IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CIVIL ACTION FILE NO.:
1:14-CV-1599-HLM

WILLIAMS, SCOTT & ASSOCIATES LLC, a Georgia limited liability company,
WSA, LLC, a Nevada limited liability company d/b/a Warrant Services Association,
JOHN WILLIAMS, individually and as officer of Williams, Scott & Associates, LLC, and as managing member of WSA, LLC, and
CHRIS LENYSZYN, individually and as managing member of WSA, LLC,

Defendants.

ORDER

This case is before the Court on the Motion for Summary Judgment against Defendant Chris Lenyszyn

("Defendant Lenyszyn") filed by Plaintiff Federal Trade Commission (the "FTC") [121].

I. Procedural Background

The Court incorporates the procedural background portions of its earlier Orders into this Order as if set forth fully herein, and adds only those background facts that are relevant to the instant Motion. On July 30, 2015, the FTC filed its Motion for Summary Judgment. (Docket Entry No. 121.) Defendant Lenyszyn filed a response and the FTC filed a reply. (Docket Entry Nos. 136 (Response), 139 (Reply).)[1] On October 26, 2015, Defendant Lenyszyn

[1]The Court reminds counsel that all briefs and filings must comply with the font size and type requirements of the Local Rules. See N.D. Ga. R. 5.1C ("Computer documents must be prepared in one of the following fonts: Times New Roman (at least 14 point), Courier New (at least 12 point), Century Schoolbook (at least 13 point), or Book Antigua (at least 13 point). Typewriter prepared

sought permission to file a surreply. (Docket Entry No. 141.) On October 27, 2015, the Court denied that Motion without prejudice, but permitted Defendant Lenyszyn to file a second request for leave to file a surreply, this time attaching the proposed surreply as an exhibit, by October 30, 2015. (Order of Oct. 27, 2015 (Docket Entry No. 142).) On October 29, 2015, Defendant Lenyszyn filed a second Motion for Leave to File Surreply in compliance with the October 27, 2015, Order. (Docket Entry No. 143.) The Court granted that Motion. (Order of Oct. 29, 2015 (Docket Entry No. 144).) The Court now finds that the matter is ripe for resolution.

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documents must be prepared with no more than 10 characters per inch. Footnotes, headings, and indented citations may be single-spaced."). The complete text of the Local Rules is available via the Court's website: www.gand.uscourts.gov.

II. Initial Matters

Defendant Lenyszyn submitted various exhibits in support of his response to the FTC's Motion for Summary Judgment. (Docket Entry Nos. 136-2 through 136-10; Docket Entry Nos. 137-2 through 137-10.) The FTC argues that all of those exhibits are inadmissible for various reasons. (Reply Supp. Mot. Summ. J. (Docket Entry No. 139) at 3-13.) The Court addresses the exhibits in turn.

A. DX01

DX01 is a single page transaction slip relating to a Bank of America account. (DX01 (Docket Entry Nos. 136-2, 137-2).) The Court agrees with the FTC that this exhibit is inadmissible hearsay, because Defendant Lenyszyn failed to provide either a certification from Bank of America or an

affidavit to show that the exhibit is actually a business record. The Court therefore will not consider DX01 when ruling on the FTC's Motion for Summary Judgment.

B. DX02, DX03, and DX04

DX02, DX03, and DX04 are letters from Defendant John Williams ("Williams") dated November 3, 2014, and addressed to the Nevada Secretary of State, the FTC, and the Nevada Financial Institution Division, respectively. (DX02 (Docket Entry Nos. 136-3, 137-3); DX03 (Docket Entry Nos. 136-4, 137-4); DX04 (Docket Entry Nos. 136-5, 137-5).) The FTC correctly points out that these letters are inadmissible hearsay because they do not qualify as unsworn statements under penalty of perjury under 28 U.S.C. § 1746 or as affidavits. Instead, each of the letters

simply state: "The foregoing document was acknowledged before me on November 3rd 2014 by John Williams," over the signature of a notary public. (DX02; DX03; DX04.) 28 U.S.C. § 1746 requires that an unsworn declaration under penalty of perjury state, "in substantially the following form . . . 'If executed within the United States, its territories, possessions or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).'" 28 U.S.C. § 1746 (internal quotation marks omitted). Generally, to qualify as an affidavit, a document must certify that it is sworn to and subscribed. DX02, DX03, and DX04 meet neither of those requirements, and the exhibits therefore are inadmissible hearsay. The Court cannot agree with Defendant

Lenyszyn's contentions in his surreply that DX02, DX03, and DX04 are admissible. (Surreply (Docket Entry No. 145) at 5.) The Court consequently will not consider those exhibits in connection with the FTC's Motion for Summary Judgment.

C. DX06

DX06 consists of interrogatory responses from Williams. (DX06 (Docket Entry Nos. 136-7, 137-7).) The FTC correctly points out that those responses are inadmissible hearsay, as they were neither answered under oath or signed by Williams as the person answering the interrogatories. See Fed. R. Civ. P. 33(b)(3) ("Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath"); Fed.

R. Civ. P. 33(b)(5) ("The person who makes the answers must sign them. . . ."). The Court therefore declines to consider DX06 in connection with the FTC's Motion for Summary Judgment.

D. DX07

DX07 appears to consist of a series of text messages. (DX07 (Docket Entry Nos. 136-8, 137-8).) The FTC is correct in noting that this exhibit is inadmissible hearsay. Notably, nothing in the exhibit identifies the authors of the messages or the telephone numbers, and the Court cannot determine who sent or received the messages. The Court therefore declines to consider DX07 for purposes of ruling on the FTC's Motion for Summary Judgment.

E. DX08

DX08 consists of a State of Nevada complaint form. (DX08 (Docket Entry Nos. 136-9, 137-9).) For the reasons discussed infra, the Court agrees with the FTC that Defendant Lenyszyn's contention that he did not know his name was on corporate documents filed with the State of Nevada does not directly refute any material fact that the FTC submitted. Alternatively, as discussed infra, the Court finds that Defendant Lenyszyn, having asserted the Fifth Amendment privilege concerning his knowledge about this issue during his deposition, may not now use DX08 as a substitution for his testimony during discovery. Those rulings do not change even if Defendant Lenyszyn is correct in his contention that DX08 is substantially in compliance

with the requirements of § 1746 and qualifies as an unsworn declaration. (Surreply at 4.) The Court therefore declines to consider DX08 in connection with the FTC's Motion for Summary Judgment. Even if the Court had considered DX08, the Court's rulings would not change.

F. DX09

DX09 purports to be a copy of the office lease for Legacy Payment Systems. (DX09 (Docket Entry Nos. 136-10, 137-10).) The Court agrees with the FTC that this exhibit is inadmissible because it is a partial copy, not a duplicate original, and the pages are out of order. (Compare id. with PX76 (Docket Entry No. 121-54).) Federal Rule of Evidence 1002 provides: "An original writing, recording, or photograph is required in order to

prove its content unless these rules or a federal statute provides otherwise." Fed. R. Evid. 1002. Federal Rule of Evidence 1003, in turn, states: "A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate." Fed. R. Evid. 1003. Federal Rule of Evidence 1001(e) defines a duplicate as "a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original." Fed. R. Evid. 1001(e). It is abundantly clear that DX09 does not accurately reproduce the original. Under those circumstances, DX09 does not qualify as a duplicate

under Rule 1001(e), and it is not admissible under either Rule 1002 or Rule 1003.

G. DX05

DX05 consists of Defendant Lenyszyn's affidavit. (DX05 (Docket Entry Nos. 136-6, 137-6).) The FTC argues that the Court should not consider that affidavit because Defendant Lenyszyn took the Fifth Amendment during his deposition. (Reply Supp. Mot. Summ. J. at 3-6.) For the following reasons, the Court agrees.

"The Fifth Amendment privilege against self-incrimination 'protects a person . . . against being incriminated by his own compelled testimony or communications.'" S.E.C. v. Zimmerman, 854 F. Supp. 896, 898 (N.D. Ga. Mar. 24, 1993) (alteration in original) (quoting

Fisher v. United States, 425 U.S. 391, 409 (1976)). "The privilege 'can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory.'" Id. (quoting Kastigar v. United States, 406 U.S. 441, 445 (1972)). "The Fifth Amendment privilege cannot be invoked to oppose discovery and then tossed aside to support a party's assertions." Id. at 899.

