UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

GLOBAL PROCESSING SOLUTIONS, LLC, et al.,

Defendants.

Case No. _____

1:17-CV-4192

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S *EX PARTE* MOTION FOR A TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE, APPOINTMENT OF RECEIVER, IMMEDIATE ACCESS TO BUSINESS PREMISES, AND OTHER EQUITABLE RELIEF

(FILED UNDER SEAL)

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I. INTRODUCTION

The FTC brings this action to stop a debt collection enterprise from continuing to victimize consumers through a host of illegal practices. Defendants' main tactic is to claim that consumers have committed theft or another crime, and that dire consequences—including lawsuits, garnishments, and even criminal charges or arrest—will follow unless an immediate payment is made. Often, defendants underscore the urgency of their threats by claiming that they are in the process of sending "sealed documents" or a "uniformed officer" to a consumer's home or place of employment.

In reality, this "pay up or else" collection scheme is a high-pressure hoax: the consumers haven't committed a crime; there are no pending criminal charges or other legal actions; and the claims about "sealed documents" and a "uniformed officer" are completely phony. In fact, in some cases, consumers don't even owe the debts that defendants are attempting to collect. But even when consumers ask questions or dispute defendants' claims, defendants double-down on their illegal bluffs. Indeed, anticipating consumer pushback, defendants developed written rebuttal and response templates that reiterate their false threats and suggest that consumers will

get relevant documents at a "180/80 hearing"—apparently referring to a felony complaint procedure.[1]

Furthermore, in attempting to evade liability, defendants have created a moving target by using multiple business names and putting different parts of their operation under nominally distinct corporate entities. For example, defendants have shifted the name they use in collection calls from American Credit Adjusters to Advanced Mediation Group, and most recently to Apex National Legal Services and Regional Solutions.[2] Employees are paid through separate but sometimes overlapping payrolls, and merchant accounts have been set up under additional fronts, including Global Processing Solutions, Intrinsic Payment Solutions, and North Center Collections.

To protect consumers from additional harm, the FTC seeks an *ex parte* temporary restraining order ("TRO") under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The proposed TRO would immediately halt defendants'

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[1] Coody Decl. 2 ¶ 11, Att. A at 8. Specifically, the "180/80 hearing" part of the rebuttal appears to be a reference to N.Y. Criminal Procedure Law § 180.80, which "prohibits the state from holding a defendant arrested on a felony complaint for longer than five days without either disposing of the felony complaint or commencing a hearing." *Snyder v. Smith*, No. 04 CV 81, 2008 WL 1969326, at *3 (E.D.N.Y. May 6, 2008); *see also* Goldstein Decl. 60 ¶¶ 130-131 (online search of "180/80 hearing" showing closest corollary is N.Y. Criminal Procedure Law § 180.80).

[2] Goldstein Decl. 58-59 ¶¶ 127-128 & tbl. 1, 65 ¶¶ 145-146; Goldston Decl. Att. A.

deceptive practices, preserve assets for potential redress to consumer victims, appoint a temporary receiver, and permit the FTC and receiver to immediately access defendants' business premises to inspect and copy documents.[3] These measures are necessary to prevent ongoing consumer injury, dissipation of assets, and the destruction of evidence, thereby preserving this Court's ability to provide effective final relief. The requested preliminary relief is particularly appropriate where, as here, defendants have attempted to evade scrutiny through creating multiple business fronts, employing phone numbers with a variety of different area codes, and using mail drops as business addresses.

II. DEFENDANTS

The defendants include ten interrelated business entities that operate as a common enterprise and the three individuals—Lamar Snow, Jahaan McDuffie, and Glentis "Glen" Wallace—that control them.

[3] This Court has granted equivalent temporary equitable relief, on an *ex parte* basis, against similarly fraudulent debt collection operations. *See, e.g.*, *FTC. v. Primary Group, Inc.*, No. 1:15-cv-01645-MHC (N.D. Ga. May 11, 2015); *CFPB v. Universal Debt & Payment Solutions, LLC et al.*, No. 1:15-cv-00859-RWS (N.D. Ga. Mar. 26, 2015); *FTC v. Williams, Scott & Assocs., LLC*, No. 1:14-CV-1599 (N.D. Ga. May 27, 2014); *FTC v. Pinnacle Payment Servs., LLC, et al.*, No. 1:13-cv-03455-TCB (N.D. Ga. Oct. 21, 2013).

A. Corporate Defendants

Defendants' operation consists of ten business entities. Although there is some overlap, the enterprise appears to be roughly divided between four consumer-facing businesses that primarily have made collection calls and six businesses that primarily have performed operational tasks.

1. Consumer-Facing Entities

The consumer-facing entities are Diverse Financial Enterprises, American Credit Adjusters, Advanced Mediation Group, and Apex National Services. These entities make collection calls, which, as detailed below, rely completely on false threats of arrest and other illegal tactics. As consumer complaints filed against the enterprise indicate, these businesses have been used in rough succession, with one entity winding down as another entity starts up.[4]

Defendants' initial consumer-facing entity, **Diverse Financial Enterprises, Inc.**, was incorporated on March 22, 2012.[5] After filing annual registrations in 2013 and 2014, defendants stopped filing required corporate paperwork, and Diverse Financial Enterprises was administratively

[4] Goldstein Decl. 58-59 ¶ 127 & tbl. 1.

[5] Goldstein Decl. 31 ¶ 79; Ex. 42 at 1.

dissolved.[6] Consumer complaints indicate that the operation primarily used the Diverse Financial Enterprises name in collection calls in 2013 and 2014.[7]

By the time Diverse Financial Enterprises wound down, defendants had started making collection calls through two new businesses: American Credit Adjusters and Advanced Mediation Group.[8]

Defendants formed **American Credit Adjusters, LLC**, in August 2014, and started operating through the company in early 2015.[9] Defendants used American Credit Adjusters to make collection calls, obtain new corporate bank accounts, open a new payroll account, and establish a fresh website.[10] Although defendants filed a Certificate of Termination for the

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[6] Goldstein Decl. 31-32 ¶¶ 80-81; Ex. 42 at 3-5.

[7] Goldstein Decl. 58-59 ¶ 127 & tbl. 1.

[8] During the same time period, defendants also made collection calls under the name of corporate defendant North Center Collections, Inc. North Center Collections appears to have subsequently shifted towards the operational side of the enterprise, and is discussed below. *See* Goldstein Decl. 58-59 ¶ 127 & tbl. 1.

[9] Goldstein Decl. 32-33 ¶ 84 & 58-59 ¶ 127 tbl. 1; Ex. 44 at 1-2.

[10] Goldstein Decl. 33-35 ¶¶ 86-92; Ex. 43 at 1-2 (website data); Ex. 45 at 1-5 (bank account documents); Ex. 46 at 1 (website registration); Ex. 48 at 1 (payroll account agreement).

company in early 2016, they continued using the American Credit Adjusters name through early 2017.[11]

Defendants formed **Advanced Mediation Group, LLC** in September 2016.[12] Defendants made collection calls under the Advanced Mediation Group name from early 2016 (before the entity was formed) to early 2017.[13] Defendants do not appear to have opened bank accounts or service contracts through Advanced Mediation Group. They also did not file an annual registration for the company, and in March 2017, a Statement of Resignation of Registered Agent was filed with no replacement Agent named.[14]

In late 2016, defendants started shifting their consumer-facing business to **Apex National Services, LLC**.[15] This company was created in March 2016, but remained largely dormant until late 2016, at which time

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[11] Goldstein Decl. 33 ¶ 85 & Ex. 44 at 3-4 (certificate of dissolution), 58-59 ¶ 127 & tbl. 1.

[12] Goldstein Decl. 35-36 ¶¶ 93-94; Ex. 50 at 1-2. Advanced Mediation Group is the only corporate defendant that was not organized by one of the individual defendants. It was established by Jermain Kyle, who received payroll and bonus checks from Capital Security Investments. Goldstein Decl. 35 ¶¶ 93-94; Ex. 50 at 4; *see also* Cheung Decl. Att. A.

