UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PRIME LEGAL PLANS LLC, *et al.*,

Defendants, AND

THE 2007 SAN LAZARO IRREVOCABLE LIFE INSURANCE TRUST, *et al.*,

Relief Defendants.

PLAINTIFF'S *EX PARTE* MOTION FOR A TRO WITH AN ASSET FREEZE, APPOINTMENT OF A RECEIVER, AND OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE AND MEMORANDUM IN SUPPORT THEREOF

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I. INTRODUCTION

For over two years, Defendants have perpetrated a scheme to extract money from distressed homeowners through deception, taking in at least $21 million dollars from consumers. Through an elaborate network of entities, Defendants market and operate a program in which financially-strapped consumers pay fees – with no set end-date – of up to $750 per month. To convince these consumers to pay these monthly fees, Defendants promise access to a network of top-notch attorneys who will use a variety of loan audits and reviews to defend against foreclosure and win concessions from lenders that will result in lower mortgage payments for the consumer. Defendants also offer a variety of loan audits and reviews that they misrepresent as integral to foreclosure defense or to forcing lenders to negotiate. As further enticement, Defendants have even dangled the possibility of winning the home free and clear.

But Defendants fail to deliver these promised services and results. The loan audits and reviews are little more than a ploy to keep consumers enrolled and paying monthly fees. Consumers generally never speak to an attorney in their state, and do not receive the promised foreclosure defense services. Rather than providing desperately needed assistance to consumers, Defendants extract their last dollars and leave them in a more precarious financial position. Some consumers, on Defendants' advice, stop paying their mortgages, and some consumers who enrolled have even lost their homes.

Illegal practices permeate Defendants' operations. They violate the Mortgage Assistance Relief Services Rule ("MARS Rule")[1] which the FTC promulgated to protect consumers from schemes such as this. Mortgage Assistance Relief Services, 75 Fed. Reg. 75092, 75095-97 (Dec. 1, 2010). The MARS Rule contains several mechanisms to protect homeowners, including: (1) disclosure requirements, (2) prohibitions on certain representations in selling the services, and (3) perhaps most importantly, a ban on advance fees that bars service providers from even *requesting* fees before a consumer has received and accepted an offer of relief from their lender. Defendants' practices also violate the FTC Act's prohibition against unfair and deceptive practices, as well as the Do Not Call provisions of the Telemarketing Sales Rule ("TSR").

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[1] The MARS Rule, originally codified at 16 C.F.R. Part 322, became effective December 29, 2010, with the exception of 16 C.F.R. § 322.5, which became effective January 31, 2011. The MARS Rule was recodified as Regulation O, 12 C.F.R. Part 1015, effective December 30, 2011.

Defendants break these laws at every turn. They routinely cold call consumers who have placed their telephone numbers on the Do Not Call registry. When they speak to consumers, they fail to provide disclosures that the MARS Rule requires; these disclosures have also been absent from their websites. Defendants misrepresent the results consumers can expect in violation of both the MARS Rule and Section 5. And Defendants flout the MARS Rule's ban on advance fees by collecting monthly fees from consumers, but boast that they comply during sales pitches to gain consumer trust. Rather than acting with urgency to assist their customers, Defendants prolong their enrollment to maximize the collection of unlawful up-front fees.

To halt these predatory and illicit practices, the FTC requests that the Court enter the proposed *ex parte* temporary restraining order. To preserve the Court's ability to remedy Defendants' law violations through final relief such as consumer redress, the FTC's proposed order would, among other things, freeze Defendants' assets, appoint a temporary receiver over the corporate Defendants, and provide the receiver and the FTC with immediate access to Defendants' business premises.

II. DEFENDANTS

A. Corporate Defendants

Defendants' scheme operates through a constantly evolving maze of interconnected entities: (1) the legal membership plan in which consumers enroll, which has gone by no fewer than six names in two years: Prime Access Management (the current iteration, which appears to be a trade name), Prime Legal Plans, Freedom Legal Plans, Consumer Legal Plans, Frontier Legal Plans, and American Legal Plans[2] (collectively "Legal Plans"); (2) entities marketing the Legal Plans, including Reaching U Network, 123 Save A Home, American Hardship and Consumer Acquisition Network; and (3) companies that support the operation, including Back Office Support Systems and Legal Servicing and Billing Partners.

1. Legal Plans

Legal Plans purports to act as a middleman between consumers and network attorneys and to coordinate the loan audit and review process. Prime Access Management is the current name of the scheme and is marketed on several active websites. PX01 ¶¶ 23, 27. Although Defendants no longer market the Legal Plans entities described below, they maintain active corporate registration and, in some cases, continue to receive consumer funds.

[2] American Legal Plans is a fictitious business name owned by Kim Landolfi. PX01, Att. AE.

Prime Legal Plans LLC is a Delaware limited liability company formed in 2011 with an address at 160 Greentree Drive, Suite 101, Dover, Delaware (a registered agent service company) and 2400 E. Commercial Blvd., Fort Lauderdale, Florida. PX01, Att. CT; PX 17 ¶ 4-5, 8.

Freedom Legal Plans LLC is a Delaware limited liability company formed in 2010 with an address at 160 Greentree Drive, Suite 101, Dover, Delaware and, until recently, 6451 N. Federal Highway, Fort Lauderdale, Florida PX01, Att. CP; PX 17 ¶ 4-5, 8. It continues to receive direct disbursements of consumer funds via the scheme's payment processor and has received at least $3.3 million through September 7, 2012. PX01, Table 4.

Consumer Legal Plans LLC ("CLP-NV") is a Nevada limited liability company formed in 2010 with an address at 871 Coronado Center Drive, Suite 200, Henderson, Nevada (a virtual office). PX01, Att. CH.

Consumer Legal Plans, LLC ("CLP-WY"), also doing business as CLP Associates, LLC, is a Wyoming limited liability company formed in 2011 with an address at 199 E. Flagler, # 1460, Miami, Florida (a mail drop). PX01, Att. CJ. It is the managing member of Defendant Consumer Acquisition Network, LLC. PX01, Att. AP.

Frontier Legal Plans LLC is a Delaware limited liability company formed in 2011 with an address at 160 Greentree Drive, Suite 101, Dover, Delaware and, until recently, 6451 N. Federal Highway, Suite 1200, Fort Lauderdale, Florida. PX01, Att. CQ; PX 17 ¶¶ 4-5, 8. Frontier Legal Plans has an active website and continues to take in consumer funds via check and money order to Frontier Legal Plans, Legal Freedom Plans, and Prime Legal Plans. PX01 ¶ 59.

2. Entities Marketing Legal Plans

Reaching U Network, Inc. ("RUN") purports to be a Florida non-profit corporation with addresses at 701 Brickell Avenue, Suite 1550, Miami, Florida (a virtual office) and 199 Flagler St., #1460, Miami, Florida (a mail drop). PX01, Att. BT. Until late 2011, RUN was the scheme's non-profit marketing front and held itself out as a 501(c)(3) organization dedicated to education and counseling for homeowners. In reality, RUN's 501(c)(3) status was revoked by the IRS in 2010 and was no more than a high-pressure sales operation whose purpose was to enroll consumers in Legal Plans. PX01 ¶ 19, Atts. DA, DH; PX 08 ¶¶ 23-24, 29, 38; PX 23 ¶¶ 38-41; PX 25 ¶¶ 13-16, 24. RUN owns several fictitious names, some of which are still used to market Legal Plans: Legal Billing Services, Legal Servicing Partners, Save Our Home Plan, 123

Save Our Home, Home Savers, Forensic Auditor Services, Legal Network Association, and Homeowners Rescue Mission. PX01, Atts. BX-CC. RUN has received at least $230,360 in direct disbursements of consumer funds. PX01, Table 5.

Defendant **123 Save A Home, Inc.** ("123 Save A Home") was formed in 2011 and purports to be a Nevada non-profit corporation. PX01, Att. CF. It has addresses at 2360 Corporate Circle, Suite 400, Henderson, Nevada (registered agent) and 168 SE 1st Street, Miami, Florida. *Id.* 123 Save A Home purports to help consumers by educating them about their legal rights, even though its telemarketers sell for-profit Legal Plans memberships to generate revenue for Defendants. PX01, Att. FN at 13.

Defendants RUN and 123 Save A Home are not exempt from jurisdiction under Section 5 of the FTC Act by virtue of their purported non-profit status because: (1) no adequate nexus exists between the organizations' activities and their alleged public purpose; and (2) their proceeds are devoted to private rather than public interests. *FTC v. College Football Ass'n*, 117 F.T.C. 971, 993 (1994).

Defendant **American Hardship LLC** is a Florida limited liability company formed in 2010 that markets Legal Plans to consumers. PX24, Atts. AB, FD. It has addresses at 1001 N. West Street, Suite 1200, Wilmington, Delaware (a virtual office) and 2400 E. Commercial Blvd. Fort Lauderdale, Florida. PX01, Att. AD; PX17 ¶¶ 4, 8. It has received at least $2.5 million in direct disbursements of consumer funds. PX01, Table 5.

Defendant **Consumer Acquisition Network, LLC** ("CAN") is a Florida limited liability company formed in 2010 with addresses at 871 Coronado Center Drive, Suite 200, Henderson, Nevada (virtual office) and 168 SE 1st Street, Miami, Florida. PX01, Atts. AJ, AP. CAN also operates as Consumer Legal Network, Legal Servicing & Billing Partners, Forensic Auditor Services, Telefunding Services, Mortgagesavers.org, Florida Land Trust Consultants, and First Capital Land Trust. PX01, Atts. AK-AN; PX28, Atts. A-C. CAN is registered as a commercial telemarketer in Florida and markets Legal Plans. PX01, Att. FE. As of September 2012, approximately $250,000 in consumer payments had passed through CAN's payment processing account before being disbursed to various entities involved in the scheme. PX01 ¶ 71. CAN has also received at least $729,000 in direct disbursements of consumer funds. PX01, Table 5.

3. Entities Supporting Legal Plans

Back Office Support Systems LLC ("BOSS") is a Florida limited liability company formed in 2011 with addresses in Fort Lauderdale, Florida, at 5200 N. Federal Highway, Suite 2-1069 (a mail-drop), and 2400 E. Commercial Blvd. PX01, Att. AH, AI; PX17 ¶¶ 4-5. BOSS representatives interfaces directly with consumers enrolled in the Legal Plans about their audits and purported loan reviews. *See, e.g.*, PX01, Att. KJ. Its bank accounts have been used for payroll, and it has received at least $698,000 in direct disbursements of consumer funds. PX01 ¶ 64, Table 5.

