

1 BACKGROUND AND FINDINGS

2 The FTC filed a substantial volume of declarations and exhibits in support of the TRO
3 application, in addition to the detailed allegations in the complaint. The Court makes the
4 following findings on the basis of these materials. Because this is an ex parte
5 application, defendants may challenge them before the preliminary injunction hearing. The
6 preliminary injunction hearing is set for August 1, 2019, at 2:00 p.m.

7 A. The Court has subject matter jurisdiction over the case, and there is good cause to
8 believe that it will have jurisdiction over all parties hereto and that venue in this district is proper.

9 B. The FTC has made a prima facie showing that defendants (1) misrepresented the
10 price associated with trial offers of their products (2) misrepresented that clicking on a
11 "FRPSOHWHFKHFNB Complete Your Purchase" offer when in fact it
12 added upsell products and associated charges (3) did not clearly and conspicuously disclose to
13 consumers that they would be charged the full amount for the product and enrolled in continuity
14 plans resulting in additional charges to their credit cards or withdrawals from their debit
15 accounts (4) "GLGQRWREWDLQFRQVXPHUV" imposed these charges "UPHG" or
16 or provide a clear way to stop the recurring charges (5) did not clearly and conspicuously
17 disclose their return, cancellation, and refund policies (6) used fraudulent documentation to
18 contest consumer disputes over unauthorized charges (7) engaged in credit card laundering,
19 through which they unlawfully used shell companies and owners to obtain access to
20 "PHUFKDQWDFFRXQWVQHGHGWRDFHSWAFERSONALPHUV" as a
21 inference from this conduct is that defendants unfairly injured consumers by charging them
22 without their authorization

23 C. The current record shows that defendants All Media Group, LLC, Henry Block,
24 and Alan Schill have engaged in and are likely to engage in acts or practices that violate Section
25 5(a) of the FTC Act, 15 U.S.C. § 5(a), 6 HFWLRQRIWKH5HVWRUH2QOLQH6
26 Act (ROSCA), 15 U.S.C. § 403, Section 907(a) of the Electronic Funds Transfer (EFTA),
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1 the FTC is likely to prevail on the merits of this action. Specifically, the FTC has proffered
2 captures, records of undercover purchases, consumer declarations, transcripts of calls, consumer
3 complaints, chargeback files, corporate and financial records, and similar materials that
4 demonstrate a likelihood of success in establishing that defendants have misrepresented the price
5 associated with purported trial offers of their products, misrepresented the effect of webpages
6 that purported to merely complete the checkout process, failed to adequately disclose the
7 material terms of their purported trial offers, failed to clearly and conspicuously disclose material
8 WHUPV RI WKH FRQWLQLXW\ SODQV E Hattin, chargeback, OO HFWLQJ F
9 FRQVXP HUV ¶ F bards with DTC, Caution, unfairly injured consumers by
10 engaging in credit card laundering, and deceptively contested chargeback disputes using
11 fraudulent documentation

12 D. These materials also establish that immediate and irreparable harm is likely to
13 result from H I H Q G D Q W V ¶ R Q J R L Q J Y L R O D W L R and Regulation E) 7 & \$ F W
14 unless defendants are restrained and enjoined.

15 E. There is good cause to believe that immediate and irreparable damage to the
16 & R X U W ¶ V D E L O L W \ W R J U D Q W H i n h u m a n e t a r y c e d i t i o n , H O L H I I R U
17 rescission, disgorgement or refunds will occur from the sale, transfer, destruction or other
18 disposition or concealment by defendants of their assets or records, unless defendants are
19 immediately restrained and enjoined; and, in accordance with Federal Rule of Civil
20 Procedure 65(b) and Local Rule 65-1, the interests of justice require that this Order be granted
21 without prior notice to defendants. Consequently, the FTC is excused from providing defendants
22 with prior notice of the TRO application

23 F. Good cause exists for appointing a temporary receiver to the Receivership
24 Entities (defined infra), freezing H I H Q G D Q, and permitting the FTC and the Receiver to
25 take expedited discovery.

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1 G. Weighing the equities and considering the likelihood of success on the
2 merits, a temporary restraining order with an asset freeze, the appointment of a temporary
3 receiver, expedited discovery, and other equitable relief is in the public interest.

4 H. The Court has authority to issue this Order under Sections 13(b) and 19 of the
5 FTC Act, 15 U.S.C. § 53(b); Federal Rule of Civil Procedure 65; and the All Writs Act, 28
6 U.S.C. § 1651.

7 I. No security is required of any agency of the United States for issuance of a
8 temporary restraining order. Fed. R. Civ. P. 65(c).