[13] Goldstein Decl. 58-59 ¶ 127 & tbl. 1. The FTC also identified two complaints that were filed against Advanced Mediation Group in 2014, but these appear to be anomalies, with no complaints being filed in 2015. *Id.*

[14] *Id.* at 35-36 ¶ 94; Ex. 50 at 3.

[15] Goldstein Decl. 37 ¶¶ 98-99; Ex. 53 at 1-2.

defendants started to regularly use the Apex National Services name in collection calls.[16]

Most recently, defendants have started using a fictitious business name in collection calls—Regional Solutions, Inc.—that does not appear to have been registered or otherwise formalized.[17]

2. Operational Entities

In carrying out their collection attempts, the consumer-facing entities have relied on services and goods provided by six operational entities: Global Processing Solutions, Intrinsic Solutions, Capital Security Investments, North Center Collections, Mitchell & Maxwell, and Mirage Distribution. These businesses provide and maintain, among other things, phone lines used to make collection calls, collection software accounts, skip-tracing accounts, and rented office space.[18] These entities also have controlled the merchant accounts through which the operation has obtained over $3.4 million in payments from its victims.[19]

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[16] Goldstein Decl. 58-59 ¶ 127 & tbl. 1.

[17] *Id.*; *see also* Ex. 63.

[18] *See generally* Goldstein Decl. 53-60 ¶¶ 109-131 (summarizing mechanics of the scheme).

[19] *Id.* at 60-61 ¶ 132 & tbl. 4.

Global Processing Solutions, LLC ("Global Processing") was created on August 8, 2014 as a corporation, and converted to a limited liability company on July 8, 2016.[20] Defendants used Global Processing to maintain financial accounts, obtain consumer payments, transfer funds related to debt remits or portfolios, and cover operational expenses.[21] From January 2015 through December 2016, Global Processing took in more than $1.3 million in consumer funds. During this time period, the company wired approximately $675,000 in payments that appear to have been for debt remits, debt portfolio purchases, or investments.[22] It also covered costs for payment gateways and phone line accounts, transferred approximately $260,000 to Capital Security Investments, and had roughly $47,000 in cash withdrawals.[23]

Intrinsic Solutions, LLC, was created September 1, 2015 as a corporation, and was converted into a limited liability company on July 8,

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[20] Goldstein Decl. 7 ¶ 17; Ex. 1 at 1-6.

[21] Goldstein Decl. 8-13 ¶¶ 20-31, 60-61 ¶¶ 133-136 & tbl. 4; Ex. 3 at 1-9 (bank account signatory cards); Ex. 5 at 1-3 & Ex. 6 at 2-16 (merchant account agreements); Ex. 9 at 1-2 (website data). A debt remit occurs when a debt collector has a contingency relationship with the owner of a debt. When the collector obtains a payment on such a debt, it may remit a portion of the funds back to the owner.

[22] Goldstein Decl. 60-61 ¶¶ 132-136 & tbl. 4.

[23] *Id.* at 61-62 ¶¶ 135-136.

2016.[24] Intrinsic Solutions maintained a corporate bank account through which it obtained $1.16 million in consumer funds between March and November 2016.[25] At the end of this period, Intrinsic Solutions stopped accepting payments through its merchant accounts.[26] But the company continued to operate, receiving approximately $468,000 from North Center Collections between November 2016 and March 2017.[27] Intrinsic Solutions has capitalized the other corporate defendants, transferring approximately $678,000 to Capital Security Investments, $420,000 to Apex National Group, and $113,000 to North Center Collections.[28] The company transferred an additional $120,945 to individual defendant Lamar Snow and had more than $84,000 in cash withdrawals.[29]

Defendants created **North Center Collections, Inc.** ("North Center") on November 19, 2015.[30] In December 2015, North Center obtained a lease on office space at 4319 Covington Highway in Decatur, and its bank account

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[24] *Id.* at 14-15 ¶¶ 33-34; Ex. 11 at 1-6.

[25] Goldstein Decl. 15-18 ¶¶ 35-41 & 60-61 ¶ 137 tbl. 4; Ex. 13 at 1-27 (bank account signatory cards); Ex. 14 at 1-6 (merchant processing application).

[26] Goldstein Decl. 17-18 ¶ 41.

[27] *Id.* at 62 ¶ 137.

[28] *Id.* at 62-63 ¶ 138.

[29] *Id.*

[30] *Id.* at 19 ¶¶ 45-46; Ex. 18 at 1-2.

became active.[31] North Center appears to have started engaging in both the consumer-facing and operational sides of the enterprise: consumer complaints indicate that the operation used the North Center name in collection calls from mid-2016 to early 2017, and it also maintained a merchant account, procured skip-tracing and collection database accounts, and processed payroll for some employees.[32]

After defendants stopped using the North Center name for collection calls, North Center continued to perform some of the operational aspects of the enterprise. Through the North Center merchant account, defendants took in over $958,000 in consumer payments between late November 2016 and early April 2017.[33] Although a Certificate of Dissolution was filed for North Center on December 31, 2016, the corporation has continued to operate.[34]

Defendants formed **Capital Security Investments, LLC** on November 3, 2014.[35] Defendants have used Capital Security Investments to

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[31] *Id.* at 19-20 ¶ 47, Ex. 19 at 113, & Ex. 20 (office space); Goldstein Decl. 20-21 ¶¶ 48-49 & Ex. 21 at 1-7 (bank accounts).

[32] Goldstein Decl. 58 ¶ 127 & tbl. 3 (collection calls); Goldstein Decl. 21-23 ¶ 51-52 & 54-57, & Exs. 23-26 (operational services).

[33] Goldstein Decl. 60-61 ¶ 132 & tbl. 4.

[34] *Id.* at 19 ¶ 46 & Ex. 18 (certificate of dissolution); Goldstein Decl. 21 ¶ 50 & Ex. 22 (post-dissolution payroll checks).

[35] Goldstein Decl. 25 ¶ 59; Ex. 28 at 1-2.

obtain bank accounts, phone lines, and a website.[36] The bank accounts appear to have primarily used to issue paychecks, including for individuals who have also been employed by one or more of the other corporate defendants.[37]

Defendants formed **Mitchell & Maxwell, LLC** (f/k/a Mitchell & Maxwell Investigative Services, LLC) on April 20, 2010.[38] Under the Mitchell & Maxwell name, defendants maintained an account with TransUnion Risk and Alternative Data Solutions.[39] This account gave defendants' access to a skip tracing product called TLO, which defendants used to obtain information about consumers.[40] Defendants filed paperwork to administratively dissolve the company, and Mitchell & Maxwell was terminated on November 18, 2016.[41]

Defendants formed **Mirage Distribution, LLC** on November 30, 2016.[42] Defendants have held out Mirage Distribution's principal place of business as 3904 North Druid Hill Road, Suite 145, Decatur, Georgia—which

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[36] Goldstein Decl. 26-27 ¶¶ 61-67; Exs. 30-35.

[37] Goldstein Decl. 27 ¶ 63; Ex. 32; Cheung Decl. Att. A.

[38] Goldstein Decl. 28-29 ¶¶ 68-70; Ex. 36 at 1-4.

[39] Goldstein Decl. 29-30 ¶¶ 73-74; Ex. 38 at 1-8.

[40] Ex. 38 at 4.

[41] Goldstein Decl. 28-29 ¶ 70; Ex. 36 at 8-9.

[42] Goldstein Decl. 30 ¶¶ 75-76; Ex. 39 at 1-2.

appears to be a mailbox in a UPS store.[43] Financial records indicate that Mirage Distribution has been almost wholly capitalized by Global Processing, and many of its employees were transferred over from North Center Collections.[44]

B. Individual Defendants

The individual defendants running the enterprise are Lamar Snow, Jahaan McDuffie, and Glentis "Glen" Wallace. Snow, McDuffie, and Wallace have been at the center of the debt collection enterprise.[45]

Lamar Snow is the CEO, with bank signatory power, of Global Processing Solutions, Intrinsic Solutions, North Center, and Diverse Financial Enterprises.[46] In addition, until October 2015, Snow was an authorized signer on corporate bank accounts for Capital Security

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[43] Goldstein Decl. 30 ¶ 75; Ex. 39 at 1-2.

