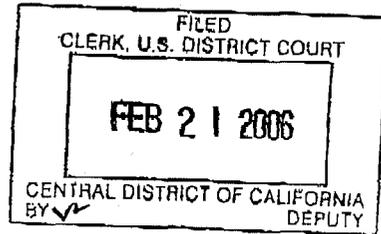


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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

*UNDER SEAL*

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

NO. CV 06-0849 SJO (OPx)

**ORDER GRANTING PLAINTIFF FEDERAL TRADE COMMISSION'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER 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**

The matter is before this Court on 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 Application"). The Application is made on the grounds that Defendants Universal Premium Services, Inc. (a.k.a. Premier Benefits, Inc.), Consumer Reward Network, Inc., Star Communications LLC, Membership Services Direct, Inc. (a.k.a. Continuity Partners, Inc.); Connect2USA, Inc. (collectively, "Corporate Defendants"), Brian K. MacGregor, Harijinder Sidhu, Joseph F. Larosa, Jr., Pranot Sangprasit, William Thomas Heichert, Michael Howard Cushing, Paul P. Tosi, and Manh Cao (collectively "Defendants") have allegedly engaged, and continue to

1 engage in deceptive acts and practices in or affecting commerce, in violation of Section 5(a) of  
2 the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310. Compl.  
3 ¶¶ 36, 40-52. Through this action, the FTC seeks, *inter alia*, restitution and rescission of contract  
4 to redress consumer injury and disgorgement of Defendants' ill-gotten gains. *Id.* ¶ 57.

5 Having considered all admissible documents submitted by the FTC, the Court GRANTS  
6 the FTC'S *Ex Parte* Application for Temporary Restraining Order with Asset Freeze, Appointment  
7 of Temporary Receiver, and Other Equitable Relief and Order to Show Cause Why a Preliminary  
8 Injunction Should Not Issue and a Permanent Receiver Should Not Be Appointed. The Court  
9 ADOPTS and ISSUES the FTC's Proposed Order Re: Temporary Restraining Order with Asset  
10 Freeze, Appointment of Temporary Receiver, and Other Equitable Relief and Order to Show  
11 Cause Why a Preliminary Injunction Should Not Issue and a Permanent Receiver Should Not Be  
12 Appointed.

13 I. FACTUAL BACKGROUND

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

20 The FTC avers that consumers are told that to receive the "free" items, they must pay a  
21 nominal shipping and handling fee, to be debited from their bank account. *Id.* ¶ 25.<sup>1</sup> Once  
22 Defendants' telemarketers have the consumers' bank account information, they allegedly engage  
23 in various deceptive and abusive tactics to induce consumers to enroll in membership "discount"  
24 programs through which the consumers' bank accounts are to be debited on a negative option  
25

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28 <sup>1</sup> The FTC has submitted evidence in the form of declarations showing that Defendants  
misrepresented that they will send consumers a valuable free item upon payment of a nominal  
shipping and handling fee. Application at 13, n. 73.

1 basis (the "verification process" or "verification recording"). *Id.* ¶¶ 26-30.<sup>2</sup> Consumers report that  
2 the Defendants make numerous debits to the consumers' bank accounts, in amounts ranging from  
3 \$1.95 to \$149.90, but do not send the free item that they promised to the consumer. *Id.* ¶ 32.<sup>3</sup>  
4 Moreover, the Defendants make it difficult, if not impossible, for the consumers to obtain refunds  
5 and avoid additional debits to the consumers' bank accounts, despite the Defendants' previous  
6 representations that consumers may cancel their memberships and obtain refunds. *Id.* ¶¶ 33-35.

7 Based on the foregoing allegations, the FTC filed this action against Defendants alleging:  
8 (1) violation of § 5(a) of the FTC Act, 15 U.S.C. § 45(a), by making material misrepresentations  
9 to consumers in the course of telemarketing membership programs (Claim 1); (2) violation of §  
10 310.3(a)(2)(iv) of FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.3(a)(2)(iv), by  
11 misrepresenting a material aspect of the nature or terms of their refund and cancellation policies  
12 (Claim 2); (3) violation of § 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii), by  
13 misrepresenting their affiliation with, or endorsement or sponsorship by, a person or government  
14 entity (Claim 3); (4) violation of § 310.4(a)(6) of the TSR, 16 C.F.R. § 310.4(a)(6), by causing the  
15 submission of the customer's billing information without the express informed consent of the  
16 customer (Claim 4); (5) violation of § 310.4(a)(1) of the TSR, 16 C.F.R. § 310.4(a)(1) by engaging  
17 in threats, intimidation, or the use of profane or obscene language (Claim 5); (6) violation of §  
18 310.4(b)(1)(iii)(A) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A), by initiating or causing a telemarketer  
19 to initiate an outbound telephone call to a person when that person previously has stated that he  
20 or she does not wish to receive an outbound telephone call made by or on behalf of the seller  
21 whose goods or services are being offered (Claim 6); and (7) violation of § 310.3(a), (c), or (d),  
22