Here, Defendant Lenyszyn invoked the Fifth Amendment in response to every substantive question that counsel for the FTC asked him during his deposition, including the matters set forth in his affidavit. (See generally Dep. of Chris Lenyszyn, PX72 (Docket Entry Nos. 121-35 through 121-50).) Although Defendant Lenyszyn's current counsel had not yet entered an appearance in this

action when the FTC conducted Defendant Lenyszyn's deposition, Attorney Nicholas A. Lotito was present for the deposition and was advising Defendant Lenyszyn. (See generally id.) Further, Defendant Lenyszyn never moved to withdraw his assertion of the Fifth Amendment privilege. (See generally Docket.)[2] Under those circumstances, Defendant Lenyszyn may not now attempt to testify via affidavit as to matters for which he previously asserted the Fifth Amendment privilege. See Zimmerman, 854 F. Supp. at 899 (precluding defendant from presenting "any evidence which he has withheld by his invocation of his testimonial privilege in this matter" where defendant "waited until after the SEC has already filed a motion for summary judgment

[2]Notably, Defendant Lenyszyn did not offer to withdraw that assertion in his surreply. (See generally Surreply.)

to make his decision as to whether to stay silent or not"); see also In re Edmond, 934 F.2d 1304, 1308-09 (4th Cir. 1991) (concluding that a district court properly declined to consider a party's affidavit submitted in response to a motion for summary judgment where the party had invoked the Fifth Amendment to avoid discovery); United States v. Parcels of Land, 903 F.2d 36, 43 (1st Cir. 1990) ("[T]he district court had ample authority to strike [a claimant's] affidavit after he invoked the fifth amendment and refused to answer the government's deposition questions."); S.E.C. v. LeCroy, Civil Action No. 2:09-CV-2238-AKK, 2014 WL 4403147, at *6 (N.D. Ala. Sept. 5, 2014) (refusing to allow a defendant to obtain summary judgment based on the defendant's declaration where the defendant "consistently

asserted his Fifth Amendment rights in depositions," and stating, "[t]his court will not allow [the defendant] to 'convert the [Fifth Amendment] privilege from the shield against compulsory self-incrimination which it was intended to be into a sword'" (last alteration in original) (quoting United States v. Rylander, 460 U.S. 752, 753 (1983))); United States v. Inc. Vill. of Island Park, 888 F. Supp. 419, 431 (E.D.N.Y. May 17, 1995) ("[A] decision to assert the privilege during pretrial depositions may be valid grounds for precluding a defendant from testifying at trial, as well as for striking affidavits opposing summary judgment motions." (citations omitted)); United States v. Sixty Thousand Dollars ($60,000.00) in U.S. Currency, 763 F. Supp. 909, 914 (E.D. Mich. Apr. 23, 1991) ("Because claimant has asserted a fifth

amendment claim in discovery, this court holds that he may not now waive the privilege and testify. Neither may he submit affidavits in opposition to the government's motion for summary judgment."). With all due respect to Defendant Lenyszyn, nothing in his surreply warrants departing from this general rule. (Surreply at 2-4.) The Court consequently will not consider DX05 when ruling on the FTC's Motion for Summary Judgment.

III. Factual Background

Keeping in mind that, when deciding a motion for summary judgment, the Court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion, the Court provides the following statement of facts. Strickland v. Norfolk S. Ry. Co., 692

F.3d 1151, 1154 (11th Cir. 2012). This statement does not represent actual findings of fact. Rich v. Sec'y, Fla. Dep't of Corr., 716 F.3d 525, 530 (11th Cir. 2013). Instead, the Court has provided the statement simply to place the Court's legal analysis in the context of this particular case or controversy.

A. The Parties

Defendant Williams Scott & Associates, LLC ("Williams Scott") is a Georgia limited liability company. (FTC's Statement of Material Facts ("PSMF") (Docket Entry No. 121-2) ¶ 1; Defendant Lenyszyn's Resp. PSMF ("DRPSMF") (Docket Entry No. 137) ¶ 1.) Defendant WSA, LLC ("WSA") is a Nevada limited liability company. (PSMF ¶ 2; DRPSMF ¶ 2.) WSA also did business as "Warrant

Services Association." (PSMF ¶ 3; DRPSMF ¶ 3.) Williams Scott and WSA used the name "WSA" interchangeably when collecting debts. (PSMF ¶ 4; DRPSMF ¶ 4.) Since at least as early as 2010, Williams Scott and WSA have contacted consumers nationwide and attempted to collect, or have collected, debts that consumers did not owe or that Williams Scott and WSA had no authority to collect. (PSMF ¶ 5, as modified per DRPSMF ¶ 5; Decl. of Michael S. Liggins, PX01 (Docket Entry No. 2-2 at 7-14)[3] ¶ 5; Decl. of Lynette Bates, PX04 (Docket Entry No. 2-3 at 17-21) ¶ 6; Decl. of Thelma Begay, PX05 (Docket Entry No. 2-3 at 32-36) ¶ 8; Decl. of Joshua Gille, PX09 (Docket Entry No. 2-3 at 70-74) ¶ 8; Decl. of Heather Stover, PX14 (Docket Entry

[3]The Court gives both the docket entry number and the page numbers from the CM/ECF electronic filing system.

No. 2-3 at 123-128) ¶ 2-3, 7); Decl. of Jacqueline Vallair, PX15 (Docket Entry No. 2-3 at 135-139) ¶ 8; Decl. of Oscar Williams, PX16 (Docket Entry No. 2-3 at 154-158) ¶ 9; Decl. of Rebecca Mattson (ACE Cash), PX18 (Docket Entry No. 2-3 at 170-173) ¶¶ 6-8); PX21 Attachment F and F-Tr (Docket Entry Nos. 41-4 at 23 and 41-5 at 1-19), Attachment G and G-Tr. (Docket Entry No. 41-5 at 20-30); Decl. of Jennifer Allen (Sterling Jewelers, Inc.), PX24 (Docket Entry No. 55-4 at 1-8) ¶¶ 8-9; Third Suppl. Decl. of Michael Liggins, PX71 (Docket Entry No. 121-30 at 1-7) ¶ 7 & Attachment P-Tr. (Docket Entry No. 121-34 at 57-65); Lenyszyn Dep. at 53, 56.)

Williams Scott and WSA contacted consumers who had inquired about, applied for, or received payday loans from

online lenders or otherwise. (PSMF ¶ 6, as modified per DRPSMF ¶ 6; Decl. of Yolanda Banda, PX03 (Docket Entry No. 2-3 at 9-13) ¶ 4; Bates Decl., PX04 ¶ 2; Begay Decl., PX 05 ¶ 6; Decl. of Robert Broome, PX06 (Docket Entry No. 2-3 at 40-43) ¶ 3; Decl. of Kathy Lynn Burns, PX07 (Docket Entry No. 2-3 at 49-55) ¶ 3; Decl. of Leigh Ann Fuqua, PX08 (Docket Entry No. 2-3 at 59-62) ¶ 4; Gille Decl., PX09 ¶¶ 2, 8; Decl. of Gregory Hood, PX10 (Docket Entry No. 2-3 at 78-82) ¶ 4; Decl. of Kathleen Jacobi, PX11 (Docket Entry No. 2-3 at 95-100) ¶ 10; Decl. of Trevor Jones, PX12 (Docket Entry No. 2-3 at 104-108) ¶ 5; Decl. of Cathy McLaughlin, PX13 (Docket Entry No. 2-3 at 115-119) ¶ 5; Stover Decl. PX14 ¶ 3); Vallair Decl., PX15 ¶ 5; Decl. of Kristina Koeppel, PX19 (Docket Entry No. 2-3 at 176-182)

¶ 6; Decl. of Janet Teehee, PX20 (Docket Entry No. 2-3 at 197-202) ¶ 5.) Williams Scott and WSA telephoned consumers and claimed that the consumers were delinquent on debts. (PSMF ¶ 7, as modified per DRPSMF ¶ 7; Liggins Decl., PX01 ¶ 5; Decl. of Tom Fogelsong, PX02 (Docket Entry No. 2-3 at 1-8) ¶ 4; Banda Decl., PX03 ¶¶ 3-4; Bates Decl., PX04 ¶ 3; Begay Decl., PX05 ¶¶ 2, 6; Broome Decl, PX06 ¶ 4; Burns Decl., PX07 ¶¶ 4, 6, 8, 15; Fuqua Decl., PX08 ¶¶ 2, 4; Gille Decl., PX09 ¶¶ 3, 9-10; Hood Decl., PX10 ¶ 2; Jacobi Decl., PX11 ¶¶ 3, 10; Jones Decl., PX12 ¶ 3; McLaughlin Decl., PX13 ¶ 4; Stover Decl., PX14 ¶¶ 2-5; Vallair Decl., PX15 ¶¶ 2-3; Mattson Decl, PX18 ¶¶ 6-8; Koeppel Decl., PX19 ¶¶ 2, 5; Teehee Decl., PX20 ¶¶ 4,8; Suppl. Decl. of Michael Liggins, PX21 (Docket