[44] Goldstein Decl. 31 ¶ 78; Ex. 41 at 1-12; Cheung Decl. Att. A.

[45] A table summarizing the relationships between the individual defendants and each corporate defendant is available at Goldstein Decl. 41-47 tbl. 1.

[46] Goldstein Decl. 7 ¶ 17 & Ex. 1 at 3, 8-9 ¶¶ 20-21 & Ex. 3 at 1-3, 10-11 ¶ 24 & Ex. 5 at 1 (CEO and owner of Global Processing Solutions); Goldstein Decl. 14-17 ¶¶ 33-40, Ex. 13 at 27, & Ex. 14 at 1 (CEO, manager, and sole owner of Intrinsic Solutions); Goldstein Decl. 19-24 ¶¶ 45-57, Ex. 18 at 3-4, Ex. 21 at 1, Ex. 23 at 1, & Ex. 26 at 1 (CEO, CFO, and sole owner of North Center Collections); Goldstein Decl. 31-32 ¶¶ 79-81 & Ex. 42 at 3-4 (CEO and CFO of Diverse Financial Enterprises).

Investments.[47] He is also a primary payroll contact and authorized signer on corporate bank accounts for American Credit Adjusters,[48] and is listed on the payroll for American Credit Adjusters and Apex National Services.[49]

Jahaan McDuffie has been the primary officer—holding himself out as a partner—of Capital Security Investments and American Credit Crunchers, and he is also the CFO of Intrinsic Solutions.[50] In addition, McDuffie has signatory power over the corporate accounts of Global Processing Solutions, Intrinsic Solutions, American Credit Adjusters, and Capital Security Investments.[51] He has also been a corporate contact for the phone accounts of Apex National Services and Capital Security

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[47] Goldstein Decl. 26 ¶ 61 & Ex. 30 at 1-2.

[48] Goldstein Decl. 33-35 ¶¶ 88 & 92; Ex. 45 at 6-7; Ex. 49 at 1.

[49] Goldstein Decl. 35 ¶ 92 & 38 ¶ 103; Ex. 49 at 4; Ex. 56 at 4.

[50] Goldstein Decl. 32-34 ¶¶ 84-92 & Ex. 45 at 1-4 (sole owner, "key executive," and partner of American Credit Adjusters), Goldstein Decl. 26 ¶¶ 61-62, Ex. 31 at 1-5 (sole owner, "key executive," and partner of Capital Security Investments), Goldstein Decl. 15 ¶ 35 & Ex. 13 at 1-5 (CFO of Intrinsic Solutions).

[51] *See* Goldstein Decl. 33-34 ¶¶ 86-88 & Ex. 45 at 1-4 (American Credit Adjusters); Goldstein Decl. 26 ¶¶ 61-62 & Ex. 31 at 1-5 (Capital Security Investments); *see also* Goldstein Decl. 7-8 ¶ 18 & Ex. 2 (rent checks for 2140 McGee Road location signed by McDuffie). Although McDuffie does not appear as an authorized signer on the bank accounts of Global Processing Solutions and Intrinsic Solutions, he has been able to withdraw funds and write checks on these accounts. *See* Goldstein Decl. 9 ¶ 22 & Ex. 4 (Global Processing Solutions), 16 ¶ 37 & Ex. 12 (Intrinsic Solutions).

Investments.[52] In addition, he has been a primary payroll contact for American Credit Adjusters, and is listed on the payrolls of American Credit Adjusters and Apex National Services.[53]

Glentis "Glen" Wallace has been the owner and primary officer—with bank signatory authority—of Mitchell & Maxwell, Mirage Distribution, and Apex National Services.[54] He also has been a primary payroll contact for, and employee of, American Credit Adjusters and Apex National Services.[55] In addition, he is listed on the North Center payroll as an independent contractor and he has received payroll checks from Mirage Distribution.[56]

III. DEFENDANTS' DECEPTIVE AND ABUSIVE COLLECTION PRACTICES

Defendants' debt collection operation has relied completely on unlawful collection practices that violate the FTC Act and the FDCPA. Specifically,

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[52] Goldstein Decl. 39-40 ¶ 107 & Ex. 60 at 3 (Apex National Services), 27 ¶ 64 & Ex. 33 at 2 (Capital Security Investments).

[53] Goldstein Decl. 34-35 ¶¶ 91-92, Ex. 48, Ex. 49 at 3 (American Credit Adjusters), 38 ¶ 103 & Ex. 56 at 3 (Apex National Services).

[54] Goldstein Decl. 28-31 ¶¶ 68-74, Ex. 36 at 7, Ex. 37 at 1-6, Ex. 38 at 3 (LLC member, signatory, and member of Mitchell & Maxwell); Goldstein Decl. 30-31 ¶¶ 75-78 & Ex. 40 at 1-6 (sole owner and "key executive" of Mirage Distribution); Goldstein Decl. 37-38 ¶¶ 98-100 & Exs. 53-54 (owner with control of Apex National Services).

[55] Goldstein Decl. 35 ¶ 92 & Ex. 49 (American Credit Adjusters); Goldstein Decl. 38 ¶¶ 101-103 & Exs. 55-56 (Apex National Services)

[56] Ex. 27 at 13, Ex. 41 at 1; *see also* Cheung Decl. Att. A.

defendants have: (1) falsely claimed that consumers have committed a crime and are facing dire consequences, including lawsuits and criminal action; (2) made false or unsubstantiated claims that consumers owe debts; (3) made unlawful contacts with third parties, such as consumers' employers; and (4) failed to provide statutorily-required disclaimers and notices.

A. Defendants Have Used False, Deceptive, or Misleading Representations to Collect Payments from Consumers.

Section 5 of the FTC Act prohibits "unfair or deceptive practices in or affecting commerce." 15 U.S.C. § 45. An act or practice is deceptive under Section 5 if it involves a material representation or omission that is likely to mislead consumers acting reasonably under the circumstances. *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003). A misrepresentation is material if it involves facts that a reasonable person would consider important in choosing a course of action. *See FTC v. Nat'l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1190-91 (N.D. Ga. 2008), *aff'd* 356 Fed. Appx. 358 (11th Cir. 2009).

In considering whether a claim is deceptive, the Court must consider the "overall, net impression" created by the representation. *Id.* at 1189. The FTC need not prove that defendants' misrepresentations were made in bad faith or were done to defraud or deceive. *See, e.g., FTC v. Windward Mktg.*

Ltd., No. Civ.A. 1:96-CV-615F, 1997 WL 33642380, at *28 (N.D. Ga. Sept. 30, 1997) ("Proof of intent to deceive is not required under Section 5.").

Similarly, Section 807 of the FDCPA prohibits the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. Section 807 provides a non-exhaustive list of examples of actions that violate its strictures, including mischaracterizing the nature of a debt, representing that nonpayment will result in arrest, and threatening actions that can't legally be taken. *See* 15 U.S.C. §§ 1692e(1)(A), (4). In determining whether a practice or statement is deceptive, courts in this district apply a "least-sophisticated consumer" standard to ensure that the FDCPA "protects all consumers, the gullible as well as the shrewd." *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1194 (11th Cir. 2010) (quoting *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2nd Cir. 1993)).

1. Defendants have falsely claimed that consumers have committed a crime and are facing dire consequences.

Defendants' collection business has relied on two related misrepresentations that squarely violate the FTC Act and the FDCPA. First, defendants have misrepresented that consumers have violated a civil or criminal law and that there is an imminent or pending legal matter. Second,

defendants have falsely claimed that dire consequences—including wage garnishment, lawsuit, or arrest—will follow unless the consumer makes an immediate payment.

