ 310.3(a), (c),  
 11 (d). Except for Joseph LaRosa, each Individual Defendant--Brian MacGregor, Harijinder Sidhu,  
 12 Pranot Sangprasit, William Heichert, Michael Cushing, Paul Tosi, and Manh Cao--is or was an  
 13 officer and director of one of the Corporate Defendants. Joseph LaRosa controlled Defendant  
 14 Consumer Rewards Network's bank accounts, oversaw the companies' response to customer  
 15 complaints, and was the companies' contact in dealing with complaints forwarded by various State  
 16 Attorney Generals. *Ex Parte* TRO Application at 48, n, 250, 60. At a minimum, these Individual  
 17 Defendants consciously avoided knowing of their companies' illegal activities.

18 Upon review of Defendants' business records, FTC staff found additional evidence  
 19 demonstrating that Individual Defendants control Corporate Defendants, as well as evidence that  
 20 Individual Defendants control newly-formed entities, including, but not limited to, "Merchant Risk  
 21 Management, Inc.,"<sup>9</sup> "All Star Access, Inc.," "Prime Time Ventures, Inc.," "Pantel One Corporation,"  
 22  
 23  
 24  
 25

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26 <sup>9</sup> Merchant Risk Management is Defendants' principal place of business, (Second Smart  
 27 Decl., ¶ 6), and is located at 3800 Howard Hughes Parkway, Suite 500, Las Vegas, NV. Merchant  
 28 Risk Management's office suite was formally occupied by corporate defendant Connect2USA, Inc.  
 until January 2006. For all practical purposes, it appears that defendant Connect2USA, Inc. is  
 Merchant Risk Management.

1 and "World Era Development Limited,"<sup>10</sup> which FTC contends were created in an effort to continue  
 2 their illegal conduct and hide assets in furtherance of perpetrating their scam.

3 Further Evidence of Individual Defendants' involvement in illegal conduct is as follows:

4 **Brian MacGregor:** Evidence indicates that in addition to controlling Corporate Defendants,  
 5 Brian MacGregor controls Defendants' new corporate affiliates. Such evidence includes the fact  
 6 that Brian MacGregor is the principal of Merchant Risk Management, (Second Smart Decl., ¶ 44,  
 7 Exh. 37, pp. 361-63; ¶ 16, Exh. 11, pp. 259-60), maintains an office on that company's business  
 8 premises, (Second Smart Decl., ¶ 3), and has business cards showing he is affiliated with the  
 9 company. (Second Smart Decl., ¶ 28, Exh. 21, p. 310).<sup>11</sup> FTC also submits evidence that Brian  
 10 MacGregor helped author the marketing material for Prime Time Ventures' product "Protection  
 11 Plus," (Second Smart Decl., ¶ 29, Exh. 22, pp. 311-14; ¶ 38, Exh. 31, p. 349), and authorized  
 12 payment for the rent and utility bills of Defendants' Phillipines telemarketing call center,  
 13 "Connect2, Inc." (Second Smart Decl., ¶ 39, Exh. 32, p. 350). FTC maintains that Brian  
 14 MacGregor also selected new names for the membership programs that Defendants had  
 15 marketed through defendant Consumer Reward Network and were going to market through their  
 16 new company, All Star Access. (Second Smart Decl., ¶ 218, Exh. 13, p. 286). In addition, FTC  
 17 staff found in Brian MacGregor's office a list of website addresses affiliated with Defendants.  
 18 (Second Smart Decl., ¶ 30, Exh. 23, pp. 315-16).

19 **Harijinder Sidhu:** Evidence indicates that in addition to serving as defendant  
 20 Connect2USA's sole officer and director, Harijinder Sidhu had authority to control Defendants'

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 22  
 23 <sup>10</sup> Although the newly-formed entities are not named in the Complaint, Defendants fail to  
 24 adequately explain why such entities should not be included in this Court's determination of  
 25 whether a preliminary injunction should issue in this case. In an abundance of caution, this Court  
 26 finds that the existence of Defendants' newly-formed entities is important to the resolution of the  
 instant Application For Preliminary Injunction. In view of the evidence, the newly-formed entities  
 have a purpose which is suspect, namely, continuing the purported illegal activity alleged in the  
 Complaint. As such, they are properly included in this Court ruling.

