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CLERK US DISTRICT COURT  
DISTRICT OF NEVADA

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8  
9 UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

10  
11 Federal Trade Commission,  
12 Plaintiff,  
13 v.

CV-S-05-0002-PMP-LRL

14 Global Net Solutions, Inc., a Nevada corporation;  
15 Global Net Ventures, Ltd., a United Kingdom company;  
16 Wedlake, Ltd., a corporation;  
17 Open Space Enterprises, Inc., a Nevada corporation;  
18 Southlake Group, Inc., a Nevada corporation;  
19 WTFRC, Inc., a Nevada corporation doing business as  
Reflected Networks, Inc.;  
20 Dustin Hamilton, individually and as an officer or director  
of Global Net Solutions, Inc., Global Net Ventures, Ltd.,  
and Reflected Networks, Inc.;  
21 Tobin Banks, individually and as director of Open Space  
22 Enterprises, Inc.;  
23 Gregory Hamilton, individually and as an officer and  
director of Southlake Group, Inc.;  
24 Philip Doroff, individually and as an officer of Reflected  
25 Networks, Inc.; and  
26 Paul Rose, individually;  
27 Defendants.  
28

**PLAINTIFF'S EX PARTE  
APPLICATION FOR  
TEMPORARY  
RESTRAINING ORDER  
WITH ASSET  
FREEZE ORDER  
PERMITTING  
IMMEDIATE ACCESS  
TO DEFENDANTS'  
PREMISES, AND ORDER  
TO SHOW CAUSE WHY  
PRELIMINARY  
INJUNCTION SHOULD  
NOT ISSUE**

1 Plaintiff Federal Trade Commission ("Commission"), pursuant to Rule 65(b) of the  
2 Federal Rules of Civil Procedure and Local Rule 7-5, applies to this Court on an *ex parte* basis  
3 without notice to the Defendants for a Temporary Restraining Order with asset freeze, an order  
4 permitting immediate access to the Defendants' business premises, and an order to show cause  
5 why a preliminary injunction should not issue against the Defendants. As grounds therefor, the  
6 Commission states that the Defendants have engaged and may continue to engage in acts and  
7 practices that violate Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and  
8 Sections 5(a) and (d) of the Controlling the Assault of Non-Solicited Pornography and Marketing  
9 Act of 2003, and the FTC's Adult Labeling Rule, 16 C.F.R. Part 316.1, as set forth in the  
10 Commission's Complaint, the memorandum of points and authorities in support of this  
11 Application, and the supporting declarations and exhibits.


12 The interests of justice require that this *ex parte* Application be heard without notice,  
13 pursuant to Fed. R. Civ. P. 65(b). Advance notice of this action to the Defendants may result in  
14 dissipation or concealment of assets and destruction of documents. Such actions will cause  
15 immediate and irreparable damage by impeding the Commission's efforts to obtain monetary  
16 compensation for Defendants' violations. Issuing the TRO with asset freeze and other requested  
17 relief without notice facilitates full and effective relief by preserving the status quo pending a  
18 hearing on the requested Preliminary Injunction. For the reasons stated in the accompanying  
19 Declaration of Counsel, counsel for the Commission has not provided notice of this motion to the  
20 defendants. See Declaration of Stephen L. Cohen.


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Because the Commission seeks to avoid any notice to the Defendants from the filing of these documents, which might result in the dissipation or concealment of assets or the destruction or concealment of documents, it is also concurrently filing an Application to file all documents in this matter under seal for a short duration.

Dated: January 3, 2005

Respectfully submitted,  
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10 UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

11 **Federal Trade Commission,**

12 Plaintiff,

13 v.

14 **Global Net Solutions, Inc.,** a Nevada corporation;

15 **Global Net Ventures, Ltd.,** a United Kingdom company;

16 **Wedlake, Ltd.,** a corporation;

17 **Open Space Enterprises, Inc.,** a Nevada corporation;

18 **Southlake Group, Inc.,** a Nevada corporation;

19 **WTFRC, Inc.,** a Nevada corporation doing business as  
20 Reflected Networks, Inc.;

21 **Dustin Hamilton,** individually and as an officer or director  
22 of Global Net Solutions, Inc., Global Net Ventures, Ltd.,  
and Reflected Networks, Inc.;

23 **Tobin Banks,** individually and as director of Open Space  
24 Enterprises, Inc.;

25 **Gregory Hamilton,** individually and as an officer and  
director of Southlake Group, Inc.;

26 **Philip Doroff,** individually and as an officer of Reflected  
27 Networks, Inc.; and

28 **Paul Rose,** individually;

Defendants.

Civil Action No.

CV-S-

**MEMORANDUM OF  
POINTS AND  
AUTHORITIES IN  
SUPPORT OF  
PLAINTIFF'S EX PARTE  
APPLICATION FOR  
TEMPORARY  
RESTRAINING ORDER  
WITH ASSET FREEZE,  
ORDER PERMITTING  
IMMEDIATE ACCESS  
TO DEFENDANTS'  
BUSINESS PREMISES,  
AND ORDER TO SHOW  
CAUSE WHY  
PRELIMINARY  
INJUNCTION SHOULD  
NOT ISSUE**

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1 **I. INTRODUCTION**

2 The defendants are spammers. They send sexually-explicit unsolicited commercial email  
3 to unsuspecting consumers throughout the United States. Global Net Solutions, Inc., Global Net  
4 Ventures, Ltd., Wedlake, Ltd., Open Space Enterprises, Inc., Southlake Group, Inc., Reflected  
5 Networks, Inc., Dustin Hamilton, Tobin Banks, Gregory Hamilton, and Philip Doroff operate a  
6 common enterprise offering money to third party "affiliates" to help promote their websites  
7 through spam. (These defendants will be referred to in this Memorandum as "the GNS  
8 defendants.") Defendant Paul Rose ("Rose") is one of the GNS defendants' affiliates and is  
9 responsible for sending hundreds of thousands of spam.

10 With little regard for bombarding consumers with highly offensive commercial email and  
11 totally disregarding the laws governing the sending of such email, the GNS defendants and Rose  
12 have violated practically every requirement of the Controlling the Assault of Non-Solicited  
13 Pornography and Marketing Act of 2003 ("CAN-SPAM" or the CAN-SPAM Act), 15 U.S.C.  
14 § 7701 *et seq.*, the FTC's Adult Labeling Rule (the "Adult Labeling Rule" or the "Rule"),  
15 16 C.F.R. Part 316.1, which governs sexually-explicit emails, and Section 5 of the FTC Act,  
16 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices. By ignoring these laws,  
17 defendants have subjected consumers to an endless barrage of unwanted sexual images and  
18 language while engaging in a "shell game" to hide their identity, shirk responsibility for  
19 complying with the law, and making it impossible for consumers to avoid defendants'  
20 undesirable email.

21 The Federal Trade Commission ("FTC" or "Commission") brings this suit pursuant to  
22 Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b)  
23 and 57b, and under Section 7(a) of CAN-SPAM, seeking an *ex parte* Temporary Restraining  
24 Order ("TRO"), asset freeze, and other equitable relief to halt defendants' law violations. The  
25 FTC's Complaint alleges that the GNS defendants operate a common enterprise that procures  
26 affiliates such as defendant Rose to initiate emails on their behalf promoting the GNS  
27 defendants' sexually-related websites. In some instances, the GNS defendants have initiated  
28 emails on their own behalf, promoting some of their most sexually-explicit websites. In all

1 instances, and there have been hundreds of thousands, defendants have violated the laws  
2 enforced by the FTC and barraged consumers with unwanted email that consumers are powerless  
3 to prevent.

4 The preliminary relief sought in the application is critical to bringing an immediate halt to  
5 defendants' law violations and to preserving their assets for possible future relief pending final  
6 resolution of this matter.

## 7 **II. THE PARTIES, JURISDICTION AND VENUE**

### 8 **A. The Parties**

#### 9 **1. The Plaintiff - The Federal Trade Commission**

10 Plaintiff FTC is an independent agency of the United States government created by  
11 statute. 15 U.S.C. §§ 41-58. The Commission is authorized to enforce, *inter alia*, Section 5(a)  
12 of the FTC Act, which declares "unfair or deceptive acts or practices" in or affecting commerce  
13 to be unlawful. The FTC is also charged with enforcing various provisions of CAN-SPAM as if  
14 a violation of CAN-SPAM "were an unfair or deceptive act or practice proscribed under Section  
15 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B))." 15 U.S.C.  
16 § 7706(a). The Commission is authorized to initiate federal district court proceedings, by its own  
17 attorneys, to enjoin violations of the FTC Act, and to secure such equitable relief as may be  
18 appropriate in each case, including monetary redress. 15 U.S.C. § 53(b); *FTC v. H.N. Singer,*  
19 *Inc.*, 668 F.2d 1107, 1111-13 (9th Cir. 1982).

