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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 FEDERAL TRADE COMMISSION,
16 Plaintiff,

17 v.

18 JOHN BECK AMAZING PROFITS,
LLC, a California limited liability
19 company; JOHN ALEXANDER, LLC, a
California limited liability company;
20 JEFF PAUL, LLC also d/b/a
SHORTCUTS TO MILLIONS, LLC, a
21 California limited liability company;
MENTORING OF AMERICA, LLC, a
22 California limited liability company;
FAMILY PRODUCTS, LLC, a
23 California limited liability company;
DOUGLAS GRAVINK, an individual;
24 GARY HEWITT, an individual; JOHN
BECK, an individual; JOHN
25 ALEXANDER, an individual; and JEFF
PAUL, an individual,

26 Defendants.
27
28

Case no. CV-09-4719 CBM(FFMx)

MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF FTC'S MOTION FOR
PRELIMINARY INJUNCTION
WITH ASSET FREEZE AND
OTHER EQUITABLE RELIEF

Date: July 27, 2009
Time: 10:00 a.m.
Judge: Hon. Consuelo B. Marshall

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1 **I. Introduction**¹

2 Plaintiff Federal Trade Commission (“FTC”) asks this Court to halt the
3 deceptive practices of two individuals, both recidivists, who through a parent
4 company control three businesses that are merely different faces of the same scam.

5 Defendants use infomercials to promote money-making systems, including
6 “John Beck’s Free & Clear Real Estate System” and “Jeff Paul’s Shortcuts to
7 Internet Millions.”² Each system consists of a kit that costs \$39.95. Defendants’
8 infomercials lure consumers with misleading claims of quick and easy profits. In
9 reliance on these representations, hundreds of thousands of consumers have
10 purchased the John Beck and Jeff Paul kits. When consumers purchase either of
11 these kits, they are unknowingly enrolled in Defendants’ continuity membership
12 plans. Defendants charge consumers’ accounts \$39.95 every month unless
13 consumers take affirmative steps to cancel.

14 The scam does not end there. Having gathered an enormous target list of kit
15 purchasers, Defendants deploy an army of telemarketers who call these consumers
16 and offer personal coaching services. The telemarketers misrepresent that these
17 coaching services will enable consumers to earn more money at a faster rate than if
18 consumers used the kits alone. The cost of the coaching services is steep:
19 Defendants charge consumers an average of about \$4,000 each, with some
20 consumers paying more than \$12,000. To convince consumers to pay these
21 enormous sums, Defendants’ telemarketers assure consumers that their

22
23 ¹Plaintiff has filed concurrently herewith 87 Exhibits, including declarations
24 from FTC and other consumer protection personnel, as well as declarations from
25 68 consumers. Citations to these declarations consist of the Exhibit number
26 (“PX”) followed by the relevant paragraph and/or page number(s).

27 ²Defendants also have promoted “John Alexander’s Real Estate Riches in 14
28 Days.” This system was deceptively marketed from November 2005 to mid-2007,
resulting in injury to thousands of consumers. This system is addressed in the
Complaint, but is not included in the FTC’s Application for Preliminary Injunction.

1 “investment” is risk-free, because consumers who complete Defendants’ coaching
2 program will either find themselves earning so much money they will be able to
3 quickly pay off the cost of the coaching services, or will qualify for Defendants’
4 “tuition reimbursement” program. In reliance on these representations, tens of
5 thousands of consumers across the United States have purchased Defendants’
6 personal coaching services. Consumers who decline the offer of coaching services
7 are hounded by Defendants’ telemarketers, even after asking not to be called again.

8 Few, if any, consumers who purchase and use the John Beck or Jeff Paul
9 system earn substantial sums of money the way Defendants’ infomercials claim.
10 Further, few consumers who purchase Defendants’ personal coaching services earn
11 more than what they paid for the coaching. Defendants’ conduct violates Section 5
12 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, and the
13 Telemarketing Sales Rule, 16 C.F.R. Part 310 (“TSR”). The FTC requests that the
14 Court halt Defendants’ illegal practices and remedy the consumer injury caused by
15 Defendants by: (1) entering a preliminary injunction prohibiting these law
16 violations; (2) appointing a monitor to ensure compliance with the Court’s order;
17 (3) freezing Defendants’ assets for the benefit of consumer victims; and (4)
18 providing related equitable relief.

19 **II. The Parties**

20 **A. Plaintiff**

21 The FTC is an independent agency of the United States Government created
22 by statute. 15 U.S.C. §§ 41 *et seq.* It is charged, *inter alia*, with enforcement of
23 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive
24 acts or practices in or affecting commerce. The FTC is also charged with enforcing
25 Commission trade regulation rules, including the Telemarketing Sales Rule. 15
26 U.S.C. §§ 57b and 6105(b). Sections 13(b) and 19 of the FTC Act, 15 U.S.C.
27 §§ 53(b) and 57b, authorize the Commission to initiate federal court proceedings to
28 enjoin violations of the FTC Act and its trade regulation rules to secure such

1 equitable relief as may be appropriate, including restitution for injured consumers.

2 **B. Defendants**

3 Individual defendants **Gary Hewitt** and **Douglas Gravink**, both FTC Act
 4 recidivists,³ are the masterminds behind the scam. Hewitt and Gravink created and
 5 control all of the corporate defendants involved in this case. They are the sole
 6 members of defendant **Family Products, LLC**.⁴ Family Products, LLC is the sole
 7 member of defendants **John Beck Amazing Profits, LLC**; **Jeff Paul, LLC** also
 8 **d/b/a Shortcuts to Millions, LLC**; and **Mentoring of America, LLC** (hereinafter,
 9 the “Corporate Defendants”).⁵ Family Products, LLC oversees the nationwide⁶
 10 marketing and selling of the John Beck and Jeff Paul systems.⁷ Defendant
 11 Mentoring of America, LLC employs hundreds of telemarketers who market and
 12 sell coaching programs for the John Beck and Jeff Paul systems.⁸ All of the
 13 Corporate Defendants report 7030 Hayvenhurst Ave., Van Nuys, CA, as their
 14 principal place of business,⁹ and share common management and employees.¹⁰

15 Hewitt and Gravink, as the sole members of Family Products, LLC,

16
 17 ³Individual Defendants Hewitt and Gravink are subject to two prior FTC
 18 orders that prohibit them from making certain misrepresentations. PX 79 ¶¶ 27-28.
 19 In addition, since 2004, Mentoring of America, LLC has been cited multiple times
 20 by the Utah Division of Consumer Protection for making misrepresentations in its
 sales pitches and for failing to honor consumers’ three-day right of rescission
 under Utah law. See PX 73 ¶¶ 14-24.

21 ⁴PX 81 ¶ 8, Att. 1 at pp. 37-40, 82-84, 122-23.

22 ⁵PX 81 ¶ 8; Family Products, LLC uses John Beck Amazing Profits, LLC
 23 and Jeff Paul, LLC only as accounting vehicles; they have no employees. PX 82 ¶
 7, Att.1 at pp. 39, 653-64.

24 ⁶PX 81 ¶ 10, Att. 1 at pp. 36, 44-45, 81, 89, 120.

25 ⁷PX 81 Att. 1 at pp. 40, 85 and Att. 3.

26 ⁸PX 81 ¶ 14, Att. 1 at pp. 124-25, Att. 6 at 292-93. Mentoring of America
 also maintains five telemarketing locations in California, Utah, Nevada, and
 Arizona. PX 81 ¶ 14; PX 82 ¶ 7, Att. 3 at pp. 1207-08.

27 ⁹PX 81 ¶ 9, Att. 1 at pp. 35-36, 80-81, 120.

28 ¹⁰PX 81 ¶ 7, Att. 3 at p. 176; PX 82, Att. 3 at pp. 1205-07; see also n. 5,
supra.

1 reviewed and approved the scripts for the John Beck and Jeff Paul infomercials¹¹ as
2 well as the scripts used by Defendants' telemarketers.¹²

3 Each of the systems was developed by its respective namesake, Defendants
4 **John Beck** and **Jeff Paul** (hereinafter, the "Inventor Defendants").¹³ Beck and
5 Paul each helped create and is featured in the infomercial for his system.¹⁴ Beck
6 and Paul also receive a percentage of the profits from the sales of their systems and
7 the coaching sales.¹⁵ For purposes of this memorandum, the term "Defendants"
8 refers to Hewitt, Gravink, and the Corporate Defendants, and the term "Inventor
9 Defendants" refers to John Beck or Jeff Paul.

10 **III. Facts: Defendants are Running a Three-Stage Scam**

11 A. Stage One of the Scam: The Infomercials

12 1. The John Beck Infomercial

13 On the air since at least January 2004, the John Beck infomercial¹⁶ promises
14 that the John Beck system will reveal a "secret" to quickly and easily earning
15 substantial amounts of money. Here, the secret is buying homes for "pennies on
16 the dollar" at government tax sales and then renting or selling these homes.

17 a. *Representations in the John Beck Infomercial*

18 The John Beck infomercial represents that the John Beck system will allow
19 consumers with no experience in real estate to take advantage of government tax
20

21 ¹¹PX 81 ¶ 6, Att. 2 at pp. 167-68, 170-71.

22 ¹²PX 81 ¶ 55, Att. 1 at pp. 124-25.

23 ¹³PX 81 ¶ 12, Att. 2 at pp. 167-68, 170-71.

24 ¹⁴Id.; PX 82 ¶ 7, Att. 1 at pp. 44-46, 49, 51, 53-55, 57, Att. 2 at pp. 671-73,
688-90, 725-26, 728, 753, 780-81; Att. 3 at pp. 53-58.

25 ¹⁵PX 81 ¶ 13, Att. 5 at pp. 81, 271; PX 82 ¶ 7, Att. 3 at p. 1323.

26 ¹⁶Since 2004, at least two versions of the John Beck infomercial have aired.
27 PX 79 ¶¶ 5-6; see also PX 82 ¶ 7, Att. 2 at pp. 664-65. Both versions have similar
28 formats and contain similar representations made by Inventor Defendant John
Beck, the infomercial hosts, and consumer endorsers. See PX 1 (DVD of
infomercials); PX 79 Att. 2-3.

1 “foreclosure” sales.¹⁷ The John Beck infomercial explains that, when real estate
 2 taxes are not paid, county and local governments may collect the unpaid taxes by
 3 conducting public tax sales.¹⁸ Because government tax liens are usually superior to
 4 all mortgages or loans, when a property is sold at a tax sale, all mortgages or loans
 5 are wiped out.¹⁹ Thus, according to the infomercial, consumers can purchase
 6 properties at government tax sales in their area by simply paying the back taxes,
 7 and thus acquire properties “free and clear” of all mortgages and loans.²⁰

8 Although the infomercial mentions that the John Beck system can be used to
 9 purchase other types of property (such as land), the emphasis of the infomercial is
 10 clearly on using the John Beck system to buy homes.²¹ The infomercial opens with
 11 pictures of homes.²² Nearly every time a consumer endorser is speaking, homes
 12 are shown.²³ Inventor Defendant John Beck shows multiple examples of homes he
 13 claims were purchased using his system.²⁴ More than 70 examples of homes are
 14 shown, which works out to about one home pictured every twenty-three seconds.²⁵
 15 Consumers have concluded, after seeing the infomercial, that they will be able to
 16
 17

18 ¹⁷PX 79 ¶ 7m. Although mortgage foreclosures are separate and distinct
 19 from government tax sales, the most recent John Beck infomercial mentions the
 20 opportunities that are being created by the current housing crisis. Id.; see also PX
 21 82 ¶ 7, Att. 2 at 775-77.

22 ¹⁸PX 79 ¶ 7a, Att. 2-3.

23 ¹⁹Id.

24 ²⁰See generally PX 1 (DVDs of infomercials); PX 79, Att. 2-12.

25 ²¹ PX 79 ¶ 7k. In most instances, when the infomercial uses the term
 26 “property,” an image of a home is also being shown. Id. PX 79 ¶ 7i.