Entry No. 1-3) ¶ 9 & Attach. F and F-Tr. (Docket Entry Nos. 41-4 at 23, 41-5 at 1-19), Attach. G and G-Tr (Docket Entry Nos. 41-5 at 20-30); Allen Decl., PX24 ¶ 9; PX71 Attach. B-Tr. (Docket Entry No. 121-31 at 21-45), Attach. N-Tr. (Docket Entry No. 121-34 at 38-50), Attach. P-Tr. (Docket Entry No. 121-34 at 57-65), Attach. J-Tr. (Docket Entry No. 121-33 at 19-41); Lenyszyn Dep. at 48.) Williams Scott and WSA falsely claimed that they had authority from consumers' lenders to collect the debts. (PSMF ¶ 8, as modified per DRPSMF ¶ 8; Bates Decl., PX04 ¶ 2; Begay Decl, PX05 ¶¶ 4-5; Fuqua Decl., PX08 ¶¶ 2-4; Gille Decl., PX09 ¶ 2; Hood Decl., PX10 ¶¶ 3, 8; Stover Decl., PX14 ¶ 2; Vallair Decl., PX15 ¶ 3; Williams Decl., PX16 ¶ 7; Mattson Decl, PX18 ¶¶ 7-8; Teehee Decl., PX20 ¶ 5;

Liggins Supp. Decl., PX21 ¶ 9; PX21 Attach. F and F-Tr., Attach. G and G-Tr.; Allen Decl., PX24 ¶¶ 8-9; PX71 Attach. B-Tr.) When collectors for Williams and WSA communicated with consumers about purported debts, the collectors often knew and discussed consumers' personal information, such as social security numbers and bank account information. (PSMF ¶ 9, as modified per DRPSMF ¶ 9; Broome Decl., PX06 ¶ 3; Gille Decl., PX09 ¶ 4; Hood Decl., PX10 ¶ 3; Jacobi Decl., PX11 ¶ 4; Stover Decl., PX14 ¶ 5; Koeppel Decl., PX19 ¶ 4; Teehee Decl., PX20 ¶¶ 6-7; PX71 Attach. B-Tr., Attach. N-Tr.; Attach. P-Tr., & Attach D-Tr.) The collectors often pretended to be affiliated with law enforcement officials. (PSMF ¶ 10, as modified per DRPSMF ¶ 10; Liggins Decl., PX01 ¶ 5; Fogelsong Decl.,

PX02 ¶ 4; Banda Decl., PX03 ¶¶ 2-3; Broome Decl., PX06 ¶ 4; Burns Decl., PX07 ¶¶ 4, 8, 10, 12; Fuqua Decl., PX08 ¶¶ 2-3; Gille Decl., PX09 ¶ 2; Hood Decl., PX10 ¶ 2; Jones Decl., PX12 ¶¶ 2-3; McLaughlin Decl., PX13 ¶ 2; Vallair Decl., PX15 ¶¶ 2, 4; Williams Decl., PX16 ¶¶ 4-5, 8; Teehee Decl., PX20 ¶ 4; Liggins Supp. Decl., PX21 ¶ 9 & Attach. F and F-Tr.; PX71 Attach. C-Tr., Attach. D-Tr., Attach. E-Tr., Attach. G-Tr.) Further, some collectors falsely claimed to be attorneys or employees of a law firm. (PSMF ¶ 11, as modified per DRPSMF ¶ 11; Liggins Decl., PX01 ¶ 5; Bates Decl., PX04 ¶ 3; Begay Decl., PX05 ¶ 2; Broome Decl., PX06 ¶ 2; Hood Decl., PX10 ¶¶ 2-4, 6; Jacobi Decl., PX11 ¶¶ 2-3, 13; McLaughlin Decl., PX13 ¶ 2; Stover Decl., PX14 ¶¶ 2-4, 9; Vallair Decl., PX15 ¶¶ 2-9; Aff. of Justin Tramble

(State Bar of Georgia), PX17 (Docket Entry No. 2-3 at 168-169); Koeppel Decl., PX19 ¶ 2; Liggins Supp. Decl., PX21 ¶ 9 & Attach. F and F-Tr.; Liggins Third Supp. Decl., PX71 ¶ 7 & Attach. N-Tr., Attach. P-Tr., and Attach. I-Tr.)

The collectors also accused consumers of committing crimes, such as bank fraud or theft by deception. (PSMF ¶ 12, as modified per DRPSMF ¶ 12.) (Liggins Decl.,PX01 ¶ 5; Fogelsong Decl., PX02 ¶ 4; Banda Decl., PX03 ¶¶ 3, 8, 10; Begay Decl., PX05 ¶ 2; Broome Decl., PX06 ¶¶ 7-8; Burns Decl., PX07 ¶¶ 3, 8, 10; Gille Decl., PX09 ¶¶ 2-3, 9; Hood Decl., PX10 ¶ 2; Jacobi Decl., PX11 ¶¶ 4, 11; Stover Decl., PX14 ¶ 2; Vallair Decl., PX15 ¶¶ 2, 6; Williams Decl., PX16 ¶¶ 304; Koeppel Decl., PX19 ¶ 2; Teehee Decl., PX20 ¶¶ 4, 9; Liggins Supp. Decl., PX21 ¶ 9 & Attachs. F

and F-Tr.; Allen Decl., PX24 ¶ 9; Liggins Third Supp. Decl., PX71 ¶¶ 6-7 & Attach. A, Attachs. M-O, Attach. D-Tr., Attach. E-Tr., Attach. K-Tr., and Attach. P-Tr.) The collectors also sometimes falsely threatened consumers with arrest or imprisonment if the consumers did not immediately pay the purported delinquent debt. (PSMF ¶ 13, as modified per DRPSMF ¶ 13; Liggins Decl., PX01 ¶ 5; Fogelsong Decl., PX02 ¶ 4; Banda Decl., PX03 ¶ 2; Bates Decl., PX04 ¶¶ 3-4; Begay Decl., PX05 ¶ 7; Broome Decl., PX06 ¶¶ 2, 4; Burns Decl., PX07 ¶¶ 4, 10, 14; Fuqua Decl., PX08 ¶ 4; Gille Decl., PX09 ¶¶ 2-3; Hood Decl., PX10 ¶ 2; Jacobi Decl., PX11 ¶ 2; Jones Decl., PX12 ¶ 3; McLaughlin Decl., PX13 ¶ 3; Stover Decl., PX14 ¶ 4; Koeppel Decl., PX19 ¶ 5; Teehee Decl., PX20 ¶¶ 10, 16; Supp. Liggins

Decl., PX21 ¶ 9 & Attach. F and F-Tr, Attach. G and G-Tr.; Liggins Third Supp. Decl., PX71 ¶ 7 & Attach. D-Tr., Attach. K-Tr., and Attach. N-Tr; Lenyszyn Dep. at 48, 53, 55-56.) Some collectors also falsely threatened consumers that their driver's licenses would be suspended or revoked if the consumers failed to pay the alleged delinquent debt. (PSMF ¶ 14, as modified per DRPSMF ¶ 14; Liggins Decl., PX01 ¶ 5; Banda Decl., PX03 ¶ 5; Gille Decl., PX09 ¶ 3; Hood Decl., PX10 ¶ 2; Jones Decl., PX12 ¶ 3; Stover Decl., PX14 ¶ 2; Vallair Decl., PX15 ¶ 3; Koeppel Decl., PX19 ¶ 2; Teehee Decl., PX20 ¶ 4; Liggins Supp. Decl., PX21 ¶ 9 & Attach. F and F-Tr. and Attach. G and G-Tr.; Liggins Third Supp. Decl., PX71 ¶ 7 & Attach. C-Tr., Attach. L-Tr., Attach. P-Tr.; Lenyszyn Dep. at 56.) Some collectors also called

consumers at their workplaces when they knew that the calls were inconvenient or prohibited by the consumers' employers. (PSMF ¶ 15, as modified per DRPSMF ¶ 15; Burns Decl., PX07 ¶¶ 9-10, 12-13; Fuqua Decl., PX08 ¶ 10; Williams Decl., PX16 ¶ 2; Supp. Liggins Decl., PX21 ¶ 9 & Attach. G and G-Tr.) Some collectors used abusive or profane language or repeatedly contacted consumers on their telephones, as a means of intimidating, abusing, or harassing consumers to convince the consumers to pay the alleged debts. (PSMF ¶ 16, as modified per DRPSMF ¶ 16; Bates Decl., PX04 ¶ 3; Begay Decl., PX05 ¶ 7; Burns Decl., PX07 ¶¶ 3, 5, 8-10, 13, 15; Fuqua Decl., PX08 ¶¶ 4, 10; Gilles Decl., PX09 ¶¶ 5, 10; Jacobi Decl., PX11 ¶¶ 8-9; McLaughlin Decl., PX13 ¶ 4; Stover Decl., PX14 ¶ 11;

Williams Decl., PX16 ¶ 2; Teehee Decl., PX20 ¶ 10; PX21, Attach. G and G-Tr.) Some collectors also called third parties, including co-workers, family, and friends, and disclosed information about the consumers' debts. (PSMF ¶ 17, as modified per DRPSMF ¶ 17; Liggins Decl., PX01 ¶ 5; Banda Decl., PX03 ¶ 2; Burns Decl., PX07 ¶ 10; Jones Decl., PX12 ¶ 2; Williams Decl., PX16 ¶ 2; PX71, Attach. F-Tr.)