#### 20 **2. The Defendants**

##### 21 **a. Global Net Solutions, Inc. ("GNS")**

22 Defendant GNS is a Nevada corporation with its registered office located at 3960 Howard  
23 Hughes Parkway, Fifth Floor, Las Vegas, NV 89109. (Exh. 8.)<sup>1</sup> GNS operates the website

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25 <sup>1</sup> Exhibits submitted in support of the FTC's application for a TRO are designated  
26 with the abbreviation "Exh." followed by the exhibit number. Where the exhibit is a declaration,  
27 the name of the declarant is indicated in brackets. The page number of the referenced exhibit or  
28

1 signup4cash.com whose purpose is to attract affiliates, through an offer of money, to advertise  
2 and promote the GNS defendants' content websites.

3 **b. Global Net Ventures, Ltd. ("GNV")**

4 Defendant GNV is a United Kingdom company with its registered office located at  
5 Almeda House, 90-100 Sydney Street, London SW3 6NJ England. (Exh. 9.) GNV operates or  
6 has operated the websites livewebfriends.com, signup4sex.com, and onlinecharges.com.  
7 (Exh. 15.) Livewebfriends.com is the portal website for the GNS defendants' operations. It  
8 primarily offers live webcam video and chat. Signup4sex.com provides sexually-explicit content  
9 to affiliates obtained by GNS. Onlinecharges.com is a website that facilitates online payments  
10 between consumers and the GNS defendants.

11 **c. Wedlake, Ltd. ("Wedlake")**

12 Wedlake purports to be a limited liability company allegedly located in Riga, Latvia. The  
13 Latvian government, however, has no record of its existence. (Exh. 10.) Wedlake operates or  
14 has operated the websites onlinecharges.com, signup4sex.com, signupforcash.com,  
15 globalnetventures.com, livenetfriends.com, and member-services.org; and the sexually-explicit  
16 content websites cocktuggers.com, cumsmothered.com, deliciousdudes.com, eighteenies.com,  
17 footlongschlong.com, fuckablackbith.com, hardcorepornflicks.com, hotavailableamateurs.com,  
18 melissacam.biz, perfect-lesbians.com, pounded-pussies.com, pussiesandcream.com, and  
19 retardsex.com. (Exh. 15.)

20 **d. Open Space Enterprises, Inc. ("Open Space")**

21 Open Space is a Nevada corporation with its registered office located at 7311 S. Eastern  
22 Avenue, #281, Las Vegas, NV 89119. (Exh. 11.) Open Space operates or has operated  
23 livewebfriends.com, and the sexually-explicit content websites cocktuggers.com,  
24 cumsmothered.com, eighteenies.com, footlongschlong.com, hardcorepornflicks.com,  
25 hotasianbrothel.com, hotavailableamateurs.com, perfect-lesbians.com, pounded-pussies.com, and  
26 pussiesandcream.com. (Exh. 15.)

27 \_\_\_\_\_  
28 its attachments is indicated by "p." followed by the number.

1                                   **e. Southlake Group, Inc. ("Southlake")**

2           Southlake is a Nevada corporation with its registered office at 6330 South Pecos Road,  
3 Suite 100, Las Vegas, NV 89120. (Exh. 13.) Southlake operates or has operated  
4 livenetfriends.com, the successor to livewebfriends.com, and the sexually-explicit content  
5 websites cocktuggers.com, cumsmothered.com, deliciousdudes.com, eighteenies.com,  
6 footlongschlong.com, fuckablackbith.com, hardcorepornflicks.com, hotasianbrothel.com,  
7 hotavailableamateurs.com, perfect-lesbians.com, pounded-pussies.com, and  
8 pussiesandcream.com. (Exh. 15.)

9                                   **f. WTFRC, Inc. d/b/a Reflected Networks, Inc. ("Reflected  
10                                    Networks")**

11           Reflected Networks is a Nevada corporation with its registered office located at 3960  
12 Howard Hughes Parkway, Fifth Floor, Las Vegas, NV 89109, and a business address of 6363  
13 South Pecos Road, Las Vegas, NV 89120. (Exh. 12.) Reflected Networks provides free hosting  
14 services for the GNS affiliates.

15                                   **g. Dustin Hamilton ("D. Hamilton")**

16           D. Hamilton is an individual residing in Las Vegas, Nevada. He is an officer of GNS, a  
17 director of GNV, and an officer of Reflected Networks. (Exhs. 8, 9, 12.) He is responsible for  
18 hiring employees and establishing the commissions paid to affiliates. (Exh. 7 [Vera] pp.32-78.)  
19 He also uses the name "Donnie Gangsta" (Exh. 7 [Vera] pp.32-78.) and the email addresses  
20 "donnie@signup4cash.com" (Exhs. 52 and 59) and "dustin@globalnetventures.com" (Exh. 5  
21 [Tipton] pp.21-29.).

22                                   **h. Tobin Banks ("Banks")**

23           Banks is an individual residing in Henderson, Nevada. He is director of Open Space.  
24 (Exh. 11.)

25                                   **i. Gregory Hamilton ("G. Hamilton")**

26           G. Hamilton is an individual residing in Memphis, Tennessee. He is an officer and  
27 director of Southlake Group. (Exh. 13.)  
28

1                                   **j- Philip Doroff ("Doroff")**

2           Doroff is an individual residing in Minneapolis, Minnesota. He is or was an officer of  
3 Reflected Networks. (Exh. 12.) He has used the email address "phil21@five-elements.com."  
4 (Exh. 5 [Tipton] pp.21-29.)

5                                   **k. Paul Rose ("Rose")**

6           Rose is an individual residing in Tucson, Arizona. He also uses the name "john baker"  
7 and the email address "idbud@epimp.com." (Exh. 7 [Vera] ¶ 26, p.8; Exh. 47.) Rose is a GNS  
8 affiliate and has operated the following websites that link to the GNS defendants' websites  
9 livewebfriends.com or livenetfriends.com: bjkandy.com, jgjenny.com, fritzwebcam.com,  
10 heheamber.com, hijenny.com, jnpage.com livejen.com, loljen.com, lolkandy.com, pkjen.com,  
11 profilejen.com, rrrjen.com, seetheprofile.com, starjen.com, tiffhuh.com, vgjen.com,  
12 wowjen.com, wtfjen.com, and xowebcam.com. (Exh.7 [Vera] ¶ 26, p.8; Exh. 47.)

13                   **B. Jurisdiction and Venue**

14           The Court has subject matter jurisdiction over the Commission's allegations pursuant to  
15 15 U.S.C. §§ 45(a), 53(b), and 7706(a), and 28 U.S.C. §§ 1331, 1337(a), and 1345.  
16 Plaintiff's claims arise in Clark County in the District of Nevada. The GNS defendants reside in  
17 and have transacted business in Clark County, Nevada. See Exhs. 8, 11, 12, 13. They have  
18 advertised to and solicited money from consumers throughout the United States.

19  
20                   **III. STATEMENT OF THE CASE**

21                   **A. The Common Enterprise**

22           The GNS defendants operate a common enterprise that is characterized by a maze of  
23 interrelated companies with shared officers, telephones, addresses, and computer servers;  
24 transfers of domains between defendants; and payments of bills by one corporation for another.  
25 Exh. 15 provides an illustration of the common elements forming this enterprise, and Exh. 7  
26 [Vera] p.16 provides an illustration of how the common enterprise works. Central to the GNS  
27 defendants' scheme is that throughout various supposed changes in ownership of the GNS  
28 defendants' domains, there has been one constant: the computer server used by the GNS

1 defendants for accessing their websites. This computer server, with an Internet Protocol ("IP")  
2 address of 209.249.6.2, stores data for all of the GNS defendants' websites, including their  
3 payment website onlinecharges.com, their affiliate website signup4cash.com, and their principal  
4 content portals livewebfriends.com and livenetfriends.com. (Exh. 15; Exh.7 [Vera] ¶ 15, pp.4-5;  
5 Exhs. 16, 18, 32, and 33.) Regardless of the putative owner of the GNS defendants' websites,  
6 the computer server has remained the same.

7 Other recurring elements in the GNS common enterprise are two telephone numbers:  
8 702-435-7676 and 702-436-7676. These telephone numbers have been shared by GNV, GNS,  
9 Southlake, and D. Hamilton. (Exh. 15.) Another telephone number, 702-355-2324, is linked to a  
10 contact on the retardsex.com website for "Donnie Baldwin." (Exh. 38.) This telephone number  
11 belongs to and is paid for by D. Hamilton. (Exh. 41; Exh. 7 [Vera] ¶¶ 20, 54, pp.6, 14-15.)  
12 According to a posting in an adult webmaster's forum by "Donnie Gangsta," which is one of D.  
13 Hamilton's aliases, "My cell phone is 702-355-2324." (Exh. 7 [Vera] p.78.)