Defendants often begin their collection attempts with an urgent message: you have committed a crime and are in legal trouble. Defendants typically claim that consumers are facing charges for theft of services, breach of contract, or fraud.[57] And defendants' call scripts, which instruct collectors to assert that there are pending legal charges, leave no doubt that this misconduct is systematic.[58]

Defendants attempt to add an aura of credibility to these lies by falsely representing that they are a legal services business. For example, defendants told one consumer—mirroring a call script used by defendants—that they were calling "in regards to some sealed documents" that a "private courier" would deliver, and that the consumer would "need two forms of identification, as well as a witness to sign off on these documents."[59] Similarly, defendants have claimed to be process servers, from the "Fraud and Finalization

[57] Grissom Decl. 1 ¶¶ 2 & 5 (theft of service or breach of contract); Malone Decl. 1 ¶ 2 (bank fraud and theft); Tayetto Decl. 1 ¶ 4 (credit card fraud).

[58] Coody Decl. Att. A at 2, 3, & 9.

[59] Anthony Decl. 1 ¶ 2; Coody Decl. Att. A at 5 (applicable script).

Division," or calling to provide notice about a judgment.[60] Moreover, defendants' business names—including Advanced Mediation Group and Apex National Legal Services—further reinforce the false impression that the call is about an imminent or pending legal matter.[61]

Having established this false set-up, defendants tighten the screws with phony threats of civil and criminal action. Defendants have threatened consumers with, among other things, lawsuits, wage garnishment, and arrest. [62] But there is no evidence that defendants have filed lawsuits or obtained judgments against consumers, and defendants have no authority to

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[60] Estrada Decl. 3 ¶ 14; Grissom Decl. 1 ¶2; Kaplan Decl. Att. A at 4; Pallotta Decl. 1 ¶ 2; Rich Decl. 1 ¶ 3.

[61] Anthony Decl. ¶ 4; Rich Decl. ¶ 4; Kaplan Decl. Att. A at 4

[62] Anthony Decl. 2 ¶ 8 (threat of lawsuit); Bell Decl. 1 ¶ 3 (threat to arrest consumer in front of consumer's coworkers); Estrada Decl. 2 ¶ 8 & 3 ¶ 14 (threats of lawsuit, garnishment, levy on home, and to have consumer's husband arrested); Goldston Decl. 1-3 ¶¶ 5, 8, & 15-16 (threats to have bench warrant issued and to garnish consumer's social security income); Grissom Decl. 1 ¶¶ 2 & 5 (claimed "charges" would move forward); Johnson Decl. 1 ¶¶ 1 & 4 (threat of garnishment); Kaplan Decl. Att. A at 4 (threats of legal action and arrest); Kassel Decl. 1 ¶ 4 (threats of lawsuit and wage garnishment); Malone Decl. 1 ¶ 2 (threats of lawsuit, wage garnishment, and arrest); Mullane Decl. 1-2 ¶¶ 3 & 9 (threats of lawsuit, federal charges, and arrest); Pallotta Decl. 1 ¶ 3 (claimed there was a judgment and garnishment against consumer); Pinnix Decl. 1 ¶ 8 (threats of court summons, wage garnishment, and loss of employment); Rich Decl. 1 ¶¶ 2-3 & Att. A at 4 (threat of lawsuit); Tayetto Decl. 1-2 ¶¶ 4-9 (threat of arrest).

have consumers arrested for nonpayment of a private debt.[63]

Defendants have issued some of these threats with striking specificity. In one instance, defendants went so far as to threaten to call the consumer's employer to have him fired from his job and "tossed on the street."[64] Other times, defendants have threatened to send "uniformed officials" or a sheriff to a consumer's residence or place of employment.[65] And in some cases, defendants have claimed that if a consumer does not settle immediately, they will owe thousands of additional dollars.[66]

Defendants have profited handsomely from their misconduct. Financial records show that defendants' debt collection enterprise coerced more than $3.4 million out of consumer victims from 2015 to the present, with hundreds of thousands of dollars transferred to the individual defendants or withdrawn

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[63] *See* Goldstein Decl. 59 ¶ 129.

[64] Pallotta Decl. 1 ¶ 3; *see also* Pinnix Decl. 1 ¶ 8 (defendants threatened that consumer would lose her job unless she paid the debt).

[65] Kaplan Decl. Att. A at 4; Goldston Decl. 1 ¶ 4; Graves Decl. 1 ¶ 5; *see also* Tayetto Decl. 2 ¶ 9 (call in which defendants impersonated sheriff).

[66] Anthony Decl. 1-2 ¶ 8 (claiming that if consumer did not settle for $700 that day, consumer would owe $4,200); Coody Decl. 2 ¶ 12 (reporting that collectors were instructed to say "if you want to tack on court costs and attorney's fees, that is your prerogative"); *see also* Coody Decl. Att. A at 3 (script stating that if defendants' "client" is successful in bringing lawsuit, consumer will owe $1,500); Kassel Decl. 1 ¶ 4 (asserting that consumer would owe "all of the court costs and lawyer fees").

as cash.[67]

Defendants' attempts to pressure consumers into making payments with misrepresentations and false threats violates both Section 5 of the FTC Act, as alleged in Count I of the Complaint, and Sections 807(4),(5), and (10) of the FDCPA, as alleged in Count III of the Complaint.

2. Defendants have made false or unsubstantiated claims that consumers owe debts.

Defendants' threats are particularly troubling because, in many cases, the consumers do not appear to owe the purported debts. First, in some cases, defendants have attempted to collect on debts that consumers had already paid. Indeed, even in the face of credible disputes—including a consumer faxing a receipt of a confirmation letter from the original creditor stating that the purported debt had been satisfied—defendants have continued their collection attempts.[68]

Second, defendants have attempted to collect debts that consumers do not recognize.[69] When consumers have requested written verification of an unfamiliar debt, defendants have refused to provide any information and

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[67] Goldstein Decl. 60-63 ¶¶ 132-38 & tbl. 4.

[68] Graves Decl. 1, ¶¶ 3-7 & Att. B; Pinnix at 1-2, ¶¶ 5-6 & 10-11, & Att. A.

[69] Anthony Decl. 1-2, ¶¶ 7-9; Bell Decl. 1 ¶¶ 2-3; Estrada Decl. 1-2, ¶¶ 6-9.

instead made more threats against the consumer.[70] For example, defendants responded to one request for written verification by calling the consumer a "modern day scum bag" and a "deadbeat."[71]

Defendants' telephone scripts also contain rebuttals for consumers who do not recognize a purported debt, directing collectors to claim that the consumer "received correspondence" and that the "[c]orrespondence was never returned so unfortunately this is still considered a valid debt."[72] Defendants also have used a rebuttal for consumers who say that the purported debt is the result of ID theft; the rebuttal directs the collector to make spurious claims that defendants' client has "proof that they have filed necessary paperwork" and that the consumer has "24 hours from the time of the call otherwise acct will be filed as willful invasion."[73]

These problems are further compounded by the apparent source of some of the debt portfolios that defendants have attempted to collect payments on. Evidence obtained from an informant shows that defendants

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[70] Anthony Decl. 1 ¶ 8; Estrada Decl. 2 ¶ 9.

[71] Bell Decl. 1-2 ¶¶ 3 & 5.

[72] Coody Decl. Att. A at 7.

[73] *Id.*

collected on debts from "BMG" portfolios.[74] BMG debts originate from online payday loan operations associated with Joel Tucker. These debts have been the subject of two recent FTC actions, alleging that: (i) many of the debts arose out of illegitimate loans, with lenders using payday loan leads to make high-interest-rate loans to consumers without the consumer's consent or knowledge; and (ii) many of the debts were simply made up. *See FTC v. CWB Servs. et al.*, No. 4:14-cv-00783-DW (W.D. Mo. filed Sept. 5, 2014); *FTC v. SQ Capital, LLC, et al.*, No. 2:16-cv-02816 (D. Kan. filed Dec. 16, 2016).