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23 <sup>2</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. Application at 15, n. 80, 82. The FTC also alleges that Defendants deceive,  
26 threaten, and harass consumers to obtain their purported consent to debit their accounts for  
27 membership program fees. Application at 17, n. 85. The FTC further avers that Defendants even  
28 debit the accounts of consumers who have hung up on Defendants' telemarketer or who have  
been specifically told they would not be charged. Application at 19-20, n. 98.

<sup>3</sup> The FTC has proffered evidence showing that Defendants do not send consumers the  
promised free items. See Application at 20, n. 99.

1 and § 310.4 of the TSR, thereby violating § 310.3(b) of the TSR, 16 C.F.R. § 310.3(b) by assisting  
2 and facilitating an act or practice that violates the TSR.

3 Concurrent with the filing of the Complaint, the FTC filed the instant Application for an order  
4 enjoining Defendants from continuing their alleged fraudulent sales practices and other ancillary  
5 equitable relief, including: (1) an asset freeze; (2) appointment of temporary receiver; (3)  
6 immediate access to Defendants' business premises and records; (4) an accounting; (5)  
7 immediate production of documents; (6) limited expedited discovery; and (7) an order to show  
8 cause why a preliminary injunction should not issue and why a permanent receiver should not be  
9 appointed. The FTC submits that these measures are necessary to prevent continued consumer  
10 injury, dissipation of assets, and destruction of evidence, thereby preserving this Court's ability  
11 to provide effective final relief to Defendants' victims.

## 12 II. LEGAL STANDARD AND DISCUSSION

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

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

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

27 The exercise of this broad, equitable authority is particularly appropriate where, as here,  
28 the public interest is at stake. *See FTC v. Gem Merchandising Corp.*, 87 F.3d 466, 469 (11th Cir.

1 1996). When the public interest is implicated, the courts' equitable powers "assume an even  
2 broader and more flexible character than when only a private interest is at stake." *Id.* (citations  
3 omitted).

4 In addition, § 19(b) of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant relief  
5 as it finds necessary to redress injury to consumers resulting from violations of a trade regulation  
6 rule, including the TSR. Congress provides that such relief may include, but should not be limited  
7 to, "rescission or reformation of contracts, the refund of money [and] return of property." 15  
8 U.S.C. § 57b(b).

9  
10 B. An Order Granting Temporary Injunctive Relief Is Proper Because the FTC Is Likely  
11 to Succeed on the Merits and a Balancing of the Equities Tips in the FTC's Favor.

12 Because the FTC acts to safeguard the public interest, the standard for a TRO and  
13 preliminary injunctive relief under § 13(b) differs from that typically applied to private litigants.  
14 Section 13(b) "places a lighter burden on the Commission than that imposed on private litigants  
15 by the traditional equity standard; the Commission need not show irreparable harm to obtain a  
16 preliminary injunction." *FTC v. Warner Communications, Inc.*, 742 F.2d 1156, 1159-1160 (9th Cir.  
17 1984) (citing Conference Report No. 924, 93d Cong., 1st Sess. 11, *reprinted in* 1973 U.S. Code  
18 Cong. & Admin. News 2533). "In determining whether to grant a preliminary injunction under §  
19 13(b), a court must 1) determine the likelihood that the Commission will ultimately succeed on the  
20 merits and 2) balance the equities." *Warner Communications*, 742 F.2d at 1160.