14 The GNS defendants also share officers and directors. D. Hamilton is the president of  
15 GNS, a director of GNV, and president of Reflected Networks. D. Hamilton and Banks jointly  
16 managed an early owner of livewebfriends.com, Interactive Media. (Exh. 14; *see also* Exh. 45.)  
17 Doroff is or was the treasurer of Reflected Networks and owns or owned Five Elements, Inc.,  
18 which is the company that maintains the computer servers used by the GNS defendants.

19 Another common element in the GNS defendants' enterprise is the frequent transfer of  
20 domains among the defendants. (Exh. 15.) Undoubtedly, the frequency of change in the  
21 registration information of the GNS defendants' advertised domains is directly related to  
22 complaints they receive from consumers.

23 Finally, the GNS defendants have disregarded corporate formalities and used funds from  
24 one corporation to pay the obligations of another. For example, onlinecharges.com, the GNS  
25 defendants' payment website, is supposedly owned by Wedlake. (Exh. 15.) However, the  
26 customer service telephone number is billed to Reflected Networks (Exh.7 [Vera] ¶ 18, pp.5-6;  
27 *see also* Exh. 39) and paid in some instances by Global Net Solutions (Exh.7 [Vera] ¶ 19, p.6;  
28 Exh. 40).



1           **B. Defendants' Method of Doing Business**

2           Defendants overall spamming scheme relies on four essential elements: recruiting  
3 affiliates to promote the GNS defendants' websites; initiating unsolicited email to consumers to  
4 promote the websites; facilitating online payment options for consumers; and providing content,  
5 usually sexually-explicit, both after purchase and sometimes prior to purchase for use in affiliate  
6 spam.

7                   **1. Recruiting Affiliates**

8           The GNS defendants, through their signup4cash.com website, recruit third party affiliates  
9 to join their program and promote their websites by offering the affiliates lucrative cash  
10 incentives. Signup4cash.com offers "everything an adult webmaster could want to find in a  
11 sponsorship program." (Exh. 59.) For example, for each \$4.95 trial membership that an affiliate  
12 obtains, GNS will pay the affiliate \$30. GNS also offers other cash inducements to its affiliates:  
13 \$25 per each \$1 trial membership; \$50 per each \$30 monthly membership; \$20 per lifetime  
14 membership. (Exh. 59; *see also*, Exh. 7 [Vera] p.41.) The GNS defendants have also offered  
15 special cash incentives to affiliates to spur new members, such as "\$3300 to the webmaster who  
16 refers the most people from now until March 31<sup>st</sup>." (Exh. 7 [Vera] p.46.) GNS also offers "free  
17 hosting for affiliates" and "unique original content for our affiliates to use." (Exh. 59.) One  
18 method the GNS defendants use to promote their affiliate program is through cross-selling  
19 opportunities. For example, on the fuckablackbitch.com website, there is a box that reads,  
20 "Webmaster - Make Money click here now!" which leads to signup4cash.com. (Exh.7 [Vera]  
21 ¶ 45, p.12.) Another method used by the GNS defendants to recruit affiliates is through adult  
22 webmaster forums. *See* Exh. 7 [Vera] pp.32-78.

23           Signup4cash.com promotes a variety of sexually-oriented websites, all owned and  
24 operated by the GNS defendants. These websites include livewebfriends.com and its successor  
25 website, livenetfriends.com, "where amateur girls can do their very own cam shows";  
26 cumsmothered.com; eighteenies.com, focusing on "graphic teen content"; footlongschlong.com;  
27 fuckablackbitch.com; hardcorepornflicks.com; hotavailableamateurs.com; perfect-lesbians.com;  
28 pounded-pussies.com; and pussiesandcream.com. (Exhs. 52 and 59.)

1 According to the signup4cash.com FAQs (Frequently Asked Questions), its "president" is  
2 "Donnie" and its corporate offices are located at 6363 S. Pecos Road, Suites 209 and 210, Las  
3 Vegas, NV, with a telephone number of 702-435-7676. (Exh. 52.) The FAQs also answer the  
4 following question, "Do you accept email traffic?" with this response:

5 Yes, we accept all email traffic that is in compliance with  
6 international and United States law. However, we do not accept  
7 any email traffic that links directly to our sites. If you mail directly  
to our sites, your account will be suspended immediately and your  
funds will be held.

8 (Exhs. 52 and 59.) Until approximately September 8, 2004, GNS had no other policy regarding  
9 the use of email by its affiliates. GNS then supposedly instituted the following policy:

10 Signup4cash has a zero tolerance anti-spam policy. . . . Signup4cash  
11 DOES accept mail traffic that is CAN-SPAM compliant or traffic from  
verifiable opt in email lists.

12 (Exh. 59.) However, GNS currently has no means to verify whether email traffic complies with  
13 CAN-SPAM and based on the number of complaints it has received about its spam, does not  
14 care. *See, e.g.*, Exh. 5 [Tipton] pp.21-29.

15 Defendant Rose is a GNS affiliate. In line with the above policy, defendant Rose  
16 established various intermediate websites from which he has directed traffic to the GNS  
17 defendants' websites. To promote these websites, Rose has initiated emails with hyperlinks to  
18 the GNS defendants' websites. (Exh. 5 [Tipton] ¶ 4, pp.1-2; pp.8-20.) Using the alias John  
19 Baker, and a false address, he registered the following domains that link to the GNS defendants'  
20 websites: Bjkandy.com, Fritzwebcam.com, Heheamber.com, Hijenny.com, Jnpage.com,  
21 Livejen.com, Loljen.com, Lolkandy.com, Pkjen.com, Rrrjencom, Seetheprofile.com, Tifde.com,  
22 Tiffhuh.com, Vgjen.com, Wowjen.com, Xowebcam.com, Fgjenny.com, Profilejen.com,  
23 Starjen.com, and Wtfjen.com. (Exh. 7 [Vera] ¶ 26, p.8.)

24 The GNS defendants know that some of their affiliates have engaged in fraudulent  
25 practices while promoting the GNS websites. In an adult webmaster forum exchange, defendant  
26 D. Hamilton asked his fellow webmasters, "Since we've been a private invite only program we  
27 haven't ever had to deal with affiliate fraud but now that we are public a lot of fucks are  
28

1 defrauding.. they're very good at it too.. Anyone have any suggestions for dealing with it?" (Exh.  
2 7 [Vera] p.77.)

## 3 2. Sending spam

4 To promote the GNS defendants' websites, all of the defendants have initiated hundreds  
5 of thousands of spam to consumers throughout the United States. Some of defendants' spam  
6 contain sexually-explicit subject lines, such as "Video of guys fucking helpless retar(d)ed girls  
7 lol." (Exh. 1 [Villagran] ¶ 2, p.1; Exh. 2 [Latner] ¶¶ 5, 7, p.2; Exh. 3 [Jarvis] ¶ 3, p.1.) Many of  
8 defendants' spam contain subject lines suggesting a prior personal relationship between the  
9 sender and the recipient, such as "i called, why didnt you call back"; "is it really you"; "long time  
10 no see"; or "contact me asap." (Exh. 2 [Latner] ¶ 8, pp.2-3; Exh. 4 [McGowan] pp.29-49; Exh. 5  
11 [Tipton] ¶¶ 6, 16, pp.2, 6, 8-20; Exh. 6 [Hightower] p.3.) Other emails suggest that the message  
12 comes from an ISP, such as "Message from AOL." (Exh. 7 [Vera] ¶ 52, p.14). Some of  
13 defendants' spam contain subject lines that appear to be relating current news, such as "Osama  
14 Strikes Again." (Exh. 2 [Latner] ¶ 9, p.3; Exh. 53.)

15 In many instances, defendants falsely identify the senders of these emails, most often  
16 through "spoofing." Spoofing consists of placing false information into the email protocol to  
17 make the email look like it originates from a source other than the one it actually comes from. In  
18 such cases the email address identified as the "sender" is phony. (Exhs. 5 [Tipton] ¶ 5, p.2; 42,  
19 43, 44, 45.) In other instances, defendants have compromised a legitimate consumer's email  
20 address, either through an open proxy or a computer virus, (Exh. 7 [Vera] ¶ 52, p.14; *see also*  
21 *FTC v. Phoenix Avatar, LLC*, 2004 WL 1746698, Exh. 68 at \*11, 2004-2 Trade Cases (CCH)  
22 ¶ 74,507 (N.D. Ill. July 30, 2004)), or by use of an email address obtained though the false  
23 promise that it would not be used to spam.

