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13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 \_\_\_\_\_ )  
16 FEDERAL TRADE COMMISSION, )  
17 Plaintiff, )  
18 v. )  
19 )  
20 AMERICAN TAX RELIEF LLC, d/b/a )

Case No. CV 11-6397 DSF (Ex)  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF PLAINTIFF FTC'S  
MOTION FOR SUMMARY  
JUDGMENT ON ALL COUNTS  
AGAINST ALL DEFENDANTS  
AND RELIEF DEFENDANTS;  
OR, IN THE ALTERNATIVE,

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1 I. INTRODUCTION

2 American Tax Relief (“ATR”), a company owned and operated by  
3 Alexander Seung Hahn (“Hahn”) and his wife Hyun Park (“Park”), preyed on  
4 consumers for over a decade by falsely promising to significantly reduce  
5 consumers’ tax debts. Almost since the inception of the business, ATR claimed in  
6 its advertising to have helped thousands of people settle their tax debts for a  
7 fraction of the amount owed. Consumers who called ATR in response to  
8 Defendants’ ads were routinely told that they qualified for Offers in Compromise  
9 (“OICs”) and Penalty Abatements (“PAs”) that would reduce their tax debts by  
10 tens of thousands of dollars. Based on Defendants’ representations, consumers  
11 agreed to pay ATR fees ranging from \$2,500 to \$25,000 or more. In reality, the  
12 vast majority of ATR’s customers did not qualify for the promised tax relief  
13 programs, and ATR did not substantially reduce their tax debts. In fact, even after  
14 being in business for over a decade, fewer than a thousand of ATR’s more than  
15 20,000 customers obtained reductions in their tax debts amounting to more than  
16 what they paid ATR.

17 This case is ripe for summary judgment. The uncontroverted facts show that  
18 Defendants engaged in a pattern of deceptive and unfair practices in violation of  
19 Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45.  
20 Defendants consistently misrepresented that ATR already had helped thousands of  
21 people substantially reduce their tax debts (Count I), and misrepresented in  
22 telemarketing calls that individual consumers “qualified” for programs that would  
23 significantly reduce their tax debts (Count II). Defendants also sometimes placed  
24 unauthorized charges on consumers’ accounts (Count III). Finally, Defendant  
25 Park’s parents received millions of dolla

1 declarations/depositions of fourteen former employees; declarations from forty-one  
2 consumers; stipulations/declarations from seventeen advertisers; evidence of six  
3 undercover calls placed to ATR; declarations from the Better Business Bureau  
4 (“BBB”) and two state Attorney General offices; lawsuits filed against  
5 Defendants by the New York City Department of Consumer Affairs (“NYC”) and  
6 individual consumers; internal ATR documents, including the sales script used by  
7 ATR sales representatives for over nine years, which indicated that consumers  
8 “qualified” for either an OIC or PA; the report of a tax expert with decades of  
9 experience attesting to the stringency of requirements that must be met, and the  
10 uncertainty involved, in obtaining tax reductions from the Internal Revenue  
11 Service (“IRS”); and declarations from two IRS representatives.

12 By contrast, Defendants cannot produce a single witness to testify about  
13 ATR’s practices or even authenticate doc  
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1 Relief Defendants Young Soon Park and Kon Park are Defendant  
 2 Park's parents. (SF 78, 91.) Although they admit that they were never employed  
 3 by ATR, they have received many millions of dollars of Defendants' ill-gotten  
 4 gains. (SF 80, 82-88, 93, 95, 97-98.)

