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11 Attorneys for Plaintiff
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13 IN THE UNITED STATES DISTRICT COURT
 14 FOR THE DISTRICT OF ARIZONA

15 Federal Trade Commission

Case No. CV-12-2368-PHX-SRB

16 Plaintiff,

17 vs.

COMPLAINT FOR PERMANENT
 INJUNCTION AND OTHER
 EQUITABLE RELIEF

18 American Business Builders, LLC, an
 19 Arizona Limited Liability Company; ENF,
 20 LLC, an Arizona Limited Liability
 21 Company also d/b/a Network Market
 22 Solutions; UMS Group, LLC, an Arizona
 23 Limited Liability Company; United
 24 Merchant Services, LLC, an Arizona
 25 Limited Liability Company; Universal
 26 Marketing and Training, LLC, an Arizona
 27 Limited Liability Company; Unlimited
 28 Training Services, LLC, an Arizona
 Limited Liability Company; Shane
 Michael Hanna a/k/a Shane Michael
 Romeo, an individual; and Stephen Spratt,
 an individual,

Defendants.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 In support of this application, Plaintiff states the following:

3 1. Local Rule 7.2(e) prohibits parties from filing any motion, including its
4 supporting memorandum of points and authorities (“motion”), that exceeds 17 pages,
5 exclusive of attachments and any required statement of facts, unless permitted by order of
6 the judge.

7 2. Good cause exists in this case for the issuance of an order permitting
8 Plaintiff to file a motion that exceeds 17 pages because of the scope of Defendants’
9 illegal telemarketing campaign, the number of legal issues, and the number of defendants,
10 as alleged in the Complaint:

11 a. There are eight defendants involved in this deceptive and unfair
12 telemarketing business. They have caused, and continue to cause, substantial monetary
13 and other injury to consumers across the nation.

14 b. Defendants are violating the Federal Trade Commission Act, 15
15 U.S.C. § 45(a), and the FTC’s Business Opportunity Rule, 16 C.F.R. Part 437, as
16 amended. As alleged in the Complaint, Defendants are liable for one count under the
17 Federal Trade Commission Act and three counts under the Business Opportunity Rule.
18 Each of these four counts provides a separate and independent basis for the Court to grant
19 the requested Temporary Restraining Order and ancillary equitable relief. All of these
20 legal issues require discussion in the memorandum.

21 c. The two individual Defendants involved in this scheme personally
22 participated in and knew of the deceptive acts alleged in the Complaint. Thus, they
23 should be held personally liable for whatever monetary and injunctive relief the Court
24 grants. This issue requires separate discussion in the memorandum.

25 d. The six corporate Defendants to this action operate as a common
26 enterprise through a maze of entities that, among other things, share locations, mail
27 drops, telephone numbers, and employees, and transfer assets among each other and other
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1 Business Opportunity Rule and to secure such equitable relief as may be appropriate in
2 each case, including rescission or reformation of contracts, restitution, the refund of
3 monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(B)
4 and 57b, and 16 C.F.R. Part 437, as amended.

5 **DEFENDANTS**

6 6. Defendant American Business Builders, LLC (“ABB”) is an Arizona
7 limited liability company that has maintained its principal place of business at 4734 W.
8 Glendale Avenue, Glendale, AZ 85301. Defendant ABB transacts or has transacted
9 business in the District of Arizona, including at its principal place of business and
10 through a private mail box located at 4397 W. Bethany Home Road, Suite 1327,
11 Glendale, AZ 85301. At times material to this Complaint, acting alone or in concert with
12 others, ABB has advertised, marketed, distributed, or sold a business opportunity to
13 consumers throughout the United States.

14 7. Defendant ENF, LLC (“ENF”), also doing business as Network Market
15 Solutions, is an Arizona limited liability company that has maintained its principal place
16 of business at 4620 N. 16th Street, Suite E-219, Phoenix, AZ 85016. ENF transacts or has
17 transacted business in the District of Arizona, including at its principal place of business
18 and through a private mail box located at 4397 W. Bethany Home Road, Suite 1210,
19 Glendale, AZ 85301. At times material to this Complaint, acting alone or in concert with
20 others, ENF has advertised, marketed, distributed, or sold a business opportunity to
21 consumers throughout the United States.

22 8. Defendant UMS Group, LLC (“UMS Group”) is an Arizona limited
23 liability company with its principal place of business in the District of Arizona. UMS
24 Group transacts or has transacted business in the District of Arizona, including through a
25 private mail box located at 4397 W. Bethany Home Road, Suite 1326, Glendale, AZ
26 85301. At times material to this Complaint, acting alone or in concert with others, UMS
27 Group has advertised, marketed, distributed, or sold a business opportunity to consumers
28 throughout the United States.