27  
 28 <sup>11</sup> FTC maintains that its staff found on Brian MacGregor's desk, business cards in his name  
 for Continuity Partners, Connect2USA, and Merchant Risk Management. (Second Smart Decl.,  
 ¶ 28, Exh. 21, p. 310).

UNRECORDED

1 domestic telemarketing call center, I Connect Communications.<sup>12</sup> (Second Smart Decl., ¶ 9, Exh.  
2 4, p. 49).

3 **Joseph LaRosa:** Evidence indicates that in addition to managing Corporate Defendants,  
4 Joseph LaRosa has authority to act on behalf of Merchant Risk Management and is the  
5 company's General Manager. (Second Smart Decl., ¶ 40, Exh. 33, p. 351). FTC also maintains  
6 that Joseph LaRosa set up All Star Access' demand draft account at Payment Processing Center,  
7 (Second Smart Decl., ¶ 41, Exh. 34, p. 353), controls the bank accounts of both All Star Access  
8 and Prime Time Ventures, (Second Smart Decl., ¶ 19, Exh. 14, pp. 287-91), and serves as  
9 director of Defendants' Phillippines telemarketing center, defendant Connect2, Inc. (Second Smart  
10 Decl., ¶ 31, Exh. 24, p. 316). The evidence further demonstrates that Joseph LaRosa was  
11 involved in the process for selecting new names for the membership programs that Defendants  
12 had marketed through Consumer Reward Network and were going to market through their new  
13 company, All Star Access. (Second Smart Decl., ¶ 18, Exh. 13, p. 286).

14 **Pranot Sangprasit:** Evidence indicates that Pranot Sangprasit involvement extends  
15 beyond his affiliation with defendants Premier Benefits and Star Communications. Pranot  
16 Sangprasit is shown to have an "in" folder to receive internal company mail at Defendants' new  
17 entity, Merchant Risk Management, (Second Smart Decl., ¶ 15), and is authorized to transact  
18 business on All Star Access' behalf. (Second Smart Decl., ¶ 17, Exh. 12, p. 268). In addition,  
19 there is proof that Pranot Sangprasit is also involved with the activities of Prime Time Ventures,  
20 as well as Impact Marketing and Synergy Marketing Group, (Second Smart Decl., ¶ 33, Exh. 26,  
21 p. 333), which FTC contends were created for use as tools to run Defendants' illegal activities and  
22 hide their assets.

23 **William Heichert:** Evidence indicates that in addition to serving as defendant Consumer  
24 Reward Network's sole officer and director, William Heichert had authority to control Defendants'  
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26  
27 <sup>12</sup> The office of "I Connect Communications" is used by its successor in interest, "Panel One  
28 Corporation." (Second Smart Decl., ¶ 9, Exh. 4, p. 51) (December 13, 2005 lease amendment  
states "The Name of the Tenant, I Connect Communications, Inc. in Section 1.03 of the said  
Lease is hereby amended to reflect the new Nevada Corporation Panel One Corporation.").

SCANNED

1 domestic telemarketing call center, I Connect Communications. (Second Smart Decl., ¶ 9, Exh.  
2 4, p. 49).

3 **Michael Cushing:** Evidence indicates that in addition to serving as defendant Consumer  
4 Reward Network's sole officer and director, Michael Cushing is the listed as the "owner" of  
5 Consumer Reward Network in an account application for Royal Printing. (Second Smart Decl.,  
6 ¶ 42, Exh. 35, p. 354).