#### 5 IV. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES

##### 6 A. Defendants' Deceptive Advertisements

7 Since 1999, Defendants marketed ATR's tax relief services nationwide  
 8 through postcards, television, radio, and print advertisements, and on ATR's  
 9 Internet website. (SF 151-152.) Defendants' advertisements represented that, with  
 10 ATR's help, consumers who "qualified" for tax relief could save significant  
 11 amounts of money on their tax debts and stop aggressive IRS collection actions,  
 12 such as bank levies and garnishments. (SF 165, 167-176, 179-186, 189-197, 200-  
 13 204, 206-218, 221-235, 238-244, 247-263.) Can Defendants' ads were  
 14 claims that ATR already had helped thousands of people reduce their tax debts.  
 15 Such claims were made nearly since ATR's inception. (SF 161, 174, 181, 191,  
 16 200-201, 215, 221-223, 244, 252, 254-255.) For example, postcards that  
 17 Defendants mailed to taxpayers as early as 2000 represented that ATR "has helped  
 18 thousands settle their taxes for only five-on-the-Dollar." (SF 161.) Nationally-  
 19 aired television and radio ads made similar claims, including that ATR has helped  
 20 thousands of people "settle their tax debt for a fraction of what they owed" or  
 21 "eliminate up to 85% of their delinquent taxes." (SF 191, 215, 221.) Defendants'  
 22 website also represented that ATR had already "successfully resolved thousands of  
 23 cases in all 50 states," and that it could help save people a "significant amount of  
 24 money" by settling their tax debts. (SF 252-253.)

25 ATR advertisements often included "testimonials" from supposed customers  
 26 describing how much ATR purportedly had saved them on their tax debts. (SF  
 27 154, 165, 167-168, 175-176, 179-180, 207-214, 226, 262-263.) For example, in  
 28 several ads, Defendants highlighted a truck driver who purportedly reduced his tax

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<sup>2</sup> In rare instances, sales representatives told consumers they qualified for “tax relief.” Like consumers who were

1 potential eligibility for an OIC or PA. (SF 100, 104-106, 116-122, 126-128, 138-  
2 142.) Even then, it is not possible to

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25 <sup>3</sup> Follow-up letters to consumers who did not initially hire ATR warned  
26 that “the government has recently given more funding to the Collection Branch  
27 of the IRS to be more aggressive when coming after taxpayers with overdue debt.”  
28 (SF 358-359, 361.) These letters also reiterated the false claim that ATR already  
has “successfully helped thousands of people “settle their tax debts.” (SF 362-  
363.)

1 immediately. (SF 336.) Although the fee was steep, consumers were assured that  
2 ATR would obtain substantial reductions in their tax debts and that the fee  
3 “handles the case from start to finish.” (SF 300-305, 318, 341-342, 344.) In many  
4 instances, however, this proved to be false, ATR later required consumers to pay  
5 additional amounts for a variety of reasons. (SF 413-419.)

### 6 3. Authorization Forms and Congratulations Letter

7 Following the sales calls, ATR faxed consumers two authorization forms – a  
8 power of attorney form authorizing ATR to represent the consumer before the IRS,  
9 and a form authorizing the IRS to provide ATR with information about the  
10 taxpayer.<sup>4</sup> (SF 311, 350.) Consumers were directed to immediately sign and  
11 return the forms so that ATR could begin working on their cases. (SF 311-312.)  
12 ATR then forwarded these forms to the IRS, but this often was the extent of ATR’s  
13 communication with the IRS about consumers’ tax debts. (SF 391.)

14 In addition to the forms, ATR sent consumers a letter congratulating them  
15 for contacting ATR and confirming that the consumer “qualified” for tax relief.  
16 (SF 353-357.) Consumers who had been “qualified” for an OIC received a letter  
17 indicating that this relief “allows people to settle their total tax debt for only a  
18 fraction of the debt.” (SF 353.) Consumers who had been “qualified” for a PA  
19 received a letter stating that “the SR must accept” a petition to remove the  
20 consumer’s penalties and interest “as it is submitted PER IRS GUIDELINES.”  
21 (SF 354-355.)

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25 <sup>4</sup> To perpetuate the idea that the sales representatives would personally  
26 work on callers’ cases, power of attorney forms sent to consumers contained  
27 sales representatives’ names even though they had no ability to represent  
28 consumers before the IRS. (SF 1074, 351.) ATR removed the sales  
representatives’ names from these forms before they were submitted to the IRS.  
(SF 352.)

1 C. Defendants' Purported Tax Relief Services

2 1. Questionnaires and Requests for Financial Documents

3 Once consumers hired ATR, they did not get the immediate service ATR  
4 had promised, nor did the aggressive collection actions stop. (SF 368-369, 389-  
5 390.) Instead, consumers received an additional package in the mail containing,  
6 among other things, detailed financial questionnaires and document request lists,  
7 which consumers were told "need your immediate attention. . . . so that your case  
8 may be completed as soon as possible." (SF 370-371, 377-381.) Although some  
9 consumers were told during the sales call they would need to fill out a simple  
10 questionnaire, they received in their home several multi-paged questionnaires that  
11 asked for a variety of detailed financial information not sought during the initial  
12 telephone interview. (SF 313-315, 380-381.) The document request lists  
13 were equally extensive, and listed various types of financial documents that  
14 consumers were required to provide to ATR. (SF 377, 379.)