The collectors also failed to provide consumers, within five days after the initial communication with consumers, a written notice containing: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement that unless the consumer disputes the debt, the debt will be assumed valid; and (4) a statement, that if the

consumer disputes the debt in writing, the collector will obtain verification of the debt. (PSMF ¶ 18, as modified per DRPSMF ¶ 18; Banda Decl., PX03 ¶ 4; Bates Decl., PX04 ¶ 4; Begay Decl., PX05 ¶ 5; Broome Decl., PX06 ¶ 3; Burns Decl., PX07 ¶ 16; Fuqua Decl., PX08 ¶ 4; Gille Decl., PX09 ¶ 11; Hood Decl., PX10 ¶ 3; Jacobi Decl., PX11 ¶ 7; Jones Decl., PX12 ¶ 4; McLaughlin Decl., PX13 ¶ 7; Stover Decl., PX14 ¶¶ 4, 6; Vallair Decl., PX15 ¶ 5; Koeppel Decl., PX19 ¶ 6.)

In numerous instances, in their initial communications with consumers, collectors for WSA and Williams Scott did not inform consumers that they were debt collectors who were attempting to collect a debt from consumers and that information obtained from consumers will be used for that

purpose. (PSMF ¶ 19, as modified per DRPSMF ¶ 19; Banda Decl., PX03 ¶ 3; Begay Decl., PX05 ¶ 2; Burns Decl., PX07 ¶ 4; Fuqua Decl., PX08 ¶ 3; Gille Decl., PX09 ¶ 2; Hood Decl., PX10 ¶ 2; Jacobi Decl., PX11 ¶¶ 2-3; Jones Decl., PX12 ¶ 3; McLaughlin Decl., PX13 ¶ 7; Stover Decl., PX14 ¶ 4; Vallair Decl., PX15 ¶ 4; Williams Decl., PX16 ¶¶ 4-5; Koeppel Decl., PX19 ¶ 2; Teehee Decl., PX20 ¶ 4; PX71, Attach. J-Tr., Attach. K-Tr., and Attach P-Tr.; Lenyszyn Dep. at 52, 55.) When the consumers requested proof of the alleged debts, the collectors for WSA and Williams Scott did not provide it. (PSMF ¶ 20, as modified per DRPSMF ¶ 20; Banda Decl., PX03 ¶ 4; Begay Decl., PX05 ¶ 4; Burns Decl., PX07 ¶ 16; Jacobi Decl., PX11 ¶ 7; Jones Decl., PX12 ¶ 4; McLaughlin Decl., PX13 ¶ 5;

Koeppel Decl., PX19 ¶ 6.) Many consumers paid the alleged debts that the collectors for WSA and Williams Scott purported to be collecting because: (1) they were afraid of the collectors' threats if they failed to pay; (2) they believed the collectors were legitimately collecting debt; or (3) they wanted to stop the harassing collection calls. (PSMF ¶ 21, as modified per DRPSMF ¶ 21; Banda Decl., PX03 ¶ 5; Bates Decl., PX04 ¶ 4; Begay Decl., PX05 ¶¶ 7-9; Broome Decl., PX06 ¶ 5; Fuqua Decl., PX08 ¶¶ 4-8; Gille Decl., PX09 ¶ 5; Hood Decl., PX10 ¶ 4; Jacobi Decl., PX11 ¶ 9; Jones Decl., PX12 ¶¶ 5-7; McLaughlin Decl., PX13 ¶ 8; Stover Decl., PX14 ¶ 6; Vallair Decl., PX15 ¶ 6; Williams Decl., PX16 ¶ 7; Koeppel Decl., PX19 ¶ 7.)

The total net deposits relating to WSA and Williams Scott for the period from January 2010 through May 2014 is $3,935,246.51. (PSMF ¶ 22; Second Supp. Decl. of Michael S. Liggins, PX 30 (Docket Entry No. 94-2) ¶ 6.)[4]

After the Court entered a Temporary Restraining Order and Preliminary Injunction, Defendant John Williams ("Williams") continued collecting, using the company names Sterling Ross Payment Systems LP and Sterling Ross & Associates ("Sterling Ross") and Legacy Payment System LP ("Legacy"). (PSMF ¶ 23, as modified per DRPSMF ¶ 23; Decl. of Phillip Neale, PX22 (Docket Entry No. 55-2) ¶¶ 2-7; Liggins Decl., PX 23 ¶¶ 4-12; Allen Decl., PX24 ¶¶ 11-13;

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[4]The Court overrules Defendant Lenyszyn's materiality objection to PSMF ¶ 22 and notes that Defendant Lenyszyn's response fails to call into question the accuracy of the FTC's figures. (See generally DRPSMF ¶ 22.)

PX25 (Docket Entry No. 55-5).) The total net deposits relating to Sterling Ross and Legacy, for the period from July 2014 through December 2014 is $47,726.87. (PSMF ¶ 24; DRPSMF ¶ 24 (admitting this amount was deposited).)[5]

The FTC contends that Defendant Lenyszyn provided debt accounts to Williams Scott and WSA for collection, and received payments for those accounts on January 24, 2014, February 4, 2014, February 28, 2014, and March 7, 2014. (PX26 (Docket Entry No. 55-6); PX28 (Docket Entry No. 77-1); First Supp. Decl. of Michael Liggins, PX29 (Docket Entry No. 77-2) ¶ 5 & Attach. A.)

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[5]The Court overrules Defendant Lenyszyn's materiality objection to PSMF ¶ 24 and notes that Defendant Lenyszyn's response fails to call into question the accuracy of the FTC's figures. (See generally DRPSMF ¶ 24.)

The FTC contends that, on September 9, 2013, Defendant Lenyszyn became a managing member of WSA. (Liggins First Supp. Decl., PX29 ¶ 7, Attach. F; Lenyszyn Dep. at 18-19.) The FTC also contends that, between November 2013 and February 2013, Defendant Lenyszyn communicated with CBC Innovis about a pricing quote and application submitted to CBC Innovis for skip tracing services for WSA. (Liggins First Supp. Decl., PX29 ¶ 7; Lenyszyn Dep. at 18-19.)

The FTC also contends that, between March 2014 and May 2014, Defendant Lenyszyn communicated with MLS Direct Network and Capital Merchant Solutions about agreements submitted for a merchant or credit card processing account for WSA. (PX21, Attach. A (Docket

Entry No. 41-2 at 5-6); PX40 (Docket Entry No. 121-7); PX41 (Docket Entry No. 121-8); PX42 (Docket Entry No. 121-9); Lenyszyn Dep. at 61-79.)

The FTC presented a copy of an e-mail that Defendant Lenyszyn sent to Williams on September 11, 2013, discussing a virtual phone system and stating that it "might work great for us." (PX37 (Docket Entry No. 121-5).)[6] On March 26, 2014, Defendant Lenyszyn sent an e-mail to Williams that provided, in relevant part: "Please fill out these forms, take care of $75.00 payment and email to statusdocs@sos.nv.gov." (PX21, Attach. A (Docket Entry No. 41-2 at 13).)

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[6]Defendant Lenyszyn's response to PSMF ¶ 29 fails to dispute this statement.