Legal Servicing and Billing Partners LLC ("LSBP") is a Delaware limited liability company formed in 2010 with addresses at 160 Greentree Drive, Suite 101, Dover, Delaware, and 8068 Rose Marie Circle, Boyton Beach, Florida. PX01 ¶ 62, Att. CR. Most consumer payments – more than $18.4 million as of September 7, 2012 – pass through a payment processing account in LSBP's name before being funneled to bank accounts of various entities involved in the scheme. PX01 ¶ 71. LSBP has received more than $423,000 in direct disbursements of consumer funds. PX01, Table 5.

B. Individual Defendants

Defendant **Derek Radzikowski** is a principal of American Hardship, Legal Plans, and BOSS, and has been identified as the "boss" by former employees. *See, e.g.*, PX01, Att. EY; PX08 ¶¶ 41-42, 44, 48; PX17 ¶ 44-45. He has registered numerous websites marketing Legal Plans to consumers, served as the point of contact for telecommunications services, and paid for various services in furtherance of the scheme such as websites, phone service, consumer leads, and office space. PX01, Table 2, Atts. DT, at 1377-79, FA, JG, JD at 2146. Radzikowski has received large sums of money from the enterprise and owns shell corporations such as Derek B. Radzikowski, Inc. ("DBR") to which consumer funds are funneled through a series of complicated transfers among accounts. PX01, Att. JA, at 2106-08; PX02.

Defendant **Jason Desmond** is also a principal of American Hardship, Legal Plans, and BOSS, and has also been identified as "the boss" by former employees. PX01, Att. FD, at 1592, 1597-98; Atts. EY-EZ; PX17 ¶ 44-45. He is or has been a signatory on RUN and American Hardship bank accounts as well as on bank accounts for additional entities receiving funds from or paying for services in furtherance of the scheme. PX01, Att. JA, at 2106-08. Desmond is also an authorized contact for Freedom Legal Plans in documents provided to third-party vendors.

PX01, Att. FA, at 1576-77. He and his shell corporations—as well as Shelie Desmond, who resides with him – have received large sums of money from the scheme. PX02.

Defendant **Kim Landolfi** is a principal of Defendants American Hardship LLC, LSBP, and Freedom Legal Plans LLC. PX01, Att. AD, JI, at 2172, 2175. She is a signatory on the bank accounts for those entities, as well as on accounts for BOSS and other entities furthering and/or receiving profits from the scheme. PX01, Att. JA, at 2106-08. She also owns the fictitious business name American Legal Plans. PX01, Att. AE. In addition, as one of the primary contacts with the scheme's payment processor, she has approved the scheme's fee structure and authorized direct deposits of consumer funds to the bank accounts of various entities involved in the scheme. PX01, Att. JI, at 2169, 2172. She has also written payroll checks and authorized payments for services to further the scheme. PX01, Att. ¶¶ 21, 64, Atts. EW, JC.

Defendant **Lazaro Dinh** a/k/a Mario Lazaro Sopena is the Treasurer of Defendant123 Save a Home, Inc., a 45% owner of Defendant CAN, and a principal of Defendant CLP-WY. PX01, Atts. CF, CG, CK, JK. In 2011, he obtained a Florida telemarketing license for CAN; his application stated that he had been the "Community Advocate Director" for RUN since 2008 and that he was responsible for managing CAN's telefunding. PX01, Att. FE. He is a signatory on bank accounts for 123 Save A Home, CAN, and RUN, as well as on accounts of other entities involved in the scheme. PX01, Att. JA, at 2106-08. He was on RUN's payroll in 2011; has paid for websites, phone service, virtual office space, and other services in furtherance of the scheme; and was instrumental in setting up the payment processing system to distribute consumer funds among various entities. PX01 ¶ 41, Atts. DF, DT, JE, JI, JK.

Defendant **Andrew Primavera** is the Secretary and Director for Defendant123 Save A Home, Inc. and is a 45% owner of Defendant CAN. PX01, Atts. CF, CG, JK. He is a signatory on bank accounts for both entities, as well as on accounts for RUN and other entities receiving funds from the scheme. PX01, Att. JA, at 2106-08. He has paid for leads and phone service in furtherance of the scheme, and his shell corporation has controlled entities furthering or receiving funds from the scheme. *See, e.g.*, PX01 ¶ 41, Atts. AG, BB, BI, BJ.

Defendant **Christopher Edwards** is the CEO of RUN and previously served as its trustee and director. PX01, Att. BQ-BV. He is a signatory on RUN bank accounts and has overseen its marketing efforts. PX01, Att. JA, at 2106-08; Att. EM. He has also made

representations on RUN's behalf to state authorities and has authorized direct disbursements of consumer funds to RUN via the scheme's payment processor. *See, e.g.*, PX01, Atts. DG, FG-FI, JM.

C. Relief Defendants

Relief Defendant **The 2007 San Lazaro Irrevocable Life Insurance Trust** (the "Trust") is a trust with an address at P.O. Box 190744, Miami Beach, Florida. The trustee is Relief Defendant **Maria Soltura**, who is named solely in that capacity. At the direction of Defendants and Soltura, the Trust has received at least $330,000 in direct disbursements of consumer funds. PX01 ¶ 77, Att. JI, at 2174.

III. DEFENDANTS PREY ON STRUGGLING HOMEOWNERS

Defendants entice consumers to join their $750-per-month membership program by misrepresenting the services they will receive and the results they can expect. In the initial months of enrollment, consumers await completion of loan audits or reviews that will purportedly be used by expert attorneys to negotiate with their lenders and fight foreclosure. The audits and reviews offered through the program have included: a forensic audit to identify errors in the consumers' loan documents; a financial audit to determine whether the homeowner has been overpaying on the mortgage; a title search; and a "Comprehensive Discovery Package" (which includes a securitization audit to determine who owns the loan, a comprehensive property report, a MERS search,[3] and a robosigner signatory review). PX01, Att. DL, at 711-12. During this waiting period – while paying $595 or $750 per month – most consumers receive no services and have no involvement with legal professionals; a non-attorney account manager with Legal Plans is their only contact. PX17 ¶ 13-18, 22-23. Those account managers do not contact banks on consumers' behalf. *Id.* ¶ 9.

If the audits are completed – and this is not always the case – consumers are then assigned to a paralegal at one of two law firms: Litvin Law Firm, P.C., located in New York, or Litvin, Torrens & Associates, PLLC, located in Florida (collectively "Litvin Firms"), which both have loose affiliations with attorneys in other states. PX17 ¶¶ 6, 7, 22. Although Defendants promise consumers representation by an expert local attorney, if consumers interact with a law firm at all, it is generally only with Litvin Firm paralegals in New York or Florida. PX27 ¶¶ 10,

[3] MERS, the Mortgage Electronic Registration Systems, Inc., is an electronic registry that tracks ownership, servicing, and securitization of mortgage loans.

13; PX04 ¶¶ 2, 12; PX11 ¶¶ 6-9, 12; PX14; PX17 ¶¶ 7, 22; PX 12 ¶¶16, 18. Rather than using the audits and reviews to negotiate with and fight consumers' lenders as promised, the Litvin Firms' primary task is to handle standard loan modification paperwork that consumers complete themselves, that in some cases is never submitted to the lender, or is submitted only after consumers have paid fees for months. PX17 ¶ 24; PX12 ¶ 12, Att. I; PX16 ¶ 21, Att. H. If foreclosure is imminent, Litvin Firm personnel instruct consumers to file for bankruptcy to stop the foreclosure, but leave them to their own devices to handle the filing. PX17 ¶ 31; PX04 ¶ 15-16, 19, Att. F, at 49; PX07 ¶ 16. If consumers eventually interact with a local attorney at all, it is usually only after vociferous complaints and generally entails little more than cursory telephone conversations.[4] PX27 ¶ 12; PX04 ¶ 19-20; PX07 ¶ 16; PX12; PX14; PX21 ¶¶ 9, 10; PX16 ¶ 9.

Even canceling membership is difficult for consumers because Defendants' monthly fee structure incentivizes them to pressure or entice consumers to remain in the program. According to a former Legal Plans case manager, the companies offered financial incentives of up to $2,000 based upon the case manager's customer retention rate. PX17 ¶ 32. Other tactics include making additional empty promises about results consumers can expect, such as touting the company's high success rate or reiterating that results are guaranteed. PX17 ¶ 36; PX22 ¶ 14. The company has also provided consumers a free credit report at month five of enrollment to placate them. PX17 ¶ 17. Defendants have even resorted to threats: one consumer was threatened with legal action if she cancelled and told that there was a new development on her case, but that she would not be told about it unless she paid more money. PX21 ¶ 13.

A. Defendants Deceive Consumers in Violation of Section 5 of the FTC Act

A representation, omission, or practice is deceptive in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), if it is material and likely to mislead consumers acting reasonably under the circumstances. *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1266 (S.D. Fla. 2007); *FTC v. Wilcox*, 926 F. Supp. 1091, 1098 (S.D. Fla. 1995). A claim is material if it is one upon which a reasonably prudent person would rely in making a purchase decision, although the Commission need not prove actual reliance to establish materiality. *Transnet*, 506 F. Supp. 2d at 1267, 1270. Express and

[4] The FTC learned of an isolated instance in which a local attorney accompanied a consumer to a mediation. The attorney learned of the case only the day before the mediation and now independently represents the consumer, who cancelled his enrollment in Legal Plans.

deliberately implied claims are presumed material. *Wilcox*, 926 F. Supp. at 1098. To decide whether Defendants acted deceptively in violation of Section 5, the Court must determine the net impression or overall impact of their practices on consumers. *FTC v. Atlantex Assocs.*, No. 87-0045-CIV, 1987 U.S. Dist. LEXIS 10911, at *29 (S.D. Fla. Nov. 25, 1987), *aff'd*, 872 F.2d 966 (11th Cir. 1989). As shown below, Defendants' claims about the results consumers could expect violate Section 5; they are express and therefore material, and do, in fact, mislead reasonable consumers to believe that enrollment in Defendants' programs will save their homes or result in a more affordable mortgage.

1. Defendants Falsely Claim They Will Help Consumers Avoid Foreclosure and Make Their Mortgage Payments Affordable

Defendants' telemarketers tell consumers that enrolling in Legal Plans will allow them to keep their homes, or, at a minimum, prolong their homeownership. During an undercover call to Defendant American Hardship LLC, an FTC paralegal posing as a consumer was told at least four times that he would not lose his home if he enrolled. The following exchange is illustrative:

> **Q:** [W]hat can you do to help me stay in my house?
> **A:** [Y]ou're not going anywhere because you got the attorney. You're in a judicial state. That means that the process of foreclosure requires the bank to have to write you an official complaint that the judge reads and determines if the bank's complaint has got merit. . . .
> . . .
> **Q:** What if the judge doesn't agree or whatever?
> **A:** Oh, they would toss it out. . . . In other words, you've got to make the bank prove that they have a right to take the property, that they're the actual note holder. And in this case, they're not, because I know for a fact if you bought your home in 2006, the mortgage is securitized.