24 The body of defendants' spam falls into three overlapping categories: spam that has  
25 sexually-explicit content, either in images or words, in the immediately viewable area of the  
26 email (Exhs. 1 [Villagran] ¶ 3, p.1; 2 [Latner] ¶¶ 4, 5, pp.1-2; 3 [Jarvis] ¶ 3, p.1); spam that lacks  
27 opt-out notices and mechanisms, physical postal addresses, and other disclosures required by  
28 CAN-SPAM (Exhs. 1 [Villagran] ¶ 4, p.1; 2 [Latner] ¶¶ 5, 7, 8, 9, pp.2-3; 3 [Jarvis] ¶ 3, p.1;

1 4 [McGowan] ¶ 8, p.3; 5 [Tipton] ¶ 8, p.3; 6 [Hightower] ¶ 7, p.2 ); and spam that promises free  
2 access to defendants' websites (Exh. 5 [Tipton] ¶¶ 7, 16, 18, pp.3, 6-7.)

3 As for spam that promises free access to defendants' websites, typical email states, "it  
4 doesn't cost you a dime or anything like that, I just wana (sic) meet you!" (Exh. 5 [Tipton] ¶ 7,  
5 p.3.) If the recipient clicks on the link in the email, he or she is taken to an intermediate website  
6 (operated by the affiliate) containing graphic but not necessarily sexually-explicit photos. Again,  
7 there are numerous representations that defendants' websites are free:

8 All you have to do is Click here for the LiveWebFriends (\$0.00)  
9 FREE membership to see me LIVE!

10 I use a FREE age verification system so don't worry. All you need  
11 to do is make a free username and password then you can come  
12 chat with us for FREE!

13 \* \* \* \* \*

14 LiveWebFriends is a fun place because it has a free  
15 membership. . . .

16 (Exh. 5 [Tipton] ¶ 16, p.6.)

17 The prospective member is then directed to complete a form to obtain a supposedly "free"  
18 password and, once again, proposed defendants represent that the website is free: "This is a  
19 FREE site, like Yahoo!" (Exh. 5 [Tipton] ¶ 16, p.6.) In actuality, the GNS defendants' websites  
20 are not free. See discussion *infra* at VI.B.1.d; Exhs. 54-56.

21 The GNS defendants appear to be aware that traffic sent to them comes from spam.  
22 According to postings in an adult webmaster forum in which defendant D. Hamilton has actively  
23 participated, one poster commented, "everyone knows signup4cash was made on aol spam that  
24 was sent primarily to minors." (Exh. 7 [Vera] p.56.) Another poster added:

25 I've never seen one of your sites advertised anywhere. Nor any big  
26 name sites without affiliate programs, but you were doing 500-  
27 600/day... My guess is, at least 99% of those signups would have  
28 had to have come from spam. . . . If you were doing forced cross  
sell, you're looking at 500-600 s/u's a day. If not forced, 1500-  
2000. Even in 2002/2003, you'd need say ... somewhere in the  
neighborhood of what ... 100-200 million emails?

1 (Exh. 7 [Vera] p.59.) In response to the postings, "Blondie23," who clearly works for the GNS  
2 defendants responded, "our traffic has always come from many forms.. **We are mail friendly.**"  
3 (Exh. 7 [Vera] pp.68-69) (emphasis added).)

4 "Sign-ups" are a very valuable commodity in defendants' business. In the same  
5 adultwebmaster forum, but before the GNS defendants started in business, defendant  
6 D. Hamilton asked, "I want to know what avg # of sign ups a 'successful' per sign up program  
7 get per day. . . ." (Exh. 7 [Vera] p.35.) In response, "TheDoc," who appears to be a webmaster  
8 with a great deal of knowledge and experience wrote:

9 Per signup programs make more than \$10 a signup after the  
10 payout. Math is simple, we can use industry average numbers to  
do the math. This is done on 50 signups daily to a normal paysite.

11 50 signups x 4.95 x 30 days = \$7425  
12 1500 signups in a month at 35% trail to convert (525) = \$20973  
13 Out of 50 signups daily that is around 25000 uniques daily.  
14 25,000 uniques daily will produce around 18000 people viewing  
the exit daily. Out of 18,000 1:1800 will signup for something.  
15 10 signups X \$35 = \$3500 [sic]  
1500 signups in a month will produce 450 cross sales at \$15 each  
comes out to \$6750  
1500 signups produces 90% active e-mails, emails are worth on  
average \$20 per (on cc e-mails) so 1350 x \$20 = \$27000.

16 (Exh. 7 [Vera] pp.36-37) (emphasis added).) Following this exchange, the webmaster on another  
17 adult forum announcing the start-up of signup4cash.com wrote, "They're [Signup4cash] also  
18 mailer friendly, so they'll take your mail traffic plus they're paying \$20 per signup on all Epoch  
19 one-click mailer sales." (Exh. 7 [Vera] pp.47-48.)

### 20 3. Facilitating online payments

21 In accordance with the signup4cash.com instructions described earlier, defendants accept  
22 payments from consumers at their payment site, onlinecharges.com, only after consumers are  
23 routed through intermediate websites set up by affiliates. (Exh. 7 [Vera] ¶ 41, p.11). In many  
24 instances, the affiliates provide no content on these intermediate sites, so that it appears to  
25 viewers that they are going directly to onlinecharges.com or one of the GNS defendants' content  
26 websites. (Exh. 7 [Vera] ¶ 35, p.10 (retardsex.com), ¶ 44, p.12 (fuckablackbitch.com).)  
27  
28

1 A typical payment option is the GNS defendants' "instant access form," in which the  
2 consumer is asked to enter a username, password, city, state, zip, **and email address.** (Exh. 7  
3 [Vera] ¶ 36, p.11; Exhs. 49, 50, 62, 63.) Once completed and submitted, the consumer discovers  
4 that defendants' websites are no longer free: "You are buying a membership to Live Web  
5 Friends. \$4.95 for a 3-day trial. Your membership will automatically renew at the rate of \$33."  
6 (Exh. 5 [Tipton] ¶ 16, p.6.) Presumably, some consumers decline the opportunity to purchase a  
7 livewebfriends.com membership. However, because that decision is made after completing the  
8 "instant access form," the consumer has already provided his or her email address and the GNS  
9 defendants may sell or use that address to send the consumer more spam. Consumers who do  
10 purchase access to the GNS defendants' websites have been given various means of paying, most  
11 often by credit card. *See* Exh. 7 [Vera] ¶¶ 37, 48, pp.11, 12-13; Exhs. 51, 62.

#### 12 4. Delivering content

13 The GNS defendants' websites deliver sexually-explicit content "spamvertised" through  
14 their email and paid for through either their own onlinecharges.com payment website, or through  
15 a third-party processor such as Paycom. *See* Exh. 7 [Vera] ¶ 49, p.13; Exh. 63. Through their  
16 website signup4sex.com, the GNS defendants also deliver sexually-explicit promotional pictures  
17 incorporated into emails sent by their affiliates. Spam for retardsex.com includes a series of  
18 these sexually-explicit images within the initially viewable area of the spam. (Exhs. 2 [Latner]  
19 ¶¶ 5, 7, p.2; 7 [Vera] ¶ 35, p.10.)

## 21 IV. THIS COURT SHOULD ENTER PRELIMINARY INJUNCTIVE RELIEF

### 22 A. The Court is Authorized to Grant the Requested Relief

23 The FTC's complaint seeks a permanent injunction pursuant to Section 13(b) of the FTC  
24 Act, 15 U.S.C. § 53(b). Section 13(b) (second proviso) provides that "in proper cases the  
25 Commission may seek, and, after proper proof, the court may issue, a permanent injunction."  
26 The FTC may seek a permanent injunction against violations of "any provision of law enforced  
27 by the Federal Trade Commission." 15 U.S.C. § 53(b); *FTC v. Evans Products Co.*, 775 F.2d  
28 1084, 1087 (9th Cir. 1985). The CAN-SPAM Act provides that the FTC may enforce its

1 provisions as if they were requirements of Section 5 of the FTC Act. 15 U.S.C. §§ 57a(a)(1)(B),  
2 (d)(3), 7706(a). Accordingly, a case such as this one, replete with both violations of CAN-  
3 SPAM and misrepresentations that violate Section 5 of the FTC Act, is a “proper case” for  
4 injunctive relief under Section 13(b). *H.N. Singer*, 668 F.2d at 1111.