Defendant Lenyszyn spoke with consumers by telephone and represented that they were delinquent on a payday loan or other debt. (PX71, Attachs. M-Tr. through P-Tr.) Defendant Lenyszyn used the dunning name "Investigator Dan Miller" when speaking with consumers. (PSMF ¶ 33, as modified per DRPSMF ¶ 33.) Defendant Lenyszyn also used phone scripts to make those telephone calls. (PSMF ¶ 34, as modified per DRPSMF ¶ 34.) WSA and Williams Scott's business premises and the individual cubicles used by the collectors contained multiple versions of scripts making threats of arrest and criminal action if immediate payment was not made. (PSMF ¶ 35; DRPSMF ¶ 35.)

Defendant Lenyszyn misrepresented to consumers that creditors had hired WSA to get a warrant for the consumers' arrest if the consumers did not pay. (PSMF ¶ 36, as modified per DRPSMF¶ 36.) Defendant Lenyszyn accused consumers of committing crimes such as check fraud, theft by deception, and theft of services by failing to pay payday loans or other loans that the consumers allegedly owed. (PSMF ¶ 37, as modified per DRPSMF ¶ 37.) Defendant Lenyszyn threatened consumers with criminal charges and legal action if they did not pay WSA. (PSMF ¶ 38, as modified per DRPSMF ¶ 38.) Defendant Lenyszyn told consumers that they could lose their driver's licenses if they did not pay WSA. (PSMF ¶ 39, as modified per DRPSMF ¶ 39.)

Defendant Lenyszyn, through his company, Red Apple Group, Inc. ("RAG"), obtained a TLO software license from Transunion. (PSMF ¶ 40; DRPSMF ¶ 40.) Collectors for WSA and Williams Scott used the software license to skip trace personal information of consumers through November 2014. (PX43 (Docket Entry Nos. 121-10, 121-11).) The FTC presented evidence indicating that collectors who had used the TLO license while collecting for WSA also used it for collecting under the name "Sterling Ross and Associates." (PX69 (Docket Entry No. 121-29); Liggins Third Supp. Decl. ¶ 13.) The collectors for WSA and Williams Scott used the TLO license to research personal information about consumers, including social security numbers and addresses. (PSMF ¶ 43; PRDSMF ¶ 43.)

Defendant Lenyszyn received payments from Williams via cash and check for the cost of the TLO license. (PSMF ¶ 44, as modified per DRPSMF ¶ 44.)

On July 10, 2014, Defendant Lenyszyn signed a lease for office space located at 6825 Jimmy Carter Boulevard, Norcross, Georgia 30071. (PSMF ¶ 45; DRPSMF ¶ 45.) Defendant Lenyszyn signed a guaranty for the lease. (PX76 (Docket Entry No. 121-54) at 6.) Defendant Lenyszyn signed the lease on behalf of Legacy Payment Systems, LP. (Id. at 33-34.) The evidence indicated that collectors purporting to collect on behalf of Sterling Ross engaged in abusive debt collection practices after the Court entered a preliminary injunction against the corporate Defendants and Williams. (Decl. of Phillip Neale, PX22

(Docket Entry No. 55-2) ¶¶ 2-4, 6-7; Second Decl. of Michael Liggins, PX23 (Docket Entry No. 55-3) ¶¶ 6-12; Allen Decl., PX24 ¶¶ 9, 13; PX25 (Docket Entry No. 55-5); PX26 (Docket Entry No. 55-6).) The evidence also indicated that Sterling Ross collected net revenue in the amount of $47,726.87. (Liggins First Supp. Decl. ¶ 5 & Ex. A; PX28 (Docket Entry No. 77-1).)

In January 2014 and March 2014, respectively, Colorado and Nevada issued and executed Cease and Desist Orders against WSA for operating an unlicensed collection agency. (Liggins Decl., PX01 ¶¶ 11, 12; PX01, Attach. M (Docket Entry No. 2-2 at 121-125); PX01, Attach. N (Docket Entry No. 2-2 at 126-132).) The Better Business Bureau of Atlanta also maintained complaints against WSA

and Williams Scott. (Liggins Decl., PX01 ¶ 13; PX01, Attach. Q (Docket Entry No. 2-2 at 137-38).)

The FTC contends that the total net deposits pertaining to Williams Scott and WSA from September 2013 through May 2014 is $518,089.84. (Liggins Third Supp. Decl., PX71 ¶14.)

IV. Summary Judgment Standard

Federal Rule of Civil Procedure 56(a) allows a court to grant summary judgment when "there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The party seeking summary judgment bears the initial burden of showing the Court that summary judgment is appropriate and may satisfy this burden by pointing to materials in the

record. Jones v. UPS Ground Freight, 683 F.3d 1283, 1292 (11th Cir. 2012). Once the moving party has supported its motion adequately, the burden shifts to the non-movant to rebut that showing by coming forward with specific evidence that demonstrates the existence of a genuine issue for trial. Id.

When evaluating a motion for summary judgment, the Court must view the evidence and draw all reasonable factual inferences in the light most favorable to the party opposing the motion. Morton v. Kirkwood, 707 F.3d 1276, 1280 (11th Cir. 2013); Strickland, 692 F.3d at 1154. The Court also must "'resolve all reasonable doubts about the facts in favor of the non-movant.'" Morton, 707 F.3d at 1280 (internal quotation marks and citations omitted). Further,

the Court may not make credibility determinations, weigh conflicting evidence to resolve disputed factual issues, or assess the quality of the evidence presented. Strickland, 692 F.3d at 1154. Finally, the Court does not make factual determinations. Rich, 716 F.3d at 530.

The standard for a motion for summary judgment differs depending on whether the party moving for summary judgment also bears the burden of proof on the relevant issue. As the United States Court of Appeals for the Sixth Circuit has noted:

> "When the moving party does not have the burden of proof on the issue, he need show only that the opponent cannot sustain his burden at trial. But where the moving party has the burden–the plaintiff on a claim for relief or the defendant on an affirmative defense–his showing must be sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party."

Calderone v. United States, 799 F.2d 254, 259 (6th Cir. 1986) (quoting William W. Schwarzer, Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact, 99 F.R.D. 465, 487-88 (1984)). "Where the movant also bears the burden of proof on the claims at trial, it 'must do more than put the issue into genuine doubt; indeed, [it] must remove genuine doubt from the issue altogether.'" Franklin v. Montgomery County, Md.,No. DKC 2005-0489, 2006 WL 2632298, at *5 (D. Md. Sept. 13, 2006) (alteration in original) (quoting Hoover Color Corp. v. Bayer Corp., 199 F.3d 160, 164 (4th Cir. 1999)).

IV. Discussion

A. Adverse Inference

As previously noted, Defendant Lenyszyn asserted his Fifth Amendment privilege with respect to virtually every substantive question that counsel for the FTC asked him during his deposition. "The general rule is that an adverse inference may be drawn against a party in a civil action when he refuses to testify in response to probative evidence offered against him." S.E.C. v. Scherm, 854 F. Supp. 900, 905 (N.D. Ga. Sept. 28, 1993). Thus, an adverse inference arises from Defendant Lenyszyn's assertion of the Fifth Amendment privilege. Id. "This adverse inference, however, is insufficient by itself to allow summary judgment to be entered against a party. Rather, a party seeking

summary judgment must establish independently the elements of the claim within the confines of Federal Rule of Civil Procedure 56." Id. at 904-05. For the reasons discussed infra Part V.B., the Court finds that the FTC has met its burden to establish the elements of its claims via independent evidence.

B. Liability Under the FTC Act

"The FTC Act provides in relevant part that 'unfair or deceptive acts or practices in or affecting commerce are declared unlawful.'" FTC v. Windward Mktg., Inc., No. Civ. A. 1:96-CV-615F, 1997 WL 33642380, at *8 (N.D. Ga. Sept. 30, 1997) (quoting 15 U.S.C. § 45(a)); see also FTC v. SlimAmerica, Inc., 77 F. Supp. 2d 1263, 1272 (S.D. Fla. June 30, 1999) ("Section 5(a) of the FTC Act, 15 U.S.C. §

45(a), prohibits deceptive acts or practices in or affecting commerce.").[7] For purposes of Section 5 of the FTC Act, an act or practice is deceptive "if it involves a material representation or omission that is likely to mislead consumers acting reasonably under the circumstances." Windward Mktg., Inc., 1997 WL 33642380, at *9. "Proof of intent to deceive is not required under section 5." Windward Mktg., Inc., 1997 WL 33642380, at *10.

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[7]It is abundantly clear that Defendant Lenyszyn and the other Defendants engaged in activities in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44. See 15 U.S.C. § 44 ("'Commerce' means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation."). Specifically, the evidence demonstrates that Defendant Lenyszyn and the other Defendants used telephones and the U.S. mail to engage in their debt collection activities.

