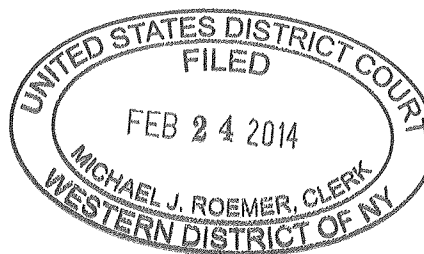


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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FEDERAL CHECK PROCESSING, INC., a New York corporation; FEDERAL RECOVERIES, LLC, a New York limited liability company; FEDERAL PROCESSING, INC., a New York corporation; FEDERAL PROCESSING SERVICES, INC., a New York corporation; UNITED CHECK PROCESSING, INC., a New York corporation; CENTRAL CHECK PROCESSING, INC., a New York corporation; CENTRAL PROCESSING SERVICES, INC., a New York Corporation; NATIONWIDE CHECK PROCESSING, INC., a/k/a National Processing Services, a Colorado Corporation; AMERICAN CHECK PROCESING, INC., a/k/a American Check Processing, Inc., a New York corporation; STATE CHECK PROCESSING, INC., a New York corporation; CHECK PROCESSING, Inc., a New York corporation; US CHECK PROCESSING, INC., a/k/a U.S. Check Processing, Inc., a New York Corporation;

Case No.

14 CV 0122

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE
RELIEF**

FLOWING STREAMS, F.S., Inc., a New York corporation; MARK BRIANDI, individually and as an officer of one or more of the Corporate Defendants; WILLIAM MOSES, individually and as an officer of one or more of the Corporate Defendants,

Defendants, and

EMPOWERED RACING LLC,

Relief Defendant.

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 814 of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692l, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, the appointment of a receiver, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FDCPA, 15 U.S.C. §§ 1692-1692p, in connection with their abusive and deceptive debt collection practices.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), and 1692l.

3. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(1), (c)(2), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),

which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the FDCPA, 15 U.S.C. §§ 1692-1692p, which prohibits abusive, deceptive, and unfair debt collection practices.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the FDCPA, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), and 1692l(a). Section 814 of the FDCPA further authorizes the FTC to use all of its functions and powers under the FTC Act to enforce compliance with the FDCPA, including the power to enforce the provisions of the FDCPA in the same manner as if the violations were violations of an FTC trade regulation rule. 15 U.S.C. § 1692l.

DEFENDANTS

6. Defendant **Federal Check Processing, Inc.** is a New York corporation that has held itself out as doing business from addresses including 3500 Main Street, Suite 130-227, Amherst, New York. Federal Check Processing transacts or has transacted business in this district and throughout the United States.

7. Defendant **Federal Recoveries, LLC** is a New York limited liability company that has held itself out as doing business from addresses including 3842 Harlem Road, Suite 235, Cheektowaga, New York. Federal Recoveries transacts or has transacted business in this district and throughout the United States.

8. Defendant **Federal Processing, Inc.** is a New York corporation that has held itself out as doing business from addresses including 5677 South Transit Road, Suite 301, Lockport, New York 14094. Federal Processing transacts or has transacted business in this

district and throughout the United States.

9. Defendant **Federal Processing Services, Inc.** is a New York corporation that has held itself out as doing business from addresses including 3380 Sheridan Drive, Number 248, Amherst, New York. Federal Processing Services transacts or has transacted business in this district and throughout the United States.

10. Defendant **United Check Processing, Inc.** is a New York corporation that has held itself out as doing business from addresses including 3380 Sheridan Drive, Number 248, Amherst, New York. United Check Processing transacts or has transacted business in this district and throughout the United States.

11. Defendant **Central Check Processing, Inc.** is a New York Corporation that has held itself out as doing business from addresses including 3842 Harlem Road, Suite 400-166, Cheektowaga, New York. Central Check Processing transacts or has transacted business in this district and throughout the United States.

12. Defendant **Central Processing Services, Inc.** is a New York Corporation that has held itself out as doing business from addresses including 5677 South Transit Road, Suite 328, Lockport, New York 14094. Central Processing Services transacts or has transacted business in this district and throughout the United States.

13. Defendant **Nationwide Check Processing, Inc.**, a/k/a National Processing Services, is a Colorado corporation that has held itself out as doing business from addresses including 1942 Broadway Street, Suite 314C, Boulder, CO 80302, and 303 S Broadway, Suite 200-355, Denver, CO 80209. Nationwide Check Processing transacts or has transacted business in this district and throughout the United States.

14. Defendant **American Check Procesing, Inc.**, a/k/a American Check Processing,

Inc., is a New York corporation that has held itself out as doing business from addresses including 3842 Harlem Road, Suite 400-166, Cheektowaga, New York. American Check Processing transacts or has transacted business in this district and throughout the United States.

15. Defendant **State Check Processing, Inc.** is a New York corporation that has held itself out as doing business from addresses including 727 Main Street, Suite 200, Niagara Falls, New York. State Check Processing transacts or has transacted business in this district and throughout the United States.