27 ²²PX 79 ¶ 7b.

28 ²³PX 79 ¶ 7d; see, e.g., id. at Att. 6.

²⁴See, e.g., PX 79, Att. 2-3. John Beck states: “There are all kinds of
 properties available at these tax sales, everything from little starter homes to big
 estates.” Id. at p. 202, lines 9-11.

²⁵PX 79 ¶ 7c.

1 use the John Beck system to buy inexpensive houses at government tax sales.²⁶

2 However, the John Beck infomercial is not just about buying cheap houses.
 3 The infomercial also represents that consumers who use the John Beck system are
 4 likely to quickly and easily earn substantial amounts of money by selling or renting
 5 the homes they purchase at tax sales in their area.²⁷ In the infomercial, consumer
 6 endorsers²⁸ and Inventor Defendant Beck make numerous express claims about the
 7 quick and easy money they have made with the John Beck system,²⁹ without
 8 spending a lot of money to do so.³⁰ Consumers have concluded, after watching the
 9 John Beck infomercial, that the John Beck system will allow them to quickly and
 10 easily earn substantial amounts of money with little financial investment.³¹

11 *b. The John Beck Materials*

12 Hundreds of thousands of consumers across the United States have
 13 purchased the John Beck system.³² The system consists of DVDs and
 14 informational booklets in written and/or electronic format.³³ The John Beck
 15 materials describe generally how government tax sales work, and summarize the
 16 tax sale process in all 50 states and Canada.³⁴ The state-by-state descriptions are
 17 brief but densely written, contain technical legal jargon, and quote extensively

18
 19 ²⁶PX 3 ¶ 3; PX 4 ¶ 3; PX 5 ¶ 3; PX 6 ¶ 2; PX 12 ¶ 2; PX 14 ¶ 3; PX 15 ¶¶ 2-
 20 3; PX 16 ¶ 3; PX 17 ¶ 3; PX 18 ¶ 3; PX 19 ¶ 2; PX 20 ¶ 2; PX 21 ¶ 2; PX 67 ¶ 4;
 see also PX 82 ¶ 7, Att. 3 at p. 1302.

21 ²⁷See, e.g., PX 79 ¶ 7m - 7q, Att. 7-11.

22 ²⁸See, e.g., PX 79 ¶ 7d. When the consumer endorsers are speaking, a
 23 disclaimer that says, “Unique Experience. Results Vary” appears. This disclaimer
 24 appears in small font and, in the more recent John Beck infomercial, in a color and
 25 location that makes it impossible to read from any reasonable distance. PX 79 ¶ 9.

26 ²⁹See, e.g., PX 79 ¶ 7m.

27 ³⁰See, e.g., PX 79 ¶ 7r.

28 ³¹PX 3 ¶ 3; PX 4 ¶ 3; PX 5 ¶ 3; PX 7 ¶¶ 2-3; PX 11 ¶¶ 2-3; PX 14 ¶ 3; PX 17
 ¶ 27; PX 19 ¶ 2; PX 20 ¶ 2; PX 37 ¶ 2; PX 67 ¶ 4.

³²PX 81 ¶ 61.

³³PX 81 ¶ 26.

³⁴PX 81 ¶ 29.

1 from state and county statutes.³⁵ Consumers report that they have found the
2 materials difficult to understand and use.³⁶

3 According to the John Beck materials, generally, at government tax sales,
4 either tax liens or tax deeds are sold.³⁷ A tax lien is a lien imposed on real property
5 to secure the unpaid taxes; it does not transfer title.³⁸ Therefore, *according to the*
6 *John Beck materials themselves*, it is impossible to purchase a tax lien at a tax sale
7 and then immediately possess the underlying property “free and clear.” Only if the
8 delinquent taxes are not repaid, can the purchaser of a tax lien “foreclose” on the
9 lien to obtain title to the property.³⁹ A tax deed, on the other hand, usually (but not
10 always) immediately conveys title to its purchaser.⁴⁰

11 *c. False Claims*

12 The John Beck infomercial’s claim that consumers located anywhere will be
13 able to purchase homes, at tax sales in their area, for just “pennies on the dollar,”
14 “free and clear” of all mortgages and liens, is false. In fact, *the John Beck system*
15 *materials themselves* reveal that, in most of the United States, the John Beck
16 system does not work as described in the infomercial. In these states, it is
17 impossible to simply walk into a government tax sale, pay a few hundred dollars in
18 back taxes, and walk out with a “free and clear” deed to a home. This is because
19 about half of the United States generally sell tax liens, not tax deeds.⁴¹ While
20 purchasers of tax liens may earn a return on their investment, they do not
21

22 ³⁵PX 81 ¶ 29.

23 ³⁶PX 5 ¶ 6; PX 6 ¶ 4 (some disks failed); PX 7 ¶ 11; PX 8 ¶ 3; PX 9 ¶ 3; PX
24 11 ¶ 48; PX 12 ¶ 3; PX 13 ¶ 4; PX 14 ¶ 5 (no access to property vault); PX 15 ¶ 9
25 (no access to property vault); PX 19 ¶ 12; PX 20 ¶ 3; PX 21 ¶ 4; PX 57 ¶ 3.

26 ³⁷PX 81 ¶¶ 30, 34.

27 ³⁸PX 81 ¶ 30; see also PX 74 ¶ 4.

28 ³⁹PX 81 ¶ 31; see also PX 74 ¶¶ 4, 9.

⁴⁰PX 81 ¶¶ 34, 37; see also PX 74 ¶ 9.

⁴¹PX 81 ¶¶ 30, 41.

1 immediately, if ever, acquire ownership of the property.⁴²

2 In the remaining states, tax deeds are sold, but it is also impossible to
3 immediately acquire homes “free and clear” for a few “pennies on the dollar” in
4 most of these states.⁴³ This is because at least 9 of these states have laws that result
5 in high opening bids (thus properties are not sold merely for the amount of back
6 taxes).⁴⁴ At least 9 other states sell deeds with a right of redemption, meaning the
7 delinquent taxpayer has time, sometimes as much as two years, during which he or
8 she may repay the cost of the deed, plus interest, and reclaim the property.⁴⁵

9 In the dozen or so remaining states (out of 50), while it might be possible for
10 a consumer to obtain a tax deed to a home at a tax sale, the John Beck materials
11 acknowledge that unless a consumer is one of few bidders (or the only one) at a tax
12 sale, the purchase prices are often bid up very quickly.⁴⁶ The John Beck materials
13 expressly state that purchasing a valuable home free and clear for pennies on the
14 dollar at a government tax sale is difficult, if not impossible, because, if there is a
15 home on the property secured by a mortgage, it is “extremely unlikely” that the
16 person or bank holding that mortgage will not pay the delinquent taxes in order to
17 preserve their security interest in the property.⁴⁷ Consequently, consumers who
18 purchase the John Beck coaching services (discussed infra) are advised by their
19

20 ⁴²PX 81 ¶¶ 30-31; see also PX 74 ¶¶ 4, 7-8, 20.

21 ⁴³PX 81 ¶¶ 34-41.

22 ⁴⁴PX 81 ¶ 41.

23 ⁴⁵PX 81 ¶¶ 37, 41.

24 ⁴⁶PX 81 ¶ 39. Consumers’ experiences confirm this point. See, e.g., PX 3 ¶
31; PX 5 ¶¶ 18, 21; PX 11 ¶ 40; PX 18 ¶ 13; PX 20 ¶ 10.

25 ⁴⁷PX 81, Att. 15 at p. 910. Parties with security interests in real property
26 (such as the holder of a mortgage) usually have a right to pay property taxes to
27 preserve their security interest. PX 81, Att. 15 at p. 909; see also PX 74 ¶ 8. The
28 John Beck materials therefore advise consumers who wish to find a home at a
government tax sale to search for abandoned properties. PX 81, Att. 15 at pp. 909-
11; see also PX 74 ¶ 17; see generally PX 5 ¶ 33; PX 11 ¶ 24; PX 18 ¶ 12.

1 coaches to look for land, not homes, at tax sales.⁴⁸ Despite their best efforts,
 2 consumers have been unable to buy homes for a few hundred dollars at tax sales,⁴⁹
 3 or to quickly and easily earn substantial amounts of money.⁵⁰

4 As additional evidence that the John Beck infomercial's claims are false,
 5 very few of Defendants' customers have documented their success. The company
 6 has for several years offered full or partial refunds of the amount consumers spend
 7 for the John Beck coaching services (often many thousands of dollars) if
 8 consumers report their "success" back to the company and also provide a
 9 testimonial for the John Beck system.⁵¹ However, only 58 out of more than 30,000
 10 (less than 0.2%) of purchasers of the John Beck coaching services have qualified
 11 for a tuition refund.⁵² In other words, more than 99.8% of John Beck coaching
 12 purchasers have not obtained this refund, which they are entitled to by simply
 13 reporting their success to the company.

14 Finally, some of the endorsers who appear in the infomercial were coached
 15 by Defendants to make misleading statements. At least two of the consumer
 16 endorsers were instructed during the filming of their testimonial to state that they
 17 had actually made money, when in fact they had not yet realized any profits.⁵³

18 *d. Unsubstantiated Claims*

19 For the same reasons discussed above, Defendants and Inventor Defendant
 20

21 ⁴⁸PX 5 ¶ 18; PX 7 ¶¶ 14, 18; PX 8 ¶ 15; PX 11 ¶ 39; PX 14 ¶ 9; PX 15 ¶ 10;
 22 PX 18 ¶ 11; PX 19 ¶¶ 8, 10; PX 67 ¶ 12.

23 ⁴⁹PX 3 ¶¶ 19-24; PX 4 ¶ 40; PX 5 ¶¶ 18-19, 21; PX 7 ¶ 20; PX 9 ¶ 16, 29;
 24 PX 11 ¶¶ 25, 39; PX 15 ¶ 10, 23; PX 16 ¶ 11, 14; PX 18 ¶ 13; PX 20 ¶¶ 10-11.

25 ⁵⁰See, e.g., PX 3 ¶¶ 19-30, 34-39; PX 4 ¶¶ 22, 27, 30-44; PX 5 ¶¶ 15-28, 38-
 26 41; PX 11 ¶¶ 10-11, 15-18, 22-48.

27 ⁵¹PX 81 ¶ 69, Att. 1 at p. 133 and ¶ 69, Att. 27 at p. 3741; PX 82 ¶ 7, Att. 3 at
 28 pp. 1224, 1351-52.

⁵²PX 82 ¶¶ 28-32, Att. 6 at pp. 1511-16.

⁵³PX 66 ¶¶ 13-17; PX 67 ¶¶ 22-30. Defendants know the difference between
 realized and unrealized profits. PX 82 ¶ 7, Att. 2 at pp. 716-17, 721.

1 Beck also did not possess a reasonable basis for representing that consumers who
 2 purchase and use the John Beck system are likely to (1) be able to purchase homes,
 3 at tax sales in their area, “free and clear” of all mortgages or liens, for just “pennies
 4 on the dollar;” (2) earn substantial amounts of money by selling or renting these
 5 homes; and (3) quickly and easily earn substantial amounts of money with little
 6 financial investment.⁵⁴

7 The claims about the how quick and easy it is to purchase homes for a few
 8 hundred dollars are unsubstantiated for additional reasons. First, none of the
 9 homes shown was purchased for the price claimed.⁵⁵ The homes, all located in
 10 Oklahoma County, Oklahoma,⁵⁶ took years to acquire.⁵⁷ At least two of them were
 11 uninhabitable when purchased.⁵⁸ In addition, none of the homes shown was
 12 purchased by someone who had previously purchased the John Beck system.⁵⁹
 13 Second, out of the more than 600,000⁶⁰ consumers who have purchased the John
 14 Beck system, Defendants and Inventor Defendant Beck possess evidence of only a
 15 few dozen consumers who may have acquired homes through government tax
 16 sales.⁶¹ Even so, many of these homes costs thousands of dollars,⁶² or consumers
 17 spent thousands on repairs prior to selling them.⁶³

19 ⁵⁴In 2007, the BBB of Southern California requested that Defendants provide
 20 substantiation for the claims made in the John Beck infomercial. While the
 21 Defendants provided an initial response to this inquiry, they failed to reply to the
 22 BBB’s follow-up requests for compelling substantiation. PX 72 ¶¶ 7-16.