15 Along with the questionnaires and document requests, consumers also  
16 received two letters, including one which supposedly came from ATR's  
17 "Accounting Department" and revealed information about ATR's restrictive  
18 cancellation policy in small print at the bottom. (SF 11, 371-373.) According to  
19 that policy, consumers could only obtain a 50% refund of "your total fee" if the  
20 services were cancelled in writing within 15 days of the date of the letter. (SF 372.)  
21 This policy was never mentioned during the sales calls, and most consumers did  
22 not notice this statement in the "Accounting Department" letter. (SF 339-340, 373,  
23 376.) In many cases, moreover, this cancellation period was about to expire, or  
24 already had expired, by the time consumers received the letter. (SF 374-375.)

25 2. ATR's Tax Resolution Department

26 The employees in ATR's Tax Resolution Department, which was located in  
27 a separate area of the office from Sales Department, were charged with  
28 applying for tax relief on behalf of ATR's customers. (SF 12, 14.) Each of these

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## 1 E. Defendants' Unauthorized Charges

2 In addition to failing to provide the promised services, ATR frequently  
 3 charged consumers without their express informed consent. These charges took a  
 4 few forms. First, the company sometimes charged consumers who did not agree to  
 5 purchase ATR's services or who agreed to pay only after ATR had secured the  
 6 promised tax relief. (SF 411-412.) It did so by convincing these consumers to  
 7 provide their account information, while assuring them that no immediate charges  
 8 would be assessed. (SF 410.) Having obtained the account information under  
 9 false pretenses, ATR then proceeded to charge the accounts immediately. (SF 410-  
 10 412.) Second, Defendants sometimes charged customers additional fees without  
 11 their consent – in some instances, by assessing charges without even seeking  
 12 consent, and in other instances, by seeking consent, but still assessing charges even  
 13 after the consumer refused to authorize them. (SF 415-421.)

## 14 V. ARGUMENT

15 The FTC's evidence overwhelmingly demonstrates that Defendants ATR,  
 16 Hahn, and Park violated Section 5 of the FTC Act, 15 U.S.C. § 45. Defendant  
 17 ATR also failed to respond to the FTC's Requests for Admission, thereby  
 18 admitting all of the FTC's requests. Moreover, because the individual Defendants  
 19 and Relief Defendants invoked the Fifth Amendment in response to the FTC's  
 20 discovery requests, the Court is entitled to draw adverse inferences against them.  
 21 See *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976); *SEC v. Colello*, 139 F.3d 674,  
 22 677 (9th Cir. 1998). In light of both the significant indisputable evidence and the  
 23 adverse inferences, no material factual issue exists as to whether Defendants  
 24 violated Section 5 of the FTC Act. Thus, this case is ripe for summary judgment,  
 25 and injunctive and equitable monetary relief should be ordered.

## 26 A. Legal Standard for Summary Judgment

27 Under Rule 56(a) of the Federal Rules of Civil Procedure, summary  
 28 judgment is proper if "the pleadings, depositions, answers to interrogatories, and

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1 ATR's sales representatives then also referred to ATR's past successes in  
2 sales calls with prospective customers. In one recorded undercover call, for  
3 example, after qualifying the caller for PA that would reduce his tax debt by  
4 \$30,000, the sales representative explained that "we do a couple of hundred cases  
5 like this per month and we've done it nationwide for about 11 years." (SF 304.) In  
6 another recorded call, the sales representative told a caller who had already been  
7 "qualified" for an OIC that "we've been doing this for over a decade and we've  
8 done it 19,000 times. So, we're very, very good at what we do." (SF 305.)