5         Once the FTC has invoked the equitable power of a federal court, the full breadth of the  
6 court's authority is available, including such ancillary final relief as rescission of contracts,  
7 restitution, and disgorgement of profits. *H.N. Singer, Id.* at 1113; *FTC v. Magui Publishers, Inc.*,  
8 1991-1 Trade Cas. (CCH) ¶ 69,425, 65,728 (C.D. Cal. 1991), *aff'd mem.*, 9 F.3d 1551 (9th Cir.  
9 1994). Further, the court may grant a preliminary injunction and temporary restraining order, and  
10 whatever additional preliminary relief is necessary to preserve the possibility of final effective  
11 ultimate relief. *FTC v. H.N. Singer, Id.* at 1111-12. Such relief may include an order freezing  
12 assets and an order permitting immediate access to records. *See e.g., id.* at 1113-14; *FTC v.*  
13 *Tyme Lock 2000, Inc.*, CV-S-02-1078-JCM-RJJ (D. Nev. 2002); *FTC v. Electronic Processing*  
14 *Services, Inc.*, CV-S-02-0500-LRH-RJJ (D. Nev. 2002); *FTC v. National Audit Defense*  
15 *Network, Inc.*, CV-S-02-0131-LRH-PAL (D. Nev. 2002); *FTC v. Dayton Family Productions,*  
16 *CV-S-97-750-PMP* (D. Nev. 1997); *FTC v. Oasis Southwest, Inc.*, CV-S-96-654-PMP (D. Nev.  
17 1996); *FTC v. American Exchange Group, Inc.*, CV-S-96-669-PMP (D. Nev. 1996); *FTC v.*  
18 *PFR*, CV-S-95-74 PMP (D. Nev. 1995); *FTC v. NCH, Inc.*, CV-S-94-138-LDG (D. Nev. 1994);  
19 *FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997).

20         **B. The FTC has Met the Legal Standard for the Issuance of Preliminary**  
21         **Injunctive Relief**

22         “Section 13(b) (of the FTC Act) ‘places a lighter burden on the Commission than that  
23 imposed on private litigants by the traditional equity standard; the Commission need not show  
24 irreparable injury to obtain a preliminary injunction.’ . . . Under this more lenient standard, ‘a  
25 court must 1) determine the likelihood that the Commission will ultimately succeed on the merits  
26 and 2) balance the equities.’” *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir.  
27  
28

1 1999) (quoting *FTC v. Warner Communications, Inc.*, 742 F.2d 1156, 1159-1160 (9<sup>th</sup> Cir.  
2 1984)).<sup>2</sup>

3 In considering the likelihood of ultimate success, “the district court need only to find  
4 some chance of probable success on the merits.” *FTC v. World Wide Factors, Ltd.*, 882 F.2d  
5 344, 346-47 (9<sup>th</sup> Cir. 1989). In weighing the equities between the public interest in preventing  
6 further violations of law and defendants’ interest in continuing to operate their business  
7 unabated, the public equities are accorded much heavier weight. *Id.*; *FTC v. World Travel*  
8 *Vacation Brokers, Inc.*, 861 F.2d 1020, 1030-31 (7<sup>th</sup> Cir. 1988).

9 **1. The Commission is Likely to Succeed on the Merits**

10 The Commission alleges violations of the recently-enacted CAN-SPAM Act, the Adult  
11 Labeling Rule promulgated pursuant to that Act, and Section 5 of the FTC Act. These violations  
12 are well-documented and widespread. Defendants are responsible for compliance with these  
13 laws and are liable for their systematic violation.

14 **a. Defendants are Liable as Initiators Under CAN-SPAM**

15 CAN-SPAM imposes liability for a commercial email message upon “initiators” of the  
16 email. This includes not only those who “originate or transmit” the message, *i.e.*, the button  
17 pushers, but also those who procure the origination or transmission of the message. 15 U.S.C.  
18 § 7702(9). CAN-SPAM defines procurers as those who “intentionally pay or provide other  
19 consideration to, or induce, another person to initiate” a message on their behalf. 15 U.S.C.  
20 § 7702(12).

21 Under this statutory scheme, those who induce others to send emails promoting their  
22 websites are liable for violations of CAN-SPAM regardless of whether the actual button pusher  
23 can be identified. *Phoenix Avatar*, 2004 WL 1746698, Exh. 68 at \*11. As a result, the GNS  
24

---

25 <sup>2</sup> Fed. R. Civ. P. 65 does require a showing of irreparable injury for the issuance of  
26 an *ex parte* TRO. As discussed in the subsequent sections of this memorandum, the Commission  
27 meets the irreparable injury standard in this case.  
28



1 defendants are procurers, and hence initiators, of emails promoting all of their websites because  
2 they offer to pay, through their affiliate program, or otherwise induce their affiliates to send email  
3 promoting their websites. Defendant Rose is also an initiator of email routed through the  
4 domains he registered because he either pushed the button to send the email himself, or created  
5 the domains that induced others to route emails to the GNS defendants' websites.

6 **b. The GNS Defendants' Spam Violates the Adult  
7 Labeling Rule<sup>3</sup>**

8 Under CAN-SPAM, email that depicts "sexually explicit conduct," as that term is defined  
9 in 18 U.S.C. § 2256, must include a label specified by the FTC in its subject line, and exclude  
10 from the area "initially viewable to the recipient" sexual materials or anything other than  
11 specified items of information. 15 U.S.C. § 7704(d). Instead of initiating commercial email with  
12 the Congressionally-mandated label, "SEXUALLY-EXPLICIT: ", the GNS defendants sent  
13 consumers, including a school administrator and other FTC declarants, the following email, with  
14 the subject line "Video of guys fucking helpless retarded [sic] girls lol! You wont belive [sic]  
15 this stuff....":

16 **Access this fucking retard porn sick  
17 funny hardcore site right now!**

18 **Amanda 19 yr drooling tool!**  
**Amanda asked for doggie.. she got it:-)**  
19 Name : Amanda Age 19  
Mental Age :7! Summary : a scuba lesson!

20 Amanda - 19 - This poor little retard is FAR too trusting.. She  
21 came knocking on our door looking for her puppy dog... minutes  
22 later.. shes on all fours being treated like a puppy herself. Fucked  
like a dog.. slapped like a whore.. and teased like a retard... and  
after it all .. tossed on the street naked and whimpering in true  
spastic fashion. Check this out!

23 [Exh. 1 [Villagran] p.3.] None of the GNS defendants' spam soliciting customers for either their  
24 retardsex.com or fuckablackbitch.com websites contains any "SEXUALLY-EXPLICIT: " labels.

---

26  
27 <sup>3</sup> We have no evidence that Rose has initiated spam that violates the Adult Labeling  
28 Rule, and the complaint does not charge him with this violation.

1 (Exh.1 [Villagran] ¶ 2, p.1; Exh. 2 [Latner] ¶¶ 4, 5, 7, pp.2-3, 18-53; Exh. 3 [Jarvis] ¶ 3, p.1;  
2 Exhs. 57, 58, 61, 62, 65.) The sexually-explicit content of these emails is immediately viewable  
3 upon opening the email. (Exh. 1 [Villagran] ¶ 3, p.1; Exh. 2 [Latner] ¶¶ 4, 5, pp.1-2; Exh. 3  
4 [Jarvis] ¶ 3, p.1; Exhs. 48, 49.)

5 Rather than provide our witness and countless others with the legally required opt-out  
6 mechanism so they could stop receiving the GNS defendants' unwanted sexually-explicit email,  
7 15 U.S.C. § 7704(d)(iii) and (iv), the GNS defendants have subjected consumers to unwanted  
8 sexually-explicit words and images. Indeed, not a single email contains the disclosures required  
9 by the Rule, including a working opt-out mechanism or a physical postal address. (Exh. 1  
10 [Villagran] ¶ 4, p.1; Exh. 2 [Latner] ¶¶ 5, 7, p.2; Exh. 3 [Jarvis] ¶ 3, p.1.)

11 Although the Adult Labeling Rule allows marketers to send sexually-explicit email to  
12 consumers who have affirmatively agreed to receive such email from them, 15 U.S.C.  
13 § 7704(d)(2), our declarants categorically deny that they affirmatively consented to receive these  
14 emails. (Exh. 1 [Villagran] ¶ 3, p.1; Exh. 2 [Latner] ¶ 4, pp.4-5; Exh. 3 [Jarvis] ¶ 4, p.2; Exh. 4  
15 [McGowan] ¶ 7, p.3, pp.6-18.) Indeed, in one instance the GNS defendants' spam makes the  
16 absurd claim that the recipient affirmatively consented to receipt of the sexually-explicit email  
17 one and one-half years earlier from an I.P. address in Ghana that the recipient never used. (Exh.  
18 2 [Latner] ¶ 4, pp.1-2.)