PX24, Att. C, at 25:11 to 26:24. *See also id.*, at 20:1-4 ("[W]e make sure you don't lose your home . . . while they're restructuring the loan."), 35:13-20 ("Will you lose your home? No."), 50:18-23 (when asked whether enrollment would prevent foreclosure, telemarketer replied, "Yeah. Oh, absolutely."). Similarly, a post-sales call email from Defendant 123 Save a Home, Inc. urging enrollment in Prime Legal Plans states:

> **YOU HAVE RIGHTS, AND NOW HAVE AT YOUR DISPOSAL, AN ATTORNEY NETWORK THAT IS ABLE TO KEEP YOU IN YOUR HOME, HALT THE**

FORECLOSURE PROCESS, AND FIGHT FOR YOUR RIGHTS!

PX01, Att. FM, at 1781. This comports with testimony from consumers that they received guarantees before enrolling that they would not lose their homes or that they could win their homes free and clear. PX06 ¶ 5; PX15 ¶¶ 4, 7; PX12 ¶ 4; PX22 ¶ 4; PX13 ¶ 5 (told about clients who won homes free and clear); PX27 ¶ 3; PX21 ¶ 3; PX01 ¶ 3; PX01, Att. FL, at 12:14 to 13:5, 31:2 to 32:10 (told mortgage would be null and void and about homeowner who won home free and clear). *See also* PX01, Att. FJ, at 1706-07, Att. FK, at 1714 (scripts stating the three possible outcomes: winning home free and clear, restructuring mortgage to result in affordable payment, or delay in foreclosure for at least six months); PX17 ¶ 28. Such consumer experiences should come as no surprise in light of testimony from former RUN sales personnel that they told consumers that clients had won their homes free and clear. PX25 ¶ 21; PX23 ¶ 28. To provide a real-life example, they would highlight a decision from the Massachusetts Supreme Court that purportedly culminated in such a result and told consumers that Legal Plans could do the same for them. PX25 ¶ 19; PX23 ¶ 26; PX08 ¶ 33.

Defendants also touted their ability to obtain loan modifications that would result in interest rate and principal reductions. Several consumers were told that their monthly payments would be reduced through negotiations and lender concessions. PX14 ¶ 4 (promised principal reduction and automatic interest rate reduction as a victim of predatory lending); PX13 ¶ 4 (drastic reductions in monthly payments); PX03 ¶ 3 (bank would be forced to renegotiate loan); PX12 ¶ 4 (principal reduction); PX09 ¶¶ 5 (assured of loan modification resulting in affordable monthly payments); PX27 ¶ 3 (guaranteed); PX21 ¶ 3 (guaranteed); PX16 ¶ 3 (interest rate of 3% or less); PX22 ¶ 3-4 (assured modification, foreclosure prevention, payments halved); PX26 ¶ 7 (interest rate down to 1-2%). During an undercover call to Defendant American Hardship, the telemarketer made multiple guarantees that the caller's payments would be reduced if he enrolled. The telemarketer claimed that the interest rate could be reduced from 8.25% to somewhere between 2% and 4% and that the company was currently "doing about a 33 to 46 percent reduction in payment." PX24, Att. C, at 8:1-5, 11:6-16, 71:22 to 72:1. On three occasions, the telemarketer said that enrollment would result in a $1,600 reduction in the monthly mortgage payment. *Id.* at 8:14-17, 13:10-14, 40:9-10, 38:18-25. *See also* PX24, Att. C, at 39:2-9 (interest rate "going to drop" because "[i]t can only go one way, down."); 43:21-25

(rate would "[a]bsolutely" be reduced). Again, information from former RUN sales personnel corroborates this evidence. A sales script RUN used stated:

> Freedom Legal Plans has a foreclosure defense membership program that offers a network of seasoned **FORECLOSURE DEFENSE ATTORNEYS** that will litigate against your lender to help keep you in your home, **potentially** getting your **mortgage re-written** with a **principle reduction** and the **lowest possible interest rate,** or in some cases having the lender hand over your property to you **FREE AND CLEAR** . . . .

PX25, Att. A, at 21. Former RUN telemarketers have also revealed that they regaled consumers with potential results such as drastic reductions in loan principal – some as high as 70% to 75% and a complete mortgage restructure. PX25 ¶ 21; PX23 ¶ 28; PX08 ¶ 27 (example provided to consumers of a $60,000 principal reduction).

Defendants use several tactics to reassure consumers about the high likelihood of success. One such tactic is consumer testimonials. For example, after an undercover call, an FTC investigator received an email that concluded with success stories about Legal Plans clients who obtained interest rate reductions. It exclaimed, "Success stories like these are happening every day!" PX01, Att. FM, at 1783 (undercover email). Consumers similarly report that Defendants referred them to success stories. PX09 ¶¶ 6, 7 (email claiming 95% success rate and promising modification since consumer had been approved for enrollment). Defendants also have told consumers that: 1) they can expect results within a few months (PX14 ¶ 5; PX15 ¶ 4; PX06 ¶ 5); and; 2) that Legal Plans and its attorneys have re-negotiated the mortgages of thousands of consumers, and that they would not have called the consumer if they could not help. PX12 ¶ 5; PX23 ¶ 28. *See* also PX24, Att. C, at 73:8-13 ("very successful" at getting loans rewritten); PX21 ¶ 4; PX16 ¶ 3; PX26 ¶ 7.

One key factor that Defendants cite as the reason for their successful outcomes is the purported legal representation provided by Legal Plans' attorney network. PX25 ¶ 21. They tout the high caliber of network attorneys and tell consumers that they will receive "full service" legal representation. PX05 ¶ 11 (Legal Plans attorneys are very successful); PX24, Att. C, at 15:11 to 16:1 ("your attorney's local. . . . So, he'll be able to always keep the bank in a position where they have to restructure the mortgage."), 51:3-7 ("you're getting a local attorney that can walk up to your county courthouse and file a motion to shield you against or push back on any attempt by the lender to take the home . . ."); PX08 ¶ 32 (Supreme Court tested attorneys have proven track

records and an "in" at the banks); PX21, Att. B, at 25. A RUN sales script stated that banks will negotiate because they "don't like to do battle with **EXPERT ATTORNEYS** in court." PX25, Att. A, at 21. *See also id.* at 53. In the same vein, the Prime Access Management marketing websites boast that network attorneys are never hard to reach and are "required to make a commitment to provide . . a level of service that is usually enjoyed only by large corporate clients." PX01, Att. DP, at 1369.

Defendants make similar claims about results consumers can expect in marketing materials. An internet advertisement for Prime Legal Plans and Prime Access Management states, "You May Get as Low as 2% Fixed Rate." PX01, Att. DU, at 1381, Att. D2, at 1395. The website www.frontierlegalplans.com claims, "Our network attorneys have helped hundreds of Americans stay in their homes. You too may have a favorable outcome if you choose the right defense plan." PX01, Att., DN, at 917.

During the time that RUN served as the non-profit front for Defendants' scheme, it had more than 20 websites, all of which stated that it was "helping thousands of Americans stay in their homes." PX01 ¶ 19, Att. DH, at 325. RUN's websites also featured numerous testimonials from consumers who supposedly avoided foreclosure and received substantial principal or interest rate reductions.[5] *Id.* at 468-70. A YouTube video advertising RUN and Freedom Legal Plans claimed that the "threat of litigation usually results in a bank agreeing to restructure the terms of your loan to produce a payment you can afford." PX01, Att. EA, at 1415a. And a Freedom Legal Plans brochure claimed that many clients had won their homes free and clear and stated, "You too can benefit from a favorable outcome if you make the right choice with the right defense plan." PX12, Att. B, at 16; PX13 ¶ 7, Att. A, at 11.

[5] The Prime Access Management website contains over 20 consumer testimonials. PX01, Att. DP, at 988-91. The disclaimer explaining that consumers may not achieve the same results appears at the bottom of the page and is not visible without scrolling down several times. Because it is not clear and prominent, it does not cure the misleading impression that such results are typical or highly likely. *FTC v. Removatron Int'l Corp.*, 884 F.2d 1489, 1497 (1st Cir. 1989) ("Disclaimers or qualifications in any particular ad are not adequate to avoid liability unless they are sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression. Anything less is only likely to cause confusion by creating contradictory double meanings.").

2. Defendants Do Not Deliver Promised Results or Provide Promised Services

Despite Defendants' promises, many consumers languish for months in the program while paying monthly fees totaling thousands of dollars with nothing to show for it. PX15 (nine months, $5,400). *See also* PX06 (over five months); PX12 (six months, obtained a trial loan modification through his own efforts); PX11 (seven months, over $4,000); PX10 ¶ (four months, found out he would be losing his home through short sale or foreclosure). In fact, several enrollees have lost their homes or had to file bankruptcy. PX04 ¶¶ 14-21; PX16 ¶¶ 13-19; PX07 ¶¶ 13-18. According to a former RUN telemarketer, Litvin stated at a company meeting that, despite what had been promised to consumers, no Legal Plans clients received principal reductions or mortgage nullifications. PX08 ¶ 44. Former sales personnel have also reported that they often received complaints from consumers who had been enrolled and paying Legal Plans' fee for months without seeing any progress or results. PX23 ¶ 30; PX08 ¶ 53.

Instead of full service legal representation by a local attorney, consumers are generally left to deal with non-attorney Legal Plans "case managers" or Litvin Firm paralegals located in Litvin's New York and Florida offices – not in the offices or under the supervision of the purported local attorney. PX27 ¶¶ 10, 13; PX04 ¶¶ 2, 12; PX11 ¶¶ 6-9, 12; PX14; PX17 ¶¶ 7, 22; PX 12 ¶¶ 16, 18. Most consumers do not speak to an attorney in their state unless they vociferously complain, and sometimes not even then. PX27 ¶ 12; PX04 ¶ 19-20; PX07 ¶ 16; PX12 (never); PX14 (never); PX21 ¶¶ 9, 10; PX16 ¶ 9 (never). One consumer notified Defendants and Litvin Firm of her impending foreclosure in February 2012 but still lost her home in July after being told on the sale date that there were no attorneys available to assist her. PX16 ¶¶ 13-18. After the foreclosure sale, Legal Plans, apparently unaware that she lost her home, asked why she stopped paying her monthly fee. PX16 ¶ 20. Another consumer who lost his home was told three days before his foreclosure sale to file for bankruptcy. Despite paying $2,380 for promised "full-service legal representation," he was told to handle the bankruptcy on his own. PX04 ¶¶ 14-19, 32. Another consumer was also instructed to file for bankruptcy *pro se* in order to keep his home. PX07 ¶¶ 16-18. Instead of full service legal representation usually enjoyed only by "large corporations," consumers are peppered with multiple requests to submit the same paperwork over and over again without any updates on the progress of their cases. PX21 ¶ 9; PX16 ¶ 11; PX17 ¶¶ 34, 35.