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b. Count II: Defendants Misrepresented that  
Consumers Qualified for Tax Relief Programs and

1 Of course, most consumers did not qualify for the tax relief ATR had  
 2 promised. Former ATR tax resolution employees themselves admit that the vast  
 3 majority of ATR customers whose files they received did not qualify for OICs or  
 4 PAs and that they could not reduce the tax debts of these customers. (SF 392-395.)  
 5 And the FTC's expert, after reviewing undercover calls, determined that none of  
 6 those callers qualified for the tax relief promised by ATR's sales representatives.  
 7 (SF 400.) Consumer declarations and complaints further establish the pattern of  
 8 consumers being told that they "qualified" for huge savings but, in most instances,  
 9 seeing no reduction in their tax debts.

## 10 2. Defendants' Unfair Practices

11 Section 5(a) of the FTC Act also prohibits unfair acts or practices. An act or  
 12 practice is unfair if it "causes or is likely to cause substantial injury to consumers  
 13 which is not reasonably avoidable by consumers themselves and is not outweighed  
 14 by countervailing benefits to consumers or to competition." 15 U.S.C. § 45(n);  
 15 *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1155 (9th Cir. 2010). For a practice to be  
 16 deemed unfair, the resulting injury must be: (1) substantial; (2) not outweighed by  
 17 countervailing benefits to consumers or competition; and (3) one that consumers  
 18 themselves could not reasonably have avoided. *FTC v. J.K. Publ'ns, Inc.*, 99 F.  
 19 Supp. 2d 1176, 1201 (C.D. Cal. 2000) (cite omitted).

20 Courts have found the practice of charging fees without consumers' express  
 21 informed consent to be unfair under the FTC Act. *Neovi*, 604 F.3d at 1155-59  
 22 (facilitating unauthorized charges found to be unfair practice); *Publ'ns*, 99 F.  
 23 Supp. 2d at 1202-03 (unauthorized charges deemed unfair).

### 24 a. Count III: Defendants' Unauthorized Charges

25 The undisputed evidence demonstrates that Defendants had a practice of  
 26 charging consumers without their express informed consent. In fact, the frequency  
 27 of complaints about unauthorized charges led the BBB to notify ATR of its  
 28 concern about this practice as early as 2002, but ATR did not then alter its



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1 the illegal activities of ATR. Hahn managed ATR, formulated ATR's business  
2 practices, hired and fired employees, managed and approved ATR's advertising,  
3 including websites, handled ATR's payroll and some accounts payable, and  
4 supervised ATR's sales representatives and office administration. (SF 25-35.)  
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27 <sup>8</sup> Moreover, to the extent that ATR was a d/b/a of Park, there can be no  
28 question regarding her individual liability. (SF 5.)

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1 permissible practices, reasonable fencing-in provisions, and record-keeping and  
2 monitoring provisions. See *FTC v. Think Achievement*, 44 F. Supp. 2d 1013,  
3 1016-18 (N.D. Ind. 2000) (discussing breadth of injunctive relief).

4 Based on Defendants' history, there is reason to believe they will continue to  
5 violate the law unless strong injunctive provisions are imposed. Despite over a  
6 decade of consumer complaints and suits, a lawsuit filed by NYC, warnings  
7 from the BBB, and the execution of a criminal search warrant, Defendants  
8 continued defrauding consumers out of millions of dollars. (SF 438-455.) Even  
9 after the entry of the Preliminary Injunction here, Defendants attempted to open  
10 another tax relief business similar to ATR, holding Hahn's brother out as the  
11 owner in order to hide their involvement. (SF 49, 76.) Hahn also has a long  
12 history of consumer fraud that predates ATR. In 1994, he was convicted of grand  
13 theft after taking money from his own customers' brokerage accounts and served  
14 jail time for that crime. (SF 39-40.) In 2006, he was convicted of mail fraud in  
15 connection with a telemarketing business that sold medical billing opportunities,  
16 and was sentenced to five years probation and ordered to pay restitution of over  
17 \$1.2 million. (SF 41-43.) Nevertheless, Hahn continued operating ATR, despite  
18 being on probation, and Park made restitution payment from the proceeds of  
19 ATR. (SF 63.)

20 Courts have banned violators of the FTC Act from an array of practices.  
21 See, e.g., *Gill*, 265 F.3d at 957-58 (ban on participation in credit-repair); *FTC v.*  
22 *Medicor, LLC*, CV 01-1896 CBM (EX), 2002 WL 1925896, at \*1-2 (C.D. Cal.