22 ⁵⁵PX 74 ¶¶ 14-16.

23 ⁵⁶PX 82 ¶ 7, Att. 2 pp. 686, 723-24, 759-60.

24 ⁵⁷PX 74 ¶ 20; see also PX 81 ¶¶ 65-68, Att. 26 at pp. 3666-3741.

25 ⁵⁸PX 74 ¶ 19; PX 75 ¶¶ 2-8.

26 ⁵⁹PX 82 ¶ 7, Att. 2 at p. 683.

27 ⁶⁰PX 81 ¶ 61.

28 ⁶¹PX 82 ¶ 21-22 and Att. 5 at pp. 1481-1510.

⁶²Id. at ¶ 22, Att. 5 at pp. 1481-1510, ¶ 31, Att. 6 at pp. 1511-17; see also PX
 74 ¶¶ 9-10; PX 16 ¶ 48.

⁶³PX 82 ¶ 22, Att. 5.

1 The claim in the infomercial that consumers are likely to earn substantial
 2 amounts of money using the John Beck system is unsubstantiated as well.
 3 Defendants do not track their customers' experiences, so they simply have no basis
 4 for the earnings claims in the infomercial.⁶⁴ Of the consumers who have reported
 5 their experience to Defendants, few, if any, have used the John Beck system to earn
 6 the amounts of money touted in the infomercial, with little financial investment or
 7 otherwise.⁶⁵ Few, if any, of these consumers earned money by purchasing houses
 8 for a few hundred dollars and then selling or renting them.⁶⁶

9 As for the consumer endorsers shown in the John Beck infomercial, none of
 10 them earned money by purchasing inexpensive homes at tax sales and then selling
 11 or renting them out for a profit, the method touted in the John Beck infomercial.⁶⁷
 12 Defendants did not possess documentation sufficient to support most of the
 13 consumer endorsers' express earnings claims.⁶⁸ Finally, Defendants did not
 14 possess any documentation to support many of Inventor Defendant Beck's claims
 15 in the infomercial; instead, they simply took his word for it.⁶⁹

16 2. The Jeff Paul Infomercial

17 Broadcast nationwide since at least January 2006, the Jeff Paul infomercial⁷⁰

18 ⁶⁴Id. at ¶ 7, Att. 2 at pp. 683-85, 707, 729, 756, 763.

19 ⁶⁵Id. at ¶¶ 21, 23, 30.

20 ⁶⁶Id. at ¶ 23.

21 ⁶⁷Id. at ¶ 25. Some of the endorsers made money buying and selling land. Id.

22 ⁶⁸Id. at ¶¶ 25-27. In several instances, the only document that Defendants
 23 possessed to support the consumer endorsers' claims was a one-page "affidavit and
 24 release" form the endorser signed prior to appearing in the infomercial. Id. at ¶ 26
 25 and Att. 8. Also, Defendant Hewitt has admitted that the consumer endorsers are
 26 not representative of consumers who purchase the John Beck system. Id. at ¶ 7,
 27 Att. 2 at pp. 707, 802-803.

28 ⁶⁹Id. at ¶ 16; see also id. ¶ 7, Att. 2 at p. 780-81.

⁷⁰Since 2006, at least two versions of the Jeff Paul infomercial have aired.
 PX 82 ¶ 6, Att. 1 at pp. 41-44. Both versions have similar formats and contain
 similar representations made by Jeff Paul, the infomercial hosts, and consumer

(continued...)

1 lures consumers with yet another money-making opportunity, this time involving
2 supposedly proven, turnkey Internet businesses.⁷¹

3 *a. Representations in the Jeff Paul Infomercial*

4 The Jeff Paul infomercial represents that consumers who purchase the Jeff
5 Paul system will receive proven, turnkey Internet businesses that will immediately,
6 and automatically, make them money.⁷² The Jeff Paul infomercial further
7 represents that the Jeff Paul system is so simple and easy to learn and use that
8 consumers do not need any prior experience with the Internet or computers to
9 make it work.⁷³ Like the John Beck infomercial, the Jeff Paul infomercial has
10 consumer endorsers and Inventor Defendant Paul making express earnings
11 claims.⁷⁴ Although short on details about how the system actually works, the
12 infomercial assures viewers that “[c]ountless people have already made millions of
13 dollars with Jeff’s amazing Shortcuts to Internet Millions” system.⁷⁵

14 Tens of thousands of consumers across the United States have purchased the
15 Jeff Paul system.⁷⁶ As with the John Beck system, consumers who purchase the
16 Jeff Paul system receive a kit containing CDs and several informational booklets in
17 written and/or electronic format.⁷⁷

18 *b. False Claims*

19 The Jeff Paul infomercial represents that the Jeff Paul system will provide

20
21 ⁷⁰(...continued)
22 endorsers. See PX 1 (DVD of infomercials); PX 81 ¶ 18.

23 ⁷¹See generally PX 1 (DVD of infomercials); PX 81 ¶ 18.

24 ⁷²PX 81 ¶ 18, Att. 9-11. The first version of the Jeff Paul infomercial
25 referred to the free websites as “three clicks to cash” websites. The more recent
26 version of the infomercial refers to these websites as “instant website businesses.”
27 PX 81 ¶ 18, Att. 11.

28 ⁷³PX 81 ¶ 18, Att. 9. See generally PX Vol. Three (consumer declarations).

⁷⁴PX 81 ¶ 18, Att. 10.

⁷⁵PX 81 ¶ 17, Att. 7 at p. 310, lines 20-22.

⁷⁶PX 81 ¶ 61.

⁷⁷PX 81 ¶ 44.

1 consumers with proven, turnkey Internet businesses, and that consumers are likely
 2 to quickly and easily earn substantial amounts of money from these businesses.
 3 The infomercial represents that consumers will accomplish this by utilizing the free
 4 “three clicks to cash” websites or “instant website businesses” included with the
 5 Jeff Paul system. This representation is false.

6 While it is technically possible for a consumer to create and use the free
 7 websites described in the Jeff Paul infomercial, each “website” is a single,
 8 unattractive webpage with a basic white background and boilerplate text.⁷⁸
 9 Consumers who want enhance their websites report that this is not easy to do
 10 because they do not have prior experience in website design.⁷⁹ Even assuming
 11 consumers can modify their free websites to their liking, consumers must do all of
 12 their own marketing to attract customers and hopefully earn money.⁸⁰ The Jeff
 13 Paul system does nothing to market consumers’ instant websites.⁸¹ Thus, contrary
 14 to what is represented in the infomercial, consumers are not able to choose a
 15 proven business and then watch as the cash rolls in.⁸²

16 In addition, contrary to the representations in the infomercial, the Jeff Paul
 17 system is not easy to learn or use, because it is not really a “system” at all. The
 18 Jeff Paul materials instruct consumers to start their own businesses from scratch by
 19 creating and marketing their own products.⁸³ The Jeff Paul materials also provide
 20 general marketing advice, which largely consists of simple tips, such as “pick a
 21
 22

23 ⁷⁸PX 78 ¶ 28. In addition, the free websites appear to have all the same
 24 format, the same layout, as well as the same text. Id.

25 ⁷⁹PX 22 ¶¶ 2, 11, 14; PX 27 ¶ 5; PX 87 ¶ 2, 6, 22.

26 ⁸⁰PX 78 ¶ 29; PX 81 ¶ 45, 47-48.

27 ⁸¹See PX 81 ¶¶ 45, 47-48.

28 ⁸²PX 22 ¶¶ 2-24; PX 23 ¶¶ 2, 15-21; PX 24 ¶¶ 2-13; PX 26 ¶¶ 2-18; see also
 PX 78 ¶ 29.

⁸³PX 81 ¶ 45; see also PX 82 ¶ 7, Att. 1 at p. 77-79.

1 market that can afford to buy your product.”⁸⁴

2 As additional evidence that the Jeff Paul infomercial’s claims are false, as
 3 with the John Beck system, Defendants have for several years offered full or partial
 4 refunds of the amount consumers spend for the Jeff Paul coaching services (often
 5 many thousands of dollars) if consumers report their “success” back to the
 6 company and also provide a testimonial for the Jeff Paul system.⁸⁵ However, there
 7 is no evidence that a single purchaser of the Jeff Paul coaching services has ever
 8 qualified for a tuition refund.⁸⁶

9 *c. Unsubstantiated Claims*

10 For the same reasons discussed above, Defendants and Inventor Defendant
 11 Paul also did not possess a reasonable basis for representing that consumers who
 12 purchase and use the Jeff Paul system are likely to earn substantial amounts of
 13 money from proven, turnkey Internet businesses.⁸⁷ Defendants do not know how
 14 much money their customers earn because they do not track their customers’
 15 experiences.⁸⁸ Despite the claim that “countless people have already made millions
 16 of dollars” with the Jeff Paul system, Defendants have documentation about the
 17 experiences of only a handful of consumers.⁸⁹ And of these consumers, few, if
 18 any, have earned the amounts of money touted in the Jeff Paul infomercial.⁹⁰

19 Furthermore, although many of the consumer endorsers make express
 20 earnings claims in the Jeff Paul infomercial, in most instances, Defendants and
 21 Inventor Defendant Paul did not possess documentation sufficient to support these

22 ⁸⁴PX 81 ¶ 49.

23 ⁸⁵PX 81 ¶ 69, Att. 1 at p. 133; PX 82 ¶ 7, Att. 3 at p. 1351-52.

24 ⁸⁶PX 82 ¶ 29, Att. 6.

25 ⁸⁷The documents that Defendants submitted in support of the two Jeff Paul
 26 infomercials are included as Att. 25 to PX 81 (see PX 81 ¶ 64). See PX 83 for a
 detailed analysis of the Jeff Paul substantiation materials.

27 ⁸⁸PX 82 ¶ 7, Att. 1 at p. 145.

28 ⁸⁹PX 83 ¶¶ 5, 13, 39.

⁹⁰PX 83 ¶¶ 5, 14, 25, Att. 2; *id.* at ¶¶ 35, 38f, Att. 3; *id.* at ¶ 42.

1 claims.⁹¹ In numerous instances, the documentation relating to income received by
 2 the consumer endorsers fails to establish or even suggest that the income was
 3 related in whole or in part to using the Jeff Paul system; in any event it is not clear
 4 that any of the consumer endorsers earned money using the free Internet businesses
 5 provided with the Jeff Paul system.⁹² Even if the statements made by the consumer
 6 endorsers are true, Defendants know that the consumer endorsers are not
 7 representative of consumers who purchase and use the Jeff Paul system.⁹³ Finally,
 8 Defendants did not possess any documentation at all to support the claims made by
 9 Jeff Paul in the infomercial.⁹⁴

10 **B. Stage Two of the Scam: Continuity Charges**

11 Both the John Beck and Jeff Paul infomercials represent that consumers who
 12 purchase the John Beck or Jeff Paul system will receive, as a free bonus, access for
 13 30 days to a special membership club (either John Beck's "Property Vault" or Jeff
 14 Paul's "Big League").⁹⁵ These are the only statements in the infomercials about
 15 the Property Vault or the Big League membership clubs.⁹⁶

16 Consumers who call to order the John Beck or Jeff Paul systems follow a
 17

18 ⁹¹PX 83 ¶¶ 6-43. In most instances, the only document that Defendants
 19 possessed to support the consumer endorsers' claims was a one-page "affidavit and
 20 release" form the endorser signed prior to appearing in the infomercial. *Id.* at ¶ 9.
 21 See also PX 82 ¶ 7, Att. 3 at p. 1328. Most of the pages that Defendants proffered
 22 as substantiation for their first infomercial were entirely unrelated to the experience
 of any of their customers. PX 83 ¶ 27.