9 DEFINITIONS

10 For the purpose of this Order, the following definitions apply:

11 A. 'Asset' PHDQV DQ\ OHJDO RU HTXLWDEOH LQWHUHVW
12 property, wherever located and by whomever held.

13 B. 'Clear and Conspicuous' R'Clearly and Conspicuously' PHDQV WKDW D
14 required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by
15 ordinary consumers, including in all of the following ways:

16 1. In any communication that is solely visual or solely audible, the disclosure
17 must be made through the same means through which the communication is
18 presented. In any communication made through both visual and audible means,
19 such as a television advertisement, the disclosure must be presented simultaneously
20 in both the visual and audible portions of the communication even if the
21 representation requiring the disclosure is made in only one means;

22 2. A visual disclosure, by its size, contrast, location, the length of time it
23 appears, and other characteristics, must stand out from any accompanying text or
24 other visual elements so that it is easily noticed, read, and understood;

25 3. An audible disclosure, including by telephone or streaming video, must be
26 delivered in a volume, speed, and cadence sufficient for ordinary consumers to
27 easily hear and understand it;

1 4. In any communication using an interactive electronic medium, such as the
2 Internet or software, the disclosure must be unavoidable;

3 5. On a product label, the disclosure must be presented on the principal
4 display panel;

5 6. The disclosure must use diction and syntax understandable to ordinary
6 consumers and must appear in each language in which the representation
7 requires the disclosure appears;

8 7. The disclosure must comply with these requirements in each medium
9 through which it is received, including all electronic devices and interface
10 communications;

11 8. The disclosure must not be contradicted or mitigated by, or inconsistent
12 with, anything else in the communication; and

13 9. When the representation or sales practice targets a specific audience, such
14 as DV F K L O G U H Q W K H H O G H U O U \ R R Q W K R H W U R I Q Q F D O X G V H
15 reasonable members of that group.

16 C. 'Corporate Defendant' PHDQV \$ + 0 H G L D and its subsidiaries // &
17 subsidiaries, affiliates, successors, and assigns.

18 D. 'Defendant(s)' PHDQV & R U S R U D W H ' H I H Q G D Q W + H Q U \ % O
19 individually, collectively, or in any combination.

20 E. 'Document' L V V \ Q R Q \ P R X V L Q P H D Q L Q J D Q G H T X D O L Q
21 3 G R F X P H Q W ' D Q G 3 H O H F W U R Q L F D O O \ V W R o c k e t 3 4 (a) R U P D W L R C

22 Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, sound and
23 video recordings, images, Internet sites, web pages, websites, electronic correspondence,
24 including email and instant messages, contracts, operating data, advertisements, FTP Logs,
25 Server Access Logs, books, written or printed records, handwritten notes, telephone logs,
26 telephone scripts, receipt books, ledgers, personal and business canceled checks and check
27 registers, bank statements, appointment books, computer records, customer or sales databases
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1 notice of this Order, whether acting directly or indirectly, in connection with the advertising
2 marketing, promoting, or offering for sale of any goods or services, are temporarily restrained
3 and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by
4 implication, any material fact, including, but not limited to

5 A. Any cost to the consumer to purchase, receive, use, or return the initial good or
6 service;

7 B. That the consumer will not be charged for any good or service;

8 C. 7 K D W D J R R G R U V H U Y L F H L V R I I H U H G R Q D ³ I U H H '
9 ³ Q R F R P P L W P R I X Q W H G L E D F V L V R U Z R U G V R I V L P L O D U L P S R U
10 absence of an obligation on the part of the recipient of the offer to affirmatively act in order to
11 avoid charges, including where a charge will be assessed pursuant to the offer unless th
12 consumer takes affirmative steps to prevent or stop such a charge;

13 D. That the consumer can obtain a good or service for a processing, service,
14 shipping, handling, or administrative fee with no further obligation;

15 E. That a transaction has been authorized by the consumer;

16 F. Any material aspect of the nature or terms of websites that are presented as part of
17 W K H S U R F H V V R I F R P S O H W L Q J D S X U F K D V H L Q F O X G L Q J ³ F R

18 G. Any material aspect of the nature or terms of a refund, cancellation, exchange,
19 repurchase policy for the good or service; or

20 H. Any other fact material to consumers concerning any good or service, such as:
21 the total costs; any material restrictions, limitations, or conditions; or any material aspect of its
22 performance, efficacy, ~~name~~, or central characteristics.

23 II. PROHIBITION AGAINST UNFAIR AND DECEPTIVE
24 NEGATIVE OPTION MARKETING PRACTICES

25 IT IS FURTHER ORDERED W K D W ' H I H Q G D Q W V ' H I H Q G D Q W V ¶ R I I L F
26 and attorneys, and all other persons in active concert or participation with any of them, who
27 receive actual notice of this Order, whether acting directly or indirectly, are temporarily
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1 independent sales organization, third party processor, payment gateway, or other financial
2 institution any material fact relating to obtaining a merchant account, including, but not limited
3 to, the identity of the bona fide owner, manager, director, or officer of an entity applying for or
4 holding a merchant account, and whether such owner, manager, director or officer:

- 5 1. Has been or is placed in a merchant account monitoring program;
- 6 2. Has had a merchant account terminated by a bank, payment processor, or
7 other financial institution; or
- 8 3. Has been fined or otherwise disciplined by a bank, payment processor,
9 other financial institution, in connection with a merchant account.