Taken together, these circumstances—collecting on debts that have been paid, debts that consumer do not recognize, and debts from dubious sources—indicate that in many instances, defendants' claims that consumers owed debts were false or unsubstantiated, and thus violated Section 5 of the FTC Act, as alleged in Count II of the Complaint, and Section 807(2)(A) of the FDCPA, as alleged in Count III of the Complaint.

B. Defendants Have Engaged in Prohibited Communications with Third Parties.

Section 805(b) of the FDCPA bars debt collectors from communicating with third parties other than for the purpose of obtaining a consumer's home or workplace address or telephone number, unless the consumer consents to

[74] Goldstein Decl. 66-67 ¶¶ 149-150 & Ex. 64.

the third-party communication or the communication is reasonably necessary to effectuate a post-judgment judicial remedy. 15 U.S.C. § 1692c(b).

Prohibited third-party communications include contacts with a consumer's family members, such as parents (if the consumer is no longer a minor), grandparents, aunts, uncles, siblings, and children, as well as a consumer's employer or co-workers. *See Berg v. Merchs. Ass'n Collection Div.*, 586 F. Supp. 2d 1336, 1341 (S.D. Fla. 2008).

Here, defendants routinely make improper contacts with third parties, in an attempt to coerce consumers into paying by disclosing information to friends, family members, and coworkers. In fact, defendants even have a call script for speaking to a consumer's employer.[75] The script directs the collector to "ask to speak to the Manger [*sic*] or H/R," inquire how the company handles the "service" of "paperwork," and request that the employer notify the consumer so that the consumer can "contact me directly to put [a] stop [on the] action."[76] Consistent with this direction, consumer declarants have reported that defendants have told employers and relatives that

[75] Coody Decl. Att. A at 6.

[76] *Id.*

consumers would be served with legal papers or subject to a garnishment order.[77]

Defendants' contacts with third parties blatantly violate Section 805(b) of the FDCPA, as alleged in Count IV of the Complaint.

C. Defendants Have Failed to Make Required Disclosures in Their Collection Calls.

Section 807(11) of the FDCPA requires debt collectors to disclose in their initial communications with consumers "that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose," and "to disclose in subsequent communications that the communication is from a debt collector." 15 U.S.C. § 1692e(11). Voicemails are communications under the FDCPA. *See, e.g., Terrell v. Prosperity Fin. Sols., Inc.*, No. 1:12-cv-2515TWT-ECS, 2013 WL 3149374, *2 (N.D. Ga. June 18, 2013).

Defendants routinely fail to make these required disclosures.[78] Rather, as discussed above, defendants frequently represent that they are a legal

[77] Rich Decl. 1 ¶¶ 2-5 & Att. A (defendants contacted phone line for consumer's small business asking what the procedure was to serve consumer at work and also left a voicemail for consumer's employer referencing a complaint that was purportedly filed against consumer); Johnson Decl. 1 ¶¶ 2 & 6 (defendants contacted consumer's mother multiple times threatening to garnish consumer's wages).

services provider or calling about a legal matter. Thus, defendants violate Section 807(11) of the FDCPA, as alleged in Count III of the Complaint.

D. Defendants Have Failed to Provide Consumers with a Validation Notice.

Section 809(a) of the FDCPA requires that unless provided in the initial communication with the consumer, a debt collector must, within five days of the initial communication, provide the consumer with a written notice containing the amount of the debt and the name of the creditor, along with a statement that the collector will assume the debt to be valid unless the consumer disputes the debt within 30 days and that the debt collector will send a verification of the debt or a copy of the judgment if the consumer timely disputes the debt in writing. 15 U.S.C. § 1692g(a). The provision is intended to minimize instances of mistaken identity of a debtor or mistakes over the amount or existence of a debt. S. Rep. No. 382, 95th Cong., 1st Sess. 4, at 4, *reprinted in* 1977 U.S.C.C.A.N. 1695, 1696. Consumers who do not receive the statutorily-required notice may never learn of their right to

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[78] Pallotta Decl. 1 ¶ 3 (representative stated that the company was a law firm and not a debt collection agency); Estrada Decl. 2 ¶ 19; Hatchett Decl. 1 ¶ 7; Anthony Decl. Atts. A & B (voicemail messages left by defendants failing to make the required disclosures and representing call is about legal matter); Kaplan Decl. Att. A (same); Grissom Jr. Decl. Att. A (voicemail lacking disclosure and stating that money will be debited from consumer's account)).

dispute or request verification of the alleged debt or its amount, age, or existence.

Here, defendants do not provide the required notices to consumers.[79] Moreover, defendants have flatly refused to provide verification to consumers who disputed or questioned alleged debts or who asked for verification. For example, one consumer was told that defendants "were past [the] point" of sending documentation of the debt and that the company had previously sent documentation to the consumer's old address.[80] In another instance, the representative refused to provide information about the debt, claiming that the company was a law firm, not a debt collector, and therefore was not required to provide documentation under the Fair Debt Collection Practices Act.[81] Indeed, defendants have even used scripts instructing their collectors to falsely claim that consumers had previously received verification in the

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[79] *See, e.g.*, Bell Decl. Att. B (letter sent by Defendants to consumer that fails to include information about how to dispute the purported debt); Estrada Decl. 2 ¶ 20; Goldston Decl. 4 ¶ 19; Graves Decl. 1 ¶ 8; Grissom Decl. 2 ¶ 8; Hatchett Decl. 1 ¶ 8; Kassel Decl. 2 ¶ 7; Mulland Decl. 2 ¶ 11; Pallotta Decl. 2 ¶ 9.

[80] Estrada Decl. 2 ¶¶ 8-9

[81] Pallotta Decl. 1 ¶ 3.

mail or that consumers couldn't receive written verification without incurring legal fees.[82]

Defendants' failure to provide statutorily-required notices violates Section 809(a) of the FDCPA, as alleged in Count V of the Complaint.

IV. THIS COURT SHOULD ISSUE A TRO TO STOP DEFENDANTS FROM VICTIMIZING CONSUMERS.

This Court should issue the proposed TRO because: (A) it has the authority to do so, (B) the FTC has met the legal standard for a TRO, and (C) the equities weigh in favor for each form of requested relief.

A. This Court Has the Authority to Grant the Requested Relief.

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), 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."[83] 15 U.S.C. § 53(b); *see also FTC v. Gem*

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[82] Coody Decl. Att. A at 7-8

[83] 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

Merch. Corp., 87 F.3d 466, 468 (11th Cir. 1996). Section 13(b) also empowers courts to exercise the full breadth of their equitable powers, including ordering rescission of contracts, restitution, and disgorgement of ill-gotten gains. *Gem Merch.*, 87 F.3d at 468-70. By enabling 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.

B. The FTC Meets the Standard for Granting a Government Agency's Request for Preliminary Injunctive Relief.

For the FTC to obtain injunctive relief, it must "show that (1) [it is] likely to succeed on the merits, and (2) injunctive relief is in the public

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second proviso of Section 13(b), its complaint is not subject to the procedural and notice requirements in the first proviso. *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982); *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984).

interest." *FTC v. IAB Mktg. Assocs., LP*, 746 F. 3d 1228, 1232 (11th Cir. 2014) [hereinafter *IAB Mktg. II*] (citing *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1217 (11th Cir. 1991)). Unlike private litigants, the FTC need not prove irreparable injury because its existence is presumed in a statutory enforcement action. *Univ. Health*, 938 F.2d at 1218. The FTC has amply demonstrated that it will ultimately succeed on the merits of its claims and that injunctive relief is in the public interest.[84]

1. The FTC Has Demonstrated Its Likelihood of Success on the Merits.

The FTC meets the first prong of the legal standard for granting a TRO or preliminary injunction. *IAB Mktg. II*, 746 F. 3d at 1232. In considering an application for such relief, the Court may consider hearsay evidence. *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (court "may rely on affidavits and hearsay materials").