7 **Paul Tosi:** Evidence indicates that in addition to serving as defendant Consumer Reward  
8 Network's sole officer and director, Paul Tosi is involved in Defendants' new corporate entities.  
9 Paul Tosi is involved with Merchant Risk Management, (Second Smart Decl., ¶ 34, Exh. 27, pp.  
10 338-42), is authorized to conduct business on All Star Access' behalf, (Second Smart Decl., ¶ 35,  
11 Exh. 28, p. 344), served as the human resources manager and President of Defendants' domestic  
12 telemarketing call center, I Connect Communications, (Second Smart Decl., ¶ 14, Exh. 9, pp. 250-  
13 51), monitors the daily sales report for Pantel One Corporation (I Connect Communications'  
14 successor), (Second Smart Decl., ¶ 32, Exh. 25, pp. 317-18), and is director of Defendants'  
15 Phillipines telemarketing call center, corporate defendant Connect2, Inc. (Second Smart Decl.,  
16 ¶ 31, Exh. 24, p. 316).

17 The above evidence found in Defendants' business records and detailed in the Receiver's  
18 Temporary Report sufficiently demonstrates an elaborate scheme whereby FTC is likely to show  
19 that Individual Defendants directly participated in controlling, or had the authority to control,  
20 Corporate Defendants in their commission of the alleged illegal activity. Furthermore, there is an  
21 adequate showing that the newly-formed entities were created to continue the alleged illegal  
22 activity in violation of the TSR. In light of such evidence, this Court finds that FTC has satisfied  
23 its burden of proving a high probability of success on the merits on FTC's claim that Individual  
24 Defendants provided substantial assistance and/or support to sellers or telemarketers when  
25 Individual Defendants knew or consciously avoided knowing those sellers and/or telemarketers  
26 were engaged in acts and/or practices that violate the TSR. FTC's evidentiary showing favors the  
27 issuance of a preliminary injunction against Defendants.

28 2. The Balance of Equities Tips in Favor of Granting the Requested Relief.

1 Because the injunction will preclude only harmful, illegal behavior, the public equities  
2 supporting the proposed injunctive relief outweigh any burden imposed by such relief on  
3 Defendants. "A court of equity is under no duty 'to protect illegitimate profits or advance business  
4 which is conducted [illegally]." *CFTC v. British American Commodity Options Corp.*, 560 F.2d  
5 135, 143 (2d Cir. 1977) (citations omitted).

6 C. The Individual Defendants May Be Held Liable for Injunctive and Monetary Relief.

7 The Individual Defendants control the business practices and the flow of money. They are  
8 the signatories on the Corporate Defendants' bank accounts. Because they have authority to  
9 control, participate in, and know about the Corporate Defendants' wrongful acts, they may be  
10 enjoined from violating the FTC Act and the TSR, and held liable for consumer redress or other  
11 monetary relief in connection with the companies activities. Preliminary relief, therefore, is  
12 appropriate against each of the Individual, as well as the Corporate, Defendants to preserve the  
13 Court's ability to impose permanent relief. *FTC v. Publ'g Clearing House*, 104 F.3d 1168, 1170  
14 (9th Cir. 1997) (assuming the duties of a corporate officer is probative of an individual's  
15 participation or authority).

16 D. An Asset Freeze, Appointment of a Permanent Receiver, and Continual Access to  
17 Defendants' Business Records Are Necessary to Preserve the Possibility of  
18 Effective Final Relief.

19 As part of the final recovery in this case, the FTC seeks redress for consumers who have  
20 been victimized by Defendants' alleged telemarketing scam. *Ex Parte* TRO Application at 64.  
21 To preserve the possibility of such relief, and to ascertain the extent of public injury caused by  
22 Defendants, the FTC requests that this Court order a continued freeze of Defendants' assets and  
23 appoint a permanent receiver.