3. Defendants Falsely Claim They Will Use Loan Audits to Substantially Reduce Monthly Mortgage Payments and Prevent Foreclosure

Defendants market their loan audits and reviews as a linchpin of their ability to obtain loan modifications or prevent foreclosure. According to Defendants, these reviews can identify the information needed to litigate against lenders, defend against foreclosure, and uncover evidence of lender fraud or misconduct that network attorneys can use as leverage against the lender. PX01, Att. DP, at 992-93. In a press release, RUN explained that the forensic audit can "open up a discovery process for litigation that could void ones [sic] mortgage if it is determined that a homeowner's mortgage document contains fraudulent doings." PX01, Att. EE. Defendants tell consumers that their audits and reviews will result in winning their homes free and clear, forcing the lender to negotiate, or drastically reducing their mortgage payments. PX15 ¶ 7; PX08 ¶ 37 (consumers told not to worry about not paying mortgages because bank would be on defensive due to mistakes in documents found in audits); PX12 ¶ 4; PX03 ¶ 3; PX09 ¶ 4; PX20 ¶ 2 (told that American Legal Plans could reduce interest rate); PX25, Att. A, at 19 ("When these types of violation are discovered in your loan documents the network attorneys from FLP utilize this information to negotiate with your lender to reduce the principal to the current market value and/or lower the interest rate. In turn this will give you an affordable monthly mortgage payment, allowing you to keep your home.").

Sales scripts used by RUN telemarketers claimed that "a mere $35 discrepancy in the closing documents can be grounds to halt a foreclosure process or even void the loan entirely." PX25, Att. A, at 19; PX08 ¶ 30. Consistent with this claim, a telemarketer explained during an undercover call that if "one violation is found, that one violation basically gets the rest of that contract null and void." PX01, Att. FL, at 32:8-10. To reassure consumers that an audit will result in a favorable outcome, Defendants claim that the vast majority of loans contain errors. PX 21 ¶ 3; PX22 ¶ 3; PX01 ¶ 90; PX25, Att. A, at 19 (RUN sales script claimed that 90% of all mortgages written in the last ten years contain violations), 24 (80% of loans written between 1999 and 2009 "contain fraud or predatory lending"); PX08 ¶ 28 (consumers told that clear violations found in 80 to 90 percent of loans audited); PX01 ¶, Att. FL, at 13:7-12 (87% probability of loan errors for loans originated between 1999 and 2009); Att.EB, Att. EE, Att. FM, Att. EA, at 1413 ("To date, every single loan the bankers issued and we've investigated has been full of violations"), 1415 ("80% of all residual loans contain some fraud or predatory

lending"). In fact, Defendants' telemarketers tell consumers that they have never seen an audit that did not locate an error, and direct them to a myriad of articles and videos about bank fraud. PX01, Att. FL, at 31:15-18), Att. FM; PX13 ¶ 4 (each loan contains eight errors on average; never seen an audit that did not show errors); PX23 ¶ 24 (100% of audits reveal mistakes or fraud); PX08 ¶ 28. Emails sent to consumers after the sales pitch further Defendants' misrepresentations, telling consumers that if their mortgages contain violations, they "are entitled to damages or at the least a mortgage you can afford" and that "[s]ome homeowners have won their deed in a court of law because of the severity of the findings." PX03 ¶ 4, Att. A.

Claims that these audits and reviews will assist in preventing foreclosure or extracting concessions from lenders are false because Defendants and attorneys associated with the scheme generally do not use the audits at all. Litvin Firms principal Gennady Litvin explained at a RUN sales meeting that the audits are used only on rare occasion. PX08 ¶ 43. A Prime Legal Plans account manager corroborates this fact, as do consumers who have reported that they received the audits without an explanation of what they mean or how to use them. PX17 ¶¶ 26-27; PX12 ¶ 19. *See* PX14 ¶¶ 10, 18.

Even if these audits and reviews were used to negotiate with or litigate against lenders, they would not garner the results that Defendants have claimed, such as precluding foreclosure or winning a home free and clear. Federal lending laws allow rescission of mortgage contracts only in limited situations and timeframes, if at all.[6] If the law permits rescission, the consumer must return the money borrowed – an impossible feat for a homeowner struggling to make monthly mortgage payments. To the extent that consumers can sue lenders for damages for violations of lending laws such as the Truth In Lending Act, consumers generally are subject to a one-year statute of limitations period. 15 U.S.C. § 1640(e). Many mortgages, moreover, are sold to third-parties as part of mortgage-backed securities. In order to prevail against an assignee, a consumer must show that the violation is apparent on the face of the disclosure statement. 15 U.S.C. § 1641(e).

[6] For example, the right of rescission is inapplicable to residential mortgage transactions, 12 C.F.R. § 226.23(f)(1), which include mortgages financing the acquisition of a consumer's principal dwelling, 12 C.F.R. § 226.2(a)(24). Although the right of rescission does apply to refinancings, 12 C.F.R. § 226.23(f)(2), that right is generally extinguished after three years, even for serious disclosure violations. 12 C.F.R. § 226.23(a).

In fact, the audits appear to serve little or no purpose other than to prolong consumers' enrollment and therefore the amount of time consumers pay Defendants' monthly fees. According to a former Legal Plans employee, consumers spend the first 2.5 months of enrollment waiting for completion of the audits and generally are not able to begin the modification application process until that point, even though the audits are not used for the loan modifications. PX17 ¶¶ 23, 26-27. Another former employee asked a manager why the audits were conducted at all if they were not actually used. PX08 ¶ 51. The manager responded that the audits prolong enrollment, that the operation could not make money off of consumers who made one or two payments, and asked the employee where he thought the money for his commission came from. *Id.* Another former employee was told that, ideally, the company would extract $5,000 in fees per consumer. PX17 ¶ 33. In some cases, consumers have waited several months to receive the audits despite being told that that they would be completed sooner. PX10 ¶ 6; PX13 ¶¶ 5, 11 (after three months, told audit would take another three to six months); PX09 ¶ 13 (enrolled four months, paid $750 fee and told no additional work would be done until after payment of another $750); PX12 ¶¶ 7, 19 (waited four months for audit while paying $750 monthly fee despite being told it would be completed in half the time). *See also* PX23 ¶ 30.

B. Defendants Violate the MARS Rule

Defendants violate the MARS Rule in multiple ways and are clearly aware of the Rule's prohibitions. During an undercover call, a telemarketer boasted about Prime Legal Plans's purported compliance with the rule, even though Defendants collect advance fees, make representations that the Rule prohibits, and fail to make mandated disclosures. PX01 ¶, Att. FL, at 34:23 to 35:8, 37:9 to 38:1.[7] *See also* PX26, Att. A, at 13, 17 ("we're probably one of the few companies that are 100 percent MARS complaint").

1. Defendants Unlawfully Collect Advance Fees

Defendants ignore the MARS Rule's prohibition against collecting or even requesting payment until the consumer has executed a written agreement with the lender or servicer. 12 C.F.R. § 1015.5(a). Evidence of their violations includes: (1) statements on their websites that they charge a monthly fee of $750 (PX01, Att. DP, at 1013); (2) payment processor records

[7] Defendants are "Mortgage Assistance Relief Service Providers" under the Rule because they offer to provide and provide "Mortgage Assistance Relief Services," as defined by the Rule. *See* 12 C.F.R. § 1015.2. Although the MARS Rule includes a limited exemption for bona fide attorney services, Defendants do not qualify for the exemption. *See infra* Section IV.B.b.

showing monthly consumer payments and regular disbursements of those payments to Defendants' bank accounts, PX01 ¶ 69; (3) numerous dissatisfied consumers who paid Defendants' fees but received no loan modifications or lost their homes; and (4) attempts to collect fees from consumers who have cancelled their memberships. PX20 ¶¶ 6-7; PX13 ¶ 12; PX04 ¶¶ 21-25; PX22 ¶ 11-13; PX27 ¶¶ 13-14. Additionally, a former employee reports that his supervisor admitted that American Legal Plans collected fees from consumers in violation of the MARS Rule. PX17 ¶ 40. Furthermore, Defendants deny refunds on grounds that they have done some work for the consumer even though collecting fees for piecemeal work flouts the Rule's ban on collection of advance fees.[8] PX14 ¶ 20; PX15 ¶¶ 12-15 (over $5,400, only $588 refunded on grounds that $4,800 worth of work was done); PX10 ¶ 8 ($3,000); PX04 ¶¶ 21, 22 ($2,380); PX17 ¶ 38. In some instances, Defendants have conditioned refunds on consumers' agreement to modify or retract complaints to organizations such as the Better Business Bureau. PX04 ¶ 32. *See* PX20 ¶ 10.

As mentioned above, Defendants not only flout the advance fee ban but also falsely claim to consumers that they comply with the Rule in order to earn their trust. During an undercover call, a telemarketer stated that the company was in compliance because it put consumer fees in a dedicated account and only withdrew money after work was completed. PX01, Att. FL, at 34:22 to 35:12, 37:9 to 38:19. Such a claim suffers from two flaws: (1) in promulgating the Rule, the Commission expressly rejected the idea of permitting collection of advance fees if deposited into an escrow account, 75 F.R. 75122-23, and (2) funds from consumers' purportedly "dedicated accounts" are disbursed to Defendants and related entities on a regular basis. PX01 ¶ 69.

2. Defendants Make Prohibited Misrepresentations to Consumers

The MARS Rule prohibits any mortgage assistance relief service provider from misrepresenting, expressly or by implication, the likelihood of negotiating, obtaining, or arranging any represented service or result. 12 C.F.R. § 1015.3(b)(1). As described in detail in Section III.A, Defendants deceptively claim that they succeed in obtaining loan modifications that make consumers payments substantially more affordable, including by providing a forensic loan audit.

[8] 75 Fed. Reg. 75121-75122 (advance fee ban prohibits charging for piecemeal services as fees cannot be collected until the consumer has accepted an offer of relief from the lender or servicer).

The MARS Rule also prohibits misrepresentations about "[t]he amount of time it will take . . . to accomplish any represented service or result." 12 C.F.R. § 1015.3(b)(2). Defendants misrepresent to consumers that they will obtain loan modification within a matter of months, but fail to do so. PX16 ¶ 5; complaints from consumers who were told process would take three months); PX09 ¶ 5 (eight weeks); PX14 ¶ 5 (four months); PX15 ¶ 4 (three months); PX21 ¶ 3 (three months); PX27 ¶ 5 (probably three months); PX6 ¶ 7 (three to six months). *See* PX17 ¶ 34. The length of time in which results will materialize, a key consideration for any consumer at risk of foreclosure, holds even more import for consumers considering enrollment in Legal Plans because of Defendants' costly monthly fee structure.