10 B. Making, or causing or assisting others in making, directly or by implication, any

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(d) has extended credit to Defendant, including through a credit card account, will :

A. Hold, preserve, and retain within its control and prohibit the withdrawal, removal, alteration, assignment, transfer, pledge, encumbrance, disbursement, dissipation, relinquishment, conversion, sale, or other disposal of any such Document or Asset, as well as all Documents or other property related to such Assets, except by further order of this Court; provided, however, that this provision does not prohibit an Individual Defendant from incurring charges on a personal credit card established prior to entry of this Order, up to the existing credit limit;

B. Deny any person, except the Receiver, access to any safe deposit box, commercial mail box, or storage facility that is titled in the name of Defendant, either individually or jointly, or otherwise subject to access by any Defendant;

C. To the extent applicable, by R Y L G H 3 O D L Q W L I I T V F R X Q V H O D Q G V three (3) days of receiving a copy of this Order, a sworn statement setting forth each Asset or account covered by this Section:

- 1. The identification number of each such account or Asset;
- 2. The balance of each such account, or a description of the nature and value

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1 held by any person or entity for the benefit of any Defendant or for the benefit of, any
2 corporation, partnership, asset protection trust, or other entity that is directly or indirectly owned,
3 managed or controlled by any Defendant (3) under the direct or indirect control, whether

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1 XIII. REPORT OF NEW BUSINESS ACTIVITY

2 IT IS FURTHER ORDERED that Robb Evans, V LLC, and its attorneys,
3 and attorneys, and all other persons in active concert or participation with any of them, who
4 receive actual notice of this Order, whether acting directly or indirectly, are hereby temporarily
5 restrained and enjoined from creating, operating or exercising any control over any business
6 entity, whether newly formed or previously inactive, including any partnership, limited
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8 counsel and the Receiver with a written statement disclosing: (1) the name of the business
9 entity; (2) the address and telephone number of the business entity; (3) the names of the business
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12 XIV. TEMPORARY RECEIVER

13 IT IS FURTHER ORDERED that Robb Evans at Robb Evans & Associates LLC
14 appointed as temporary Receiver of the Receivership Entities with full powers of an equity
15 receiver. The Receiver will be solely the agent of this Court in acting as Receiver under this
16 Order.

17 XV. DUTIES AND AUTHORITY OF RECEIVER

18 IT IS FURTHER ORDERED that the Receiver is directed and authorized to accomplish
19 the following:

20 A. Assume full control of Receivership Entities by removing, as the Receiver deems
21 necessary or advisable, any director, officer, independent contractor, employee, attorney, or
22 agent of an

1 situated, including reserve funds held by payment processors, credit card processors, merchant
2 banks, acquiring banks, independent sales organizations, third party processors, payment

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1 and to incur, or authorize the making of such agreements as may be necessary and advisable in
2 discharging his or her duties as Receiver. The Receiver will apply to the Court for prior approval
3 of any payment of any debt or obligation incurred by the Receivership Entities prior to the date
4 of entry of this Order, except payments that the Receiver deems necessary or advisable to secure
5 Assets of the Receivership Entities, such as rental payments;

6 H. Take all steps necessary to secure and take exclusive custody of each location
7 from which the Receivership Entities operate their businesses. Such steps may include, but are
8 not limited to, any of the following, as the Receiver deems necessary or advisable: (1ae W* n BT /F

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1 T. Suspend business operations of the Receivership Entities if in the judgment of the
2 Receiver such operations cannot be continued legally and profitably;

3 U. If the Receiver identifies a nonparty entity as a Receivership Entity, promptly
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5 determination by filing a motion with the Court. Provided, however, that the Receiver may delay
6 providing such notice until the Receiver has established control of the nonparty entity and its
7 Assets and records, if the Receiver determines that notice to the entity or the parties before the
8 Receiver establishes control over the entity may result in the destruction of records, dissipation
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10 V.
11 and profitably, take all steps necessary to ensure that any of the Receivership Ent
12 or websites relating to the activities alleged in the Complaint cannot be accessed by the public, or
13 are modified for consumer education and/or informational purposes, and take all steps necessary
14 to ensure that any telephone numbers associated with the Receivership Entities cannot be
15 accessed by the public, or are answered solely to provide consumer education or information
16 regarding the status of operations.