[84] Although not required to do so, the FTC also meets the Eleventh Circuit's four-part test for private litigants to obtain injunctive relief. These violations have caused substantial consumer harm to defendants' victims, and, in the absence of a TRO, Defendants will continue causing harm through their deceptive collection practices. Without the requested relief, the public will suffer irreparable harm from the continuation of defendants' scheme and the likely destruction of evidence and dissipation of assets.

a. The evidence of defendants' collection practices, including internal scripts, shows that defendants have engaged in systematic violations of the FTC Act and the FDCPA.

As set forth in Section III above, the FTC has presented ample evidence showing that it is likely to succeed on the merits of its claims that defendants violated Section 5 of the FTC Act and multiple provisions of the FDCPA. Scripts and other internal documents demonstrate that defendants systematically used false threats and other unlawful tactics to coerce consumers into making over $3.4 million in payments, and this evidence is corroborated by hundreds of consumer complaints and sixteen declarations from consumer victims.[85]

b. The corporate structure and history of defendants' operation establishes that the corporate defendants are a common enterprise, and thus jointly and severally liable for the law violations.

Although generally "the corporate entity will not be disregarded . . . where the public interest is involved, as it is in the enforcement of Section 5 of the Federal Trade Commission Act, a strict adherence to common law principles is not required." *FTC v. Nat'l Urological Grp., Inc.*, 645 F. Supp. 1167, 1182 (N.D. Ga. 2008) (quotations omitted). Hence, "where corporations

[85] *See* Goldstein Decl. 58-59 ¶ 127 & tbl. 3 (consumer complaints).

are so entwined that a judgment absolving one of them of liability would provide the other defendants with 'a clear mechanism for avoiding the terms of the order,' courts have been willing to find the existence of a common enterprise." *Id.* Where entities form a common enterprise, "each may be held liable for the deceptive acts and practices of the other." *Id.*

To determine whether a common enterprise exists, "the pattern and frame-work of the whole enterprise must be taken into consideration." *Id.* (quoting *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964). "Some of the factors that courts evaluate to determine whether a common enterprise exists include common control; the sharing of office space and officers; whether business is transacted through a maze of interrelated companies; the commingling of corporate funds and failure to maintain separation of companies; unified advertising; and evidence that reveals that no real distinction exists between the corporate defendants." *Nat'l Urological Grp., Inc.*, 645 F. Supp. at 1182. Moreover, this inquiry "is not an alter ego analysis," and thus "[t]he entities formally may be separate corporations[ ] but operate as a common enterprise." *FTC v. Direct Benefits Grp.*, No. 6:11-cv-1186-Orl-28TBS, 2013 WL 3771322, at *18 (M.D. Fla. July 18, 2013) (quoting *FTC v. Grant Connect, LLC*, 827 F. Supp. 2d 1199, 1218 (D. Nev. 2011)).

The evidence demonstrates a likelihood that the corporate defendants are a common enterprise. These entities are all controlled by the three individual defendants, with each defendant exercising control over numerous businesses.[86] And there is considerable crossover with the entities' payrolls, with numerous employees working for two or more of the corporate defendants.[87] Similarly, many of the corporate defendants have shared business addresses: five of the corporate defendants (Global Processing Solutions, Capital Security Investments, Diverse Financial Enterprises, Advanced Mediation Group, and Mitchell & Maxwell) have held their address out as 2140 McGee Road in Snellville; and four of the defendants (Intrinsic Solutions, American Credit Adjusters, Advanced Mediation Group, and Apex National Services) have held their address out as 2483 Heritage Village, Suite 16 #204 in Snellville.[88]

Moreover, the corporate defendants have "all worked together as part of the enterprise." *Direct Benefits Grp.*, 2013 WL 3771322, at *19. All of the consumer-facing entities have made collection calls, with victim funds

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[86] *See* Goldstein Decl. 41-46 tbl. 1.

[87] Specifically, around ten percent of the defendants' employees have worked for more than one of the corporate defendants. *See* Cheung Decl. 2 ¶ 6 & Att. A.

[88] *See* Goldstein Decl. 49-52 tbl. 2.

processed through merchant accounts held by one of the operational entities.[89] These funds have been transferred among the various corporate defendants, and used to pay for payroll, skip-tracing software, rent, and other expenses.[90] *See id.* (finding common enterprise where "corporate entities worked cooperatively and complemented one another," including the provision of "employee and operational, administrative, and technological services").

Given the extraordinary interdependence among the corporate entities, there is a strong likelihood that the FTC will prevail in showing that the corporate defendants acted as a common enterprise, and that each entity should be held liable for the acts and practices of the others.

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[89] *See generally* Goldstein Decl. 53-60 ¶¶ 109-131 (describing mechanics of defendants' scheme). Consumer declarants also reported that calls from the consumer-facing entities were associated with phone lines owned by the operational defendants and Apex National Services. *Compare, e.g.*, Anthony Decl. Atts. A-B & Goldston Decl. 1 ¶ 2 *with* Ex. 33 at 1; Kaplan Decl. Att. A, Johnson Decl. 1 ¶ 3, Rich Decl. 1 ¶ 4, & Estrada Decl. 1 ¶ 4, *with* Ex. 60 at 1

[90] *See* Goldstein Decl. 53-60 ¶¶ 109-141 (describing mechanics of scheme and flow of funds).

c. The evidence shows that the individual defendants were at the center of the operation, and therefore liable for the acts and practices of the common enterprise.

In addition to the corporate defendants being liable for their misconduct, the evidence shows a likelihood that individual defendants Snow, McDuffie, and Wallace are liable for injunctive and monetary relief for law violations committed by the common enterprise.

To obtain an injunction against an individual, the FTC must show that the individual either had the authority to control the unlawful activities or participated directly in them. *See IAB Mktg. II*, 746 F.3d at 1233; *Gem Merch.*, 87 F.3d at 470. An individual's status as a corporate officer gives rise to a presumption of liability to control a small, closely held corporation. *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973). More generally, assuming the duties of a corporate officer is probative of an individual's participation or authority. *FTC v. Amy Travel Serv. Inc.*, 875 F.2d 564, 573 (7th Cir. 1989); *FTC v. Holiday Enters., Inc.*, No. 1:06-2939, 2008 WL 953358, *9 (N.D. Ga. Feb. 5, 2008). Even where an individual is not officially designated as a corporate officer, courts consider "the control that a person actually exercises over given activities." *Windward Mktg.*, 1997 WL 33642380, at *5 & 13-14 (holding that defendant did not have to be an officer

or even an employee to control corporate activities). Bank signatory authority or acquiring services on behalf of a corporation also evidences authority to control. *See FTC v. USA Fin., LLC*, 415 Fed. Appx. 970, 974-75 (11th Cir. Feb. 25, 2011) (per curium) (unpublished).

An individual may be held liable for monetary redress for corporate practices if the individual had, or should have had, knowledge or awareness of the corporate defendants' misrepresentations. *Gem Merch.*, 87 F.3d at 470. But the defendant's knowledge need not rise to the level of subjective intent to defraud consumers. *Windward Mktg.*, 1997 WL 33642380 at *13 Instead, the FTC must show that the individual had actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such representations, or an awareness of a high probability of fraud, coupled with the intentional avoidance of the truth. *FTC v. Primary Group, Inc.*, __ Fed. Appx. __, 2017 WL 4329713, at *2 (11th Cir. Sept. 29, 2017) (per curium) (unpublished); *Direct Benefits Grp.*, 2013 WL 37713422, at *20. Participation in corporate affairs is probative of knowledge. *Windward Mktg.*, 1997 WL 33642380 at *13-14.

As discussed above, the individual defendants have been the principals and senior officers of the corporate defendants.[91] They have signatory authority over the corporate defendants' bank accounts and secured phone lines, skip-tracing accounts, payroll, and other critical services.[92] And each individual defendant continued to play a central role in the debt collection scheme as the operation's merchant accounts were terminated and new corporate fronts were established.[93] Hence, there can be little doubt that the individual defendants had authority to control, and knew of, the corporate defendants' wrongful acts. Accordingly, they should be enjoined from violating the FTC Act and the FDCPA and held liable for consumer redress or other monetary relief in connection with defendants' activities.