"A representation or omission is material if it is the kind usually relied on by a reasonably prudent person." FTC v. Nat'l Urological Grp., Inc., 645 F. Supp. 2d 1167, 1190 (N.D. Ga. June 4, 2008). The standard is objective, not subjective. FTC v. Figgie Int'l, Inc., 994 F.2d 595, 603 (9th Cir. 1993).

Here, the FTC has presented sufficient evidence to warrant entering summary judgment in its favor on the issue of whether Defendant Lenyszyn violated the FTC Act. The evidence demonstrates that, while making demands for payment, the collectors working for Williams Scott and WSA, including Defendant Lenyszyn, misrepresented their authority to collect and the consumers' legal obligations to pay the debt to them. For instance, many of the consumers

who filed affidavits did not owe the debts claimed. Further, although some of the complaining consumers actually owed debts to the creditors mentioned by the collectors, at least two of those creditors--ACE Cash Express, Inc. and Sterling Jewelers, Inc.--confirmed that Williams Scott, WSA, and Sterling Ross were not authorized to collect on the creditor's behalf. Additionally, claims that the collectors, including Defendant Lenyszyn, were affiliated with government entities, including law enforcement agencies, or that lawyers were involved in the collection process were false. Moreover, although the collectors, including Defendant Lenyszyn, claimed that the consumers would be arrested or subject to criminal sanctions or that the consumers' driver's licenses would be revoked or suspended, the collectors had

no authority to take those actions. The collectors somehow obtained consumers' sensitive personal information, and the collectors' knowledge of this personal information, their threats of arrest and other legal action or some combination of the two, their claims of association with lawyers or law enforcement, and their threats of license suspensions, convinced many consumers that the collectors were authorized to collect the debts and that the consumers were obligated to pay the demanded amounts. Under those circumstances, the Court finds that Defendants violated Section 5 of the FTC Act and that the FTC is entitled to summary judgment in its favor on Count I of the Amended Complaint.

C. Fair Debt Collection Practices Act Violations

The Fair Debt Collection Practices Act (the "FDCPA") "was enacted to control 'the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.'" FTC v. Loanpointe, LLC, No. 2:10-CV-225DAK, 2011 WL 4348304, at *7 (D. Utah Sept. 16, 2011) (quoting 15 U.S.C. § 1692(a)). "The FDCPA gives the FTC authority to enforce a nonexclusive list of unlawful debt collection practices and establishes liability for a single violation of a single provision." Id. Here, the FTC alleges that Defendants violated several provisions of the FDCPA.

1. Section 807 of the FDCPA

Section 807 of the FDCPA, § 1692e, prohibits debt collectors from using "any false, deceptive, or misleading

representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. The following conduct violates this provision:

> (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof:
>
> (2) The false representation of--
>
> (A) the character, amount, or legal status of any debt; . . .
>
> (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
>
> (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

. . .

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

. . .

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the

> consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

15 U.S.C. §1692e. Here, as previously discussed, the collectors, including Defendant Lenyszyn, misrepresented that: (1) the consumers were delinquent on payday loans or other debts that Defendants had authority to collect; (2) the consumers had a legal obligation to pay Defendants; (3) the collectors were affiliated with government entities, including law enforcement agencies; (4) the collectors were attorneys or were associated with law firms; (5) the consumers committed check fraud, theft by deception, or other criminal acts; (6) the consumers would be arrested or imprisoned if they failed to pay; and (7) the consumers would lose their

driver's licenses if they failed to pay. There is no question that this conduct violated § 1692e, and the Court finds that the FTC is entitled to summary judgment on Count V of its Amended Complaint.

2. Prohibited Communications with Consumers

The FDCPA prohibits debt collectors from engaging "in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." 15 U.S.C. § 1692d. Harassment or abuse, for purposes of the FDCPA, includes "[t]he use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader" and "[c]ausing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with

intent to annoy, abuse, or harass any person at the called number." Id. 15 U.S.C. § 1692c also prohibits a debt collector from communicating "with a consumer in connection with the collection of any debt . . . at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication." 15 U.S.C. § 1692c(a). Additionally, the FDCPA provides that, "without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person

other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector." Id. § 1692c(b).

Here, the evidence demonstrates that collectors for the corporate Defendants, including Defendant Lenyszyn, called some consumers repeatedly at work, even though the collectors knew or should have known that those calls were inconvenient or prohibited. The corporate Defendants therefore violated 15 U.S.C. § 1692c(a). The FTC consequently is entitled to summary judgment in its favor on Count III of the Amended Complaint.[8]

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[8]For the reasons discussed infra Part IV.D., the Court concludes that Defendant Lenyszyn is liable for the corporate Defendants' violations of the FTC Act and the FDCPA.

The evidence also demonstrates that collectors for the corporate Defendants used profanity with at least one consumer, and that collectors for the corporate Defendants called one consumer ten times daily. This conduct violates 15 U.S.C. § 1692d. The FTC consequently is entitled to summary judgment in its favor on Counts II and IV of the Amended Complaint.

3. Prohibited Communications With Third Parties

The FDCPA also prohibits debt collectors from communicating with third parties other than for purposes of obtaining a consumer's home or workplace address or telephone number. 15 U.S.C. § 1692c(b). The evidence demonstrates that collectors for the corporate Defendants improperly contacted third parties to communicate about

consumers' alleged debts. Under those circumstances, the evidence demonstrates that the corporate Defendants violated § 1692c(b), and the Court grants the FTC's Motion for Summary Judgment as to Count III of its Complaint.

4. Required Disclosures and Validation Notices

The FDCPA statute "prohibits a debt collector from placing telephone calls without providing 'meaningful disclosure of the caller's identity.'" Terrell v. Prosperity Fin. Solutions, Inc., Civil Action File No. 1:12-CV-2515-TWT, 2013 WL 3149374, at *2 (N.D. Ga. June 18, 2013) (quoting 15 U.S.C. § 1692d(6)). Courts have construed that prohibition as "requir[ing] a debt collector to disclose the caller's name, the debt collection company's name, and the nature of the debt collector's business." Id. (alteration in

original) (internal quotation marks and citation omitted). "[A] debt collector must disclose in its initial communication that 'the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.'" Id. (quoting 15 U.S.C. § 1692e(11)). "The FDCPA also requires a debt collector to disclose in any subsequent communications 'that the communication is from a debt collector.'" Id. (quoting 15 U.S.C. § 1692e(11)). Voice mail messages are communications for purposes of the FDCPA. Id.; see also Edwards v. Niagara Credit Sols., Inc., 586 F. Supp. 2d 1346, 1350 (N.D. Ga. Nov. 13, 2008) ("[A] phone message referencing an 'important matter' or similar language may be considered a 'communication' under the FDCPA."). It is abundantly clear from the record that

collectors for the corporate Defendants, including Defendant Lenyszyn, failed to make the required disclosures in their calls and voice mail messages to consumers.

The FDCPA also requires a debt collector to send validation of a debt. 15 U.S.C. § 1692g. Specifically, § 1692g(a) provides:

> Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--
>
> (1) the amount of the debt;
>
> (2) the name of the creditor to whom the debt is owed;
>
> (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof,

> the debt will be assumed to be valid by the debt collector;
>
> (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
>
> (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

15 U.S.C. § 1692g(a). The evidence demonstrates that Defendants did not provide the required notices to consumers and gave various false reasons when requested to provide verification of the amounts owed. Under those circumstances, Defendants violated § 1692(g)(a).

In sum, the evidence amply demonstrates that Defendants did not make required disclosures to consumers. The FTC therefore is entitled to summary judgment on Counts V and VI of the Amended Complaint.

D. Lenyzyn's Liability

It is abundantly clear that Defendant Lenyszyn is liable for his own violations of the FTC Act. See Windward Mtkg., Inc., 1997 WL 33642380, at *5 ("In a case brought by the FTC, individual defendants are directly liable for their own violations of section 5 of the FTC Act."). For the reasons discussed below, the Court also finds that Lenyzyn is liable for the corporate Defendants' violations of the FTC Act.