16. Defendant **Check Processing, Inc.** is a New York corporation that has held itself out as doing business from addresses including 3842 Harlem Road, Suite 400-166, Cheektowaga, New York. Check Processing transacts or has transacted business in this district and throughout the United States.

17. Defendant **US Check Processing, Inc.**, a/k/a U.S. Check Processing, Inc., is a New York corporation that has held itself out as doing business from addresses including 3380 Sheridan Drive, Number 302, Amherst, New York. U.S. Check Processing transacts or has transacted business in this district and throughout the United States.

18. Defendant **Flowing Streams, F.S., Inc.** is a New York corporation that has held itself out as doing business from addresses including 8625 Transit Road Suit 7, Amherst, NY 14051. Flowing Streams transacts or has transacted business in this district and throughout the United States.

19. Defendant **Mark Briandi** is or has been a principal of one or more of the Corporate Defendants, including Federal Check Processing, Central Check Processing, and United Check Processing. He also is or has been a principal and founding member of Federal Recoveries. In addition, Defendant Briandi is or has been a signatory to the bank accounts of

Federal Processing, Federal Recoveries, and United Check Processing. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Defendants, including the acts and practices set forth in this Complaint. Defendant Briandi resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

20. Defendant **William Moses** is or has been a principal of one or more of the Corporate Defendants, including Federal Check Processing, Federal Recoveries, Federal Processing Services, United Check Processing, Central Check Processing, and US Check Processing. He also is or has been a signatory to the bank accounts of Federal Processing, Federal Recoveries, and United Check Processing. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Defendants, including the acts and practices set forth in this Complaint. Defendant Moses resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

21. Defendants are “debt collectors” as defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

22. Relief Defendant **Empowered Racing LLC** (“Empowered Racing”) is a New York limited liability company with its principal place of business in Amherst, New York. Empowered Racing is or has been controlled and managed by Defendants Mark Briandi and William Moses. At times material to this Complaint, Empowered Racing has received funds and

other property that can be traced directly to Defendants' unlawful acts or practices alleged below. Relief Defendant Empowered Racing has no legitimate claim to these funds.

COMMON ENTERPRISE

23. Defendants Federal Check Processing, Federal Recoveries, Federal Processing, Federal Processing Services, United Check Processing, Central Check Processing, Central Processing Services, American Check Processing, State Check Processing, Check Processing, Nationwide Check Processing, US Check Processing, and Flowing Streams (collectively, "Corporate Defendants") have operated as a common enterprise while engaging in the deceptive and abusive acts and practices alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common officers, managers, business functions, employees, and office locations, and that commingled funds. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Briandi and Moses have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise. The Individual Defendants are jointly and severally liable with the Corporate Defendants for acts and practices alleged below.

COMMERCE

24. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' DECEPTIVE AND ABUSIVE COLLECTION PRACTICES

25. Since at least May 2010, and continuing thereafter, Defendants have used abusive, unfair, and deceptive tactics to pressure consumers into making payments on purported debts, often with respect to loans that the consumers have challenged in part or in whole. Defendants regularly have contacted consumers via repeated telephone calls and have threatened consumers with dire consequences—including arrest—if consumers fail to make immediate payments to the Defendants. Defendants regularly have failed to identify themselves as debt collectors, have failed to provide consumers with basic information about themselves or the purported debt, and have failed to provide consumers with the information necessary, and required by law, to confirm or dispute the debt.

26. Many consumers have paid the alleged debts that Defendants have attempted to collect because they have been afraid of the threatened repercussions of failing to pay, because they have believed Defendants are legitimate and are collecting delinquent debt, or because they have wanted to stop the harassment.

27. Since at least May 2010, Defendants have collected and processed millions of dollars in payments for purported debts.

Misrepresentations to Consumers

28. In numerous instances, Defendants have contacted a consumer by telephone repeatedly and asserted that the consumer has committed check fraud or another criminal act. In numerous instances, Defendants have used corporate names including the words “Federal,” “US,” “American,” or “State.” In numerous instances, Defendants have failed to identify themselves as debt collectors and have stated or implied that they are affiliated with federal, state, or local government. In numerous instances, Defendants have asserted that unless the

consumer makes an immediate payment of hundreds of dollars, Defendants will have the consumer arrested.

29. In numerous instances, consumers have inquired about the details of the alleged check fraud or criminal act, but Defendants have refused to discuss the basis for the allegations, or have stated that the consumers previously bounced a check when making payment on a debt. In some instances, Defendants have represented that the consumers had insufficient funds when an online payday lender attempted to debit their accounts.

30. In truth and in fact, Defendants cannot have a consumer arrested for non-payment of a private debt. Moreover, the consumers have not committed check fraud or another criminal act related to the debt that could give rise to criminal sanctions, and the Defendants have no affiliation with any government agencies.