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

22 a. The Standard

23  
24 Section 5(a) of the FTC Act, 15 U.S.C. § 45, makes it unlawful to engage in "unfair or  
25 deceptive acts or practices." The FTC adopted the TSR pursuant to 15 U.S.C. § 6102 which  
26 directed the Commission to prescribe rules prohibiting deceptive telemarketing or practices.  
27 Pursuant to § 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c) and Section 18(d)(3) of the FTC  
28

1 Act, 15 U.S.C. § 57a(d)(3),<sup>4</sup> violations of the TSR constitute unfair and deceptive acts or practices  
2 in or affecting commerce, in violation of 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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

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

15 Claims 2 through 7 allege that Defendants violated various provisions of the TSR. TSR's  
16 provisions apply to the instant case because Defendants are "sellers" or "telemarketers" engaged  
17 in "telemarketing" as those terms are defined in the TSR, and each of the consumers who has  
18 been called by Defendants is a "customer," as defined in TSR § 310.2(l).

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

20 As stated above, the FTC Act makes it unlawful to engage in "unfair or deceptive acts or  
21 practices." 15 U.S.C. § 45(a) (Claim 1). Likewise, the TSR makes it unlawful to misrepresent, in  
22 the sale of goods or services, any material aspect of the nature or terms of the seller's refund,  
23 cancellation, exchange, or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv) (Claim 2). Further,  
24 the TSR makes it unlawful to misrepresent a seller's or telemarketer's affiliation with, or  
25

26  
27 <sup>4</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."

1 endorsement or sponsorship by, any person or government entity. 16 C.F.R. § 310.3(a)(2)(vii)  
2 (Claim 3).

3 Here, Defendants allegedly made numerous misrepresentations to consumers to induce  
4 them to disclose their bank account information and to obtain purported authorizations to debit  
5 their bank accounts. Compl. ¶¶ 32-39. Each of these representations is central to the  
6 transactions and thus material. Application at 58. In many instances, each of these  
7 representations is also false. *Id.* By making misrepresentations, Defendants may have engaged  
8 in deceptive practices in violation of § 5 of the FTC Act.

9 d. The FTC Is Likely to Succeed on Claims 4 and 5.

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

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

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

23 Section 310.4(b) of the TSR prohibits telemarketers from initiating any outbound telephone  
24 call to a person when that person previously has stated that he or she does not wish to receive  
25 an outbound telephone call made by or on behalf of the seller whose goods or services are being  
26 offered.  
27  
28

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

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

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

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

17 Because the injunction will preclude only harmful, illegal behavior, the public equities  
18 supporting the proposed injunctive relief outweigh any burden imposed by such relief on  
19 Defendants. "A court of equity is under no duty 'to protect illegitimate profits or advance business  
20 which is conducted [illegally].'" *CFTC v. British American Commodity Options Corp.*, 560 F.2d  
21 135, 143 (2d Cir. 1977) (citations omitted).

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

23 The Individual Defendants control the business practices and the flow of money. They are  
24 the signatories on the Corporate Defendants' bank accounts. Because they have authority to  
25 control, participate in, and know about the Corporate Defendants' wrongful acts, they may be  
26 enjoined from violating the FTC Act and the TSR, and held liable for consumer redress or other  
27 monetary relief in connection with the companies activities. Preliminary relief, therefore, is  
28 appropriate against each of the Individual, as well as the Corporate, Defendants to preserve the

1 Court's ability to impose permanent relief. *FTC v. Publ'g Clearing House*, 104 F.3d 1168, 1170  
2 (9th Cir. 1997) (assuming the duties of a corporate officer is probative of an individual's  
3 participation or authority).

4  
5 D. An Asset Freeze, Appointment of a Receiver, and Immediate Access to Defendants'  
Business Records Are Necessary to Preserve the Possibility of Effective Final Relief.

6 As part of the final recovery in this case, the FTC seeks redress for consumers who have  
7 been victimized by Defendants' alleged telemarketing scam. Application at 64. To preserve the  
8 possibility of such relief, and to ascertain the extent of public injury caused by Defendants, the  
9 FTC requests that this Court order a temporary freeze of Defendants' assets, appoint a temporary  
10 receiver, and allow Plaintiff and the temporary receiver immediate access to Defendants' business  
11 records.