3. Defendants Fail to Make Mandated Disclosures

The MARS Rule requires mortgage assistance relief service providers to place a verbatim statement in every general commercial and consumer-specific communication disclosing that: (i) the provider is not associated with the government and its service is not approved by the government or any lender; and (ii) in certain cases, a statement disclosing that the lender may not agree to modify a loan, even if the consumer uses the provider's service. 12 C.F.R. § 1015.4(a)(1)-(2); 12 C.F.R. § 1015.4(b)(2)-(3). The MARS Rule also requires mortgage assistance relief service providers to place a statement in every consumer-specific commercial communication confirming that the consumer may stop doing business with the provider or reject an offer of mortgage assistance without having to pay for the services. 12 C.F.R. § 1015.4(b)(1). The Rule specifies that MARS providers must make the disclosures clear and prominent.

Defendants fail to make the required disclosures. They make none of the disclosures required for consumer specific communications such as sales calls and other pre-enrollment communications. *See* PX24, Atts. C & D; PX01, Atts. FL, FM, & FN; PX03, Atts. A & B. *See* PX08 ¶ 6, Att. A; PX23 ¶ 8, Att. C; PX25 ¶ 8, Att. A; PX01, Att. FD, at 1604, 1612; Att. FE, at 1625, 1646, Att. FJ, at 1706-07, Att. FK, at 1714-21. They also have failed to make the complete disclosures required for general commercial communications in marketing materials, websites, and advertisements for the vast majority of time that Legal Plans has operated. *See, e.g.*, PX01 ¶¶ 18-26, Atts. DH, DI, DJ, DK, DM, DU, DV, DW, DX, DY, DZ. No more than a few months ago, they added to their websites the disclosure set forth in 12 C.F.R. § 1015.4(a)(1) accessible only through a hyperlink. PX01 ¶ 27. The addition of that disclosure, however, does

not meet MARS Rule/Regulation O requirements because it is neither clear nor prominent as the Rule requires. To be clear and prominent, hyperlinks leading to disclosures on a webpage must be obvious, placed near the relevant information and made noticeable. FTC Dot Com Disclosures (May 2000), at 7-9. The hyperlink on Defendants' websites is none of the above. It appears in minuscule font at the bottom of the webpage only after scrolling down several times. Additionally, the disclosure is not accompanied by the "IMPORTANT NOTICE" heading specifically mandated by the Rule to precede the disclosure in bold font at two sizes larger than the text of the disclosure. 12 C.F.R. § 1015.4(a)(3)(i).

Defendants altogether fail to include on their websites the disclosure, "Even if you accept this offer and use our service, your lender may not agree to change your loan." 12 C.F.R. § 1015.4(a)(2). Either an express or implied claim that consumers will receive certain services or results, including loan modifications, triggers an obligation to make the disclosure. Defendants' websites trigger that obligation. For instance, Defendants have dedicated an entire page on various websites to consumer testimonials touting reduced monthly payments and interest rates. PX01, Att. DP, at 988-991, Att. DQ, at 1185-88. It appears that Defendants attempt to skirt the disclosure requirement by claiming not to conduct loan modifications and that services are provided by attorneys. Those are distinctions without a difference. Regardless of what Defendants call their services, their success stories are about clients whose loans were modified to result in lower interest rates or payments. Additionally, the Rule's application is not limited to the actual service provider, but includes persons that "arrange[] for others to provide" mortgage assistance relief services. 12 C.F.R. § 1015.2. Given Defendants' role in marketing, back-end services, and facilitating purported relationships with attorneys, they fall squarely within the Rule's reach and therefore must make the disclosures.

C. Defendants Violate the TSR's Do Not Call Requirements

Defendants operate their outbound telemarketing campaign with utter disregard for Do Not Call requirements. An analysis of call records demonstrates that Defendants have made at least 220,000 calls to numbers on the National Do Not Call registry from January 10, 2011 through April 20, 2012. PX01 ¶¶ 49-50, Att. FC. Records from Consumer Sentinel also indicate

that, with minor exceptions, neither Defendants nor their third-party marketers registered for or accessed Do Not Call Registry data as required by the TSR.[9] PX01, ¶¶ 46-48.

The FTC's Consumer Sentinel database includes approximately 130 Do Not Call complaints from consumers against Defendants or their marketers, and Defendants' former telemarketers have confirmed that they cold-called consumers using predictive dialers and placed at least 100 outbound calls to consumers each per day. PX01 ¶ 84; PX08 ¶ 14; PX23 ¶ 18; PX25 ¶ 13. According to at least one former employee, Defendants did not scrub their telemarketing lists for numbers on the Do Not Call Registry. PX08 ¶ 16. That same employee stated that when consumers who had placed their numbers on the National Do Not Call Registry asked why they were receiving unsolicited telephone calls, telemarketers responded that they were calling from a non-profit organization exempt from Do Not Call requirements. PX08 ¶ 16.

IV. THE COURT SHOULD ENTER A TEMPORARY RESTRAINING ORDER

To immediately halt Defendants' illegal practices and preserve assets necessary for consumer redress, the FTC requests that the Court issue a TRO enjoining the deceptive and illegal conduct described herein, freezing Defendants' assets, appointing a temporary receiver, granting immediate access to business premises, providing for other ancillary relief, and ordering the Defendants to show cause why a preliminary injunction should not issue.

A. The Court Has Authority to Grant the Relief Sought

Section 13(b) of the FTC Act authorizes the FTC to seek, and the Court to issue, temporary, preliminary, and permanent injunctions. The second proviso of Section 13(b),[10]

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[9] Two third-party marketers registered and paid an annual fee for certain area codes in Kentucky, South Carolina, and Florida, but never accessed the lists of consumers on the Do Not Call Registry in those area codes as required. *Id.* In addition, Do Not Call complaints against Defendants have originated from consumers in states across the country. PX01 ¶ 47.

[10] This action is not brought pursuant to the first proviso of Section 13(b), which addresses the circumstances under which the FTC can seek preliminary injunctive relief before or during the pendency of an administrative proceeding. Because the FTC brings this case pursuant to the second proviso of Section 13(b), its complaint is not subject to the procedural and notice requirements in the first proviso. *U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984) ("Congress did not limit the court's powers under the [second and] final proviso of § 13(b) and as a result this Court's inherent equitable powers may be employed to issue a preliminary injunction, including a freeze of assets, during the pendency of an action for permanent injunctive relief"); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982) (holding that routine fraud cases may be brought under second proviso, without being conditioned on first proviso requirement that the FTC institute an administrative proceeding).

under which this action is brought, states that "the Commission may seek, and after proper proof, the court may issue, a permanent injunction" against violations of "any provision of law enforced by the Federal Trade Commission." 15 U.S.C. § 53(b). *See also FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996). Section 13(b) also empowers the courts to exercise the full breadth of their equitable powers, including ordering rescission of contracts, restitution, and disgorgement of ill-gotten gains. *Id.* at 468-70. By enabling the courts to use their full range of equitable powers, Congress gave them authority to grant preliminary relief, including a temporary restraining order, preliminary injunction, and asset freeze. *U.S. Oil & Gas*, 748 F.2d at 1434 ("Congress did not limit the court's powers under the final proviso of § 13(b) and as a result this Court's inherent equitable powers may be employed to issue a preliminary injunction, including a freeze of assets, during the pendency of an action for permanent injunctive relief."). The Court therefore can order the full range of equitable relief sought and can do so on an *ex parte basis*. *Id.* at 1432 (authorizing preliminary injunction and asset freeze).[11]

B. The FTC Meets the Standard for Issuance of a Temporary Restraining Order and Preliminary Injunction

In this Circuit, two factors determine the appropriateness of preliminary injunctive relief under Section 13(b): (1) the likelihood of success on the merits; and (2) the balance of equities. *FTC v. University Health*, 938 F.2d 1206, 1217 (11th Cir. 1991). Irreparable injury need not be shown because its existence is presumed in a statutory enforcement action. *Id.* at 1218. As set forth below, both considerations militate in favor of the requested relief.

1. The FTC Will Likely Succeed on the Merits

To demonstrate a likelihood of success on the merits, the FTC must show that it will likely prevail and need not present evidence to justify a "final determination" that Defendants violated the law, although the record abounds with such evidence. *University Health*, 938 F.2d at

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[11] *See also* S. Rep. No. 103-130, at 15-16 (1993), *as reprinted in* 1994 U.S.C.C.A.N. 1776, 1790-91 ("Section 13 of the FTC Act authorizes the FTC to file suit to enjoin any violation of the FTC [Act]. The FTC can go into court ex parte to obtain an order freezing assets, and is also able to obtain consumer redress."). This Court has issued *ex parte* temporary restraining orders in several cases involving deceptive practices perpetrated against distressed homeowners. *See, e.g.*, *FTC v. U.S. Mortg. Funding, Inc.*, Case No. 11-CV-80155-Cohn (S.D. Fla. Feb. 20, 2011) (*ex parte* temporary restraining order freezing assets, appointing receiver, and authorizing expedited discovery and immediate access to business premises); *FTC v. First Universal Lending, LLC*, Case No. 09-82322-Civ-Zloch (S.D. Fla. Nov. 19, 2009) (same); *FTC v. Kirkland Young, LLC*, Case No. 09-23507-Civ-Gold (S.D. Fla. Nov. 19, 2009.

1218. *See also FTC v. World Wide Factors Ltd.*, 882 F.2d 344, 346 (9th Cir. 1989) (FTC need only demonstrate "some chance of probable success on the merits"). As set forth below, the FTC meets this requirement with ease and has shown that Defendants have violated and continue to violate Section 5, the MARS Rule/Regulation O, and the TSR. Further, in considering this motion, the Court "may rely on affidavits and hearsay materials" if appropriate. *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995).

a. Defendants Violate Section 5 of the FTC Act

Defendants' claims about the results consumers can expect if they enroll with Legal Plans violate Section 5. As described in Section III.A, Defendants have deceived consumers into purchasing their services by making two primary claims: that they generally succeed in preventing foreclosure and obtaining loan modifications to make consumers' mortgage payments substantially more affordable and that the loan audits and reviews they conduct will result in a loan modification. Sales scripts, marketing materials, undercover calls, and consumer and former employee testimony show that Defendants lured financially stressed consumers into paying hundreds of dollars per month in hopes of realizing results that never materialized.

b. Defendants Violate the MARS Rule

As discussed in Section III.B, Defendants violate the MARS Rule by failing to make the required disclosures, collecting fees from consumers for whom they have not procured relief, and making representations prohibited by the Rule.