2. The Equities Weigh in Favor of Injunctive Relief.

Once the FTC establishes the likelihood of its ultimate success on the merits, temporary and preliminary injunctive relief is warranted if the Court, weighing the equities, finds that relief is in the public interest. In balancing the equities between the parties, the "public equities receive far greater

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[91] *See supra* pages 12-14 and the evidence cited therein.

[92] *See supra* pages 12-14 and the evidence cited therein; *see also* Goldstein Decl. 41-45 tbl. 1 (summarizing relationships between individual defendants and each corporate defendant).

[93] *See* Goldstein Decl. 65-66 ¶ 147.

weight." *FTC v. USA Beverages, Inc.*, No. 05-61682-civ-Lenard/Klein, 2005 WL 5654219, at *5 (S.D. Fla. Dec. 5, 2005) (rep. & rec.) (citing *FTC v. World Travel Vacation Brokers*, 861 F.2d 1020, 1029-30 (7th Cir. 1988)). This principle is highly important in enforcing consumer protection laws. *See FTC v. Mallett*, 818 F. Supp. 2d, 142 149 (D.D.C. 2011). Here, because defendants "can have no vested interest in a business activity found to be illegal," *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972) (internal quotations and citations omitted), the balance of equities tips decidedly toward granting the requested relief. *See also CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977) (quoting *FTC v. Thomsen-King & Co.*, 109 F.2d 516, 519 (7th Cir. 1940)) ("A court of equity is under no duty 'to protect illegitimate profits or advance business which is conducted illegally.'").

The evidence here demonstrates that the public equities—protection of consumers from defendants' unlawful debt collection practices, effective enforcement of the law, and the preservation of defendants' assets for final relief—weigh heavily in favor of granting the requested injunctive relief. Granting such relief is also necessary because defendants' conduct indicates

that they will likely continue to deceive the public.[94] *FTC v. Five-Star Auto Club*, 97 F. Supp. 2d, 502, 536 (S.D.N.Y. 2000) ("[P]ast illegal conduct is highly suggestive of the likelihood of future violations.").

By contrast, the private equities in this case are not compelling. Compliance with the law is hardly an unreasonable burden. *See World Wide Factors*, 882 F.2d at 347 ("[T]here 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."). Because the injunction will preclude only harmful, illegal behavior, the public equities supporting the proposed injunctive relief outweigh any burden imposed by such relief on defendants. *See, e.g., Nat'l Soc'y of Prof. Eng'rs. v. United States*, 435 U.S. 679, 697 (1978). Moreover, as discussed below, the requested ancillary relief—including an asset freeze, receivership, and immediate access to defendants' business premises—is warranted by defendants' fraudulent conduct and the risk that assets or evidence will be dissipated or destroyed.

[94] *See* Goldstein Decl. 64-66 ¶¶ 142-48.

V. THE SCOPE OF THE PROPOSED *EX PARTE* TRO IS APPROPRIATE IN LIGHT OF DEFENDANTS' CONDUCT.

The FTC is likely to succeed in proving that defendants are engaging in deceptive practices in violation of the FTC Act and the FDCPA, and that the balance of equities strongly favors the public. Preliminary injunctive relief is thus justified.

A. Conduct Relief to Protect Consumers From Being Victimized During the Pendency of This Case is Appropriate in Light of Defendants' Illegal Conduct.

To prevent ongoing consumer injury, the proposed TRO prohibits defendants from making future misrepresentations while collecting debts. The proposed order also prohibits defendants from engaging in any conduct that violates the FTC Act or the FDCPA, including but not limited to: communicating with third parties regarding consumers' debts, failing to disclose that the caller is a debt collector attempting to collect a debt, and failing to provide validation notices regarding consumers' debts. *See* Proposed Order § I.

As discussed above, this Court has broad equitable authority under Section 13(b) of the FTC Act to grant ancillary relief necessary to accomplish complete justice. *U.S. Oil & Gas*, 748 F.2d at 1434-35. These requested prohibitions do no more than order that defendants comply with the FTC Act

and the FDCPA, and are appropriate given defendants' long-running violations of the law.[95]

B. An Asset Freeze, Appointment of a Receiver, and Immediate Access Provision are Warranted to Prevent the Dissipation of Assets or Destruction of Evidence.

As part of the permanent relief in this case, plaintiff will seek equitable monetary relief, including consumer redress or disgorgement of ill-gotten gains. To preserve the availability of funds to allow for the possibility of this relief, plaintiff requests that the Court issue an order requiring the preservation of assets and evidence. *See* Proposed Order § II (Prohibition on Release of Customer Information), § III (Asset Freeze). The Court also should appoint a receiver over the corporate defendants to effectuate asset protection and compliance with the requested injunction, and allow plaintiff access to

[95] As noted above, this Court has granted equivalent temporary equitable relief, on an *ex parte* basis, against similarly fraudulent debt collection operations. *See, e.g.*, *FTC. v. Primary Group, Inc.*, No. 1:15-cv-01645-MHC (N.D. Ga. May 11, 2015); *CFPB v. Universal Debt & Payment Solutions, LLC et al.*, No. 1:15-cv-00859-RWS (N.D. Ga. Mar. 26, 2015); *FTC v. Williams, Scott & Assocs., LLC*, No. 1:14-CV-1599 (N.D. Ga. May 27, 2014); *FTC v. Pinnacle Payment Servs., LLC, et al.*, No. 1:13-cv-03455-TCB (N.D. Ga. Oct. 21, 2013).

the corporate defendants' business premises to inspect and preserve evidence. *See* Proposed Order §§ XI-XVI & XVIII-XX.[96]

The requested relief is well within this Court's equitable authority, *see, e.g. U.S. Oil & Gas Corp.*, 748 F.2d at 1432 (finding that under section 13(b) a "district court has the inherent power of a court of equity to grant ancillary relief, including freezing assets and appointing a Receiver"), and these forms of relief have been granted by courts in this district in similar FTC debt collection cases.[97]

Where a business is permeated by fraud, courts have found a strong likelihood that assets may be dissipated during litigation. *See, e.g. SEC v. Manor Nursing Ctrs., Inc.*, 457 F.2d 1082, 1106 (2d Cir. 1972). Likewise, in such circumstances a receivership may be necessary because "[t]o allow Defendants to control their frozen assets and to operate their deceptive scheme would create an unreasonable risk that effective relief would be frustrated." *FTC v. Skybiz.com, Inc.*, No. 01-CV-396-K(E), 2001 WL 1673645, at *12 (N.D. Okla. Aug. 31, 2001); *see also FTC v. Millennium Telecard, Inc.*, No. 11-2479 (JLL), 2011 WL 2745963, at *12 (D.N.J. July 12, 2011) ("[T]he

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[96] Plaintiff has identified two receiver candidates in the pleading entitled "Plaintiff's Recommendation for Temporary Receiver," filed simultaneously with this memorandum.

[97] *See supra* note 95.

appointment of a Receiver is a well-established equitable remedy in instances in which the corporate defendants, through its management, has defrauded members of the public."). And immediate access to business premises can be granted under the "broad inherent equitable powers possessed by district courts" where there is evidence that relevant materials may be destroyed and the search would likely "uncover relevant evidence." *See AT&T Broadband v. Tech Communs., Inc.*, 381 F.3d 1309, 1318-20 (11th Cir. 2004) (upholding provision granting *ex parte* search and seizure of residence to private party).[98]

Defendants' conduct warrants an asset freeze, appointment of a receiver over the corporate defendants, and a provision allowing plaintiff immediate access to defendants' business premises to inspect and copy documents.