1 9. Defendant United Merchant Services, LLC (“UMS”) is an Arizona limited
2 liability company that has maintained its principal place of business at 4734 W. Glendale
3 Avenue, Glendale, AZ 85301. UMS transacts or has transacted business in the District of
4 Arizona, including through its principal place of business and a private mail box located
5 at 4397 W. Bethany Home Road, Suite 1326, Glendale, AZ 85301. At times material to
6 this Complaint, acting alone or in concert with others, UMS advertised, marketed,
7 distributed, or sold a business opportunity to consumers throughout the United States.

8 10. Defendant Universal Marketing and Training, LLC (“UM&T”) is an
9 Arizona limited liability company with its principal place of business in the District of
10 Arizona. UM&T transacts or has transacted business in the District of Arizona, including
11 through private mail boxes located at 4397 W. Bethany Home Road, Suites 1210 and
12 1327, Glendale, AZ 85301. At times material to this Complaint, acting alone or in
13 concert with others, UM&T has advertised, marketed, distributed, or sold a business
14 opportunity to consumers throughout the United States.

15 11. Defendant Unlimited Training Services, LLC (“UTS”) is an Arizona
16 limited liability company that has maintained its principal place of business in the District
17 of Arizona. UTS transacts or has transacted business in the District of Arizona. At times
18 material to this Complaint, acting alone or in concert with others, UTS has advertised,
19 marketed, distributed, or sold a business opportunity to consumers throughout the United
20 States.

21 12. Defendant Shane Michael Hanna (also known as Shane Michael Romeo) is
22 the sole member of Defendants ABB and UMS Group, and is a member of Defendant
23 UTS. Defendant Hanna was also a member of UMS. Defendant Hanna has leased
24 commercial office space for UMS at 4734 W. Glendale Avenue, Glendale, AZ 85301,
25 has registered and is financially responsible for the Internet domain names associated
26 with Defendants ABB, ENF, UMS and UM&T, and is financially responsible for
27 telephone services used by ABB and ENF. At all times material to this Complaint, acting
28 alone or in concert with others, Defendant Hanna has formulated, directed, controlled,

1 had the authority to control, or participated in the acts and practices of Defendants ABB,
2 ENF, UMS, UMS Group, UM&T, and UTS, including the acts and practices set forth in
3 this Complaint. Defendant Hanna resides in this district and, in connection with the
4 matters alleged herein, transacts or has transacted business in this district and throughout
5 the United States.

6 13. Defendant Stephen Spratt is the sole member of Defendants ENF and
7 UM&T. Spratt is a signer on a bank account for ENF and is financially responsible for a
8 toll-free telephone number associated with ABB and UMS. UM&T, whose sole member
9 is Spratt, has also processed credit card sales for UTS. At times material to this
10 Complaint, acting alone or in concert with others, Defendant Spratt has formulated,
11 directed, controlled, had the authority to control, or participated in the acts and practices
12 of ABB, ENF, UMS, UM&T and UTS, including the acts and practices set forth in this
13 Complaint. Defendant Spratt resides in this district and, in connection with the matters
14 alleged herein, transacts or has transacted business in this district and throughout the
15 United States.

16 **COMMON ENTERPRISE**

17 14. Defendants ABB, ENF, UMS Group, UMS, UM&T, and UTS
18 (collectively, "Corporate Defendants") have operated and functioned as a common
19 enterprise while engaging in the deceptive acts and practices and other violations of law
20 alleged in this Complaint. The Corporate Defendants have conducted the business
21 practices through an interrelated network of companies that have common control,
22 ownership, managers, employees, business functions, phone numbers, and addresses.
23 The Corporate Defendants also rely on a similar marketing scheme to sell consumers the
24 business opportunity described below. Because the Corporate Defendants have operated
25 as a common enterprise, each of them is jointly and severally liable for the acts and
26 practices described in this Complaint. Defendants Shane Michael Hanna, and Stephen
27 M. Spratt have formulated, directed, controlled, had the authority to control, or
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1 participated in the acts and practices of the Corporate Defendants that constitute the
2 common enterprise.

3 **COMMERCE**

4 15. At all times material to this complaint, the Defendants have maintained a
5 substantial course of trade in the offering for sale and sale of business opportunities, in or
6 affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C.
7 § 44.

8 **THE DEFENDANTS’ BUSINESS PRACTICES**

9 ***The Business Opportunity***

10 16. Defendants have carried out an illegal business opportunity scam which has
11 defrauded consumers out of hundreds of thousands of dollars.

12 17. In telemarketing calls to consumers, Defendants represent that that they
13 provide low-cost credit card and other payment processing services and related products
14 (e.g., credit card terminals and merchant cash advances) to small businesses. Defendants
15 tell consumers that, for a fee that typically ranges from approximately \$295 to \$495, the
16 consumers may operate their own home-based business selling Defendants’ payment
17 processing services and products to small businesses.