12 The temporary relief sought here is similar to that ordered in prior actions in this district.  
13 See e.g., *FTC v. National Consumer Council*, SACV 04-0474 CJC (C.D. Cal. Apr. 23, 2004)  
14 (temporary restraining order freezing assets, appointing receiver, prohibiting destruction or  
15 alteration of books and records, granting immediate access and inspection, and order permitting  
16 expedited discovery and to show cause why a preliminary injunction should not issue); see also,  
17 Certification of Counsel Pursuant to Rule 65(b) Fed. R. Civ. P. ("Certification of Counsel") ¶¶ 7-8.  
18 This Court's authority to freeze assets arises from its inherent equitable power to order consumer  
19 redress. *Gem Merchandising*, 87 F.3d at 469; *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564,  
20 571-572 (7th Cir.) (in a proceeding under § 13(b), district court has the "power to order any  
21 ancillary equitable relief necessary to effectuate" its grant of authority), *cert. denied*, 493 U.S. 954  
22 (1989); *Singer*, 668 F.2d at 1112-1113 (power to grant permanent injunctive relief carries with it  
23 authority for ancillary equitable relief); *FTC v. Southwest Sunsites, Inc.*, 665 F.2d 711, 717-719  
24 (5th Cir.) (§ 13(b) permits court to exercise full range of traditional equitable remedies), *cert.*  
25 *denied*, 456 U.S. 973 (1982). Without an order freezing all assets, any subsequent order of  
26 disgorgement or redress by this Court could be rendered meaningless. Further, when a  
27 government agency is a movant, the mere "possibility" (as opposed to likelihood) of dissipation  
28

1 of assets is sufficient to justify a freeze. *Federal Sav. & Loan Ins. Corp. v. Sahni*, 868 F.2d 1096,  
2 1097 (9th Cir. 1989).

3 In addition to freezing the corporate assets, courts have frozen *individual* defendants'  
4 assets where the individual defendants controlled the deceptive activity and had actual or  
5 constructive knowledge of the deceptive nature of the practices in which they were engaged. *Amy*  
6 *Travel Service*, 875 F.2d at 573.

7 Here, Defendants Brian MacGregor, Harijinder Sidhu, Joseph LaRosa, Pranot Sangprasit,  
8 William Heichert, Michael Cushing, and Manh Cao (collectively, "Individual Defendants") are the  
9 principals of the Corporate Defendants. Application at 64. They are the signatories on the  
10 Corporate Defendants' bank accounts. *Id.* Accordingly, the Individual Defendants control the  
11 alleged deceptive activity and are likely to have actual or constructive knowledge of the deceptive  
12 nature of the practices in which they are engaged. *Id.* at 66.

13 In addition to a TRO provision directing Defendants not to dissipate or conceal assets, the  
14 FTC seeks an order directing financial institutions and other third parties to freeze Defendants'  
15 assets in their custody and control. This Court has the authority to direct its order to such third  
16 parties to preserve assets that are easily dissipated and may be difficult or impossible to trace.  
17 *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 289-290 (1940).

18 As another means to preserve the *status quo*, Plaintiff seeks the appointment of a  
19 temporary receiver, who will locate and preserve corporate assets and records to reduce the  
20 threat of destruction, dissipation, or secretion. A temporary receiver is appropriate "where  
21 necessary to prevent the dissipation of a defendant's assets pending further action by the court."  
22 *SEC v. American Bd. of Trade, Inc.*, 830 F.2d 431, 436 (2d Cir. 1987).

23 Here, a receiver is necessary because of the likelihood that assets would otherwise be  
24 dissipated and records destroyed or concealed. As stated in the Application, Defendant Brian  
25 MacGregor has already transferred his ownership interest in several valuable real property assets  
26 to his wife Christina MacGregor and her company, Midwest Properties, Inc., in apparent  
27 anticipation of claims on their assets. Application at 67; see also, Ex. 44, Smart Decl. ¶ 74 at  
28 1615. Although the total value of these properties appears to exceed \$17 million, Brian and

1 Christine MacGregor appear to have made all of these transfers for no consideration. Smart Decl.  
2 ¶ 74 at 1615; see also Application at 50.

3 Having reviewed Plaintiff's Recommendation for Temporary Receiver, the Court appoints  
4 Rob Evans and Associates LLC as a temporary receiver in this case.

5 Finally, Plaintiff seeks an order allowing the FTC and the receiver immediate access to  
6 Defendants' business premises. Application at 67. Immediate access will allow the FTC and the  
7 receiver to inventory and collect Defendants' records and assets as soon as possible after  
8 Defendants learn of this action, decreasing their opportunities to destroy, hide, or alter computer  
9 or hard-copy records or assets.

10 E. Limited Expedited Discovery, Including Production of Documents, Asset Depositions,  
11 and Immediate Access Are Necessary.