23 ⁹²PX 83 ¶¶ 14-16, 31, 41; see also PX 68; PX 82 ¶ 7, Att. 2 at p. 683. In fact,
 24 it appears that the Defendants had difficulty even finding consumer endorsers who
 could appear in the Jeff Paul infomercial. See PX 81, Att. 25 at p. 3338.

25 ⁹³Defendant Hewitt has admitted that the consumer endorsers are not
 26 representative of consumers who purchase the Jeff Paul system. PX 82 ¶ 7, Att. 2
 at p. 683.

27 ⁹⁴PX 83 ¶ 5; see also PX 82 ¶ 7, Att. 3 at pp. 1319-20.

28 ⁹⁵PX 79 ¶ 8.

⁹⁶PX 79 ¶ 8.

1 series of pre-recorded prompts.⁹⁷ The initial greeting on the recording states that
 2 the membership clubs are included for free with the purchase of the John Beck or
 3 Jeff Paul system. As soon as consumers begin the ordering process, the automated
 4 system takes their payment information for the John Beck system (the \$39.95 kit
 5 advertised in the infomercial).⁹⁸ The only other statements made during the order
 6 process concerning the membership clubs are upsells, which are made *after* the
 7 system takes consumers' payment information.⁹⁹ These upsells offer consumers
 8 extended memberships for an additional charge.¹⁰⁰ Even if consumers decline, they
 9 are still enrolled in Defendants' continuity plans, described below.¹⁰¹

10 In fact, the Property Vault and Big League are actually continuity plans that
 11 will automatically charge consumers \$39.95 per month after the 30-day free trial
 12 period expires.¹⁰² Consumers who purchase the John Beck or Jeff Paul system are
 13 automatically and unknowingly enrolled in these continuity plans, and must
 14 contact Defendants to cancel their memberships to avoid future charges.¹⁰³ In

15
 16 ⁹⁷PX 81 ¶ 21.

17 ⁹⁸*Id.* at ¶ 22 (John Beck); *Id.* at ¶ 24 (Jeff Paul).

18 ⁹⁹PX 81 ¶ 22 (John Beck); *Id.* at ¶ 24 (Jeff Paul). Not everyone who orders
 the John Beck system hears the Property Vault upsell See PX 78 ¶ 5; PX 79 ¶ 14.

19 ¹⁰⁰PX 81 ¶ 22 (John Beck); *Id.* at ¶ 24 (Jeff Paul).

20 ¹⁰¹Some consumers believe that if they press "no" they will never be charged
 for the Property Vault of the Big League. These consumers are enrolled and
 charged anyway. See, e.g., PX 33 ¶¶ 5-6; PX 34 ¶¶ 3-4; PX 37 ¶¶ 3, 6; PX 38 ¶¶ 3,
 21 6; PX 39 ¶¶ 3-4; PX 86 ¶ 26.

22 ¹⁰²PX 81 ¶¶ 22, 24 and Att. 1, pp. 46-47, 90-91.

23 ¹⁰³After consumers are enrolled in the continuity plans without their consent,
 but before Defendants charge consumers for their memberships, Defendants
 24 purport to disclose, via package inserts, postcards, and telephone messages, that
 25 consumers can cancel the continuity plans by taking certain steps, or that the 30-
 day free trial period is about to expire and that consumers will be charged if they
 26 do not affirmatively cancel before the trial period ends. PX 81 ¶ 53. However,
 27 these disclosures are not consistently made. PX 79 ¶¶ 14-15 (no calls, emails, not
 on invoice); PX 78 ¶ 18 (no calls, emails, or communications; not on invoice for

28 (continued...)

1 numerous instances, consumers are unaware they have been enrolled and charged
 2 for the Property Vault and Big League Players' Club continuity plans until they
 3 notice the \$39.95 charges on their credit card statements.¹⁰⁴

4 C. Stage Three of the Scam: Personal Coaching Services

5 Unfortunately for consumers, Defendants' deception does not stop with the
 6 John Beck or Jeff Paul infomercials and continuity plans. Rather, customers who
 7 purchase a kit become targets for the ultimate upsell: personal coaching services
 8 for the John Beck or Jeff Paul systems. Defendants employ hundreds of
 9 telemarketers who work out of five boiler rooms located in Utah, Nevada,
 10 California, and Arizona.¹⁰⁵ During outbound and inbound calls,¹⁰⁶ the
 11 telemarketers convince consumers to spend thousands of dollars on Defendants'
 12 personal coaching services. These services consist of additional written and/or
 13 electronic materials, and, in most instances, one-on-one telephonic sessions.¹⁰⁷ The
 14

15 ¹⁰³(...continued)

16 Beck or Paul kits). Furthermore, all of these disclosures are made *after* Defendants
 17 have already taken consumers' payment information and enrolled them in the
 18 membership clubs. The disclosures are vague, presented in minuscule font, and/or
 19 fail to inform consumers of the cost of the continuity membership. PX 78 ¶ 6; PX
 20 79 ¶¶ 14-15; PX 81 ¶¶ 53-54. Most importantly, these disclosures fail to inform
 21 consumers that they *have already been enrolled* in Defendants' continuity plan.
 22 PX 81 ¶¶ 53-54. In addition, in some instances, the disclosures are made after
 23 consumers have already been charged. PX 79 ¶ 25 (postcard postmarked after
 24 charge).

25 ¹⁰⁴See PX 4 ¶ 11; PX 6 ¶ 5; PX 9 ¶ 27; PX 23 ¶ 9; PX 24 ¶ 23; PX 29 ¶ 10;
 26 PX 30 ¶ 5; PX 31 ¶ 4; PX 32 ¶ 6; PX 35 ¶¶ 3-7; PX 36 ¶ 3; PX 37 ¶ 6; PX 38 ¶ 6;
 27 PX 40 ¶ 5; PX 86 ¶ 26. Consumers have filed numerous complaints about these
 28 charges with the FTC and Better Business Bureau. PX 79 ¶ 29-38.

¹⁰⁵PX 82 ¶ 7, Att. 3 at p. 1206-08.

¹⁰⁶Defendants estimate that about 85-90% of their telemarketing calls are
 outbound. See PX 82 ¶ 7, Att. 3 at pp. 1205-06.

¹⁰⁷PX 81 ¶ 6, Att. 1 at pp. 127-29. The elements of the coaching programs
 vary depending on which package a consumer purchases. See PX 81 ¶ 58, Att. 23

(continued...)

1 telemarketers' high-pressure tactics have generated millions in revenues.¹⁰⁸

2 1. The Telemarketing Pitch

3 Defendants' telemarketers make numerous express and implied claims about
4 what consumers can expect to achieve with Defendants' expensive coaching
5 services. Using company-approved scripts,¹⁰⁹ the telemarketers represent that
6 consumers' "investment" in the coaching is risk-free, for several reasons.

7 First, the telemarketers tell consumers that Defendants' personal coaches
8 will ensure consumers' success by holding their hands and walking them "step-by-
9 step" through the John Beck or Jeff Paul system.¹¹⁰ The telemarketers assure
10 consumers that, after the coaching, they will be as successful in applying the
11 system as the consumer endorsers they saw in the infomercials.¹¹¹ Second,
12 Defendants' telemarketers urge consumers to use "other people's money" (or
13 "OPM") to pay for the cost of the coaching.¹¹² The telemarketers represent that
14 consumers will never actually have to pay for the cost of the coaching out of their
15 own pocket.¹¹³ Rather, consumers can use their credit cards as "leverage" for a
16 short amount of time (usually one to three months) during which they will be able
17

18 ¹⁰⁷(...continued)
19 (sample coaching order forms).

20 ¹⁰⁸PX 81 ¶ 61.

21 ¹⁰⁹PX 81 ¶ 55, Att. 1 at pp. 124-25. Defendants Hewitt and Gravink
22 personally review and approve the telemarketing scripts. Id.

23 ¹¹⁰See, e.g., PX 81 ¶ 57 and Att. 22; see also PX 79 ¶ 17; PX 78 ¶¶ 11-12; see
24 also PX 3 ¶ 6; PX 4 ¶ 15; PX 5 ¶ 10; PX 6 ¶ 7; PX 7 ¶¶ 5, 17; PX 8 ¶ 5; PX 11 ¶¶
25 5, 15; PX 12) ¶ 4; PX 13 ¶ 8; PX 14 ¶ 7; PX 15 ¶¶ 4-5; PX 20 ¶ 4; PX 21 ¶ 5; PX
26 22 ¶¶ 5, 8; PX 23 ¶ 6; PX 26 ¶ 5; PX 28 ¶¶ 9, 10; PX 67 ¶¶ 6, 8; PX 86 ¶¶ 8-9, 11.

27 ¹¹¹See, e.g., PX81 ¶ 57 and Att. 22; PX 78 ¶ 12; see also PX 14 ¶ 7; PX 15 ¶¶
28 4,6; PX 18 ¶ 4; PX 19 ¶ 4; PX 24 ¶ 9.

¹¹²See, e.g., PX 81 ¶ 57 and Att. 22; see also PX 79 ¶¶ 18-19; PX 9 ¶ 4); PX
12 ¶ 8; PX 16 ¶ 25; PX 19 ¶ 4; PX 67 ¶ 10.

¹¹³See, e.g., PX 81 ¶ 57 and Att. 22; see also PX 79, ¶¶ 18-19, p. 341, lines
13-16; PX 78 ¶ 13.

1 to earn enough money to pay off the charge.¹¹⁴ In numerous instances, Defendants’
 2 telemarketers promise that consumers will have no problem paying off the cost of
 3 the coaching within a few months.¹¹⁵ Finally, the telemarketers reassure consumers
 4 with a tuition reimbursement “warranty.” This warranty offers consumers who
 5 achieve success with the John Beck or Jeff Paul programs a complete refund from
 6 the company of the cost of their tuition.¹¹⁶ Consumers have reported that they
 7 would not have charged thousands of dollars to their credit cards had the
 8 telemarketers not made these assurances.¹¹⁷

9 2. Verification of Sale

10 The sales portion of Defendants’ telemarketing calls, which can last 45
 11 minutes or longer,¹¹⁸ is not recorded.¹¹⁹ However, once a consumer decides to
 12 purchase Defendants’ coaching services, the telemarketer transfers the consumer to
 13
 14
 15

16 ¹¹⁴See, e.g., PX 81 ¶ 57 and Att. 22; see also PX 79 ¶¶ 18-19; PX 78 ¶ 14.

17 ¹¹⁵PX 81 ¶ 57 and Att. 22; PX 79 ¶¶ 18-19; PX 78 ¶ 14; see also PX 9 ¶ 7;
 18 PX 15 ¶¶ 5, 7.

19 ¹¹⁶See, e.g., PX 81 ¶ 57 and Att. 22; see also PX 79, p. 380, line 1 - p. 381,
 20 line 17; PX 78 ¶¶ 13-14; PX 6 ¶ 7; PX 8 ¶ 5; PX 9 ¶ 7; PX 10 ¶ 9; PX 11 ¶ 15; PX
 21 13 ¶ 10; PX 14 ¶ 7; PX 15 ¶ 5; PX 19 ¶ 6; PX 20 ¶ 5; PX 22 ¶ 10; PX 23 ¶ 7; PX
 22 26 ¶ 6; PX 27 ¶ 11; PX 28 ¶ 11; PX 29 ¶ 7; PX 86 ¶¶ 9, 14.

23 ¹¹⁷See, e.g., PX 4 ¶ 22; PX 9 ¶ 8; PX 10 ¶ 10; PX 15 ¶¶ 8, 32; PX 19 ¶¶ 5-7;
 24 PX 20 ¶ 6; PX 23 ¶ 7; PX 27 ¶ 13; PX 28 ¶ 12; PX 29 ¶ 7; PX 67 ¶¶ 9, 11; PX 73 ¶
 25 7. Defendants will likely point out that they have a monitoring and fining system
 26 in place to punish any telemarketers who make misrepresentations. See PX 81,
 27 Att. 1 at p. 125; PX 82 ¶ 7, Att. 3 at 1265. However, given the continued,
 28 consistent complaints by consumers about Defendants’ telemarketers (see PX 73
 ¶¶ 4-5, 8, 11-12; PX 79 ¶¶ 29-32, 35-36), this monitoring system appears to be
 wholly ineffective.