18 18. The consumers to whom Defendants solicit their business opportunity are
19 not currently engaged in the payment processing industry.

20 19. In their initial contact with consumers, Defendants often represent that
21 Defendants will obtain or assist the consumer in obtaining small business customers or
22 accounts. Defendants tell consumers that the consumer will assist Defendants in
23 identifying merchants that might be interested in Defendants’ services including, in some
24 instances, by distributing flyers to or collecting merchant account statements from local
25 merchants. In numerous instances, Defendants represent that Defendants will convert
26 merchants that the consumer either identifies or refers to Defendants into customers or
27 accounts. In other instances, Defendants represent that all merchants located within a
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1 specific geographic territory and which enroll with Defendants or use Defendants'
2 services will be the customers or accounts of the consumer.

3 20. Defendants also represent that consumers will receive support from
4 Defendants in operating their new business. In numerous instances, Defendants represent
5 that such support will include training or coaching, the provision of printed marketing
6 materials such as flyers or brochures, business cards, business licenses, or the creation of
7 a website where consumers can review the status of pending accounts or customers.
8 Defendants have also represented that they will provide consumers with sales lead lists.

9 21. Typically within several days of Defendants' initial call to consumers,
10 Defendants market and sell to consumers telemarketing sales leads (consisting of the
11 names and telephone numbers of merchants that may be interested in purchasing
12 Defendants' payment processing services) and a telemarketing campaign in which
13 Defendants will call the merchants (the "leads") to promote consumers' new business.
14 Defendants represent to consumers that Defendants will contact and market Defendants'
15 services to each of these leads and that this telemarketing campaign will generate new
16 customers or accounts for the consumer. Defendants typically charge consumers \$10 for
17 each lead. The total charge to the consumer is often greater than \$10,000, and, for some
18 consumers, has been as high as \$40,000.

19 22. Defendants represent that consumers will earn income on each merchant
20 that Defendants convert into a customer or account. Defendants represent that consumers
21 will make a commission (e.g., \$500) on each payment processing terminal that
22 Defendants sell or lease, a percentage of each merchant cash advance that is funded, and
23 a percentage of each merchant's monthly sales volume for as long as the merchant
24 remains a customer or account. In some instances, Defendants represent that consumers
25 will also earn income on each merchant customer or account located within the sales
26 territory that Defendants have purportedly assigned to the consumers.

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1 of their key personnel have been the subject of any civil or criminal action for
2 misrepresentation, fraud, securities law violations, or unfair or deceptive practices;
3 material terms and conditions of any refund or cancellation policy; and the contact
4 information for at least ten people who have purchased the business opportunity from
5 Defendants. Defendants have failed to provide this information to consumers at any time
6 and in any format, including as a single written document in the form and using the
7 language required by the Business Opportunity Rule.

8 27. Although Defendants and their representatives have made claims to
9 consumers about their likely earnings, they have failed to provide consumers with an
10 Earnings Claim statement as required by the Business Opportunity Rule.

11 28. Defendants have engaged in the foregoing business practices since at least
12 March 1, 2012.

13 **VIOLATIONS OF THE FTC ACT**

14 29. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
15 deceptive acts or practices in or affecting commerce.”

16 30. Misrepresentations or deceptive omissions of material fact constitute
17 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

18 31. As set forth below, Defendants have engaged and continue to engage in
19 violations of Section 5(a) of the FTC Act in connection with the advertising, marketing
20 and sale of their business opportunities.

21 **COUNT ONE**

22 ***Deceptive Substantial Income Claims***

23 32. In numerous instances in connection with the advertising, marketing,
24 promotion, offering for sale, or sale of Defendants’ business opportunity, Defendants
25 have represented, directly or indirectly, expressly or by implication, that purchasers of
26 Defendants’ business opportunity will earn substantial income.

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1 33. In truth and in fact, in numerous instances in which Defendants have made
2 the representation set forth in Paragraph 32 of this Complaint, purchasers of Defendants'
3 business opportunity have not earned substantial income.