12 The FTC seeks leave of court to conduct limited expedited discovery regarding the  
13 existence and location of documents and assets. The FTC further requests a right of immediate  
14 access to Defendants' business premises for the purpose of inspecting and copying documents.  
15 The FTC contends that without such access, Defendants are likely to conceal or destroy  
16 documents before the Commission obtains copies. Rule 26(d) of the Federal Rules of Civil  
17 Procedure authorizes the Court to alter the standard provisions, including applicable time frames,  
18 that govern depositions and production of documents. This type of discovery reflects the Court's  
19 broad and flexible authority in equity to grant preliminary emergency relief in cases involving public  
20 interest. *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946).

21 F. The TRO Is Issued *Ex Parte* to Preserve the Court's Ability to Fashion a Meaningful  
22 Relief and to Prevent Irreparable Injury to Victims of Defendants' Deceptive and  
23 Abusive Business Activities.

24 Plaintiff has not provided Defendants with prior notice of this *Ex Parte* Application or the  
25 accompanying *ex parte* seal application and *ex parte* page limits application, pursuant to Local  
26 Rule 7-19.1.<sup>5</sup> The FTC explains that if Defendants are provided notice of this action, there is a

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27 <sup>5</sup> Local Rule 7-19.1 requires the attorney applying for *ex parte* relief:

28 (a) to make a good faith effort to advise counsel for all other parties, if known, of the

1 strong likelihood that Defendants will dissipate assets and destroy records. See Certification of  
2 Counsel ¶ 11. According to the FTC, its past experience demonstrates that defendants who  
3 received notice of the FTC's intent to file an action under circumstances such as found in this  
4 case often attempt to undermine any court order the FTC may obtain to preserve the *status quo*  
5 by immediately dissipating or concealing assets. *Id.* ¶ 12. Consequently, Plaintiff asks that, in  
6 the interest of justice, this Court waive the notice requirement pursuant to Local Rule 7-19.2. *Id.*  
7 ¶ 20.<sup>6</sup>

8 Federal Rules of Civil Procedure 65(b) provides for the issuance of an *ex parte* temporary  
9 restraining order *without notice*, pursuant to the general equitable powers of the district court,  
10 where it appears that "immediate and irreparable injury, loss or damage will result to the applicant  
11 before adverse party or [his] attorney can be heard in opposition." Here, Defendants have an  
12 incentive to secrete recoverable assets and destroy inculpatory documents if given notice of the  
13 FTC's action. Therefore, "it appears proper to enter the TRO without notice" in this action  
14 because "giving notice itself may defeat the very purpose for the TRO." See *Cenergy Corp. v.*  
15 *Bryson Oil & Gas P.L.C.*, 657 F. Supp. 867, 870 (D. Nev. 1987).

### 16 III. CONCLUSION

17 Based on the foregoing, the Court GRANTS the FTC'S *Ex Parte* Application for Temporary  
18 Restraining Order with Asset Freeze, Appointment of Temporary Receiver, and Other Equitable  
19 Relief and Order to Show Cause Why a Preliminary Injunction Should Not Issue and a Permanent  
20 Receiver Should Not Be Appointed.

21  
22  
23 \_\_\_\_\_  
24 date, time and substance of the proposed *ex parte* application and (b) to advise the  
25 Court in writing of efforts to contact other counsel and whether any other counsel,  
26 after such advice, opposes the application or has requested to be present when the  
27 application is presented to the Court.

28  
6 Local Rule 7-19.2 provides:

If the judge to whom the application is made finds that the interest of justice requires  
that the *ex parte* application be heard without notice (which in the instance of a TRO  
means that the requisite showing under Fed. R. Civ. P. 65(b) has been made), the  
judge may waive the notice requirement of L.R. 7-19.1.

1 The Court ADOPTS and ISSUES the FTC's Proposed Order Re: Temporary Restraining  
2 Order with Asset Freeze, Appointment of Temporary Receiver, and Other Equitable Relief and  
3 Order to Show Cause Why a Preliminary Injunction Should Not Issue and a Permanent Receiver  
4 Should Not Be Appointed.<sup>7</sup>

5 IT IS SO ORDERED.

6 Dated this 21 day of February, 2006.

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9  
10 S. JAMES OTERO  
11 UNITED STATES DISTRICT JUDGE  
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28 <sup>7</sup> No security is required of any agency of the United States for issuance of a restraining order.  
Fed. R. Civ. P. 65(c).