The MARS Rule's limited exemption for attorneys is not applicable here. The exemption applies only to an attorney who: (1) provides mortgage assistance relief services as part of the practice of law; (2) is licensed to practice law in the state in which the consumer or the consumer's dwelling is located; and (3) complies with state laws and regulations relating to the same general types of conduct the Rule addresses. 12 C.F.R. § 1015.7. Defendants bear the burden of establishing its application. *See* Order Denying Motion to Dismiss, *FTC v. Lakhany*, No. 8:12-cv-00337-CJC-JPR (C.D. Cal. June 28, 2012); *FTC v. Morton Salt Co.*, 334 U.S. 37, 44-45 (1948) ("the burden of proving justification or exemption under a special exception to the prohibitions of a statute generally rests on one who claims its benefits").

Defendants cannot meet this burden here. Defendants are neither attorneys nor law firms. Indeed, their websites explicitly state that they are not a law firm and do not offer legal advice. PX01, Att. DP, at 1018. *See also* PX01, Att DI, at 495, Att. DH, at 466 ("Are we attorneys?

No."); PX01, Att. DN, at 921 ("Frontier legal plans, is not a law firm, insurance carrier or a provider of legal services. . . . Participating attorneys are not employees of Frontier legal plans and have no financial obligation to the company"). Further, they cannot claim that they are simply doing attorneys' bidding. They, not the attorneys, drive the business. In fact, consumers may wait for months before being assigned and put in contact with an attorney, if at all. PX17 ¶ 23; PX27 ¶ 8; PX21 ¶¶ 5, 7. Additionally, Defendants collect the payments, control the money, and then parcel out a subset of consumer funds to the Litvin Firms and affiliated attorneys, even after consumers begin dealing with the Litvin Firms. PX01 ¶ 63; PX17 ¶¶ 12-18, 23.

Further, Defendants fail to meet the latter two exemption requirements. They have enrolled consumers and advertise in states in which they lack affiliated network attorneys. PX01; PX08 ¶¶ 17-22, 53. Even consumers who do reside in a state where Defendants have a network attorney still lack true and direct access to a network attorney. PX08 ¶¶ 19-22, 53. Paralegals at the Litvin Firms in New York and Florida handle their cases, and they generally do not receive assistance from a network attorney or even someone from the network attorney's office. PX27 ¶¶ 10, 13; PX04 ¶¶ 2, 12; PX11 ¶¶ 6-9, 12; PX14; PX17 ¶¶ 7, 22; PX 12 ¶¶16, 18. Even if the network attorneys could claim the exemption and extend its coverage to Defendants, they could not satisfy the third requirement because they would likely be in violation of state ethics regulations, including the prohibition against fee splitting between attorneys and non-attorneys. Fla. Rules of Prof. Conduct § 4-5.4(a), (e); N.Y. Rules of Prof. Conduct § 5.4(a), (d).

c. Defendants Violate the TSR's Do Not Call Requirements

The TSR prohibits deceptive and abusive telemarketing acts or practices by telemarketers and sellers. As described in Section III.C, Defendants have violated Part 310.4(b)(1)(iii)(B) of the TSR by making hundreds of thousands of telephone calls to phone numbers listed on the National Do Not Call Registry, and further violated the TSR by failing to pay the required fees for access to the National Do Not Call Registry, in violation of Part 310.8 of the TSR. There is, therefore, a strong likelihood that the FTC will succeed in proving that Defendants' marketing practices violate the TSR.

2. The Balance of Equities Favors Injunctive Relief

The public interest in halting Defendants' unlawful conduct and in preserving assets to redress consumers far outweighs any interest Defendants may have in continuing to operate their business. In balancing public and private interests, "'public equities receive far greater weight.'"

FTC v. USA Beverages, Inc., Case No. 05-61682-CIV, 2005 U.S. Dist. LEXIS 39075 (S.D. Fla. Dec. 5, 2005) (quoting *FTC v. World Travel Vacation Brokers Inc.*, 861 F.2d 1020, 1030 (7th Cir. 1988)). *See also FTC v. Warner Comms., Inc.*, 742 F.2d 1156, 1165 (9th Cir. 1984); *World Wide Factors*, 882 F.2d at 347. This principle is especially important in the context of enforcement of consumer protection laws. *FTC v. Mallett*, 818 F. Supp. 2d 142, 149 (D.C.C. 2011) ("The public interest in ensuring the enforcement of federal consumer protection is strong.").

Here, the equities justify the relief sought. There is great public interest in preventing Defendants from using deceptive tactics to extract more money from distressed homeowners and in preserving assets for consumer redress. In contrast, "there is no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment." *World Wide Factors*, 882 F.2d at 347. *See also FTC v. Affordable Media*, 179 F.3d 1228, 1236 (9th Cir. 1999) ("Obviously, the public interest in preserving the illicit proceeds . . . for restitution to the victims is great."); *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 143 (2d. Cir. 1977) (Court has no obligation to protect ill-gotten profits or illegal business interests). Moreover, in one key respect, it has already been determined that the equities in permitting Defendants to profit in advance from their business should receive little or no weight. The MARS Rule prohibits MARS providers from collecting or even requesting fees from consumers until the consumer has accepted an offer of relief from his or her lender. 12 C.F.R. § 1015.5. Thus, Defendants have no equitable interest in either monies that they have collected or are continuing to collect from consumers who have not received loan modifications or other relief. The balance therefore tips strongly in favor of issuance of the requested TRO. That Defendants' continuing law violations are not isolated in nature suggests that, absent the requested relief, they will persist in deceiving consumers and extracting fees that by law they are not permitted to collect absent the requested injunctive relief.

3. Defendants Are Liable for Monetary and Injunctive Relief

a. Corporate Defendants Operate as a Common Enterprise and Thus Are Each Jointly and Severally Liable

Because the Corporate Defendants operate as a common enterprise, they are jointly and severally liable for the consumer injury they caused. *FTC v. Wolf*, No. 94-8119-CIV-FERGUSON, 1996 WL 812940, at *8 (S.D. Fla. Jan. 31, 1996). To determine whether a

common enterprise exists, "the pattern and frame-work of the whole enterprise must be taken into consideration." *Del. Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964). A host of factors may demonstrate the existence of a common enterprise, including: common control, shared officers, shared office space, commingling of funds, unified advertising and whether the business was transacted through a maze of interrelated companies. *See Wolf*, 1996 WL 812940, at *7; *FTC v. Capital Choice Consumer Credit, Inc.*, No. 02-21050-CIV, 2004 WL 5149998, at *42 (S.D. Fla. Mar. 11, 2004); *cf. SEC v. Elliott*, 953 F.2d 1560, 1565 n.1 (11th Cir. 1992) (upholding district court's treatment of various corporate defendants for failure to maintain strict separation among entities). Product and work force continuity may also make one corporation liable for acts of another. *FTC v. U.S. Oil & Gas Corp.*, No. 83-1702, 1987 U.S. Dist. LEXIS 16137, at *59 (S.D. Fla. Jul. 10, 1987). No one factor is dispositive and all factors need not be present to justify a finding of common enterprise. *FTC v. Kennedy*, 574 F. Supp. 2d 714, 722 (S.D. Tex. 2008) ("It is not necessary that the FTC prove any particular number of entity connections and any specific connection.").

Here, the Corporate Defendants exhibit several hallmark characteristics of a common enterprise. As an initial matter, they and their assets are commonly controlled by one or more of the Individual Defendants. For example, Defendant Landolfi is a principal of Defendants American Hardship, LSBP, and Freedom Legal Plans, and is a signatory on the bank accounts for American Hardship, BOSS, Frontier Legal Plans, Freedom Legal Plans LLC, and LSBP. PX01, Att. JA, 2106-08. Defendant Desmond is a principal of American Hardship and is a signatory on RUN and American Hardship accounts. *Id.* In addition, the Corporate Defendants have shared office space and use the same mail drops and virtual offices. Until mid-2012, American Hardship, BOSS, Freedom Legal Plans, Frontier Legal Plans, and Prime Legal Plans all shared office space at 6451 N. Federal Highway; the scheme now operates from 2400 E. Commercial Blvd. *See* Section II(A), *supra*. In addition, 123 Save A Home; CAN; LSBP; and RUN have all operated from the sixth floor of 168 SE 1st Street. *Id.* Similarly, Prime Legal Plans, LSBP, Freedom Legal Plans, and American Hardship have all used the same virtual office address in Delaware at 1000 N. West Street, Suite 1200, Wilmington, Delaware. *Id.* CLP-NV, RUN, CAN, and 123 Save A Home also share a virtual office at 701 Brickell Avenue, #1550, Miami, Florida. *Id.*

Many of the Corporate Defendants' overhead expenses are paid with the same credit card controlled by one or more Individual Defendants. PX01, ¶ 68, Att. JC. For example, websites for Defendants RUN, American Hardship, Prime Legal Plans, Freedom Legal Plans, and Frontier Legal Plans were all registered and paid for through accredit card held by Defendant Radzikowski's shell corporation, DBR. *Id.*, Att. DT. Similarly, websites for RUN (advertising Freedom Legal Plans), 123 Save A Home, Consumer Legal Plans, Consumer Acquisition Network, and Lender's Fraud (advertising Prime Legal Plans) were all registered and paid for through Defendant Dinh's credit card. *Id.*

Reflective of a "maze of interrelated companies," the entities routinely make payments to one another and commingle funds. *See generally* PX02. They also share employees. For example, employees Gregory Lampkin and Scott Tovin were on the payroll for both American Hardship and Freedom Legal Plans in 2011. PX01, Att. DF. A former employee described how he was initially hired by Freedom Legal Plans, then employed by BOSS, and that he worked on marketing Prime Legal Plans and helped market American Legal Plans and Frontier Legal Plans. PX17 ¶¶ 2-3, 5, 8. He also said that his direct supervisor worked for BOSS and American Hardship. *Id.* ¶ 8.

Similarly, the common enterprise similarly shares each other's telephone numbers. The number used in one of the FTC's undercover calls was associated with Frontier Legal Plans, Freedom Legal Plans, American Legal Plans, and Legal Servicing and Billing Partners PX01 ¶ 26. In a call to that same number and subsequent communications, Defendants also identified themselves as Prime Legal Plans, American Hardship, and "Legal Plans." PX24 at 4-5, 21, 33, 46-47, 53, 58. Defendants identified themselves in an undercover call to a different number and in a subsequent email as Consumer Legal Plans, Prime Legal Plans, "Legal Plans," and the "charity" 123 Save A Home which marketed Legal Plans. PX01, Att. FL, at 4, 15-16, 23-25; Att. FM; Att. FN at 10, 12-13.