1           2.     Equitable Monetary Relief

2           The Court should also enter equitable monetary relief for the full amount of  
3 consumer injury caused by Defendants' ~~the~~ practices. The authority granted by  
4 Section 13(b) gives courts the authority "to grant any ancillary relief necessary to  
5 accomplish complete justice," including ~~the~~ authority to order restitution or  
6 disgorgement of unjust enrichment. ~~Patron I~~, 33 F.3d at 1102-1103; ~~John Beck~~  
7 2:09-cv-04719-JHN-CWx, 2012 U.S. Dist. LEXIS 70068, at \*68-69.

8           The proper calculation of equitable monetary relief is the full amount that  
9 consumers paid, less any refunds. ~~See, e.g., Stefanchik~~, 559 F.3d at 931-932;  
10 Figgie, 994 F.2d at 606-607. The FTC bears the initial burden of demonstrating  
11 that its calculations reasonably approximate consumer losses. ~~FTC v. Medicor,~~  
12 LLC, 217 F. Supp. 2d 1048, 1058 (C.D. Cal. 2007); ~~FTC v. J.K. Publ'ns, Inc.~~ No.  
13 99-0044 ABC (AJWx), 2000 WL 35594143, at \*17 (C.D. Cal. Aug. 9, 2000). The  
14 burden then shifts to defendants to show that the FTC's figures are inaccurate.  
15 Medicor, 217 F. Supp. 2d at 1058. Any uncertainty over the exact amount of  
16 consumer loss "should fall on the wrongdoer whose illegal conduct created the  
17 uncertainty." J.K. Publ'ns 2000 WL 35594143, at \*17.

18           Defendants' lack of financial books and records complicates the calculation  
19 of consumers' losses. (SF 16.) ~~In addition,~~ because the individual Defendants  
20 invoked the Fifth Amendment in refusing to respond to discovery, and no  
21 representative was provided for ATR's ~~Rule 30(b)(6)~~ deposition, the FTC was  
22 unable to obtain information in discovery from those persons with the most  
23 knowledge of ATR's finances. (SF 19, 57.) Furthermore, to date, Defendants  
24 have not produced their tax returns for several tax years, which would provide  
25 information about ATR's revenues. ~~Therefore,~~ the FTC's calculation of restitution  
26 is based on the Receiver's reports; ~~Defendants'~~ tax returns for the years 2005  
27 through 2008; available bank records; and, only where no other information is  
28 available, information from an ATR ~~data~~ base. These records demonstrate that

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1 Park, and paid off the \$420,000 mortgage on Relief Defendants' condominium.  
2 (SF 95-97.) Neither Relief Defendant has a legitimate claim to these funds and  
3 assets. Indeed, individual Defendants even admit that they placed title to their \$3.4  
4 million Beverly Hills home in Young Soon Park's name, as well as depositing  
5 "approximately \$5 million" into a bank account in her name, as "asset protection  
6 measure[s]." (SF 45-46, 71-72.) Defendants also admit to paying off the mortgage  
7 on Relief Defendants' condominium, and transferring monthly sums to them  
8 ranging from \$1,000 to \$3,000, as "gifts." (SF 47-48, 73-74.)

9 The FTC requests that Young Soon Park be ordered to disgorge  
10 \$18,068,953, the amount of ATR proceeds she received, as well as turn over title to  
11 Defendants' Beverly Hills home. The FTC further requests that Il Kon Park be  
12 ordered to disgorge the \$595,281 he received in ATR proceeds, including title to  
13 the Los Angeles condominium. Allowing Relief Defendants to retain these assets  
14 would unjustly allow them to benefit from Defendants' illegal activities.

15 VI. CONCLUSION

16 For the foregoing reasons, the FTC respectfully requests that the Court enter  
17 summary judgment against Defendants and Relief Defendants on all Counts of the  
18 FTC's Complaint, and enter a permanent injunction banning Defendants from  
19 telemarketing and debt relief services, joining them from making material  
20 misrepresentations, and awarding equitable monetary relief.

22 Dated: June 8, 2012

Respectfully Submitted,

23  
24 /s/Karen D. Dodge  
KAREN D. DODGE  
25 MARISSA J. REICH  
Attorneys for Plaintiff  
26 Federal Trade Commission  
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