Individual defendants may be "liable for the corporate defendant's violations if the FTC demonstrates that: (1) the

corporate defendant violated the FTC Act; (2) the individual defendants participated directly in the wrongful acts or practices or the individual defendants had authority to control the corporate defendants; and (3) the individual defendants had some knowledge of the wrongful acts or practices." Windward Mktg., Inc., 1997 WL 33642380, at *5; see also F.T.C. v. IAB Mktg. Assocs., LP, 746 F.3d 1228, 1233 (11th Cir. 2014) ("Individuals may be liable for FTC Act violations committed by a corporate entity if the individual participated directly in the [deceptive] practices or acts or had authority to control them." (alteration in original) (internal quotation marks and citation omitted)); SlimAmerica, Inc., 77 F. Supp. 2d at 1276 ("An individual is obligated to make consumer redress for violations of the

FTC Act where he (1) participated in or had the authority to control the wrongful acts or practices; and (2) had some knowledge of the wrongful acts or practices."). "Control over activities can be accomplished in a number of ways; and in determining whether a person has control over activities, the Court does not look solely to a person's position, but also considers the control that a person actually exercises over given activities." Windward Mktg., Inc., 1997 WL 33642380, at *5; see also IAB Mktg. Assocs., LP, 746 F.3d at 1233 ("Authority to control . . . may be established by active involvement in business affairs and the making of corporate policy and by evidence that the individual had some knowledge of the practices." (internal quotation marks and citation omitted)); FTC v. Amy Travel Serv., Inc., 875

F.2d 564, 573 (7th Cir. 1989) ("Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer.").

One court in this District has observed:

> An individual's status as a corporate officer gives rise to a presumption of ability to control a small, closely-held corporation. "A heavy burden of exculpation rests on the chief executive and primary shareholder of a closely held corporation whose stock-in-trade is overreaching and deception."

Windward Mktg., Inc., 1997 WL 33642380, at *13 (quoting Standard Educators, Inc. v. FTC, 475 F.2d 401, 403 (D.C. Cir. 1973)). Another court has noted that courts should not limit the "inquiry to whether an individual defendant was or was not a corporate officer." FTC v. QT,

Inc., 448 F. Supp. 2d 908, 973 (N.D. Ill. Sept. 8, 2006), amended on reconsideration in part, 472 F. Supp. 2d 990 (N.D. Ill. Jan. 22, 2007), aff'd, 512 F.3d 858 (7th Cir. 2008). Rather, courts should "make[] a broader inquiry and evaluate[] the individual's level of corporate involvement." Id.

As previously noted, the evidence clearly demonstrates that the corporate Defendants violated the FTC Act. The question is whether Defendant Lenyszyn may be individually liable for the corporate Defendants' violations. The Court finds that he may. The evidence demonstrates that, since September 2013, and continuing through May 2014, Defendant Lenyszyn either had the authority to control the corporate Defendants or participated directly in the debt

collection acts and practices. Beginning on September 9, 2013, Defendant Lenyszyn was listed as a managing member of WSA in filings with the Nevada Secretary of State, and e-mails and business documents from 2013 and 2014 demonstrate that Defendant Lenyszyn participated or directed others in running the day-to-day business operations of the corporate Defendants. Indeed, in December 2013, Defendant Lenyszyn began submitting applications for payment processing and skip tracing services indicating that he was an owner or managing member of WSA. Beginning in February 2014, Defendant Lenyszyn provided the software services that allowed the corporate Defendants to conduct the skip tracing required to locate the consumers who were later contacted by the

collectors. Further, Defendant Lenyszyn attempted to help the corporate Defendants find a new payment processor bank. Defendant Lenyszyn also provided at least one debt portfolio to the corporate Defendants. Further, for at least some period of time, Defendant Lenyszyn himself directly participated in the collectors' conduct by acting as a collector himself and making numerous collection calls using the name "Investigator Dan Miller." Defendant Lenyszyn's conduct during those calls violated the FDCPA. Under those circumstances, the Court finds that Defendant Lenyszyn participated in the corporate Defendants' illegal activities or had the authority to control those activities.

With respect to the knowledge requirement, the FTC need not show that the individual defendants possessed

intent to defraud. Windward Mktg., Inc., 1997 WL 33642380, at *13; SlimAmerica, Inc., 77 F. Supp. 2d at 1276. Further, the FTC need not show that the individual "had actual knowledge of the misrepresentations." SlimAmerica, Inc., 77 F. Supp. 2d at 1276. Additionally, "direct participation in the fraudulent practices is not a requirement for liability. Awareness of fraudulent practices and failure to act within one's authority to control such practices is sufficient to establish liability." Windward Mktg., Inc., 1997 WL 33642380, at *13 (internal quotation marks and citation omitted). "An individual defendant's participation in corporate affairs is probative of knowledge." Id.; see also SlimAmerica, Inc., 77 F. Supp. 2d at 1276 ("Reckless indifference to the truth or falsity of the

representations or awareness of a high probability of fraud coupled with an intentional avoidance of the truth will suffice. Moreover, a defendant's participation in corporation affairs is probative of knowledge." (internal quotation marks and citation omitted)).

The evidence demonstrates that Defendant Lenyszyn had the requisite knowledge for individual liability. It is abundantly clear from the recordings of Defendant Lenyszyn's own debt collection activity that he had actual knowledge of--and personally participated in--the individual defendants' collection practices that violated the FDCPA. Moreover, transcripts and recordings of collection calls, as well as the scripts located in the workstations of collectors, amply demonstrate that the corporate Defendants' abusive

collection practices were rampant. Additionally, Defendant Lenyszyn's own communications with a third-party company about finding a new payment processor bank indicate that he was aware that WSA's debt collection business was viewed as "high risk." Moreover, Defendant Lenyszyn was listed as a managing member of WSA since September 9, 2013, and at least two states issued Cease and Desist Orders against WSA in early 2014. Under those circumstances, the evidence demonstrates that Defendant Lenyszyn knew or should have known about the corporate Defendants' illegal activities.

For the reasons discussed above, the Court finds that Defendant Lenyszyn is liable for the corporate Defendants'

violations of the FTC Act and the FDCPA.[9] The Court

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[9]Defendant Lenyszyn argues that the FDCPA does not provide for individual liability. Defendant Lenyszyn might be correct if this action were one brought by private plaintiffs. The FDCPA, however, allows the FTC to enforce compliance with the FDCPA. Indeed, 15 U.S.C. § 1692l(a) provides:

> The Federal Trade Commission shall be authorized to enforce compliance with this subchapter, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

therefore grants the FTC's Motion for Summary Judgment as to that issue.

"The FTC Act authorizes the Court to issue preliminary and permanent injunctions and to order consumer redress, disgorgement of profits, restitution, and other equitable and legal remedies." Windward Mktg., Inc., 1997 WL 33642380, at *14; see also FTC v. Gem Merch. Corp., 87 F.3d 466, 470 (11th Cir. 1996) ("We conclude that section 13(b) [of the FTC Act] permits a district court to order a defendant to disgorge illegally obtained funds."). "[S]ection 13(b) permits disgorgement measured by the [defendants'] unjust enrichment but prohibits disgorgement measured by consumer loss." FTC v. Washington Data Res., Inc., 704

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15 U.S.C. § 1692l(a). Defendant Lenyszyn consequently is subject to individual liability for FDCPA actions in this case.

F.3d 1323, 1326 (11th Cir. 2013). In this Circuit, "the amount of net revenue (gross receipts minus refunds), rather than the amount of profit (net revenue minus expenses), is the correct measure of unjust gains under section 13(b)." Id. at 1327.

One court in this District has rejected the argument that any disgorgement of profits directed at a particular defendant must be limited to the amount of profits the defendant earned. Windward Mktg., Inc., 1997 WL 33642380, at *15. Rather, that court found that the defendants could "be held jointly and severally liable for their violations of the Act," and that "any Defendant's liability may exceed the amount that particular Defendant received from his participation in the scheme, and, instead, a

Defendant may be liable for all the money Defendants received from the telemarketing scheme." Id.

The Court finds the reasoning of the Windward Marketing court persuasive, and concludes that Defendant Lenyszyn may be held liable for monetary equitable relief equivalent to all of the corporate Defendants' net revenue from their illegal activities during the period of Defendant Lenyszyn's participation. As discussed above, the FTC has submitted evidence demonstrating that Defendant Lenyszyn participated in those activities from September 2013 through May 2014. The FTC also has submitted evidence indicating that the total net deposits relating to the corporate Defendants for that period were $518,089.84. (Liggins Third Supp. Decl. ¶ 14 & Attach. Q.) The Court finds that it

is appropriate to order Defendant Lenyszyn to pay monetary equitable relief in that amount. Moreover, as the evidence demonstrates that Defendant Lenyszyn was an active participant in WSA and that he provided skip tracing software and secured office space for Legacy Payment/Sterling Ross, the Court finds that it is appropriate to hold Defendant Lenyszyn jointly and severally liable for the net revenue generated from the collections of Legacy Payment/Sterling Ross after the entry of the preliminary injunction, which is $47,726.87.