19 **c. Defendants' Spam Contains Misleading Headers and Subject**  
20 **Lines in Violation of CAN-SPAM**

21 Congress enacted CAN-SPAM with the express purpose of giving consumers the tools to  
22 avoid commercial email that is vulgar or pornographic in nature and to identify its source.  
23 Section 2 of CAN-SPAM Act (uncodified). In addition to lacking a "SEXUALLY-EXPLICIT:"  
24 label, spam for defendants' websites conceals the perpetrators' identity through the use of false  
25 headers and misleads recipients as to the nature of the email through false subject lines.

26 **i. Misleading Headers**

27 Sections 5(a)(1) and (2) of CAN-SPAM prohibit misleading headers and subject lines.  
28 15 U.S.C. § 7704(a)(1), (2). Section 5(a)(1) of CAN-SPAM, 15 U.S.C. § 7704(a)(1), states:

1 It is unlawful for any person to initiate the transmission, to a  
2 protected computer, of a commercial electronic mail message, or a  
3 transactional or relationship message, that contains, or is  
accompanied by, header information that is materially false or  
materially misleading.

4 The CAN-SPAM Act defines "header information" to mean:

5 the source, destination, and routing information attached to an  
6 electronic mail message, including the originating domain name  
7 and originating electronic mail address, and any other information  
that appears in the line identifying, or purporting to identify, a  
person initiating the message.

8 15 U.S.C. § 7702(8). The "From:" or "Reply to:" lines in defendants' emails are part of the  
9 header information.

10 According to sworn responses to Civil Investigative Demands issued by the FTC to Juno,  
11 Yahoo!, and MSN/Hotmail, email initiated by or on behalf of defendants contain invalid "From:"  
12 or "Reply to:" addresses; *i.e.*, no such email addresses existed. (Exhs. 42-44.) Accordingly,  
13 these headers are materially false and violate CAN-SPAM.

14 Defendants' headers sometimes contain valid email addresses when a legitimate account  
15 has been compromised, (Exh. 7 [Vera] ¶ 52, p.14). In these cases, the header information is  
16 materially false because the emails do not disclose their true origin. (*See, e.g.*, Exhs. 42-44.)

17 Defendants also violate CAN-SPAM if their email uses a superficially valid email  
18 address obtained through false representations. 15 U.S.C. § 7704(a)(1)(A). Many email  
19 providers, including Microsoft, Yahoo!, and AOL, strictly prohibit the use of their email  
20 accounts for sending unsolicited commercial email. (Exh. 66 (Microsoft Declaration); Exh. 67  
21 (AOL Declaration); Exh. 7 [Vera] ¶ 55, p.15, pp. 6, 79-100.) As a result, headers in defendants'  
22 emails that incorporate email addresses from these ISPs not only violate the ISPs' prohibition on  
23 using such accounts for commercial purposes, but also violate CAN-SPAM because defendants  
24 obtained the email accounts by falsely or fraudulently representing that they would comply with  
25 the ISPs terms of service.

## 26 ii. Misleading subject lines

27 Defendants' email subject lines are also misleading in three ways. Some of defendants'  
28 emails promoting their retardsex.com website include the subject line, "Message from AOL" or a

1 similar false implication that the message comes from an ISP. (Exh.7 [Vera] ¶ 52, p.14.) Other  
2 emails promoting livewebfriends.com include subject lines that falsely imply a personal  
3 relationship with the recipient, such as “long time no see” or “i called, why didn’t you call back”  
4 (Exh. 2 [Latner] ¶ 8, pp.2-3; Exh. 4 [McGowan] pp.29-49; Exh. 5 [Tipton] ¶¶ 6, 15, pp.2, 5-6,  
5 pp.8-20; Exh. 6 [Hightower] p.3), or suggests that the email contains important current  
6 information, such as “Osama Strikes Again” (Exh. 2 [Latner] ¶ 9, p.3). Both types of subject  
7 headings are likely to mislead a reasonable recipient about a material fact regarding the subject  
8 and content of the email. Defendants email, therefore, violates CAN-SPAM.

9 **d. Defendants’ Spam Violates CAN-SPAM’s Disclosure**  
10 **Requirements**

11 CAN-SPAM requires that commercial email include: 1) an “opt-out” notice and  
12 mechanism; 2) clear and conspicuous disclosure that the email is an advertisement or solicitation;  
13 and 3) the “sender’s” valid physical postal address. 15 U.S.C. § 7704(a)(3), (5). Defendants  
14 consistently ignore this obligation to put their own name on their spam, make clear that the  
15 emails are advertisements, and give consumers the Congressionally-mandated opportunity to  
16 keep it from reaching their computers.

17 **i. Non-existent or non-functioning “opt-outs”**

18 Most of defendants’ spam either fails completely to contain an opt-out mechanism or  
19 contains one that does not function. (Exh. 1 [Villagran] ¶ 4, p.1; Exh. 2 [Latner] ¶¶ 7, 8, 9, pp.2-  
20 3; Exh. 3 [Jarvis] ¶ 3, p.1; Exh. 4 [McGowan] ¶ 8, p.3; Exh. 5 [Tipton] ¶ 8, p.3; Exh. 6  
21 [Hightower] ¶ 7, p.2; Exh. 7 [Vera] ¶ 53, p.14.) Section 5(a)(3) of the CAN-SPAM Act, 15  
22 U.S.C. § 7704(a)(3), states:

23 It is unlawful for any person to initiate the transmission to a protected  
24 computer of a commercial electronic mail message that does not contain a  
25 functioning return electronic mail address or other Internet-based  
26 mechanism, clearly and conspicuously displayed, that –

27 (i) a recipient may use to submit, in a manner  
28 specified in the message, a reply electronic mail  
message or other form of Internet-based  
communication requesting not to receive future  
commercial electronic mail messages from that  
sender at the electronic mail address where the  
message was received; and

1 (ii) remains capable of receiving such messages or  
2 communications for no less than 30 days after the  
transmission of the original message.

3 Sections 5(a)(5)(A) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A), states:

4 It is unlawful for any person to initiate the transmission of any  
5 commercial electronic mail message to a protected computer unless  
the message provides –

6 (ii) clear and conspicuous notice of the opportunity  
7 under paragraph (3) to decline to receive further  
8 commercial electronic mail messages from the  
sender.

9 As explained at IV.B.1.a, *supra*, defendants are “initiators” and are liable for complying  
10 with these provisions of CAN-SPAM. Defendants have, therefore, violated the CAN-SPAM  
11 Act.

12 **ii. No disclosure that email is an advertisement or  
solicitation**

13 Defendants’ spam typically fails to disclose that the commercial email is an advertisement  
14 or solicitation. Often, defendants’ spam suggests a personal relationship between the sender and  
15 the recipient. (Exh. 2 [Latner] ¶ 8, pp.2-3; Exh. 4 [McGowan] pp.29-49; Exh. 5 [Tipton] ¶¶ 6, 16,  
16 pp.2, 6, 8-20.) Sometimes defendants’ spam claims to be about a current news event. (Exh. 2  
17 [Latner] ¶ 9, p.3.) Most often, defendants spam purports to concern “free” webcam videos or  
18 chat. (Exh. 5 [Tipton] ¶¶ 7, 16, 18, pp.3, 6, 7.) Section 5(a)(5)(A) of the CAN-SPAM Act,  
19 15 U.S.C. § 7704(a)(5)(A), states:

20 It is unlawful for any person to initiate the transmission of any  
21 commercial electronic mail message to a protected computer unless  
the message provides –

22 (i) clear and conspicuous identification that the  
23 message is an advertisement or solicitation.

24 This disclosure is not required when the recipient has given “prior affirmative consent” to receipt  
25 of the message. 15 U.S.C. § 7704(a)(5)(B). CAN-SPAM defines “affirmative consent” to mean:

26 (A) the recipient expressly consented to receive the message, either  
27 in response to a clear and conspicuous request for such consent or  
at the recipient’s own initiative, and

28 (B) if the message is from a party other than the party to which the  
recipient communicated such consent, the recipient was given clear

1 and conspicuous notice at the time the consent was communicated  
2 that the recipient's electronic mail address could be transferred to  
3 such other party for the purpose of initiating commercial electronic  
4 mail messages.

5 15 U.S.C. § 7702(1). Our declarants, however, state they never provided defendants with  
6 consent to receive their emails. (Exh. 2 [Latner] ¶ 8, pp.2-3; Exh. 4 [McGowan] ¶ 7, p.3; Exh. 5  
7 [Tipton] ¶ 6, pp.2-3.) Therefore, defendants' failure to clearly and conspicuously disclose that  
8 their commercial email is an advertisement or solicitation violates the CAN-SPAM Act.