24 This Court's authority to freeze assets arises from its inherent equitable power to order  
25 consumer redress. *Gem Merchandising*, 87 F.3d at 469; *FTC v. Amy Travel Service, Inc.*, 875  
26 F.2d 564, 571-572 (7th Cir.) (in a proceeding under § 13(b), district court has the "power to order  
27 any ancillary equitable relief necessary to effectuate" its grant of authority), *cert. denied*, 493 U.S.  
28 954 (1989); *Singer*, 668 F.2d at 1112-1113 (power to grant permanent injunctive relief carries with



1 it authority for ancillary equitable relief); *FTC v. Southwest Sunsites, Inc.*, 665 F.2d 711, 717-719  
2 (5th Cir.) (§ 13(b) permits court to exercise full range of traditional equitable remedies), *cert.*  
3 *denied*, 456 U.S. 973 (1982). Without an order freezing all assets, any subsequent order  
4 disgorgement or redress by this Court could be rendered meaningless. Further, when a  
5 government agency is a movant, the mere "possibility" (as opposed to likelihood) of dissipation  
6 of assets is sufficient to justify a freeze. *Federal Sav. & Loan Ins. Corp. v. Sahni*, 868 F.2d 1096,  
7 1097 (9th Cir. 1989).

8 In addition to freezing the corporate assets, courts have frozen *individual* defendants'  
9 assets where the individual defendants controlled the deceptive activity and had actual or  
10 constructive knowledge of the deceptive nature of the practices in which they were engaged. *Amy*  
11 *Travel Service*, 875 F.2d at 573. Here, Defendants Brian MacGregor, Harijinder Sidhu, Joseph  
12 LaRosa, Pranot Sangprasit, William Heichert, Michael Cushing, and Manh Cao (collectively,  
13 "Individual Defendants") are the principals of the Corporate Defendants. FTC's Supplemental  
14 Brief, pp. 17-20; *Ex Parte* TRO Application at 64. They are the signatories on the Corporate  
15 Defendants' bank accounts. *Ex Parte* TRO Application at 64. Accordingly, the Individual  
16 Defendants control the alleged deceptive activity and are likely to have actual or constructive  
17 knowledge of the deceptive nature of the practices in which they are engaged.

18 This Court, however, views FTC's Proposed Preliminary Injunction Order overly broad as  
19 it prevents Defendants from accessing sufficient assets to mount a defense and to pay for the  
20 necessities of life such as food, lodging, child and health care. As the LaRosa Opposition  
21 demonstrates through signed declarations, the issuance of FTC's current Proposed Preliminary  
22 Injunction would unduly burden individual defendants Joseph LaRosa, Pranot Sangprasit, William  
23 Heichert, Michael Cushing, Paul Tosi, and Manh Cao such that said defendants would be unable  
24 to "meet crucial obligations, provide basic necessities of life for themselves and their family, or  
25 transition to new business endeavors." (The LaRosa Opposition, 14:22-26).<sup>13</sup> The MacGregor  
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27 <sup>13</sup> The LaRosa Opposition does not request a specific dollar amount to assist defendants  
28 Joseph LaRosa, Pranot Sangprasit, William Heichert, Michael Cushing, Paul Tosi, and Manh Cao  
with their "basic life necessities." Said defendants do, however, submit a declaration of attorney  
John M. Genga of Genga & Associates who has agreed to serve as their counsel at a rate of \$360

1 Opposition makes the same argument, but further maintains Brian MacGregor should be allowed  
2 access to frozen funds to pay spousal and child support in the sum of \$10,000 per month and that  
3 Brian MacGregor and corporate defendant Membership Services Direct should be allowed to hire  
4 counsel of choice at an hourly rate of approximately \$500. Similarly, the Sidhu Opposition  
5 requests that Harijinder Sidhu have access to pay for reasonable living expenses in the estimated  
6 amount of \$10,776.25 per month, and additional funds for reasonable attorneys' fees.