First, there is ample evidence that the defendants engaged in pervasive and egregious collection tactics: false threats of civil and criminal action, misrepresentations that consumers have committed crimes, and high-pressure threats to consumers' friends, relatives, and coworkers. Given the nature of the defendants' conduct, and the serious injury it has caused, there

[98] FTC's proposed TRO would limit the immediate access to the business premises of the defendants. *See* Proposed Order § XX. This section includes a requirement that defendants turn over materials that are held off-site, including in personal residences. *Id.* at § XX(E).

is a particularly strong basis for preliminary relief that will take control of the defendants' operation—and its unlawful proceeds—out of the hands of the defendants. *See Skybiz.com*, 2001 WL 1673645, at *12.

Second, in addition to the fraudulent nature of defendants' collection practices, defendants have engaged in a slew of evasive conduct—including the establishment of new business fronts, the replacement of terminated merchant accounts, the frequent use of P.O. boxes as business addresses, and the procurement of phone lines with out-of-state area codes—indicating a substantial likelihood that evidence will be destroyed or spoiled if defendants maintain control of their enterprise.[99] The need for an immediate access and receiver to preserve such evidence is especially strong given that critical assets of the defendants—namely debt portfolios—are likely to be "in electronic form and subject to quick, easy, untraceable destruction by Defendants." *See Dell Inc. v. BelgiumDomains, LLC*, No. Civ. 07-22674, 2007 WL 6862341, at *2 (S.D. Fla. Nov. 21, 2007).

Third, defendants' apparent funds appear to be a "mere pittance" compared to their $3.4 million revenue, and "[i]t is extremely unlikely that the frozen assets will be adequate to redress consumer injuries" or to provide

[99] *See* Goldstein Decl. 63-67 ¶¶ 142-152.

full disgorgement. *FTC v. IAB Mktg. Assocs., LP*, 972 F. Supp. 2d 1307, 1313-14 (S.D. Fla. 2013). Given that "defendants perpetrated a fraud on many consumers and therefore are likely liable for a substantial sum in restitution and/or disgorgement," and there is "ambiguity surrounding defendants' financial circumstances," "a broad asset freeze is appropriate." *FTC v. Career Info. Servs., Inc.*, No. 1:96-CV-1464-ODE, 1996 WL 435225, at *5 (N.D. Ga. June 21, 1996).[100] This is particularly true given the corporate defendants' substantial transfers of funds to the individual defendants—including over $120,000 to Lamar Snow and tens of thousands of dollars in cash withdrawals.[101]

In light of the defendants' systematic fraud, their wide-ranging attempts to evade scrutiny, and the relative paucity of funds available for redress or disgorgement, there is a high risk of asset or evidence destruction absent strong temporary relief. Hence, the provisions in the proposed order

[100] To ensure the effectiveness of the asset freeze, the order directs third party financial institutions to effectuate the purpose of the TRO. Proposed Order § IV. The order also includes provisions that would restrain defendants from encumbering or dissipating foreign assets, which is important because defendants may have created offshore asset protection trusts that could frustrate the Court's ability to provide monetary relief. Proposed Order §§ V-VI; *see FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239-44 (9th Cir. 2016).

[101] *See* Goldstein Decl. 62-63 ¶¶ 136 & 138.

imposing an asset freeze, receivership, and allowance of an immediate access are warranted to temporarily preserve assets and evidence.

C. The Court Should Enjoin Defendants From Destroying Evidence and Allow Plaintiff to Take Limited Expedited Discovery.

The proposed order contains a provision directing defendants to preserve records, including electronic records, and evidence. Proposed Order § IX. It is appropriate to enjoin defendants charged with deception from destroying evidence, and doing so would place no significant burden on them. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990) (characterizing such orders as "innocuous").

Plaintiff also seeks leave of Court for limited expedited discovery, including affirmative requirements on defendants to produce a financial statement, to locate and identify documents and assets. Proposed Order § XXII; *see also* Proposed Order § VIII (allowing plaintiff to obtain credit reports of defendants), § V & Atts. A-D (requiring defendants to produce financial disclosures), § X (requiring defendants to report new business activity). District courts are authorized to fashion discovery to meet the needs of particular cases. Federal Rules of Civil Procedure 26(d), 33(a), and 34(b) authorize the Court to alter default provisions, including applicable time frames, that govern depositions and production of documents. A narrow,

expedited discovery order reflects the Court's broad and flexible authority in equity to grant preliminary emergency relief in cases involving the public interest. *See Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *Fed. Express Corp. v. Fed. Expresso, Inc.*, No. 97-cv-1219RSP/GJD, 1997 WL 736530, at * 2 (N.D.N.Y. Nov. 24, 1997) (observing that early discovery "will be appropriate in some cases, such as those involving requests for a preliminary injunction") (quoting commentary to Fed. R. Civ. P. 26(d)).

Here, along with providing plaintiff immediate access to defendants' business premises, expedited discovery is warranted to locate assets, identify documents, and ensure compliance with the other provisions of the order. The request for expedited discovery is limited to these purposes, and is necessary to prevent irreparable harm through the dissipation or concealment of assets or documents.

D. The TRO Should Be Issued *Ex Parte* to Preserve the Court's Ability to Fashion Meaningful Relief.

The substantial risk of asset dissipation and document destruction in this case, coupled with defendants' ongoing and deliberate statutory violations, justifies *ex parte* relief without notice. Federal Rule of Civil Procedure 65(b) permits this Court to enter *ex parte* orders upon a clear showing that "immediate and irreparable injury, loss, or damage will result"

if notice is given. *Ex parte* orders are proper in cases where "notice to the defendant would render fruitless the further prosecution of the action." *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322 (7th Cir. 1984); *see also Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974); *AT&T Broadband*, 381 F.3d at 1319. Especially where plaintiff has shown a high likelihood that defendants' business practices are permeated with fraud, "it [is] proper to enter the TRO without notice, for giving notice itself may defeat the very purpose for the TRO." *Cenergy Corp. v. Bryson Oil & Gas P.L.C.*, 657 F. Supp. 867, 870 (D. Nev. 1987). Mindful of this problem, courts have regularly granted the FTC's request for *ex parte* temporary restraining orders in Section 13(b) cases.[102]

As discussed above, defendants' business operations are permeated by, and reliant upon, unlawful practices. The FTC's past experiences have shown that, upon discovery of impending legal action, defendants engaged in unlawful enterprises withdrew funds from bank accounts, and destroyed

[102] *See supra*, note 95. Congress has looked favorably on the availability of *ex parte* relief under the FTC Act: "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." S. Rep. No. 130, 103rd Cong., 2d Sess. 15-16, *reprinted in* 1994 U.S. Code Cong. & Admin. News 1776, 1790-91.

records.[103] Defendants' conduct and the nature of defendants' illegal scheme provide ample evidence that it is likely that defendants would conceal or dissipate assets absent *ex parte* relief. Thus, this case fits squarely into the narrow category of situations where *ex parte* relief is appropriate to make possible full and effective final relief.

VI. CONCLUSION

In order to stop defendants from harming consumers during the litigation, and protect assets for effective final relief, the FTC respectfully requests that this Court issue the attached proposed TRO.

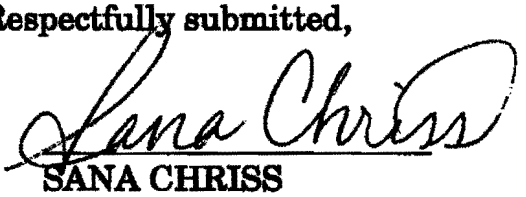
[103] Cert. and Decl. of Colin Hector, Plaintiff's Counsel, at 5-9 ¶¶ 10(a)-(e).

RULE 7.1(D) CERTIFICATION

The undersigned hereby certifies, pursuant to Local Rule 7.1(D), that Plaintiff's Memorandum in Support of Its *Ex Parte* Motion for Temporary Restraining Order with an Asset Freeze and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue has been prepared using Century Schoolbook 13-point type.

Dated: October 23, 2017

Respectfully submitted,



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