Further, the FTC may obtain permanent injunctive relief against corporate and individual defendants if "[t]here is a reasonable likelihood of future violations of the FTC Act" by those defendants. FTC v. Atlantex Assocs., No. 87-0045-

CIV-NESBITT, 1987 WL 20384, at *13 (S.D. Fla. Nov. 25, 1987); see also FTC v. USA Fin., LLC., 415 F. App'x 970, 975 (11th Cir. 2011) ("[P]ermanent injunctive relief is appropriate if the defendant's past conduct indicates that there is a reasonable likelihood of further violations in the future."). The evidence indicates that, after the Court entered its preliminary injunction, Defendant Lenyszyn assisted Legacy Payment Systems and Sterling Ross in securing office space, Defendant Lenyszyn provided access to skip tracing software for those entities' use, and those entities resumed their illegal debt collection activities. Under those circumstances, the Court finds that there is a reasonable likelihood of further violations in the future. The

Court therefore finds that an Order granting permanent injunctive relief against Defendant Lenyszyn is warranted.

VI. Conclusion

ACCORDINGLY, the Court **GRANTS** the FTC's Motion for Summary Judgment, and enters summary judgment in favor of the FTC and against Defendant Lenyszyn as to all of the counts in the Amended Complaint. The Court **ORDERS** as follows:

A. With respect to injunctive relief:

(1) Defendant Lenyszyn, whether acting directly or through any other person, is **PERMANENTLY RESTRAINED AND ENJOINED FROM**:

a. Engaging in debt collection activities, which are defined as any activities of a debt collector to

collect or attempt to collect, directly or indirectly, a debt owed or due, or asserted to be owed or due to another. For purposes of this Order, a debt means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment. Further, a debt collector is defined as any person who uses any instrumentality of interstate commerce or the mails in any business, the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due to or asserted to be owed or due to another. The term debt collector also includes any creditor who, in the process of collecting its own debts, uses any name other than its own, which would indicate that a third person is collecting or

attempting to collect such debts, as well as any person to the extent such person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt.

b. Assisting others engaged in debt collection activities; and

c. Advertising, marketing, promoting, offering for sale, or selling, in assisting others engaged in the advertising, marketing, promoting, offering for sale, or selling, of any portfolio of consumer or commercial debt or any program that gathers, organizes, or stores consumer information relating to a debt or debt collection activities.

(2) The Court **ORDERS** that Defendant Lenyszyn, his agents, employees, and attorneys, and those persons or

entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, e-mail, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are **PERMANENTLY RESTRAINED AND ENJOINED FROM DIRECTLY OR INDIRECTLY:**

a. Failing to provide sufficient consumer information to enable the FTC to administer efficiently consumer redress. If a representative of the FTC requests in writing any information related to redress, it must be provided, in the form prescribed by the FTC, within fourteen (14) days.

b. Disclosing, using, or benefitting from consumer information, including the name, address,

telephone number, e-mail address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account) of any person that Defendant Lenyszyn obtained prior to entry of this Order in connection with the collection of any debt.

c. Failing to destroy any such information in all forms in Defendant Lenyszyn's possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the FTC.

d. **PROVIDED, HOWEVER**, that consumer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

B. With respect to monetary relief, the Court **ORDERS**:

(1) The Court **DIRECTS** the Clerk to **ENTER** judgment in the amount of **$565,816.71**, in favor of the FTC against Defendant Lenyszyn, jointly and severally with the other Defendants, with post-judgment interest at the legal rate, for equitable monetary relief, including but not limited to consumer redress and disgorgement, and for paying any attendant expenses of administering any redress fund. In partial satisfaction of the judgment against Defendant Lenyszyn, any financial or brokerage institution, escrow agent, title company, commodity trading company, business entity, or person that holds, controls, or maintains accounts or assets of, on behalf of, or for the benefit of, Defendant

Lenyszyn, whether real or personal, shall turn over such account or asset to the FTC or its designated agent within ten (10) business days of receiving notice of this Order by any means, including but not limited to via facsimile.

(2) All money paid to the FTC pursuant to this Order may be deposited into a fund administered by the FTC or its designee to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress funds. If a representative of the FTC decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the FTC may apply any remaining money for such other equitable relief, including but not limited to consumer information remedies, as the

FTC determines to be reasonably related to the practices alleged in the Amended Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as equitable disgorgement.

(3) Pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish a consumer report concerning Defendant Lenyszyn to the FTC, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

C. With respect to Order acknowledgments, the Court **ORDERS**:

(1) Defendant Lenyszyn, within seven (7) days of entry of this Order, must submit to the FTC an

acknowledgment of receipt of this Order sworn under penalty of perjury;

(2) For twenty (20) years after entry of this Order, Defendant Lenyszyn, for any business that he, individually or collectively with any other Defendants, is the majority owner or controls, directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the portion of this Order governing Compliance Reporting. In any other business, such as one in which Defendant Lenyszyn is an employee without any ownership or control,

he must deliver a copy of this Order to all principals and managers of the business before participating in conduct related to the subject matter of this Order. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

(3) From each individual or entity to which Defendant Lenyszyn delivered a copy of this Order, Defendant Lenyszyn must obtain, within thirty (30) days, a signed and dated acknowledgment of this Order.

D. With respect to Compliance Reporting, the Court **ORDERS** that Defendant Lenyszyn make the following timely submissions to the FTC:

(1) One year after entry of this Order, Defendant Lenyszyn must submit a compliance report, sworn under penalty of perjury.

a. Defendant Lenyszyn must: (i) identify the primary physical, postal, and e-mail address and telephone number, as designated points of contact, which representatives of the FTC may use to communicate with Defendant Lenyszyn; (ii) identify all of Defendant Lenyszyn's businesses by all of their names, telephone numbers, and physical, postal, e-mail, and Internet addresses; (iii) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Defendant Lenyszyn must

describe if he knows or should know due to his own involvement); (iv) describe in detail whether and how Defendant Lenyszyn is in compliance with each portion of this Order; and (v) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the FTC;

b. Additionally, Defendant Lenyszyn must report any change in: (i) name, including aliases or fictitious name, or residence address; or (ii) title or role in any business activity, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest, and identify the name, physical address, and any Internet address of the business and entity.

(3) Defendant Lenyszyn must submit to the FTC notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against him within fourteen (14) days of its filing.

(4) Any submission to the FTC required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

(5) Unless otherwise directed by a FTC representative in writing, all submissions to the FTC

pursuant to this Order must be e-mailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Williams, Scott & Associates, LLC, et al.*, Matter Number X140026.

E. With respect to recordkeeping, the Court **ORDERS**:

(1) Defendant Lenyszyn must create certain records for twenty (20) years after entry of this Order, and retain each such record for five (5) years. Specifically, Defendant Lenyszyn, for any business in which he, individually or collectively with any other Defendants, is a

majority owner or indirectly controls, must maintain the following records:

(a) Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

(b) Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

(c) Records of all complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

(d) All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the FTC; and

(e) A copy of each unique advertisement or other marketing material.

F. With respect to compliance monitoring, the Court **ORDERS** that, for the purposes of monitoring compliance of Defendant Lenyszyn with this Order and any failure to transfer assets as required by this Order:

(1) Within fourteen (14) days of receipt of a written request from a representative of the FTC, Defendant Lenyszyn must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce

documents for inspection and copying. The FTC also is authorized to obtain discovery, without further leave of the Court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

(2) For matters concerning this Order, the FTC is authorized to communicate directly with Defendant Lenyszyn. Defendant Lenyszyn must permit representatives of the FTC to interview any employee or other person affiliated with Defendant Lenyszyn who has agreed to such an interview. The person interviewed may have counsel present.

(3) The FTC may use all other lawful means, including posing, through its representatives, as consumers,

suppliers, or other individuals or entities, to Defendant Lenyszyn or any individual or entity affiliated with Defendant Lenyszyn without the necessity of identification or prior notice. Nothing in this Order limits the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

(4) Upon written request from a representative of the FTC, any consumer reporting agency must furnish consumer reports concerning Defendant Lenyszyn, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

G. It is further **ORDERED** that the Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

Finally, it appearing that this Order, in conjunction with previous Orders, resolves all of the FTC's claims against all Defendants, the Court **DIRECTS** the Clerk to **CLOSE** this case.

IT IS SO ORDERED, this the 4th day of November, 2015.

UNITED STATES DISTRICT JUDGE