17 **XVI. TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

18 IT IS FURTHER ORDERED that Defendants and any other person with possession,
19 custody or control of property of, or records relating to, the Receivership Entities will, upon
20 notice of this Order by personal service or otherwise, fully cooperate with and assist the Receiver
21 in taking and maintaining possession, custody, or control of the Assets and Documents of the
22 Receivership Entities and immediately transfer or deliver to the Receiver possession, custody,
23 and control of, the following:

- 24 A. All Assets held by or for the benefit of the Receivership Entities;
25 B. All Documents or Assets associated with credits, debits, or charges made on
26 behalf of any Receivership Entity, wherever situated, including reserve funds held by payment
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XVIII. COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED

other persons in active concert or participation with any of them, and any other person with possession, custody, or control of property of or records relating to the Receivership Entities who receive actual notice of this Order will fully cooperate with and assist the Receiver. This cooperation and assistance will include, but is not limited to, providing information to the Receiver that the Receiver deems necessary to exercise the authority and discharge the responsibilities of the Receiver under this Order; providing any keys, codes, user names and passwords required to access any computers, electronic devices, mobile devices, and machines (onsite or remotely) and any cloud account (including specific method to access account) or electronic file in any medium; advising all persons who owe money to any Receivership Entity that all debts should be paid directly to the

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3 **XXI. COMPENSATION OF RECEIVER**

4 IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as
5 herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable
6 compensation for the performance of duties pursuant to this Order and for the cost of actual out-
7 of-pocket expenses incurred by them, from the Assets now held by, in the possession or control
8 of, or which may be received by, the Receivership Entities. The Receiver will file with the Court
9 and serve on the parties periodic requests for the payment of such reasonable compensation, with
10 the first such request filed no more than sixty (60) days after the date of entry of this Order. The
11 Receiver will not increase the hourly rates used as the bases for such fee applications without
12 prior approval of the Court.

13 **XXII.**

14 IT IS FURTHER ORDERED that the Receiver will file with the Clerk of this Court a
15 bond in the sum of ten thousand dollars (\$10,000) with sureties to be approved by the Court,
16 conditioned that the Receiver will well and truly perform the duties of the office and abide by
17 and perform all acts the Court directs. 28 U.S.C. § 754.

18 **XXIII. DISTRIBUTION OF ORDER BY DEFENDANTS**

19 IT IS FURTHER ORDERED that Defendants will immediately provide a copy of this
20 Order to each affiliate, telemarketer, marketer, sales entity, successor, assign, member, officer,
21 director, employee, agent, independent contractor, client, attorney, spouse, subsidiary, division,
22 and representative of any Defendant, and will, within ten (10) days from the date of entry of this
23 Order, provide Plaintiff and the Receiver with a sworn statement that this provision of the Order
24 has been satisfied, which statement will include the names, physical addresses, phone number,
25 and email addresses of each such person or entity who received a copy of the Order.
26 Furthermore, Defendants will not take any action that would encourage officers, agents,
27 members, directors, employees, salespersons, independent contractors, attorneys, subsidiaries,
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1 affiliates, successors, assigns or other persons or entities in active concert or participation with
2 them to disregard this Order or believe that they are not bound by its provisions.

3 **XXIV. EXPEDITED DISCOVERY**

4 IT IS FURTHER ORDERED that, notwithstanding the provisions of Federal Rules of
5 Civil Procedure 26(d) and (f) and 30(a)(2)(A)(iii), and pursuant to Federal Rules of Civil
6 Procedure 30(a), 34, and 45, Plaintiff and the Receiver are granted leave, at any time after
7 service of this Order, to conduct limited expedited discovery for the purpose of discovering:

8 (1) (2) the nature, location, and
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11 expedited discovery set forth in this Section will proceed as follows:

12 A. Plaintiff and the Receiver may take the deposition of parties and non-parties.
13 Forty- will be sufficient notice for such depositions. The limitations and
14 conditions set forth in Rules 30(a)(2)(B) and 31(a)(2)(B) of the Federal Rules of Civil Procedure
15 regarding subsequent depositions of an individual will not apply to depositions taken pursuant to
16 this Section. Any such deposition taken pursuant to this Section will not be counted towards the
17 deposition limit set forth in Rules 30(a)(2)(A) and 31(a)(2)(A) and depositions may be taken by
18 telephone or other remote electronic means.

19 B. Plaintiff and the Receiver may serve upon parties requests for production of
20 Documents or inspection that require production or inspection within five (5) days of service,
21 provided, however, that three (3) days of notice will be deemed sufficient for the production of
22 any such Documents that are maintained or stored only in an electronic format.

23 C. Plaintiff and the Receiver may serve upon parties interrogatories that require
24 response within five (5) days after Plaintiff serves such interrogatories.

25 D. The Plaintiff and the Receiver may serve subpoenas upon non-parties that direct
26 production or inspection within five (5) days of service.
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XXIX. DURATION OF THE ORDER

This Order will