¹¹⁸PX 79 ¶ 16; PX 78 ¶ 4, Att. 1, Atts. 4-8; see also PX 87 ¶ 3; PX 82 ¶ 7,
 Att. 3 at pp. 1261-62.

¹¹⁹PX 82 ¶ 7, Att. 3 at pp. 1210, 1262.

1 a “compliance monitor.”¹²⁰ Only this portion of the call is recorded.¹²¹ The
 2 compliance monitors read from an approved script.¹²² The monitor reads quickly,
 3 and is at times difficult to understand.¹²³ After confirming consumers’ contact and
 4 payment information, and the terms of the sale,¹²⁴ the monitor asks the consumer if
 5 the telemarketer made any earnings claims¹²⁵ during the sales portion of the call.¹²⁶
 6 If a consumer answers “yes” to this question, the sale will not go through.¹²⁷ In
 7 numerous instances, before they transfer the sale to compliance, the telemarketers
 8 instruct consumers to answer “no” to this question, stating it is just a formality.¹²⁸

9 3. False and Unsubstantiated Claims

10 Defendants’ telemarketers represent that consumers who purchase and
 11 complete the John Beck or Jeff Paul coaching programs will quickly earn back the
 12 cost or substantially more than the cost of the coaching program.¹²⁹ This claim is
 13 false. Consumers have reported that their coaches did not walk them step-by-step
 14 through the John Beck or Jeff Paul system as promised.¹³⁰ Consumers have also
 15 complained that Defendants’ coaches seemed rushed, inexperienced, and were
 16

17 ¹²⁰PX 81 ¶ 6, Att. 1 at pp. 124-25.

18 ¹²¹Id. See also PX 2 (sample compliance recordings), PX 81 ¶ 60.

19 ¹²²PX 81 ¶ 56 and Att. 21.

20 ¹²³PX 80 ¶ 3; PX 12 ¶ 9.

21 ¹²⁴PX 81 ¶ 56 and Att. 21; see also PX 80.

22 ¹²⁵The compliance script defines an earnings claim as “guarantee[ing] the
 client a specific amount of money by a specific date. PX 81 ¶ 56, Att. 21 at pp.
 2693, 2696, 2699, 2702; see also PX 82 ¶ 7, Att. 3 at pp. 1217-18.

23 ¹²⁶PX 81 ¶ 56 and Att. 21.

24 ¹²⁷PX 82, Att. 3 at pp. 1211, 1220-21. However, the compliance monitor can
 still elicit a “no” response from a consumer even after the consumer has already
 answered “yes” to this question. See, e.g., PX 80 pp. 5-6.

25 ¹²⁸PX 73 ¶¶ 11-12; PX 15 ¶ 8.

26 ¹²⁹This representation is false for the same reasons (described in §§ III.A.1.c.
 and III.A.2.b., supra) that similar money-making claims made in the John Beck
 and Jeff Paul infomercials are false.

27 ¹³⁰See, e.g., PX 3 ¶ 30; PX 11 ¶ 34; PX 28 ¶ 15; PX 86 ¶¶ 15-16, 20, 23.

1 unable to answer consumers' questions.¹³¹ As a result, very few consumers, if any,
 2 quickly earn back the cost of the coaching. In fact, only about 58 out of more than
 3 40,000 coaching customers (less than 0.2%) have qualified for a tuition refund, and
 4 all of these were John Beck coaching customers.¹³² Put another way, over 99.8%
 5 of purchasers of the John Beck or Jeff Paul systems have not applied for or
 6 received tuition refunds. On the contrary: hundreds of consumers have
 7 complained to the FTC and BBB that, despite their best efforts, they have been
 8 unable to make the John Beck or Jeff Paul system work.¹³³

9 For the reasons discussed above in connection with the John Beck and Jeff
 10 Paul infomercials, Defendants also did not possess adequate substantiation for their
 11 telemarketers' claims. In addition, Defendants do not track their customers'
 12 experiences,¹³⁴ so they do not know about the experiences of more than 99% of
 13 their customers (those who have not reported their experiences to the company).

14 4. Do Not Call Violations

15 Using recycled lead lists,¹³⁵ Defendants' aggressive telemarketers continue
 16 to hound consumers, repeatedly calling consumers who have requested not to be
 17 called again.¹³⁶ In some instances, consumers must ask multiple times to stop
 18 receiving calls before Defendants honor their requests.¹³⁷ Hundreds of consumers
 19 have filed complaints about Defendants' incessant sales calls.¹³⁸

20 **IV. Argument: The Court Should Enter the Requested Relief**

21 Plaintiff asks the Court to enter a preliminary injunction that freezes
 22 Defendants' assets and appoints a monitor to ensure compliance. The requested

23 ¹³¹See, e.g., PX 4 ¶ 35; PX 7 ¶¶ 17-18; PX 15 ¶ 18; PX 16 ¶ 35; PX 17 ¶ 24.

24 ¹³²PX 82 ¶ 30 and PX 81 ¶ 61.

25 ¹³³PX 79 ¶¶ 35-37.

26 ¹³⁴See notes 68 and § III.A.2.c., supra; see also PX 82 ¶ 7, Att. 3 at p. 1255.

27 ¹³⁵PX 70 ¶¶ 12-13.

28 ¹³⁶See generally PX 41 through PX 65 (consumer declarations).

¹³⁷See generally PX 37 - 39, 41-47, 49-65 (consumer declarations).

¹³⁸PX 79 ¶ 34.

1 relief is warranted because Plaintiff is likely to succeed on the merits; irreparable
 2 injury to consumers and to the Court's ability to provide effective final relief to
 3 consumers is likely to result if the requested order is not entered; and the equities
 4 balance in Plaintiff's favor.

5 A. The Court is Authorized To Grant the Requested Relief

6 The FTC Act authorizes a district court to grant permanent injunctions to
 7 enjoin violations of the Act in "proper cases." 15 U.S.C. § 53(b).¹³⁹ A routine
 8 deception case such as this one, replete with misrepresentations and omissions of
 9 material facts in violation of Section 5(a) of the FTC Act and the Telemarketing
 10 Sales Rule, qualifies as a "proper case" for injunctive relief under Section 13(b).¹⁴⁰

11 The authority to issue a permanent injunction under Section 13(b) includes
 12 the authority to grant preliminary and ancillary equitable relief necessary to
 13 effectuate ultimate relief.¹⁴¹ The Court may exercise the full breadth of its
 14 equitable authority in a Section 13(b) action because Congress "did not limit that
 15 traditional equitable power" when it invoked that power in passing the FTC Act.¹⁴²
 16 Ancillary equitable relief may include an order freezing assets and the appointment
 17 of a monitor to ensure compliance with the preliminary injunction.¹⁴³ District

18
 19 ¹³⁹Section 13(b) of the FTC Act authorizes the issuance of injunctive relief in
 20 two different situations. Because the Commission proceeds here under the second
 21 proviso of Section 13(b), the standard that is prescribed in the statute (which
 22 relates to the issuance of temporary relief in aid of administrative proceedings)
 does not apply. FTC v. H.N. Singer, Inc., 668 F.2d 1107, 1111 (9th Cir. 1982);
FTC v. U.S. Oil & Gas Corp., 748 F.2d 1431, 1434 (11th Cir. 1984).

23 ¹⁴⁰Singer, 668 F.2d 1107, 1111-13 (9th Cir. 1982).

24 ¹⁴¹FTC v. Gill, 265 F.3d 944, 950 (9th Cir. 2001). See also FTC v. Pantron I
Corp., 33 F.3d 1088, 1095 (9th Cir. 1994) (citing Cliffdale Assocs., Inc., 103
 25 F.T.C. 110, 164-65 (1984)); Singer, 668 F.2d at 1113.

26 ¹⁴²Singer, 668 F.2d at 1113.

27 ¹⁴³FTC v. World Wide Factors, Ltd., 882 F.2d 344, 346-47 (9th Cir. 1989)
 (affirming district court's power to freeze assets); Singer, 668 F.2d at 1113
 (affirming preliminary injunction and personal and corporate asset freeze); U.S. Oil

28 (continued...)

1 courts are also authorized to depart from normal discovery procedures and to
2 fashion discovery by order to meet discovery needs in particular cases.¹⁴⁴

3 The exercise of this broad equitable authority is particularly appropriate
4 where, as here, the public interest is at stake.¹⁴⁵ Numerous courts in the Ninth
5 Circuit have granted or affirmed injunctive relief similar to that requested here.¹⁴⁶

6 B. The Standard for Entry of a Preliminary Injunction

7 Traditionally, a plaintiff may obtain a preliminary injunction if it shows
8 either: (1) a combination of probable success on the merits and the possibility of
9 irreparable injury, or (2) that serious questions are raised and the balance of
10 hardships tips in its favor.¹⁴⁷ These are not two separate tests: “These two
11 formulations represent two points on a sliding scale in which the required degree of
12 irreparable harm increases as the probability of success decreases.” *Id.*

13 Under the first of these formulations, where the government moves for
14

15 ¹⁴³(...continued)

16 & Gas Corp., 748 F.2d at 1432; *see also* S. Rep. 103-130, 103d Cong., 1st Sess.
17 (1993), *reprinted in* U.S.C.C.A.N. (1994) at 1790-91 (“Section 13 of the FTC Act
18 authorizes the FTC to file suit to enjoin any violation of the FTC [Act]. The FTC
19 can go into court *ex parte* to obtain an order freezing assets, and is also able to
20 obtain consumer redress”).

21 ¹⁴⁴F.R.Civ.P. 1, 26(b)(2), 30(a), 34(b).

22 ¹⁴⁵Porter v. Warner Holding Co., 328 U.S. 395, 398, 66 S.Ct. 1086, 90 L.Ed.
23 1332 (1946); U.S. v. Laerdal Mfg., 73 F.3d 852, 857 (9th Cir. 1995); World Wide
24 Factors, 882 F.2d 344, 347 (9th Cir. 1989).

25 ¹⁴⁶FTC v. Publ’g Clearing House, Inc., 104 F.3d 1168, 1170 (9th Cir. 1997)
26 (TRO, preliminary injunction); World Wide Factors, 882 F.2d at 346 (TRO,
27 preliminary injunction, asset freeze; FTC v. Am. Nat’l Cellular, Inc., 810 F.2d
28 1511, 1512-14 (9th Cir. 1987) (preliminary injunction, asset freeze, appointment of
receiver); FTC v. Affordable Media, LLC, 179 F.3d 1228, 1232-33 (9th Cir. 1999)
(TRO, preliminary injunction, asset freeze, accounting); *see also* FTC v.
Stefanchik, 559 F.3d 924, 926-27(9th Cir. 2009); FTC v. Medlab, Inc., 2009 U.S.
Dist. LEXIS 33917 (N. D. Cal. Apr. 21, 2009).

¹⁴⁷United States v. Odessa Union Warehouse Co-op, 833 F.2d 172, 174 (9th
Cir. 1987).

1 injunctive relief in a statutory enforcement action, it need not show irreparable
2 injury if it shows a likelihood of success on the merits, in which case harm to the
3 public interest is presumed.¹⁴⁸ Thus, a preliminary injunction may be granted if the
4 district court determines that the FTC has a likelihood of success on the merits.

5 Under the second formulation of the sliding-scale test, a district court may
6 grant a preliminary injunction even absent a showing of a likelihood of success on
7 the merits if the moving party shows “that his cause presents serious questions of
8 law worthy of litigation.”¹⁴⁹ In weighing the public and private equities, the public
9 interest should receive greater weight,¹⁵⁰ particularly where the evidence
10 demonstrates that a defendant’s business is rooted in deception, for a “court of
11 equity is under no duty to protect illegitimate profits or advance business which is
12 conducted [illegally].”¹⁵¹

13 C. The Evidence Presented Meets the Standard

14 The evidence presented shows that it is more likely than not that the FTC
15 will ultimately prove, by a preponderance of the evidence, that Defendants and the
16 Inventor Defendants are liable for the allegations in the Complaint. Therefore, the
17 entry of a preliminary injunction is warranted.