The Corporate Defendants also do business under one another's or substantially similar names, making the entities virtually indistinguishable. For example, there are two entities with the name "Consumer Legal Plans" and Freedom Legal Plans changed its name to Frontier Legal Plans. PX01, Att. KH. Both RUN and CAN have operated under the name "Forensic Auditor Services." PX01, Atts. AL, BX. RUN has also operated as "123 Save Our Home," a name that is almost identical to 123 Save A Home. PX28, Att. D. And RUN and CAN have operated

under the names "Legal Serving Partners," "Legal Billing Services," and "Legal Servicing and Billing Partners," respectively, all of which are confusingly similar to LSBP. PX01, Atts. AM, CA, CC. Because the Corporate Defendants operate as a common enterprise, each is jointly and severally liable for one another's wrongful conduct.

b. Individual Defendants Are Liable For the Corporate Defendants' Practices

An individual defendant may be held liable for injunctive relief for corporate practices if: (1) the individual participated directly in the challenged conduct or (2) had the authority to control it. *See Gem Merch. Corp.*, 87 F.3d at 470; *FTC v. 1st Guar. Mortg. Corp., et al.*, No. 09-cv-61840, 2011 WL 1233207, at *15 (S.D. Fla. Mar. 30, 2011). An individual's status as an officer or authority to sign documents gives rise to a presumption of authority to control a small, closely held corporation. *Transnet Wireless*, 506 F. Supp. 2d at 1270; *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170-71 (9th Cir. 1997). Assuming the duties of a corporate officer is also probative of an individual's participation. *FTC v. Amy Travel*, 875 F.2d 564, 573 (7th Cir. 1989). Even where an individual is not officially designated as a corporate officer, courts consider "the control that a person actually exercises over given activities." *FTC v. Windward Mktg.,Ltd.*, No. 1-96-CV-615 1997 WL 33642380, at *5 (N.D. Ga. Sept. 30, 1997) (holding that defendant did not have to be an officer or even an employee to control corporate activities). *See also FTC v. Medicor, LLC*, 217 F. Supp. 2d 1048, 1055-56 (C.D. Cal. 2002). Bank signatory authority or acquiring services on behalf of a corporation also evidences authority to control. *See FTC v. USA Financial, LLC*, 415 Fed. Appx. 970, 974-75 (11th Cir. Feb. 25, 2011).

An individual may be held liable for monetary relief for corporate practices if the individual defendant had or should have had knowledge of the illicit conduct, showed reckless indifference to the truth or falsity of a representation, or had an awareness of a high probability of fraud with an intentional avoidance of the truth. *Affordable Media*, 179 F.2d at 1234; *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009). Participation in corporate affairs is probative of knowledge. *Affordable Media*, 179 F.3d at 1235; *Amy Travel*, 875 F.2d 564. Moreover, the FTC need not show that the individual defendant had the intent to defraud consumers. *FTC v. Jordan Ashley*, No. 93-2257, 1994 U.S. Dist. LEXIS 7494, at *11 (S.D. Fla. Apr. 5, 1994). Where a common enterprise is present, an individual defendant's liability for monetary relief is joint and

several with all entities participating in the enterprise. *See FTC v. Nat'l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1213-14 (N.D. Ga. 2008).

Here, the conduct of each Individual Defendant satisfies the standards for individual liability for both injunctive and monetary relief. As a preliminary matter, each has a position of authority with one or more of the Corporate Defendants. *See* Section II(B), *supra*. In addition, one or more of the Individual Defendants has bank signatory authority for each corporate entity's known bank accounts. PX01, Att. JA, at 2106-08. This demonstrates "requisite control" and is probative of each Individual Defendant's participation and knowledge. *Publ'g Clearing House*, 104 F.3d at 1170; *Amy Travel*, 875 F.2d 564.

Further, the Individual Defendants directed a payment processing system to disburse consumers' advance fees to the bank accounts of various entities involved in the scheme. PX01, Atts. JD, JI-JK. This involvement in the payment processing system shows their knowledge of the Corporate Defendants' violations of the MARS Rule's advance-fee-collection ban. The individuals' control of various marketing efforts to consumers, such as websites and telemarketing scripts, also illustrates that they knew or should have known of the Corporate Defendants' misrepresentations and failure to provide requisite MARS disclosures. *See, e.g.*, PX01, Atts. DT, FD-FI. As discussed below, additional facts regarding each of the Individual Defendants' conduct provide even more evidence of their control, authority, and knowledge of corporate practices.

Defendant Radzikowski has been identified by at least two former employees as the "boss," and was responsible for signing the lease for the scheme's recent headquarters. *See* Section II(B), *supra*. He registered and paid for numerous websites marketing Legal Plans, including sites for RUN, American Hardship, and Freedom Legal Plans. PX01, Att. DT. He also pays for and controls the operation's cloud hosting and telecommunications service, and has paid for various other expenditures in furtherance of the scheme. PX01, Att. FA, ¶ 68, JC. On at least one occasion in August 2011, Radzikowski participated in a boiler room "training" where he heard about misrepresentations being made to consumers about the program's promised results. PX08 ¶¶ 42-44, 48, 52. At that meeting, he told a former employee to enroll as many consumers in Legal Plans as possible, regardless of whether they were qualified, already working with their lenders on a modification, or already had an attorney. PX08 ¶¶ 42-44, 48, 52.

Radzikowski is also a substantial beneficiary of funds from the common enterprise. PX02; Frazier Dec.

Like Radzikowski, Defendant Desmond has also been identified as the "boss" and has received substantial payments from the common enterprise. PX01, Att EY, at 1565 ; PX02 ¶¶ 10, 20. A person named Shelie Desmond, who appears to reside with him, has also received large payments from the operation. Certification and Declaration of Counsel Leah Frazier ("Frazier Dec."); PX02 ¶¶ 10, 19, Att. H. He is a principal of American Hardship and signed its telemarketing application to sell memberships in Freedom Legal Plans. *See* PX01 FD. He is a principal of American Hardship and is or has been a signatory on bank accounts for American Hardship and RUN, as well as for other entities furthering or receiving funds from the scheme. PX01, Att. JA, at 2106-08. He has also served as a point of contact for various third-party services for the enterprise. PX01, Att. FA, at 1576-77.

Defendant Dinh is a principal of 123 Save a Home and CAN, and has identified himself as a contact for RUN and CLP-WY to state authorities. *See* Section II.B, *supra.* He obtained CAN's telemarketing license to sell "litigation support services for attorneys" or to engage in "telefunding for charities." PX01, Att. FE. He signed the lease for RUN's virtual office address and is a signatory on bank or PayPal accounts for 123 Save A Home, CAN, RUN, and CLP-WY or CLP-NV, as well as on financial accounts of other entities furthering or receiving funds from the scheme. *See* Section II.B., *supra.* He was instrumental in setting up and authorizing disbursements of consumer funds through the scheme's payment processor; registered and paid for services such as websites and phone service; and notarized RUN's affidavit in support of its application to solicit funds as a Florida charitable organization and RUN's statement to the Florida Office of Financial Regulation in response to consumer complaints. *See infra*, Section II.B; PX01 ¶ 17, Att. DG.

Defendant Landolfi owns the fictitious business name "American Legal Plans" and is a principal of American Hardship, LSBP, Freedom Legal Plans, and Frontier Legal Plans. *See* Section II.B, *supra.* She is a signatory on bank accounts for those Corporate Defendants, as well as for BOSS and other entities furthering or receiving funds from the scheme. *Id.* She has signed payroll checks and paid for various services in furtherance of the operation. PX01 ¶ 64, Att. EW; PX02. Landolfi has authorized disbursements of consumer funds from the processor to various entities involved in the scheme. *See, e.g.*, PX01, Att. JI, at 2169, 2172. She was also

listed on the Better Business Bureau website as the contact for Legal Plans and therefore received consumer complaints filed against Legal Plans. PX01 ¶ 100, Atts. AH, KL. In 2011, Defendant Landolfi notarized false RUN corporate resolutions signed by Defendant Edwards authorizing various marketing entities to operate as RUN's "agents" in a non-profit "fundraising campaign," when in reality these entities were boiler rooms selling for-profit Legal Plans memberships. PX01, Atts. FX-GE. With Defendant Desmond, she applied for American Hardship's Florida commercial seller's license to market Freedom Legal Plans and provided the American Hardship scripts under penalty of perjury. PX01, Att. FD.

Defendant Primavera is a principal of 123 Save A Home and CAN, and has been identified as a manager of RUN. *See supra*, Section II.B. He is a signatory on the bank accounts of all three entities, and is the sole officer and signatory for Avera Systems USA, Inc., which has paid for services in furtherance of the scheme and controls at least one entity furthering or receiving funds from the scheme. *See supra*, Section II.B.

Defendant Edwards is a principal of RUN, and is a signatory on certain of its bank and PayPal accounts. *See* Section II.B, *supra*. He has promoted RUN through social media and has registered several of RUN's fictitious names. PX01, Atts. BB-CC, EM. In July 2011, Edwards signed several resolutions designating as "agents" of RUN for a "fundraising" campaign various individuals who were actually running boiler rooms to market for-profit Legal Plans. PX01, Atts. FX-GE. With Defendant Dinh, he filed applications for RUN to operate as a commercial telephone seller and a Florida charitable solicitor, and certified to the Florida Office of Financial Regulation that RUN did not provide or sell loan modifications. PX01, Att. DG, FG-FI.

4. Relief Defendants Should Disgorge Ill-Gotten Gains

The FTC may obtain disgorgement from relief defendants, or nominal defendants, who have received ill-gotten gains and do not have a legitimate claim to those assets; knowledge of or participation in the wrongdoing is not required for recovery from such persons. *See Transnet,* 506 F. Supp. 2d at 1273; *CFTC v. Int'l Berkshire Grp. Holdings, Inc.*, No. 05-61588, 2006 WL 3716390, at *10 (S.D. Fla. Nov. 3, 2006); *FTC v. Ivy Capital, Inc.* No. 2:11-CV-283 JCM GWF, 2011 WL 2118626, at *4 (D. Nev. May 25, 2011).

Here, Relief Defendant Trustee Soltura (named only in her capacity as Trustee of the Trust) authorized the payment processor to directly deposit consumer funds into the trust's bank account. *See, e.g.*, PX01, Att. JI, at 2174. In her capacity as trustee, Soltura is an indispensable

party to this lawsuit. *First Nat'l Bank v. Broward Nat'l Bank*, 265 So.2d 377, 378 (Fl. Ct. App. 1972). As of June 2012, the trust's bank account directly received at least $330,000 in consumer funds. PX01 ¶ 77. There is no evidence the San Lazaro Trust has a legitimate claim to these ill-gotten gains; indeed, it is difficult to fathom how a life insurance trust could provide services to the operation. For these reasons, assets of the San Lazaro Trust equal to the amount of proceeds it received from the common enterprise should be frozen, and the Trust should be ordered to complete financial disclosures on an expedited basis.