9 **iii. No valid physical postal address**

10 Not one of defendants' hundreds of thousands of emails contains the sender's valid  
11 physical postal address. (Exh. 1 [Villagran] ¶ 4, p.1; Exh. 2 [Latner] ¶¶ 5, 7-9, pp.2-3; Exh. 3  
12 [Jarvis] ¶ 3, p.1; Exh. 4 [McGowan] ¶ 8, p.3; Exh. 5 [Tipton] ¶ 8, p.3; Exh. 6 [Hightower] ¶ 7,  
13 p.2; Exh. 7 [Vera] ¶ 53, pp.14-15.) Section 5(a)(5)(A) of the CAN-SPAM Act, 15 U.S.C.  
14 § 7704(a)(5)(A), states:

15 It is unlawful for any person to initiate the transmission of any commercial  
16 electronic mail message to a protected computer unless the message  
17 provides –

18 (iii) a valid physical postal address of the sender.

19 Therefore, defendants have violated the CAN-SPAM Act by initiating email without the sender's  
20 valid physical postal address.

21 **e. Defendants' Spam is Deceptive and Violates Section 5 of the  
22 FTC Act**

23 Defendants' spam also violates Section 5(a) of the FTC Act by falsely representing that  
24 access to their websites is free. (Exh. 5 [Tipton] ¶¶ 7, 15, 17, pp.3, 5-8; Exhs. 54-56.) Section  
25 5(a) prohibits "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C.  
26 § 45(a). A violation of Section 5(a) is properly found upon a showing that "first, there is a  
27 representation, omission, or practice that, second, is likely to mislead consumers acting  
28 reasonably under the circumstances, and third, the representation, omission, or practice is  
material." *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994) (quoting and adopting  
standard in *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 164-65 (1984)). *See also Resort Car Rental*

1 *System, Inc. v. FTC*, 518 F.2d 962, 964 (9th Cir.), *cert. denied*, 423 U.S. 827 (1975) (advertising  
2 that induces consumer response through deception violates FTC Act).

3 As described in Section III.A. *supra*, the declarations and other evidence clearly  
4 demonstrate that defendants have falsely represented that their websites are free. Such express  
5 misrepresentations are likely to mislead consumers and are presumed to be material. *Novartis*  
6 *Corp. v. FTC*, 223 F.3d 783, 786 (D.C. Cir. 2000), citing *Cliffdale Assocs.*, 103 F.T.C. 182.  
7 Accordingly, the Commission is likely to succeed in demonstrating that defendants have violated  
8 Section 5(a) of the FTC Act.

9 **f. The GNS Defendants are Liable as a Common Enterprise for**  
10 **Violations of the CAN-SPAM Act**

11 The FTC alleges that all defendants, except defendant Rose, are part of a common  
12 enterprise (referred herein as the GNS defendants). Courts have found common enterprises in a  
13 variety of FTC actions under Section 13(b), based upon common corporate control, similar sales  
14 techniques, interrelated finances, use of the structure to perpetrate fraud, and other factors. *FTC*  
15 *v. Marvin Wolf*, 1996 WL 812940, \*6-7, 1997-1 Trade Cases (CCH) ¶ 71,713 (S.D. Fla. 1996);  
16 *FTC v. Investment Developments, Inc.*, 1989 WL 62564, at \*10-11 (E.D. La. June 8, 1989). Joint  
17 liability is most appropriate when a business is transacted through “a maze of interrelated  
18 companies” or when, as a whole, “the pattern or framework” of an enterprise suggests that the  
19 several corporations are actually transacting the same or similar business. *Delaware Watch Co.*  
20 *v. FTC*, 332 F.2d 745, 746 (2nd Cir. 1964).

21 The GNS defendants have created a maze of corporations (Exhs. 8-14) and websites  
22 (Exh. 15) directed to the promotion of sexually-explicit materials. The GNS common enterprise  
23 is described in detail, *supra* at Part III.A., and is graphically demonstrated by their repetitious and  
24 obfuscatory changes of ownership. The sole purpose of these machinations is to conceal the  
25 unitary nature of the GNS defendants’ business.

26 Accordingly, the FTC charges the GNS defendants jointly with all the law violations  
27 alleged in the FTC’s complaint. The complaint distinguishes the liability of defendant Rose, who  
28

1 is only charged with liability for emails that route consumers through the intermediate domains  
2 he registered.

3 **g. The Individual Defendants are Liable for Injunctive and**  
4 **Monetary Relief**

5 Under the FTC Act, an individual is liable and subject to injunctive relief for the acts of a  
6 corporate defendant if the individual participated directly in the unlawful activities or had the  
7 authority to control such activities. *See Publishing Clearing House*, 104 F.3d 1170; *FTC v. Amy*  
8 *Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989). “Authority to control the company can be  
9 evidenced by active involvement in business affairs and the making of corporate policy,  
10 including assuming the duties of a corporate officer.” *Amy Travel*, 875 F.2d at 573. *See also*  
11 *Publishing Clearing House*, 104 F.3d at 1170; *FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d  
12 1176, 1203 (C.D. Cal. 2000).

13 An individual may be held liable for monetary redress under the FTC Act if the individual  
14 directly participated in the deceptive acts or had some control over the acts and actual or  
15 constructive knowledge of the deception. *Publishing Clearing House*, 104 F.3d at 1171.  
16 Constructive knowledge, moreover, can be shown by demonstrating that defendants were  
17 recklessly indifferent to the truth, or had an awareness of a high probability of fraud coupled with  
18 an intentional avoidance of the truth. *Publishing Clearing House*, 104 F.3d at 1171; *J.K.*  
19 *Publications*, 99 F. Supp. 2d at 1204. “The extent of an individual’s involvement in a fraudulent  
20 scheme alone is sufficient to establish the requisite knowledge for personal restitutionary  
21 liability.” *Affordable Media, LLC*, 179 F.3d at 1235.

22 The individual defendants are intimately involved in the affairs of the corporate  
23 defendants and have direct knowledge of ongoing law violations. (*See, e.g.*, Exh. 5 [Tipton]  
24 Aitach. B, in which Mr. Tipton repeatedly forwarded complaints to defendants and cited them for  
25 violating CAN-SPAM.) More broadly, the individual defendants registered businesses and  
26 websites, and induced others to promote those websites without ensuring that any emails  
27 promoting their websites contain working opt-out mechanisms or valid physical postal addresses.  
28 The individual defendants must know that they failed to take these actions. Consequently, they



1 have actual knowledge of their violations of CAN-SPAM. Defendants' disregard of complaints  
2 forwarded to them combined with their failure to ensure that emails promoting their websites are  
3 CAN-SPAM compliant is both reckless indifference to their own obligations, and a conscious  
4 avoidance of the truth they would have learned through compliance with CAN-SPAM's  
5 affirmative obligations.

## 6                   2.       **The Balance of Equities Warrants Immediate Equitable Relief**

7           The balance of the equities tips decidedly in the FTC's favor in this case. First, where, as  
8 here, public and private equities are at issue, public equities outweigh private equities. *World*  
9 *Wide Factors*, 882 F.2d at 347. The proposed temporary restraining order requests three types of  
10 relief: conduct prohibitions to ensure future compliance with CAN-SPAM, the Adult Labeling  
11 Rule, and Section 5 of the FTC Act; asset retention and repatriation provisions to preserve  
12 monies obtained unlawfully by defendants; and reporting and discovery provisions to obtain  
13 information relevant to a preliminary injunction hearing. These are necessary provisions, and  
14 defendants have no legitimate right to continue unlawful conduct, hold on to their unlawful  
15 profits, or conceal information needed to effectuate relief in this case. Therefore, the Court  
16 should enter the requested TRO.

### 17                   a.       **Detailed Conduct Prohibitions are Necessary**

18           Parts I-V of the proposed TRO and preliminary injunction would enjoin continued  
19 violations of the Adult Labeling Rule, the CAN-SPAM Act, and Section 5 of the FTC Act.  
20 Without such conduct prohibitions, defendants would be free to continue to perpetrate their law  
21 violations on members of the public and cause substantial consumer and business injury. The  
22 conduct prohibitions contained in the proposed TRO would work no hardship on defendants, as  
23 they have no right to engage in practices that violate the law. *See World Wide Factors*, 882 F.2d  
24 at 347.