18 1. Defendants’ Conduct Violates Section 5 of the FTC Act

19 Counts 1, 2, 5, 6, and 7 of the Complaint allege that Defendants have
20 violated Section 5(a) of the FTC Act, which prohibits deceptive acts and practices
21 in or affecting commerce. 15 U.S.C. § 45(a). To prove deception, the FTC must

22
23 ¹⁴⁸Id.; see also World Wide Factors, 882 F.2d at 347 (“the district court need
24 only to find some chance of probable success on the merits,” citing Odessa Union,
833 F.2d at 176); FTC v. Affordable Media, LLC, 179 F.3d 1228, 1233 (9th Cir.
25 1999).

26 ¹⁴⁹Topanga Press, Inc. v. City of Los Angeles, 989 F.2d 1524, 1528 (9th Cir.
1993).

27 ¹⁵⁰World Wide Factors, 882 F.2d at 347.

28 ¹⁵¹CFTC v. British Am. Commodity Options Corp., 560 F.2d 135, 143 (2d
Cir. 1977), cert. denied, 438 U.S. 905 (1978) (internal citations omitted).

1 show “first, there is a representation, omission, or practice that, second, is likely to
2 mislead consumers acting reasonably under the circumstances, and third, the
3 representation, omission, or practice is material.”¹⁵²

4 In determining what messages may reasonably be ascribed to a statement or
5 set of statements, a court should consider the overall net impression.¹⁵³ A particular
6 claim will be deemed to have been made if consumers, acting reasonably under the
7 circumstances, would interpret the statements to contain that message.¹⁵⁴

8 The FTC can prove that a representation is likely to mislead consumers in
9 either of two ways. First, the FTC can prove that the express or implied message
10 conveyed by the ad is in fact false. False claims are inherently “likely to
11 mislead.”¹⁵⁵ Second, the FTC can prove that the advertiser lacked a reasonable
12 basis for asserting the message was true.¹⁵⁶ The latter of these two approaches “is

13
14 ¹⁵²Pantron I, 33 F.3d at 1095; see also Resort Car Rental System v. FTC, 518
15 F.2d 962, 964 (9th Cir. 1975) (advertising that induces consumer response through
16 deception violates the FTC Act), cert. denied, 423 U.S. 827 (1975). See also FTC
Policy Statement on Deception, appended to In the Matter of Cliffdale Associates,
103 F.T.C. 110 (1984), 1984 FTC LEXIS 71 at *167-93.

17 ¹⁵³In re Kraft, Inc., 114 F.T.C. 40, 122 (1991); FTC v. Cyberspace.com,
18 LLC, 453 F.3d 1196, 1200 (9th Cir. 2006); see also FTC v. World Travel Vacation
19 Brokers, 861 F.2d 1020, 1029 (7th Cir. 1988); FTC v. U.S. Sales Corp., 785 F.
20 Supp. 737, 745 (N.D. Ill. 1992); Am. Home Prods. Corp. v. FTC, 695 F.2d 681,
21 687 (3d Cir. 1982) (“The tendency of the advertising to deceive must be judged by
22 viewing it as a whole’ The impression created by the advertising, not its literal
truth or falsity, is the desideratum”) (quoting Beneficial Corp. v. FTC, 542 F.2d
611, 617 (3d Cir. 1976)).

23 ¹⁵⁴Kraft, 114 F.T.C. at 120.

24 ¹⁵⁵In the Matter of Thompson Med. Co., Inc., 104 F.T.C. 648, 788 (1984),
25 1984 LEXIS 6 at *380, aff’d, Thompson Medical Co., Inc. v. FTC, 791 F.2d 189
(D.C. Cir. 1986), cert. denied, 479 U.S. 1086 (1987).

26 ¹⁵⁶U.S. Sales, 785 F. Supp. at 748-49; In the Matter of National Dynamics
27 Corp., 82 FTC 488, 549-50 and n.10 (1969), 1973 FTC LEXIS at *123-27, aff’d,
492 F.2d 1333 (2d Cir. 1974), cert. denied, 419 U.S. 993 (1974); Pfizer, Inc., 81
28 F.T.C. 23, 62 (1972), 1972 FTC LEXIS 13 at *91-93; Thompson Medical Co., 104

(continued...)

1 particularly useful where the validity of the claim is uncertain, but the lack of
 2 substantiality is clear.”¹⁵⁷ In addition, extrinsic evidence, such as expert
 3 testimony, a consumer survey, or a copy test, is not necessary to support a finding
 4 that an advertisement has a tendency to deceive.¹⁵⁸ In appropriate circumstances,
 5 the FTC can presume that consumers are likely to reach false beliefs about a
 6 product because of an omission.¹⁵⁹ The FTC does not have to show that all
 7 consumers were deceived.¹⁶⁰

8 A claim is material if “it involves information that is important to
 9 consumers, and, hence, likely to affect their choice of, or conduct regarding, a
 10 product.”¹⁶¹ If consumers are likely to have chosen differently but for the
 11
 12

13
 14 ¹⁵⁶(...continued)

15 F.T.C. at 788 (1984), 1984 FTC LEXIS 6 at *380-81; Sears, Roebuck and Co. v.
FTC, 676 F.2d 385, 387-88 (9th Cir. 1982).

16 ¹⁵⁷Cliffdale Associates, 103 F.T.C. at 173, 1984 FTC LEXIS 71 at *123-24;
 17 see also Litton Industries, 97 F.T.C. 1 (1981), 1981 FTC LEXIS 94 at *97-99,
modified 676 F.2d 364 (9th Cir. 1982).

18 ¹⁵⁸FTC v. Medlab, Inc., 2009 U.S. Dist. LEXIS 33917, at *15-16 (N.D. Cal
 19 Apr. 21, 2009) (citing FTC v. Brown & Williamson Tobacco Corp., 778 F.2d 35,
 40 (D.C. Cir. 1985)); Kraft, Inc. v. FTC, 970 F.2d 311, 319 (7th Cir. 1992); see
 20 also Simeon Management Corp. v. FTC, 579 F.2d 1137, 1146 n.11 (9th Cir. 1978);
 21 FTC v. Febre, 1996 WL 396117 at *9 n.1 (N.D. Ill., July 3, 1996) (citing
Thompson Medical Co., 104 F.T.C. 648, 788-89 (1984)), adopted by, 1996-2
 22 Trade Cases ¶ 71,580 (N.D. Ill., Sept. 27, 1996), aff'd on other grounds, 128 F.3d
 23 530 (7th Cir. 1997).

24 ¹⁵⁹Kraft, 114 F.T.C. at 133 n.21.

25 ¹⁶⁰FTC v. Figgie Int'l, 994 F.2d 595, 605-06 (9th Cir. 1993); see also FTC v.
Amy Travel Serv., Inc., 875 F.2d 564, 572 (7th Cir. 1989) (“[T]he FTC need not
 26 prove that every consumer was injured. The existence of some satisfied customers
 does not constitute a defense under the FTCA.”).

27 ¹⁶¹Cyberspace.com, 453 F.3d at 1201, quoting Cliffdale Assocs., Inc., 103
 28 F.T.C. at 165); see also FTC v. Minuteman Press, 53 F. Supp. 2d 248, 258
 (E.D.N.Y. 1998).

1 deception, the misrepresentation is material.¹⁶² Express claims, or deliberately
 2 made implied claims, are presumed to be material.¹⁶³ Implied claims may be
 3 material when they go to the heart of the solicitation or the characteristics of the
 4 product or service offered.¹⁶⁴ Claims or omissions relating to cost are material.¹⁶⁵

5 Express claims concerning the earnings *potential* of business opportunities
 6 are presumed to be material.¹⁶⁶ Even if there is no guarantee of the stated level of
 7 earnings, express claims about the potential of a money-making system are
 8 presumed to be material.¹⁶⁷ While it might not be reasonable to believe that
 9 everyone who participates in an offered money-making opportunity will earn the
 10 stated amounts, it can be presumed that a consumer would reasonably believe that
 11 the statements of earnings potential represent typical or average earnings. *Id.*

12 a. Defendants Make Deceptive Earnings and Other Claims

13 As detailed in Section III.A.1.a, *supra*, Defendants and Inventor Defendant
 14 Beck expressly represent in the John Beck infomercial that consumers who
 15 purchase the John Beck system are likely to quickly and easily purchase homes, at
 16

17 ¹⁶²In re Southwest Sunsites, Inc., 105 F.T.C. 7, 149 (1985), 1980 FTC LEXIS
 18 86 at *328-30, *aff'd* 785 F.2d 1431 (9th Cir. 1986), *cert. denied*, 479 U.S. 828
 19 (1986).

20 ¹⁶³Thompson Medical Co., 104 F.T.C. at 816; Pantron I, 33 F.3d at 1095-96.

21 ¹⁶⁴*See Kraft*, 970 F.2d at 322; *see also Southwest Sunsites*, 105 F.T.C. at 149,
 22 1980 FTC LEXIS at *375; Figgie, 994 F.2d at 604 (law does not protect people
 who merely imply their deceptive claims); Cliffdale Associates, 103 F.T.C. at 165
 (1984), 1984 FTC LEXIS at *104-07.

23 ¹⁶⁵FTC v. Crescent Publ'g Group, Inc., 129 F. Supp. 2d 311, 321 (S.D.N.Y.
 2001), *citing Thompson Medical Co.*, 104 F.T.C. at 816.

24 ¹⁶⁶FTC v. Febre, 1996 WL 396117 at *2 (N.D. Ill., July 3, 1996), *adopted by*,
 25 1996-2 Trade Cases ¶ 71,580 (N.D. Ill., Sept. 27, 1996), *aff'd on other grounds*,
 26 128 F.3d 530 (7th Cir. 1997); *see also FTC v. Medicor LLC*, 217 F. Supp. 2d 1048,
 27 1053-54 (C.D. Cal. 2002); In re Amway Corp., 93 F.T.C. 618, 729-32 (1979); FTC
v. Jordan Ashley, 1994-1 Trade Cas. (CCH) ¶ 70,570 at 72,096 (S.D. Fla. 1994);
FTC v. Five-Star Auto Club, Inc., 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000).

28 ¹⁶⁷Febre, 1996 WL 396117 at *2.

1 government tax sales in their area, “free and clear” of any mortgages or liens, for
 2 “pennies on the dollar.” Defendants and Inventor Defendant Beck also expressly
 3 claim that consumers are likely to quickly and easily earn substantial amounts of
 4 money, including by selling or renting these homes. This message is continuously
 5 reinforced by numerous consumer endorsers who, over the course of the 30-minute
 6 infomercial, again and again tout their success using the John Beck system.¹⁶⁸ It is
 7 presumptively reasonable for someone viewing the John Beck infomercial to
 8 conclude that the consumer endorsers’ experiences represent those of the typical
 9 purchaser of the John Beck system.¹⁶⁹

10 As described in Sections III.A.1.c. and d., however, these representations are
 11 false and unsubstantiated. The John Beck materials themselves reveal that
 12 Defendants know this to be true: in most of United States, local laws or regulations
 13 make it simply impossible to use the John Beck system as described in the
 14 infomercial.¹⁷⁰ Those same materials show that, even in the remaining 12 states
 15 where purchasing a home using the John Beck system might theoretically be
 16 possible, the strong incentive for secured parties to protect their interests makes it
 17 “extremely unlikely” that a consumer could ever use the system to acquire a home
 18 “free and clear.” Defendants do not systematically track the performance of their
 19

20 ¹⁶⁸FTC v. QT, Inc., 448 F. Supp. 2d 908, 919-20 (N.D. Ill. 2006).