7 Courts have recognized the propriety of asset freezes allowing for "ordinary living  
8 expenses," *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982), and permitting for the  
9 services of legal counsel. *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347-48 (9th Cir. 1989)  
10 ("If, out of concern for preserving funds for ultimate distribution to defrauded customers, the  
11 district court wishes to limit the amount by which the frozen funds may be invaded for payment  
12 of attorney fees, it should set a maximum total sum which may be withdrawn or it should establish  
13 a minimum size to which the otherwise frozen assets may be reduced based upon appropriate  
14 findings."). In light of prevailing Ninth Circuit law and in the interests of justice, this Court permits  
15 a limited lift of the asset freeze with respect to individual defendants Joseph LaRosa, Pranot  
16 Sangprasit, William Heichert, Michael Cushing, Paul Tosi, Manh Cao, and Harijinder Sidhu in that  
17 said defendants are permitted full access to their personal bank accounts in addition to the sum  
18 total of \$2,500.00 each per month to pay for ordinary living expenses and attorneys' fees. Brian  
19 MacGregor and corporate defendant Membership Services Direct are permitted to a limited lift of  
20 the asset freeze in the collective sum total of \$5,000.00 per month to pay for ordinary living  
21 expenses and attorneys' fees. In addition, on or before the fifth (5<sup>th</sup>) day of each month, Brian  
22 MacGregor and Membership Services Direct shall, individually or through their respective counsel,  
23 submit a "Monthly Statement Of Monies Received" to the Permanent Receiver that will be  
24 accompanied with a signed declaration that the monies received as stated are true and accurate.  
25 Furthermore, each defendant or that defendant's counsel shall submit a "Notice Of Expenditures  
26 To The Permanent Receiver" on or before the fifth (5<sup>th</sup>) day of each month. Attached to the

27 \_\_\_\_\_  
28 per hour.

1 "Notice Of Expenditures To The Permanent Receiver" shall be a signed declaration by the  
2 defendant that the expenditures as stated are true and accurate.<sup>14</sup>

3 The Court recognizes, however, that various defendants entered into an oral side  
4 agreement with FTC regarding attorneys' fees (the "Side Agreements Re Attorneys' Fees").  
5 Those agreements were summarized by counsel for FTC, Faye Chen Barnouw, during the oral  
6 hearing on FTC's Application For Preliminary Injunction. The Side Agreements Re Attorneys'  
7 Fees should be incorporated into FTC's Proposed Preliminary Injunction Order for review by this  
8 Court. Because the specifics of the Side Agreements Re Attorneys' Fees were not discussed  
9 during the hearing, this Court will determine whether said agreements are appropriate, and will  
10 either adopt FTC's entire Proposed Injunction Order, or omit the particular section discussing the  
11 Side Agreements Re Attorneys' Fees.

12 In addition to a preliminary injunction provision directing Defendants not to dissipate or  
13 conceal assets, FTC seeks an order directing financial institutions and other third parties to freeze  
14 Defendants' assets in their custody and control. This Court has the authority to direct its order  
15 to such third parties to preserve assets that are easily dissipated and may be difficult or  
16 impossible to trace. *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 289-90 (1940). In this  
17 Court's prior order granting FTC's *Ex Parte* TRO Application, the Court froze Defendants' assets  
18 in the custody and control of third parties as well as froze assets of third parties that were  
19 purportedly generated or secured through the illegal conduct alleged in the Complaint.

20 The MacGregor Opposition and the Midwest Properties Opposition request that this Court  
21 now unfreeze the assets of third-party corporation "Midwest Properties, Inc." and third party  
22 individual Christine MacGregor<sup>15</sup> (collectively, "Non-Defendants"). According to said oppositions,  
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24  
25 <sup>14</sup> The Permanent Receiver shall, in a timely manner, file before this Court the "Monthly  
26 Statement Of Monies Received" and "Notices Of Expenditures To The Permanent Receiver"  
submitted by Defendants.

27 <sup>15</sup> Christine MacGregor is the estranged wife of Brian MacGregor. (Midwest Properties  
28 Opposition, 1:5-7). Christine MacGregor maintains that she owns and operates Midwest  
Properties, Inc, which is a real estate company that invests in, renovates, and resells residential  
real property in the State of California. (Midwest Properties Opposition, 1:10-12).