25           In general, the proposed conduct provision track the law precisely. Part V of the  
26 proposed TRO provides greater detail than the CAN-SPAM Act contains regarding defendants'  
27 obligations concerning opt-out requests and lists of persons who have allegedly provided prior  
28 affirmative consent to receipt of defendants' emails. Specifically, it would enjoin defendants

1 from failing to provide a consumer's opt-out request to any person who initiates commercial  
2 email on their behalf, provides mailing lists or addresses of email recipients used to initiate these  
3 emails, or maintains evidence of the recipients' affirmative consent to receipt of the emails.  
4 Furthermore, it would require that the GNS defendants ensure that anyone sending commercial  
5 email on their behalf: specify that the GNS defendants are the sender of any commercial email  
6 that promotes their products, services, or Internet websites; allocates responsibility for honoring  
7 opt-out requests and updating mailing lists and affirmative consent lists; identifies the GNS  
8 defendants' principal place of business and specifies that address as the physical postal address  
9 that the GNS defendants require in all commercial emails initiated on their behalf; specifies a  
10 unique method to identify any commercial email for which that person is an initiator; specifies  
11 that any email address that is the subject of a request not to receive future commercial email from  
12 the GNS defendants will be removed from all mailing lists and affirmative consent lists of that  
13 person within ten (10) business days after the request is made; and identifies the name, address,  
14 and telephone number of each individual and business entity that has access to any opt-out  
15 request.

16 Defendants generally have not provided consumers with an opt-out opportunity.  
17 Consequently, they may have no current means of ensuring that their affiliates honor opt-out  
18 requests or not use opt-out information for any other purpose, as prohibited by CAN-SPAM.  
19 15 U.S.C. § 7704(a)(4). As discussed *supra*, there is evidence that defendants' lists of alleged  
20 prior affirmative consent are bogus, and that they have tolerated affiliates such as defendant Rose  
21 who have registered domains with false names and addresses. The GNS defendants themselves  
22 have continuously obfuscated their identity. In these circumstances, we consider it essential that  
23 all affiliates be identified and be bound to honor the law before being entrusted with the email  
24 addresses of persons exercising opt-out rights. Defendants also must properly maintain and  
25 update affirmative-consent and opt-out lists. Defendants have not made these legal requirements  
26 a part of their business; they should be required to do so before the business can continue.

1                               **b.     An Asset Freeze is Necessary to Prevent Dissipation of Assets**  
2                               **and to Preserve the Possibility of Effective Final Relief for**  
3                               **Consumers**

4           Parts VI and VII of the proposed TRO would freeze the defendants' assets and order the  
5           repatriation of foreign assets. Defendant D. Hamilton has admitted that defendant  
6           signup4cash.com uses an offshore account stating:

7                               For us a [foreign] merchant account is worth it – partly because we  
8                               do millions per year in volume and have a per minute cam site that  
9                               requires billing that doesn't mesh well with conservative  
10                              IPSPs. . . . They allow aggressive front end billing schemes (cross  
11                              sales) that you will not ever be able to get with any bank unless you  
12                              are doing \$1mil+/month in volume. . . .

13           (Exh. 7 [Vera] Attach. E.)

14           The standard for an asset freeze is a showing of likelihood of success on the merits,  
15           combined with a possibility that the assets will be dissipated. *FSLIC v. Sahni*, 868 F.2d 1096,  
16           1097 (9th Cir. 1989) (requiring a showing that “likelihood” of dissipation placed an undue  
17           burden on FSLIC). Where business operations are permeated by deception, there is a strong  
18           possibility that assets may be dissipated during the pendency of the legal proceedings. *See Id.* at  
19           1097. Mindful of this, courts have ordered asset freezes and required repatriation on the basis of  
20           pervasive deceptive activities such as those found in this case. *Affordable Media. LLC*, 179 F.3d  
21           at 1236; *see, e.g., SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972); *SEC*  
22           *v. R.J. Allen & Assoc., Inc.*, 386 F. Supp. 866, 881 (S.D. Fla. 1974).

23                               **c.     Record Retention, Reporting, and Immediate Access**  
24                               **Provisions are Relevant to the Preliminary Injunction Hearing**  
25                               **in this Case**

26           Parts VIII to XII of the proposed TRO contain record keeping and reporting requirements,  
27           and authorize immediate access to defendants' business records and credit reports. These  
28           provisions are intended to ensure that information is available to the Court at the preliminary  
injunction hearing. The immediate access provision is not contained in the proposed preliminary  
injunction.

          These provisions should help clear up the business obfuscations created by the  
defendants. They have conducted a business for almost a year in complete noncompliance with

1 CAN-SPAM. This information required by the TRO will help identify the scope of the unlawful  
2 practices, other participants, and the location of ill-gotten gains. This type of discovery order  
3 reflects the Court's broad and flexible authority in equity to grant preliminary emergency relief in  
4 cases involving the public interest. See *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946);  
5 *FSLIC v. Dixon*, 835 F.2d 554, 562 (5th Cir. 1987); *Federal Express Corp. v. Federal Expresso,*  
6 *Inc.*, No. 97-CV-1219, 1997 U.S. Dist. LEXIS 19144, at \* 6 (N.D.N.Y. Nov. 24, 1997) (early  
7 discovery "will be appropriate in some cases, such as those involving requests for a preliminary  
8 injunction") (quoting commentary to Fed. R. Civ. P. 26(d)). Courts in this District have ordered  
9 similar relief for violations of laws enforced by the FTC. See *FTC v. Desert Financial Group,*  
10 *Inc.*, CV-S-95-01173-LDG (LRL) (D. Nev. 12/5/95); *FTC v. Empress Corp. d/b/a American*  
11 *Publishers Exchange*, CV-S-95-01174-LDG (RLH) (D. Nev. 12/5/95); *FTC v. EDJ*  
12 *Telecommunications, Inc. d/b/a Int'l Marketing*, CV-S-95-01151-LDG (LRL) (D. Nev. 7/12/95);  
13 *FTC v. USM Corp. d/b/a Senior Citizens Against Telemarketing*, CV-S-95-668-LDG (LRL) (D.  
14 Nev. 7/12/95); *FTC v. Richard Canicatti d/b/a/ Refund information Services*, CV-S-94-859-  
15 HDM (RLH) (D. Nev. 10/12/94); *FTC v. Thadow, Inc.*, CV-S-95-00075-HDM (LRL) (D. Nev.  
16 2/1/95).

17 **C. The Temporary Restraining Order Should Be Issued *ex Parte***

18 The issuance of an *ex parte* order is appropriate where the evidence demonstrates a  
19 likelihood that providing notice to defendants would render the issuance of the order fruitless. *In*  
20 *the Matter of Vuitton et Fils, S.A.*, 606 F.2d 1 (2d Cir. 1979); *Cenergy Corp. v. Bryson Oil & Gas*  
21 *P.L.C.*, 657 F.Supp. 867, 870 (D. Nev. 1987) ("it appears proper to enter the TRO without notice,  
22 for giving notice itself may defeat the very purpose of the TRO").

23 This matter is a proper case for the granting of an *ex parte* order. Although the purpose  
24 of preliminary relief "is to preserve the status quo pending a determination of the action on the  
25 merits," *Chalk v. U.S. District Court*, 840 F.2d 701, 704 (9th Cir. 1988), the status quo in this  
26 case is rife with law violations. The GNS defendants are engaging in a continuous transfer of  
27 Internet websites among themselves, using defendant Wedlake's wraith-like corporate existence  
28 and other corporate shells as tools of obfuscation. Defendant Rose has registered all his domains

1 with false names and addresses. All of defendants' business is operated through misleading  
2 arrangements of affiliates and redirected websites. It is necessary to a proper hearing on further  
3 preliminary injunctive relief to freeze these dissimulations, preserve assets, and require complete  
4 business and financial accounting that reveals the details and scope of defendants' operation.  
5 Given their nearly complete noncompliance with CAN-SPAM and the Adult Labeling Rule,  
6 combined with their misrepresentations in violation of § 5 of the FTC Act, it would be fruitless  
7 and invite irreparable harm to allow defendants to continue operations without an order in place.  
8 The defendants have demonstrated their willingness to profit from hard-core, fraudulent conduct.  
9 Granting temporary relief before notice is provided will at least make it more difficult for  
10 defendants to conceal their assets and business records, and thereby frustrate the Court's ability to  
11 grant effective final relief.

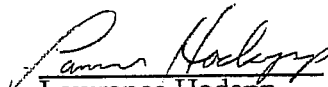
## 13 V. CONCLUSION

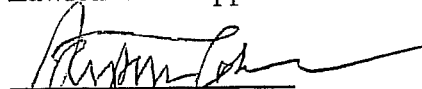
14 Plaintiff respectfully requests that this Court issue the proposed *ex parte* TRO halting  
15 defendants' law violations, freezing assets, and ordering defendants to show cause why a  
16 preliminary injunction should not issue. The proposed relief will ensure that defendants do not  
17 continue their law violations and help ensure the possibility of effective final relief for defrauded  
18 consumers.

19 Dated: January 3, 2005

Respectfully submitted,

20 JOHN D. GRAUBERT  
21 Acting General Counsel

22   
23 Lawrence Hodapp

24   
25 Stephen L. Cohen  
26 Attorneys for Plaintiff  
27 Federal Trade Commission  
28