21 ¹⁶⁹Defendants’ mouseprint disclaimers stating “Unique Experience. Results
 22 vary” do not inoculate them from liability. The disclaimers are wholly ineffective
 23 because they fail to correct the overall message of the advertisements, which is,
 24 overwhelmingly, that consumers who purchase and use the John Beck or Jeff Paul
 25 system are likely to quickly and easily earn substantial amounts of money. See
 26 Medicor, 217 F. Supp. 2d at 1053-54; Cyberspace.com, 453 F.3d at 1200; Medlab,
 27 2009 U.S. Dist. LEXIS 33917, at *14-15; U.S. Sales, 785 F. Supp. at 740-41.

28 ¹⁷⁰The FTC is not contending that it is impossible to acquire property through
 government tax sales. Rather, all that is at issue are the deceptive statements and
 omissions made by the defendants in marketing the John Beck system. FTC v.
Wolf, 1997-1 Trade Cases (CCH) ¶ 71,713, 1996 WL 812940 (S.D. Fla. 1996),
aff’d, 113 F.3d 1251 (11th Cir. 1997).

1 customers, so they have no current basis for the earnings and other material claims
2 in the John Beck infomercial.

3 Similarly, as described in Section III.A.2.a., *supra*, Defendants and Inventor
4 Defendant Paul expressly represent in the Jeff Paul infomercial that consumers
5 who purchase the Jeff Paul system will receive turnkey Internet businesses that
6 have been proven to make money. In the infomercial, Investor Defendant Paul
7 describes his system as being so easy, no prior experience is required – in fact, the
8 system will allow consumers to make money *automatically*. Consumer
9 testimonials paraded through the infomercial reinforce the express earnings claims
10 made therein by Individual Defendant Paul. These express claims are
11 presumptively material to consumers and would be impossible to interpret in any
12 way other than as the typical experience of a Jeff Paul system purchaser.¹⁷¹

13 Sections III.A.2.b. and c., *supra*, describe the evidence submitted in support
14 of the FTC’s application that shows the representations made in the Jeff Paul
15 infomercial and by Defendants’ telemarketers are likewise false and
16 unsubstantiated. The only “system” consumers receive from their Jeff Paul
17 purchase is instructions to create a basic web page offering the products of other
18 companies or individuals for sale on commission. Consumers who do so find that
19 their “website” generates no Internet traffic (because there is nothing to drive
20 customers there) and thus no income. The materials provided with the Jeff Paul
21 system urge consumers not to rely on the websites they created, but to create and
22 market a brand new product. This is quite the opposite of a “turnkey business” that
23 generates automatic income. Because what consumers receive is at such a variance
24 from what Defendants advertise, it should be no surprise that Defendants have no

25 ¹⁷¹Like the John Beck infomercial, the Jeff Paul infomercial displays a small
26 disclosure during the consumer testimonials: “Unique Experience. Results vary.”
27 However, this disclosure is inadequate to effectively inform consumers that the
28 numerous claims by Individual Defendant Paul and the testimonials do not
remotely resemble the typical experience of Jeff Paul system purchasers.

1 reasonable basis for the claims they make in their infomercial and telemarketing.
2 In addition, Defendants do not systematically track their purchasers, nor can they
3 document Individual Defendant Paul's claims. In short, Jeff Paul's proven track
4 record does not exist.

5 Because the claims in the John Beck and Jeff Paul infomercials and made by
6 the telemarketers are express, they are presumptively material. In addition, these
7 claims go to the core reasons why consumers would purchase these systems: to
8 purchase an inexpensive house or to earn substantial amounts of money.

9 b. Defendants Fail to Disclose Material Information

10 In addition, as described in Section III.B, supra, Defendants omit material
11 facts from their infomercials about the Property Vault and Big League continuity
12 plans. Specifically, Defendants fail to disclose that consumers are automatically
13 enrolled in these continuity plans when they purchase the John Beck or Jeff Paul
14 systems, that consumers will be automatically charged \$39.95 per month, and that
15 these charges will continue unless consumers contact Defendants to cancel their
16 memberships. Because this information involves cost, it is presumptively material.

17 No doubt, as described above, Defendants will argue that they do make
18 disclosures about their continuity plan during the automated ordering process.
19 However, the statements made during the ordering process, if they are made at all,
20 either reinforce the message that the Property Vault and Big League are free
21 bonuses included with the purchase of the John Beck or Jeff Paul system, or
22 confuse consumers. Defendants will likely further argue that they disclose
23 information about the continuity plans through post-enrollment notifications in the
24 form of inserts, postcards, emails, and telephone messages. However, these
25 disclosures, if they are made at all, are ineffective, for several reasons. First, they
26 are untimely, because they are made nowhere near the original express "free
27
28

1 bonus” claims made in the infomercial, and certainly not prior to enrollment.¹⁷²

2 Second, they fail to inform consumers of a crucial fact: that they have already been
3 enrolled in the continuity plans. Third, the disclosures are defective because they
4 are printed in tiny font, are vague, or fail to include the cost of the continuity plans.

5 2. Defendants Are Violating the Telemarketing Sales Rule

6 Counts 8, 9, 12, and 13 allege that the inbound calls from customers in
7 response to Defendants’ infomercials are subject to the Telemarketing Sales Rule
8 (“TSR”), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29,
9 2003).¹⁷³ The TSR requires, among other things, that “sellers” and
10 “telemarketers”¹⁷⁴ give consumers clear and accurate disclosures of all material
11 terms of their transactions.

12 Specifically, TSR Section 310.3(a) requires that, before a consumer pays for
13 goods and services,¹⁷⁵ sellers and telemarketers clearly and conspicuously disclose
14 all material terms relating to a negative option sales offer. A negative option is an
15 offer like the one Defendants claim to make here, when a customer’s failure to

16 ¹⁷²Resort Car Rental, 518 F.2d at 964 (citing Exposition Press, Inc. v. FTC,
17 295 F.2d 869 (2d Cir. 1961) (FTC Act is violated if the defendant induces the first
18 contact through deception, even if the buyer later becomes fully informed before
19 entering the contract.)

20 ¹⁷³Calls made by consumers in response to other forms of advertising, like
21 infomercials (“inbound telemarketing”), are usually exempt from specific
22 regulation under the TSR. Defendants’ use of continuity plans to charge
23 consumers after their initial purchases of Defendants’ money-making systems,
24 however, is covered under the TSR because the TSR specifically applies to
25 inbound telemarketing if the product or service offered is an investment
26 opportunity. See TSR § 310.6(b)(5), 16 C.F.R. § 310.6(b)(5). Defendants’
27 systems and coaching programs are “investment opportunities,” as that term is
28 defined in Section § 310.2(p) of the TSR, 16 C.F.R. § 310.2(p).

¹⁷⁴Defendants are “sellers” or “telemarketers” engaged in “telemarketing.”
See TSR, 16 C.F.R. §§ 310.2(z), (bb), and (cc).

¹⁷⁵Under the TSR, “pays” means when consumer provides financial info.
PX 82 ¶ 33, Att. 7 at p. 1537, 60 Fed. Reg. 4384 (Aug. 23, 1995), 68 Fed. Reg.
4599 (Jan. 29, 2003).

1 cancel future purchases of goods or services will constitute an agreement to make
2 those purchases. The material terms required to be disclosed under the TSR
3 include telling the customer his or her account will be charged unless the customer
4 takes an affirmative action to avoid the charges, the dates when the customer will
5 be charged, and the specific steps the customer must take to avoid the charges.¹⁷⁶
6 In addition, the TSR requires that sellers and telemarketers must obtain the express
7 informed consent of a customer before causing his or her billing information to be
8 submitted for payment.¹⁷⁷

9 The evidence detailed in Section III.B., supra, demonstrates that in the
10 course of telemarketing the John Beck and Jeff Paul systems, Defendants violate
11 the TSR by failing to disclose material information about the Property Vault and
12 Big League continuity plans prior to taking consumers' payment information,
13 namely, that consumers will be automatically enrolled in these continuity plans and
14 that consumers' accounts will automatically be charged \$39.95 per month unless
15 consumers take affirmative action to cancel their memberships.

16 Count 14 of the Complaint alleges that in the course of telemarketing
17 Defendants' personal coaching services their money-making systems, Defendants'
18 telemarketers repeatedly call consumers who have previously requested to no
19 longer be contacted by Defendants. Defendants' conduct violates Section
20 310.4(b)(1)(iii)(A) of the TSR, which explicitly prohibits this practice.¹⁷⁸

21 3. The Equities Balance in the Commission's Favor

22 The public equities in this case warrant preliminary and ancillary injunctive
23 relief. In weighing the equities, the Ninth Circuit has held that the public interest
24 should receive far greater weight than the private interests.¹⁷⁹ Indeed, the equities

25 ¹⁷⁶See TSR § 310.3(a)(1)(vii), 16 C.F.R. § 310.3(a)(1)(vii).

26 ¹⁷⁷See TSR § 310.4(a)(6), 16 C.F.R. § 310.4(a)(6).

27 ¹⁷⁸See TSR § 310.4(b)(1)(iii)(A), 16 C.F.R. § 310.4(b)(1)(iii)(A).

28 ¹⁷⁹Affordable Media, 179 F.3d at 1236; FTC v. Warner Communications,

(continued...)

1 in this case weigh heavily in favor of preliminary injunctive relief. Defendants'
 2 conduct has led hundreds of thousands of consumers to spend tens of millions of
 3 dollars under the false belief that Defendants' money-making systems are easy to
 4 learn and use and that they will make substantial sums of money. In fact,
 5 Defendants do not possess evidence of any consumers who have quickly and easily
 6 earned substantial sums using the John Beck and Jeff Paul systems as described in
 7 the infomercials. Given the previous violations of the FTC Act by Defendants
 8 Hewitt and Gravink, their repeated brushes with the state of Utah, the unyielding
 9 stream of BBB complaints, and the pervasive nature of the unlawful activity, there
 10 is a strong likelihood that, absent injunctive relief, future law violations will
 11 occur.¹⁸⁰ These violations, if continued, will result in continued consumer loss.

12 The private equities in this case are not compelling. Compliance with the
 13 law is hardly an unreasonable burden. There is no oppressive hardship to
 14 defendants in requiring them to comply with the law and refrain from fraudulent
 15 representations.¹⁸¹ The evidence demonstrates that the public equities – the
 16 protection of innocent consumers from fraud, the effective enforcement of the law,
 17 and the preservation of assets for final relief – weigh heavily in favor of granting
 18 the preliminary relief requested in this case.

19 **D. Common Enterprise**

20 When one or more corporate entities operate as part of a common enterprise,
 21 each may be held liable for the deceptive acts and practices of the others under the
 22

23 ¹⁷⁹(...continued)

24 Inc., 742 F. 2d 1156, 1165 (9th Cir. 1984).

25 ¹⁸⁰See FTC v. Southwest Sunsites, 665 F.2d 711, 723 (5th Cir. 1982) (“A
 26 large-scale systematic scheme tainted by fraudulent and deceptive practices giv[es]
 27 rise to a ‘fair inference of a reasonable expectation of continued violations’ absent
 restraint”) citing SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1100-01 (2d
 Cir. 1972).

28 ¹⁸¹See World Wide Factors, 882 F.2d at 347.

1 FTC Act.¹⁸² Factors in determining common enterprise include (1) common
 2 control; (2) sharing office space; (3) whether the business is transacted through a
 3 maze of interrelated companies; and (4) commingling of funds.¹⁸³ As set forth in
 4 Section II.B, supra, all of these factors are present here. Defendant Family
 5 Products, LLC is the controlling member of Defendant John Beck Amazing
 6 Profits, LLC; Defendant Jeff Paul, LLC also dba Shortcuts to Millions, LLC; and
 7 Mentoring of America, LLC. All of these LLCs have reported the same business
 8 address and office space. Defendants John Beck Amazing Profits, LLC and Jeff
 9 Paul, LLC also dba Shortcuts to Internet Millions, LLC conduct their business in
 10 the exact same way, by running infomercials selling materials that cost \$39.95 and
 11 enrolling consumers in continuity plans. All of the Corporate Defendants are
 12 ultimately controlled by Individual Defendants Hewitt and Gravink. Therefore, the
 13 Court should find that the Corporate Defendants operate as a common enterprise.