C. The Scope of the Proposed TRO is Necessary and Appropriate

1. Asset Freeze

When a district court determines that the FTC is likely to prevail in a final determination on the merits, it has "a duty to ensure that . . . assets . . . [are] available to make restitution to the injured customers." *World Travel Vacation Brokers*, 861 F.2d at 1031. The Eleventh Circuit has repeatedly upheld the authority of district courts to order an asset freeze to preserve the possibility of consumer redress. *See, e.g., Gem Merch. Corp.*, 87 F.3d at 469; *U.S. Oil & Gas,* 748 F.2d at 1433-34.[12] To help ensure the availability of assets, preserve the status quo, and guard against the dissipation and diversion of assets, the Court may freeze the assets of corporate and individual defendants where, as here, the individual defendants controlled the deceptive activity and had actual or constructive knowledge of the deceptive nature of the practices. *Amy Travel*, 875 F.2d at 574-75; *In re: Nat'l Credit Mgmt. Grp., LLC*, 21 F. Supp. 2d 424, 462 (D.N.J. 1998).

Courts have held, and experience has shown, that Defendants who engage in deceptive or other serious law violations are likely to waste assets prior to resolution of the action. *See SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972). *See generally* Frazier Dec. Here, in addition to the law violations described *supra*, there is additional cause for concern.

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[12] This Court has frozen defendants' assets in many FTC enforcement actions. *See, e.g., FTC v. Premier Precious Metals, Inc.*, No. 0:12-cv-60504-RNS (S.D. Fla. Mar. 20, 2012); *FTC v. VGC Corp.*, No. 1:11-cv-21757-JEM (S.D. Fla. May 16, 2011); *FTC v. Amer. Precious Metals, LLC*, No. 0:11-cv-61072-RNS (S.D. Fla. May 13, 2011); *FTC v. U.S. Mortg. Funding, Inc.*, Case No. 11-CV-80155-Cohn (S.D. Fla. Feb. 20, 2011) *FTC v. First Universal Lending, LLC*, Case No. 09-82322-Civ-Zloch (S.D. Fla. Nov. 19, 2009); *FTC v. Kirkland Young, LLC*, No. 09-23507-Civ-Gold (S.D. Fla. Nov. 18, 2009); *FTC v. 1st Guar. Mortg.*, No. 09-61840-Civ-Seitz (S.D. Fla. Nov. 17, 2009); *FTC v. Global Mktg.*, 594 F. Supp. 2d 1281 (M.D. Fla. 2009).

Bank records reveal that accounts receiving large disbursements of consumer funds are being emptied out with alarming speed and frequency. *See generally* Frazier Dec.; PX02. For example, a bank account in the name of "Debt Soft, LLC" (for which Defendant Landolfi is the sole signatory) received close to $500,000 in direct consumer deposits via the scheme's payment processor between November 2011 and July 2012. PX02 ¶¶ 5, 9-10. As of July 31, 2012, only $9522 remained in this account. *Id.*, Att. E, at 152. The rest of the consumer funds were quickly funneled to entities controlled by or individuals associated with Defendants Radzikowski and Desmond. *Id.* ¶ 5, 9-10.

Another bank account controlled by Defendant Landolfi in the name of "US Ventures LLC" received consumer funds through a complicated maze of transactions. PX02 ¶¶ 5, 19. In a four-month period from April through July 2012, those funds were used to pay $165,500 for the benefit of Defendant Radzikowski (to him directly, to his shell corporation and on his behalf to Paradise Island Limited); and $170,000 for the benefit of Defendant Desmond (to him directly, to his shell corporation, and to Shelie Desmond, who shares a residential address with him). *Id.* ¶¶ 19-20. The account was also used to wire $138,750 to a subsidiary of Las Vegas casino operator Wynn Resorts. *Id.* In addition, more than $330,000 has been diverted to an irrevocable life insurance trust. The convoluted path and dissipation of consumer funds demonstrates that, without an asset freeze, further dissipation and misuse of assets is likely.

2. Temporary Receiver

The FTC also seeks the appointment of a temporary receiver pursuant to the Court's equitable powers under Section 13(b) of the FTC Act.[13] *U.S. Oil & Gas*, 748 F.2d at 1432. This remedy is appropriate where, as here, there is "imminent danger of property being lost, injured, diminished in value or squandered, and where legal remedies are inadequate." *Leone Indus. v. Assoc. Packaging Inc.*, 795 F. Supp. 117, 120 (D.N.J. 1992) (citing *McDermott v. Russell*, 523 F. Supp. 347, 352 (E.D. Pa. 1981), *aff'd*, 722 F.2d 732 (3d Cir.1983)). *See also US Oil & Gas*, 748 F.2d at 1432. When a corporate defendant has used deception to obtain money from consumers, "it is likely that, in the absence of the appointment of a receiver to maintain the status quo, the corporate assets will be subject to diversion and waste" to the detriment of the victims. *SEC v. First Fin. Grp. of Tex.*, 645 F.2d 429, 438 (5th Cir. 1981); *SEC v. Keller Corp.*, 323 F.2d 397, 403 (7th Cir. 1963).

[13] The FTC recommends the Court appoint Jonathan Perlman. *See* Pl.'s Recomm. of Receiver.

Here, Defendants are unlikely to be deterred from engaging in deceptive conduct merely by entry of a TRO. Far from being ignorant of the laws enforced by the FTC, the Corporate Defendants have falsely asserted that they comply with the MARS Rule and have stated that they are exempt from the TSR's Do Not Call provisions due to their "non-profit" status. PX01, Att. FL, at 34-35; PX08 ¶ 16; PX17 ¶¶ 40-41. They are aware of the advance fee violations and direct the disbursement of consumer funds to various entities. PX01, Atts. JE-JM. In light of the Defendants' persistent and knowing violations, appointment of a receiver is a reasonable measure by which the Court may ensure that the Defendants will cease their illegal conduct pending a permanent resolution of this case.

3. Immediate Access and Limited Expedited Discovery

The proposed TRO grants the temporary receiver and the FTC immediate access to Corporate Defendants' primary physical business locations to locate Defendants' assets, identify potential additional defendants, locate documents pertaining to Defendants' business practices, and to locate Defendants, should they attempt to evade service. For the same purposes, the FTC seeks limited expedited discovery to discover the nature and location of assets and documents and the extent of assets, including permission to conduct depositions with 48 hours' notice and to issue requests for production of documents on five days' notice. District courts may depart from normal discovery procedures, particularly in a case involving the public interest. *See* Fed. R. Civ. P. 26(d), 30(a)(2), 33(a), and 34(b). *See also Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) (equitable powers broader where public interest is involved). Immediate access and limited expedited discovery are also necessary to protect evidence against destruction.

4. Cure Letter

The Court should prohibit Defendants from enforcing a gag clause in a release agreement that has been forced upon certain consumers, and require Defendants to provide assistance in providing a corrective letter. In some instances, Defendants have conditioned refunds upon the consumer's execution of a waiver that requires consumers to promise that they will "not initiate or voluntarily participate in, or provide assistance with respect to, any legal action, claim or proceeding against" the company. PX20 ¶¶ 8, 9, Atts. C & D; PX01 ¶¶ 96-97, Atts. KI, KK. Courts have looked with disfavor upon such clauses as contrary to the public interest. *See, e.g.*, *EEOC v. Astra USA, Inc.*, 94 F.3d 738, 744 (1st Cir. 1996) (agreement interfering with communication between employee and EEOC "sows the seeds of harm to the public interest");

Gen. Steel Domestic Sales, LLC v. Steelwise, LLC, No. 07cv1145, 2009 WL 185614 (D. Colo. Jan. 23, 2009). That release infringes the public interest here because it likely has left consumers with the impression that they will face reprisal if they cooperate with the FTC. PX01 ¶¶ 96-99. To ensure that the Commission can vindicate its law enforcement mission, the Court should bar Defendants from enforcing the clauses and require that they identify the consumers who signed it, and otherwise aid in the process of providing a cure letter if requested.

D. The Requested Relief Should Be Granted *Ex Parte*

Relief should to be issued without notice so that final relief can be effectuated. Fed. R. Civ. P. 65(b) requires a showing that irreparable damage or loss will occur before issuance of an ex parte TRO. *See Cardile Bros. Mushroom Packaging v. Wonder-Land Invs., Inc.*, No. 09-20894, 2009 WL 936671, at *1 (S.D. Fla. April 6, 2009). In such cases, *ex parte* relief is "indispensable" because "it is the sole method of preserving a state of affairs in which the Court can provide effective final relief." *In re Vuitton et Fils S.A.*, 606 F.2d 1, 4 (2d Cir. 1979); *see also FTC v. U.S. Mortgage Funding,* 2011 WL 810790, at * 1 (S.D. Fla. Mar. 1, 2011).

Ex parte relief is indispensable here. Thousands of financially-distressed consumers have up to $750 automatically deducted from their bank accounts every month. Once these funds are in Defendants' control, they are freely shifted among various entities, diverted to personal use, or withdrawn as cash. *See* Section IV.C.1; PX01 ¶ 68; PX02; Frazier Dec. ¶¶ 13-15. The FTC's experience shows that defendants engaged in similar schemes have withdrawn funds and moved or shredded documents upon learning of impending legal action. Frazier Dec. ¶ 15.

Also militating in favor of *ex parte* relief, Defendants have taken affirmative steps to evade law enforcement and conceal themselves. For example, when the State of Florida was investigating a complaints about Defendants' business practices, Defendant Edwards submitted a false statement – notarized by Defendant Dinh – that RUN did not offer or market loan modification services. PX01, Att. DG. In addition, Defendants use post office boxes and virtual offices as their places of business. *See supra*, Section II.A; PX01 ¶ 79. Moreover, they have changed the consumer-facing name of the operation numerous times in a short period and instructed employees not to acknowledge to consumers that the companies are related. PX17 ¶¶ 8, 43. Indeed, after changing the program's name to Prime Access Management, employees were instructed to purge documents referring to Prime Legal Plans, and managers inspected each work station to ensure it was done. PX17 ¶ 48.

Individual defendants have also taken measures to conceal themselves or their involvement in the scheme as well. For example, Defendant Dinh lists a commercial address on his drivers' license. PX01 ¶ 80.e. And although Defendants Radzikowski and Desmond do not appear on the Corporate Defendants' corporate filings, they have each been identified as the "boss" and received substantial payments from the scheme. *See generally* PX02. In light of the totality of these circumstances, *ex parte* relief is warranted.

V. CONCLUSION

For the reasons set forth above, the FTC respectfully requests that the Court enter the proposed TRO to halt Defendants' violations of the FTC Act, the MARS Rule, and the TSR, and to help ensure the possibility of effective final relief for consumers.

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Respectfully submitted,

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