

1 **Simon Barth**, MA Bar No. 706122, DC Bar No. 90035761

James E. Evans, VA Bar No. 83866

2 **Federal Trade Commission**

600 Pennsylvania Ave., NW, Mailstop CC-6316/1144

3 Washington, DC 20580

(202) 326-3317 / sbarth@ftc.gov

4 (202) 326-2026 / james.evans@ftc.gov

5 **Attorneys for Plaintiff**

Federal Trade Commission

7 **Aaron D. Ford**, Attorney General

Ernest D. Figueroa, Consumer Advocate

8 **Ziwei Zheng**, NV Bar No. 16351

9 **Samantha B. Feeley**, NV Bar No. 14034

State of Nevada, Office of the Attorney General

10 Bureau of Consumer Protection

8945 W. Russell Road, Suite 204

11 Las Vegas, NV 89148

(702) 486-6021 / zzheng@ag.nv.gov

12 (702) 486-3789 / sfeeley@ag.nv.gov

13 **Attorneys for Plaintiff**

State of Nevada

15 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

17 **Federal Trade Commission**, and

18 **State of Nevada**,

19 Plaintiffs,

20 v.

21 **American Tax Service LLC, et al.**,

22 Defendants.

No. 2:25-cv-1894-GMN-EJY

**Plaintiffs' Sur-Reply in Support of a
Preliminary Injunction**

24 Plaintiffs, the Federal Trade Commission and State of Nevada, respectfully request that
25 the Court enter a Preliminary Injunction against Defendants forthwith, to prevent further
26 consumer injury during the pendency of this litigation. Individual Defendants Selb and Bennett
27 have rested “on the previously submitted briefing, along with the oral argument that was
28 provided to the Court on October 27, 2025 (‘Hearing’).” (ECF No. 60, at 1). Because time did

1 not allow Plaintiffs to respond to Defendants' arguments at the Hearing, Plaintiffs respond
2 briefly to Defendants' oral arguments below.

3 **Defendants have not been "ambushed."** At the Hearing, Selb and Bennett claimed to
4 have been "ambushed" by Plaintiffs' exhibits filed along with their Supplemental Memorandum
5 in Support of a Preliminary Injunction (ECF No. 46) ("Supplemental Memo"), and had not
6 "had the opportunity to explain[.]" Hr'g Tr. (ECF No. 53) 26:23-25 [hereinafter, "Tr."].
7 However, the vast majority of the exhibits that Plaintiffs' filed along with their Supplemental
8 Memo were Defendants' own documents that Plaintiffs discovered during the immediate access.
9 *See* GX 594 ¶ 17 (FTC-ATS-3112) (describing where GX 437-590 were found in Defendants'
10 offices and accounts). Nevertheless, Selb and Bennett have now had more than three weeks to
11 review the additional exhibits, and instead of offering explanations, they have rested on their
12 previous brief and argument. Accordingly, Selb and Bennett have abandoned any argument that
13 they have had insufficient opportunity to respond to Plaintiffs' evidence in support of a
14 preliminary injunction.

15 **Plaintiffs' case is not based on one former employee.** At the Hearing, Selb and
16 Bennett claimed that Plaintiffs' case is based on a single declaration from a former employee. Tr.
17 29:20-24. This is simply false. The former employee's declaration is one of more than 600
18 exhibits. Moreover, the Individual Defendants have not rebutted any of the few specific facts for
19 which *only* the former employee declaration is cited.

20 **Defendants' fail to account for numerous consumer complaints.** Selb and Bennett
21 also incorrectly claimed that Plaintiffs' case was based on "a very small percentage" of
22 consumer complaints. Tr. 30:1-2. As noted in Plaintiffs' Supplemental Memo, Selb's and
23 Bennett's purported calculation ignores 507 consumer complaints received by the FTC, GX 394
24 ¶ 59-61 (FTC-ATS-1918 to -1919), and more than 300 complaints produced by the IRS, GX 5-
25 309 (FTC-ATS-0018 to -0731). Selb and Bennett also ignore the temporary receiver's
26 Supplemental Declaration, which noted "hundreds of reports from affected consumers," ¶ 3
27 (ECF No. 45, at 2), and described the "prevailing theme" as "consumer dissatisfaction," ¶ 6
28 (ECF No. 45, at 4).

1 **The Court should continue the asset freeze, including over the Individual**
2 **Defendants’ personal assets.** Selb and Bennett’s final arguments were limited to the asset
3 freeze, addressing three points: harm to consumers, legal authority, and scope of the freeze.

4 Selb and Bennett claim that Plaintiffs have not quantified the harm that their enterprise
5 caused. They acknowledge Plaintiffs’ current estimate of the enterprise’s revenues—\$77.7
6 million in just the last few years. But, they argue: “[A]ll of that can’t be damages, right? That
7 can’t be the case. . . . [T]here are real customers here that received real services. And by
8 extension, that means not all consumers have been harmed.” Tr. 33:16–21. This argument is
9 incorrect. Plaintiffs assert two theories for equitable monetary relief: (1) Defendants’ violations
10 of the GLB Act, the Impersonation Rule, and the TSR trigger equitable monetary relief under
11 § 19 of the FTC Act, 15 U.S.C. § 57b—specifically, “rescission or reformation of contracts [and]
12 the refund of money or return of property,” and (2) Defendants’ violations of NRS
13 §§ 598.0915(5) and (9), and 598.0923(1)(c), trigger equitable monetary relief under NRS
14 § 598.0963(3)—specifically, “disgorgement [or] restitution.” Under these authorities: “[T]he
15 proper monetary award here is total consumer loss, less any refunds or chargebacks. In other
16 words, defendants’ net revenues.” *FTC v. Consumer Def., LLC*, No. 2:18-cv-30, 2022 WL
17 18106047, at *4 (D. Nev. Dec. 30, 2022); *see FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 606 (9th Cir.
18 1993) (“The fraud in the selling, not the value of the thing sold, is what entitles consumers in
19 this case to full refunds.”). Defendants are not entitled to “actual earnings for services provided
20 to paying customers” when those customers were deceived at the outset of their relationship
21 with Defendants. *Figgie Int’l*, 994 F.2d at 606; *FTC v. Dayton Fam. Prods.*, No. 2:97-cv-750, 2016
22 WL 1047353, at *10 (D. Nev. Mar. 16, 2016) (Navarro, J.) (“no offset is warranted for any ‘value’
23 in the sweepstakes booklets or de minimis checks sent to some consumers, as the victims paid
24 based on false promises about valuable monetary prizes”), *aff’d sub nom. FTC v. Burke*, 699 F.
25 App’x 669 (9th Cir. 2017). Every dollar consumers paid Defendants after being induced to pay
26 through government-impersonating mailers and deceptive telemarketing should be returned to
27 them. Because the amount of frozen assets pales in comparison to the amount of consumer
28

1 | harm, continuing a full asset freeze is necessary and appropriate to preserve funds for consumer
2 | redress.

3 | Attacking this Court’s authority to continue the asset freeze, Selb and Bennett cite *Grupo*
4 | *Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999), *AMG Capital Mgmt. v.*
5 | *FTC*, 593 U.S. 67 (2021), and *FTC v. Credit Bureau Center, LLC*, 937 F.3d 764 (7th Cir. 2019). Tr.
6 | 35:10–11, 36:14–37:19. But none of these cases impedes this Court’s power to freeze assets.

7 | Selb and Bennett claim *Grupo Mexicano* held that “you can’t get a prejudgment asset
8 | freeze unless you have an interest in the property or there’s other equitable relief available.” Tr.
9 | 35:15–17. As discussed above, however, the relief sought in this matter is *equitable* relief. By its
10 | own clear terms, *Grupo Mexicano* simply does not apply here. *See* 527 U.S. at 310 (“This case
11 | presents the question whether, *in an action for money damages*, a United States District Court has the
12 | power to issue a preliminary injunction preventing the defendant from transferring assets in
13 | which *no lien or equitable interest is claimed.*” (emphasis added)); *see also Johnson v. Couturier*, 572 F.3d
14 | 1067, 1083–85 (9th Cir. 2009) (“[B]y its very terms, the holding of *Grupo Mexicano* is limited to
15 | cases in which only monetary damages are sought. The Supreme Court expressly stated that a
16 | preliminary injunction barring asset transfer is available where the suit seeks equitable relief.”); *In*
17 | *re Focus Media Inc.*, 387 F.3d 1077, 1087 (9th Cir. 2004) (“*Grupo Mexicano* exempts from its
18 | proscription on preliminary injunctions freezing assets cases involving ... equitable causes of
19 | action.”).

20 | Next, Selb and Bennett incorrectly claim that *AMG* and *Credit Bureau Center* held that
21 | “you can’t get an asset freeze under Section 13.” Tr. 36:24. What those cases actually held is that
22 | Section 13(b) does not authorize courts to award final judgments for equitable monetary relief.
23 | *AMG*, 593 U.S. at 70 (“The question presented is whether this statutory language authorizes the
24 | Commission to seek, and a court to award, equitable monetary relief such as restitution or
25 | disgorgement. We conclude that it does not.”); *Credit Bureau Center*, 937 F.3d at 767 (“we
26 | conclude that section 13(b)’s grant of authority to order injunctive relief does not implicitly
27 | authorize an award of restitution”). Contrary to Selb and Bennett’s assertion that, “if you do the
28 | same analysis under Section 19 ... you get to the ... same spot,” Tr. 36:24–37:1, “[n]othing in

1 *AMG Capital* calls ... into question” the principle that “district courts have inherent equitable
2 power to issue provisional remedies ancillary to a request for final equitable relief.” *FTC v.*
3 *Noland*, No. 20-cv-47, 2021 WL 4318466, at *3–5 (D. Ariz. Sept. 23, 2021). Here, the asset freeze
4 is a form of preliminary injunctive relief to preserve assets that could go towards satisfying an
5 equitable judgment under Section 19 of the FTC Act—not Section 13. *See FTC v. Automators*
6 *LLC*, No. 23-cv-1444, 2023 WL 6373069, at *1 (S.D. Cal. Aug. 11, 2023) (holding that asset
7 freezes and receiverships are “available under Section 19”). Indeed, the Supreme Court labeled
8 Sections 13(b) and 19 “a coherent enforcement scheme.” *AMG*, 593 U.S. at 78. The Court can,
9 and should, continue the asset freeze.

10 Finally, Selb and Bennett argue that “they can’t pay for the basic necessities of life based
11 on the order as it[']s written today.” Tr. 37:23–25. They cite state and federal property
12 exemptions, and the Sixth Amendment right to counsel. Tr. 38:1–39:19. These are also not
13 impediments to continuing the asset freeze as-is. Plaintiffs will more fully explain, in their
14 forthcoming Opposition to the Individual Defendants’ Emergency Motion to Modify
15 Temporary Restraining Order or, Alternatively, Motion for Withdrawal of Counsel (*see* ECF No.
16 59 (ordering Plaintiffs to file such response by November 21, 2025)), that Selb and Bennett are
17 not entitled to continue funding their lavish lifestyles with stolen consumer funds. Specifically
18 responding to Selb and Bennett’s arguments at the Hearing, however, Plaintiffs will note for now
19 that: (1) property exemptions only apply to the *execution* of *final* judgments, *e.g.* NRS §§ 21.090 &
20 115.010—and may not apply at all when property was acquired with fraudulently-obtained
21 funds, *see FTC v. Am. Precious Metals, LLC*, No. 11-cv-61072, 2017 WL 1323466, at *1–3 (S.D.
22 Fla. Apr. 10, 2017) (setting aside the Florida homestead exemption), *aff’d*, 726 F. App’x 729 (11th
23 Cir. 2018);¹ and (2) “the Sixth Amendment does not govern civil cases.” *Turner v. Rogers*, 564 U.S.
24 431, 441 (2011).

27 ¹ The Florida state law principles underlying *American Precious Metals* are mirrored in Nevada
28 and California, where Selb and Bennett own property. *See Maki v. Chong*, 119 Nev. 390, 393–94
(2003); *Kemp v. Enemark*, 194 Cal. 748, 752–54 (1924)).

1 To preserve assets for potential future consumer redress, the Court should issue a
2 Preliminary Injunction that continues the asset freeze instituted in the TRO, without
3 modification.²

4 **Conclusion.** For the reasons stated in Plaintiffs’ *Ex Parte* Motion for a Temporary
5 Restraining Order (ECF No. 4), Supplemental Memo (ECF No. 46), and above, Plaintiffs
6 respectfully request that the Court enter a Preliminary Injunction. Among other things, a
7 Preliminary Injunction converting the temporary receivership to a permanent receivership would
8 allow the Receiver to take prudent action to conserve Receivership Estate assets. For example,
9 financial disclosures submitted by Defendant Elite Sales Solutions indicate that the leases for
10 Defendants’ offices cost \$50,000 per month. GX 609 (Third Declaration of Reeve Tyndall) ¶ 4
11 (FTC-ATS-3215). Terminating the leases as soon as possible would help preserve Receivership
12 Estate funds for possible consumer redress payments. The proposed Preliminary Injunction
13 (ECF No. 46-1) should be entered forthwith.

14
15 Respectfully submitted,

16 Dated: November 18, 2025

17 /s/ Simon Barth

18 **Simon Barth**, MA Bar No. 706122,
DC Bar No. 90035761
19 **James E. Evans**, VA Bar No. 83866
Federal Trade Commission
600 Pennsylvania Ave., NW, CC-6316/1144
20 Washington, DC 20580
(202) 326-3317 / sbarth@ftc.gov
21 (202) 326-2026 / james.evans@ftc.gov

22 **Attorneys for Plaintiff**
23 **Federal Trade Commission**

24
25 ² Plaintiffs would stipulate that, if the Court enters a Preliminary Injunction forthwith that
26 continues the TRO’s asset freeze as-is, then the Individual Defendants’ Emergency Motion to
27 Modify Temporary Restraining Order or, Alternatively, Motion for Withdrawal of Counsel (ECF
28 No. 57), can and should be treated as a motion to modify such Preliminary Injunction, rather
than the then-outdated TRO. That is to say, the Court need not wait to resolve the Individual
Defendants’ Emergency Motion before entering a Preliminary Injunction—and indeed it should
not wait given the upcoming potential wasting of assets. *See infra* Conclusion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Ziwei Zheng, NV Bar No. 16351
Samantha B. Feeley, NV Bar No. 14034
Office of the Nevada Attorney General
8945 W. Russell Road, Suite 204
Las Vegas, NV 89148
(702) 486-6021 / zzheng@ag.nv.gov
(702) 486-3789 / sfeeley@ag.nv.gov

Attorneys for Plaintiff
State of Nevada