14 E. The Individual Defendants are Liable for Injunctive & Equitable
 15 Monetary Relief

16 Individuals may be held individually liable for injunctive relief under the
 17 FTC Act if corporate defendants violated the FTC Act and the individual
 18 defendants participated directly in the deceptive acts or had authority to control
 19 them.¹⁸⁴ “Authority to control the company can be evidenced by active
 20 involvement in business affairs and the making of corporate policy, including
 21
 22

23 ¹⁸²FTC v. Think Achievement Corp., 144 F. Supp.2d 993, 1011 (N.D. Ind.
 24 2000).

25 ¹⁸³Id.

26 ¹⁸⁴FTC v. Stefanchik, 559 F.3d at 93; see also Cyberspace.com, 453 F.3d at
 27 1202; Southwest Sunsites, 785 F.2d 1431, 1438-39 (9th Cir. 1986); Goodman v.
 28 FTC, 244 F.2d 584, 592-94 (9th Cir. 1957); Affordable Media, 179 F.3d at 1234;
Publishing Clearing House, 104 F.3d at 1170, citing FTC v. American Standard
Credit Sys., 874 F. Supp. 1080, 1087 (C.D. Cal. 1994).

1 assuming the duties of a corporate office.”¹⁸⁵

2 As discussed above in Section III, the Corporate Defendants have engaged
3 in misrepresentations that were reasonably relied upon by consumers and which
4 caused consumer injury. Thus, the first requirement for demonstrating individual
5 liability is met. As for the second requirement, both Gary Hewitt and Douglas
6 Gravink are in positions to exercise control of the Corporate Defendants. Both
7 Gary Hewitt and Douglas Gravink are the sole owners of their companies and are
8 involved in the daily operations of those companies. Accordingly, both should be
9 held individually liable for the misrepresentations made to consumers.

10 An individual who is liable for injunctive relief for corporate misconduct
11 under Sections 5 and 13(b) of the FTC Act is also liable for restitution for such
12 misconduct if he had knowledge of the deception.¹⁸⁶ Knowledge can be
13 demonstrated by showing actual knowledge of material misrepresentations,
14 reckless indifference to the truth or falsity of the misrepresentations, or an
15 awareness of a high probability of fraud along with an intentional avoidance of the
16 truth.¹⁸⁷ The FTC does not have to show an intent to defraud.¹⁸⁸ The extent of an
17 individual’s involvement in a fraudulent scheme alone is sufficient to establish the
18 requisite knowledge for personal restitutionary liability.¹⁸⁹ An individual’s degree
19 of participation in the corporation’s business affairs is probative of knowledge.¹⁹⁰

20 Hewitt and Gravink both have the requisite knowledge to establish monetary
21 liability. Both Hewitt and Gravink are responsible for and approved the content of

22
23 ¹⁸⁵Amy Travel, 875 F.2d at 573.

24 ¹⁸⁶Publishing Clearing House, 104 F.3d at 1171.

25 ¹⁸⁷Affordable Media, 179 F.3d at 1234; see also Publishing Clearing House,
104 F.3d at 1171, citing FTC v. American Standard Credit Sys., Inc., 874 F. Supp.
1080, 1089 (C.D. Cal. 1994); Amy Travel, 875 F.2d at 574.

26 ¹⁸⁸Affordable Media, 179 F.3d at 1234; Publishing Clearing House, 104 F.3d
27 at 1171.

28 ¹⁸⁹Affordable Media, 179 F.3d at 1235.

¹⁹⁰Amy Travel, 875 F.2d at 574.

1 the infomercials and the telemarketing scripts used to sell the personal coaching
2 services. Even if they did not intentionally mislead consumers, given the scant
3 evidence of consumers' success with the John Beck and Jeff Paul systems, they are
4 at the very least recklessly indifferent to the falsity of and lack of substantiation for
5 the representations made in their infomercials and by their telemarketers. Hewitt
6 and Gravink were also likely aware of the hundreds of consumer complaints
7 forwarded to the Corporate Defendants by the Better Business Bureau; of the
8 BBB's request for substantiation for Defendants' claims; of the failure of
9 Defendants to respond to this request; and of Defendants' subsequent failure to
10 address additional complaints forwarded by the BBB,¹⁹¹ because these sorts of
11 interactions with an entity like the BBB would be significant to any business.

12 As described in Section II.B. and III.A, supra, Inventor Defendants John
13 Beck and Jeff Paul are also liable for injunctive and monetary relief, because they
14 participated in the creation of their respective infomercials. Each also personally
15 made false and/or unsubstantiated claims in his respective infomercial, and
16 received proceeds from the sale of his respective system and related personal
17 coaching services.

18 F. An Asset Freeze Is Necessary to Preserve the Possibility of Effective
19 Final Relief

20 1. The Corporate Defendants' Assets Should Be Frozen

21 As noted above, the purpose of an asset freeze is to preserve the possibility
22 of effective final relief. Appellate courts "recognize the importance of preserving
23 the integrity of the disputed assets to ensure that such assets are not squandered by
24 one party to the potential detriment of another."¹⁹² Thus, in the Ninth Circuit, after
25 determining that Plaintiff has a likelihood of success on the merits, the test for
26

27 ¹⁹¹See § III.A.1.d. and note 54, supra.

28 ¹⁹²FSLIC v. Ferm, 909 F.2d 372, 374 (9th Cir. 1990).

1 imposing an asset freeze is whether there is a *possibility* of dissipation of assets.¹⁹³

2 A central factor to consider in evaluating whether to freeze Defendants'
3 assets is whether they have sufficient assets to pay their potential liability.¹⁹⁴
4 Defendants face a potential liability of over \$300,000,000. Accordingly, their
5 assets should be frozen, since every dollar they spend reduces their ability to pay
6 their potential liability, to the detriment of consumer victims. Absent a freeze,
7 dissipation of assets is not merely a possibility—it is a virtual certainty.

8 The magnitude of the defendant's ultimate liability also warrants the entry of
9 an asset freeze.¹⁹⁵ In this case, the scope of Defendants' monetary liability is
10 indeed enormous. Without any restriction on their use of funds, Defendants have
11 every incentive to move their assets outside the reach of the Court.¹⁹⁶

12 In addition, where, as here, the defendants have committed fraud, a court
13 may conclude there is a likelihood that assets will be dissipated.¹⁹⁷ This likelihood
14 should be considered even greater in this case, where it appears that Defendants
15 continuously disregarded Utah state law despite repeated warnings. Moreover, as
16 noted above, both of the Individual Defendants have previously been sued by the

17
18 ¹⁹³FSLIC v. Sahni, 868 F.2d 1096, 1097 (9th Cir. 1989). In Sahni, the Ninth
19 Circuit reversed a district court's denial of an asset freeze where the district court
20 had required a showing that asset dissipation was not only possible but likely. Id.
at 1097.

21 ¹⁹⁴See FTC v. Figgie Int'l, Inc., 994 F.2d 595, 605-06 (9th Cir. 1993)
22 (upholding use of the total amount of consumer payments as measure of restitution
23 where FTC proved that defendant made misrepresentations and "that they were
widely disseminated"); Stefanchik, 559 F.3d at 931-32.

24 ¹⁹⁵FTC v. USA Bevs., Inc., 2005 U.S. Dist. LEXIS 39075 at *24-25 (S.D.
25 Fla. 2005) (U.S.M.J report adopted by U.S.D.J. at 2005 U.S. Dist. LEXIS 39026)
26 ("The scope of the monetary liability for Defendants' unlawful conduct is
enormous and provides considerable motivation for defendants to place their assets
beyond the Court's reach").

27 ¹⁹⁶The proposed order therefore also requires Defendants to account for
assets and recent expenditures, and to repatriate any funds held outside the country.

28 ¹⁹⁷Manor Nursing, 458 F.2d at 1106.

1 FTC (Gravink twice) for making deceptive representations in infomercials and
2 have signed consent judgments.

3 Under these circumstances, a complete freeze of the Corporate Defendants'
4 assets and the appointment of a receiver would be warranted. Defendants' entire
5 business is built on false and unsubstantiated representations. As an alternative,
6 however, Plaintiff proposes that Corporate Defendants retain control of their
7 business (under the watch of a monitor, as discussed further below) and that the
8 Court permit ordinary and necessary expenditures in the normal course of business.
9 The proposed order also would allow the release of reasonable attorneys fees, after
10 Defendants have provided, and Plaintiff has analyzed, financial disclosure forms,
11 with a ceiling to be imposed. Imposing a ceiling would balance the Defendants'
12 interest in mounting a defense against the need to preserve frozen funds to redress
13 consumer injury.¹⁹⁸

14 2. The Individual Defendants' Assets Should Also Be Frozen

15 The assets of the Individual Defendants should also be frozen. The
16 individuals are jointly and severally liable for the Corporate Defendants'
17 liability.¹⁹⁹ Absent a showing that the Individual Defendants have more than
18 sufficient funds to pay \$300 million in refunds, their assets should be frozen to
19 prevent dissipation. Plaintiff's proposed order would allow the Individual
20 Defendants to use frozen funds to pay reasonable living expenses and attorneys
21 fees, upon a showing that they are not able to obtain funds from other sources.²⁰⁰

22
23 ¹⁹⁸See World Wide Factors, 882 F.2d at 347 (authorizing district court to set
ceiling on amount of funds to be released for attorneys fees).

24 ¹⁹⁹QT, Inc., 512 F.3d at 858, 864 (7th Cir. 2008); Gill, 71 F. Supp. 2d at 1046-
25 47.

26 ²⁰⁰See ESLIC v. Dixon, 835 F.2d 554, 565 (5th Cir. 1987) (placing burden on
27 defendants to show they could secure services of attorney only if assets subject to
freeze order were released). The proposed order also contemplates that the Court
28 would set a ceiling on the total amount (if any) of attorneys fees to be released; see

(continued...)

1 G. A Monitor Is Necessary to Prevent Dissipation of Assets and
2 Ensure Compliance with the Preliminary Injunction

3 As an alternative to a complete freeze of all the Corporate Defendants' assets
4 or appointing a receiver, Plaintiff requests the appointment of a monitor over the
5 Corporate Defendants. The monitor would be charged with observing Defendants'
6 business practices and ascertaining whether the Corporate Defendants are
7 complying with the preliminary injunction. A monitor would be particularly useful
8 to help ensure that Defendants possess substantiation for any claims they make
9 going forward and to oversee the practices and claims of Defendants'
10 telemarketers. Should the Defendants begin to run afoul of the preliminary
11 injunction, the monitor could bring the questionable conduct to the Court's
12 attention quickly, which is especially important in light of the Defendants' high
13 volume of sales and the potential for consumer injury to quickly amass. The
14 monitor would also help to ensure that the Corporate Defendants' funds are spent
15 only on ordinary and necessary business expenses.

16 ///

24 ²⁰⁰(...continued)
25 also CFTC v. Noble Metals Int'l, Inc., 67 F.3d 766, 775 (9th Cir. 1995) (upholding
26 district court's decision not to allow payment of any attorneys fees from frozen
27 funds, on grounds that "the frozen assets fell far short of the amount needed to
28 compensate" the defendants' victims); and World Wide Factors, 882 F.2d at 347
(noting that "[c]ourts regularly have frozen assets and denied attorney fees or
limited the amount for attorney fees").

1 **V. Conclusion**

2 For the foregoing reasons, to prevent ongoing consumer harm during the
3 pendency of litigation and to preserve assets to redress consumer victims, Plaintiff
4 asks that this Court issue the requested Preliminary Injunction.

5
6 Dated: July 2, 2009

Respectfully submitted,

7
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9 Jennifer M. Brennan
10 Stacy R. Procter
11 John D. Jacobs
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