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1 there is no legitimate basis to freeze the assets of Non-Defendants because FTC 1) failed to  
2 allege that Non-Defendants participated in or were aware of the deceptive practices stated in the  
3 Complaint and 2) failed to sufficiently demonstrate the legal or evidentiary basis to permit an asset  
4 freeze against Non-Defendants. This Court agrees. Upon review of the record, there are no  
5 adequate grounds to justify freezing the assets of Non-Defendants at the present time. Although  
6 FTC contends that Defendant Brian MacGregor transferred his ownership interest in several  
7 valuable real property assets to his wife Christina MacGregor and her company, Midwest  
8 Properties, Inc., in anticipation of claims on their assets,<sup>16</sup> (*Ex Parte* TRO Application at 67; see  
9 also, Ex. 44, Smart Decl. ¶ 74 at 1615), and fraudulently made such transfers with no  
10 consideration, (Smart Decl. ¶ 74 at 1615; see also *Ex Parte* TRO Application at 50), FTC fails to  
11 satisfy its burden of showing a likelihood of success on the merits on its claims that Non-  
12 Defendants were involved any of the deceptive practices alleged in the Complaint. As such, Non-  
13 Defendants cannot be made a subject of requested preliminary injunction at this time, and are  
14 therefore stricken from the TRO issued in this case. This Court's present determination does not  
15 foreclose FTC from adding Non-Defendants as parties to the Complaint or demonstrating that  
16 a preliminary injunction is warranted against Non-Defendants upon the proper showing at a later  
17 date. With respect to other third parties designated in the Proposed Preliminary Injunction Order,  
18 issuing an injunction against them is appropriate in light of the strong indications of illegal activity  
19 presented in this case, the sufficient showing that FTC will prevail on the merits of its claims  
20 against them, and in an abundance of caution so as to preserve assets for effective final relief to  
21 aggrieved consumers.

22 As another means to preserve the *status quo*, Plaintiff seeks the appointment of a  
23 permanent receiver, who will locate and preserve corporate assets and records to reduce the  
24 threat of destruction, dissipation, or secretion. A permanent receiver is appropriate "where  
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26 <sup>16</sup> According to FTC, the total value of these properties appears to exceed \$17 million. In  
27 response, the Midwest Properties Opposition states that "the FTC vastly overstates the value of  
28 the interests conveyed by, *inter alia*, ignoring recorded mortgages and encumbrances on the  
properties – the existence of which also were previously made known to the FTC in 2004."  
(Midwest Properties Opposition, 2:8-11).

RECORDED

1 necessary to prevent the dissipation of a defendant's assets pending further action by the court."  
2 *SEC v. American Bd. of Trade, Inc.*, 830 F.2d 431, 436 (2d Cir. 1987). Here, a receiver is  
3 necessary because of the likelihood that assets would otherwise be dissipated and records  
4 destroyed or concealed. Having reviewed FTC's Application For Preliminary Injunction, this Court  
5 finds appropriate to appoint Robb Evans & Associates LLP as the Permanent Receiver.<sup>17</sup>  
6 However, no receiver is appointed for Non-Defendants, as they are not a proper subject of FTC's  
7 Proposed Preliminary Injunction Order for the reasons discussed above.

8 III. CONCLUSION

9 Based on the foregoing, the Court GRANTS the United States Federal Trade Commissions'  
10 Application for Preliminary Injunction And Appointment Of Permanent Receiver. Plaintiff FTC is  
11 to prepare a Proposed Preliminary Injunction With Asset Freeze, Appointment Of Permanent  
12 Receiver, And Other Equitable Relief consistent with this Court's present ruling. This Court  
13 appoints Robb Evans & Associates LLC as the Permanent Receiver. No security is required of  
14 any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

15  
16 IT IS SO ORDERED.

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19 DATED: 3/17/06

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S. JAMES OTERO, JUDGE  
UNITED STATES DISTRICT COURT

<sup>17</sup> Pursuant to this Court's previous Order granting FTC's Application For *Ex Parte* TRO, Robb Evans & Associates LLC has served as the *temporary* receiver in this case.