4 34. Therefore, Defendants' representation as set forth in Paragraph 32 of this
5 Complaint is false or misleading and constitutes a deceptive act or practice in violation of
6 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

7 **VIOLATIONS OF THE BUSINESS OPPORTUNITY RULE**

8 35. Defendants are "sellers" who have sold or offered to sell a "business
9 opportunity" as defined by the Business Opportunity Rule, 16 C.F.R. § 437.1(c) and (q).
10 Under the Business Opportunity Rule, a "seller" is a person who offers for sale or sells a
11 business opportunity. 16 C.F.R. § 437.1(q). Under the Rule, a "business opportunity"
12 means a "commercial arrangement" in which a "seller solicits a prospective purchaser to
13 enter into a new business;" the "prospective purchaser makes a required payment;" and
14 the "seller, expressly or by implication, orally or in writing, represents that the seller or
15 one or more designated persons will . . . (ii) Provide outlets, accounts, or customers,
16 including, but not limited to, Internet outlets, accounts, or customers, for the purchaser's
17 goods or services." 16 C.F.R. § 437.1(c)(ii). Under the Rule, providing "outlets,
18 accounts, or customers" includes "furnishing the prospective purchaser with existing or
19 potential . . . outlets, accounts, or customers; requiring, recommending, or suggesting one
20 or more locators or lead generating companies; providing a list of locators or lead
21 generating companies; collecting a fee on behalf of one or more locators or lead
22 generating companies; . . . or otherwise assisting the prospective purchaser in obtaining
23 his or her own . . . outlets, accounts, or customers." 16 C.F.R. § 437.1(m).

24 36. Among other things, the Business Opportunity Rule requires sellers to
25 provide prospective purchasers with a disclosure document in the form and using the
26 language set forth in the Business Opportunity Rule and its Appendix A, and any
27 required attachments. In the disclosure document, the seller must disclose to prospective
28 purchasers five categories of information, including basic identifying information about

1 the seller, any earnings claims the seller makes, the seller's litigation history, any
2 cancellation and refund policy the seller offers, and contact information of prior
3 purchasers. 16 C.F.R. § 437.3(a)(1)-(5). Furthermore, this information must be disclosed
4 at least seven (7) days before the prospective purchaser signs a contract or makes a
5 payment. 16 C.F.R. § 437.2. The pre-sale disclosure of this information enables a
6 prospective purchaser to contact prior purchasers and take other steps to assess the
7 potential risks involved in the purchase of the business opportunity.

8 37. Defendants have made earnings claims in connection with the sale of their
9 business opportunity, as defined by the Business Opportunity Rule, 16 C.F.R. § 437.1(f).
10 Under the Business Opportunity Rule, an "earnings claim" means "any oral, written, or
11 visual representation to a prospective purchaser that conveys, expressly or by implication,
12 a specific level or range of actual or potential sales, or gross or net income or profits." 16
13 C.F.R. § 437.1(f).

14 38. The Business Opportunity Rule prohibits sellers from making earnings
15 claims unless the seller: (1) has a reasonable basis for the claim at the time it is made; (2)
16 has in its possession written materials to substantiate the claim at the time it is made; (3)
17 furnishes an Earnings Claim statement to prospective purchasers in conjunction with the
18 disclosure document, containing, among other things, information regarding the time
19 frame captured by the earnings claim, the characteristics of the purchasers, and the
20 number and percentage of all persons who purchased the business opportunity within the
21 time frame who achieved at least the stated level of earnings; and (4) makes written
22 substantiation of the earnings claim available to any prospective purchaser who requests
23 it. 16 C.F.R. § 437.4(a).

24 39. The Business Opportunity Rule also prohibits any seller, directly or
25 indirectly through a third party, from misrepresenting the likelihood that a "seller,
26 locator, or lead generator will find . . . outlets, accounts, or customers for the purchaser."
27 16 C.F.R. § 437.6 (j).

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1 misrepresented the likelihood that the Defendants will find accounts or customers for the
2 prospective purchaser.

3 46. Defendants acts and practices, as described in paragraph 45 above, violate
4 the Business Opportunity Rule, 16 C.F.R. § 437.6(j), and Section 5(a) of the FTC Act, 15
5 U.S.C. § 45(a).

6 **CONSUMER INJURY**

7 47. Consumers have suffered and will continue to suffer substantial monetary
8 loss as a result of the Defendants' violations of Section 5(a) of the FTC Act and the
9 Business Opportunity Rule. In addition, Defendants have been unjustly enriched as a
10 result of their unlawful acts and practices. Absent injunctive relief by this Court, the
11 Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm
12 the public interest.

13 **THIS COURT'S POWER TO GRANT RELIEF**

14 48. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to
15 grant injunctive and such other relief as the Court may deem appropriate to halt and
16 redress violations of any provision of law enforced by the FTC. The Court, in the
17 exercise of its equitable jurisdiction, may award ancillary relief, including rescission or
18 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of
19 ill-gotten monies, to prevent and remedy any violation of any provision of law enforced
20 by the FTC.

21 49. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant
22 such relief as the Court finds necessary to redress injury to consumers resulting from
23 Defendants' violations of the Business Opportunity Rule, including the rescission or
24 reformation of contracts and the refund of money.

25 **PRAYER FOR RELIEF**

26 Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15
27 U.S.C. §§ 53(b) and 57b, and the Business Opportunity Rule, and the Court's own
28 equitable powers, requests that the Court:

