

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

7

8

9

United States of America,

No. CV-11-0390-PHX-JAT

10

Plaintiff,

ORDER

11

vs.

12

13

Business Recovery Services, LLC; Brian
Hessler,

14

Defendants.

15

16

Pending before the Court is Defendants’ Motion to Modify Temporary Injunction.
(Doc. 167). The Court now rules on the Motion.¹

17

18

I. BACKGROUND

19

20

21

22

23

24

Defendant Business Recovery Services is an Arizona limited liability company with its principal place of business in Maricopa County. Defendant Brian Scott Hessler is the owner of Business Recovery Services. Defendants sell goods and services, including “recovery kits,” that they state allow customers to recover funds that consumers have lost in previous transactions. Some of the customers who purchase Defendants’ recovery kits lost

25

26

27

28

¹ Though oral argument was requested on the Motion, because both the parties submitted memoranda discussing the law and evidence in support of their positions and oral argument would not have aided the Court’s decisional process, the Court will not set oral argument. *See e.g., Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998); *Lake at Las Vegas Investors Group, Inc. v. Pacific. Dev. Malibu Corp.*, 933 F.2d 724, 729 (9th Cir. 1991).

1 money or other items of value in previous telemarketing transactions. Among other claims,
2 Plaintiff United States of America (the “Government”) alleges that Defendants’ sale of
3 recovery kits to customers who have lost money in previous telemarketing transactions
4 violates the Telemarketing Sales Rule, 16 C.F.R. Part 310.

5 The Government filed a Motion for a Preliminary Injunction (Doc. 5) to enjoin
6 Defendants from violating the Telemarketing Sales Rule. After holding a hearing on April 5,
7 2011, the Court granted the Government’s Motion. The Court enjoined Defendants from
8 “requesting or receiving payment of any fee or consideration from a person for goods or
9 services represented to recover or otherwise assist in the return of money or any other item
10 of value paid by that person in a previous telemarketing transaction, until seven (7) business
11 days after such money or other item is delivered to that person.” (Doc. 34, p. 8).

12 Defendants moved to modify that injunction. (Doc. 83). That motion was denied.
13 (Doc. 118). Defendants appealed that denial to the Ninth Circuit Court of Appeals. (Doc.
14 128). Defendants now move again to modify the Court’s injunction. (Doc. 167)

15 II. THE APPEAL

16 The Ninth Circuit Court of Appeals has now ruled on Defendants’ appeal, and
17 affirmed the denial of modification. *United States v. Bus. Recovery Servs., LLC*, No. 11-
18 17677 (9th Cir. June 15, 2012).² Accordingly, this Court has jurisdiction to amend the
19 preliminary injunction.

20 III. LEGAL STANDARD AND ANALYSIS

21 A court that issues an injunction retains the power to modify or suspend it. *Clark v.*
22 *Coye*, 60 F.3d 600, 606 (9th Cir. 1995). The party seeking dissolution or modification of an
23 injunction bears the burden of establishing that a significant change in facts or law justifies
24 dissolution or modification. *Sharp v. Weston*, 233 F.3d 1166, 1170 (9th Cir. 2000) (citing
25 *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 383 (1992)). If the party meets its initial
26

27 ² The Court notes that the mandate has not issued. However, the slip opinion is
28 currently controlling law.

1 burden of demonstrating a significant change in facts or law, then the Court considers
2 whether the proposed modification is suitably tailored to the changed circumstances. *Rufo*,
3 502 U.S. at 383.

4 Here, Defendants do not raise any significant change in fact or law. Defendants simply
5 request that the Court pre-approve Defendants' sale of a book and the operation of 'a dispute
6 resolution university.' Defendants do not meet their burden of establishing changed
7 circumstances sufficient to warrant a modification. Because Defendants have not
8 demonstrated a significant change in facts, or the law, the Court will not modify the
9 injunction.

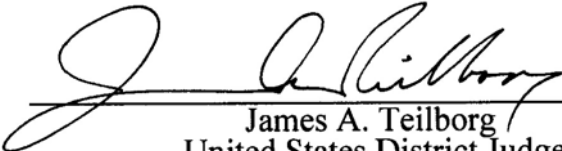
10 **IV. CONCLUSION**

11 Accordingly,

12 **IT IS ORDERED** denying Defendants' Motion to Modify Temporary Injunction.

13 (Doc. 167).

14 DATED this 16th day of July, 2012.

15
16
17 
18 _____
19 James A. Teilborg
20 United States District Judge
21
22
23
24
25
26
27
28