31. In numerous instances, Defendants also have threatened to sue a consumer or represented that a lawsuit already has been filed against a consumer. These threats and representations often indicate that the lawsuit will be brought or has already been brought in a court system that is close to the consumer's residence, or that a process server or Sheriff will serve papers to the consumer at the consumer's home or place of employment. In numerous instances, Defendants also have told a consumer that they will garnish the consumer's wages, levy consumer's bank accounts, or seize the consumer's property.

32. In numerous instances, Defendants have represented that the only way the consumer can avoid the purported lawsuit or other consequences is by making an immediate payment.

33. In truth and in fact, in numerous instances, Defendants have not had the authority or the intent to carry out their threatened actions. Defendants have lacked the authority or

intention to file a lawsuit against the consumer or send a process service or Sheriff to serve papers on a consumer. Defendants also have lacked the authority or intention to garnish a consumer's wages, levy a consumer's bank account, or seize a consumer's property, in part because Defendants have not filed an action and obtained a judgment against the consumer.

34. In numerous instances, Defendants have failed to provide consumers with basic information—including the Defendants' business name, that the call was an attempt to collect a debt, and that any information provided by the consumer would be used to collect a debt—during these calls.

35. In numerous instances, Defendants also have failed to provide consumers within five days after the initial communication with a written notice setting forth: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement that unless the consumer disputes the debt, the debt will be assumed valid; and (4) a statement that if the consumer disputes all or part of the debt in writing within 30 days, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector. In numerous instances, Defendants have refused to provide consumers with this information despite consumer's repeated requests, and as a result, consumers have been unable to exercise their rights under the FDCPA to make a cease-and-desist request or to dispute formally the validity of a debt.

36. In numerous instances, when a consumer has asked about the origin of a purported debt, Defendants have refused to provide details such as the original creditor or the origination date of the loan, or have provided verifiably inaccurate information.

37. In numerous instances where the Defendants have provided consumers with the

name of the purported original creditor, the consumers have attempted to verify the debt with the purported original creditor. In some instances, consumers have been told by the purported original creditor that the consumer does not owe the debt, that the consumer already had satisfied the debt, or that the Defendants do not have the authority to collect on the debt.

38. In numerous instances, in response to Defendants' attempt to collect on debts, consumers have challenged the debt in whole or in part. In numerous instances, consumers have told Defendants that they do not recognize the debt and/or do not believe that they owe the debt. In some instances, consumers have told Defendants that they recognize the debt, but that the debt was paid in full or has been discharged, often years prior to the Defendants' collection attempts.

39. Regardless of the nature of the challenge, Defendants have continued to attempt to collect challenged debts without taking independent steps to verify the accuracy of challenged account information. For example, Defendants continued to threaten a consumer with arrest in 2013 even after she had informed them that her debt had been discharged in bankruptcy in 2011.

Unlawful Disclosure of Information to Third Parties

40. In numerous instances, Defendants have contacted third parties, including friends, family members, or co-workers of putative debtors. In many instances, Defendants disclose information about a purported debt to these third parties.

41. In some instances, Defendant tell third parties that putative debtors have committed check fraud, and that putative debtors are going to be arrested or imprisoned if a debt is not paid. And in some instances, third parties pay the purported debts out of concern that the putative debtors will be sued, arrested, or imprisoned.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

42. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts

or practices in or affecting commerce.”

43. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

Deceptive Representations Regarding Consequences of Non-Payment

44. In numerous instances in connection with the collection of purported consumer debts, Defendants have represented, directly or indirectly, expressly or by implication, that:

- a. Consumers have committed check fraud or another criminal act;
- b. Defendants are going to have a consumer arrested or imprisoned;
- c. Defendants’ are affiliated with government entities, including law enforcement agencies;
- d. Defendants have filed, or intend to file, a lawsuit against a consumer; or
- e. Defendants are going to garnish a consumer’s wages, levy a consumer’s bank account, or seize a consumer’s property.

45. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 44 of this Complaint,

- a. Consumers have not committed check fraud or another criminal act;
- b. Defendants cannot have the consumer arrested or imprisoned;
- c. Defendants are not affiliated with any government entities;
- d. Defendants have not filed, and do not have the authority or intention to file at the time, a lawsuit against the consumer;
- e. Non-payment of a purported debt will not result in the garnishment, attachment, or seizure of the consumer’s wages or property.

46. Therefore, Defendants' representations as set forth in Paragraph 44 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Unsubstantiated Representations That Consumers Owe Debts in Part or in Whole

47. In numerous instances, during telephone calls to consumers who previously had told Defendants that they did not owe the debt that Defendants were attempting to collect, Defendants have represented, directly or indirectly, expressly or by implication, that the consumers owed the debt.

48. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in paragraph 47, Defendants have not had a reasonable basis for these representations at the time the representations were made.

49. Therefore, the making of the representations set forth in paragraph 47 constitute deceptive acts or practices in violation of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE FDCPA

50. In 1977, Congress passed the FDCPA, 15 U.S.C. §§ 1692 *et seq.*, which became effective on March 20, 1978, and has been in force since that date. Section 814 of the FDCPA, 15 U.S.C. § 1692l, provides that a violation of the FDCPA shall be deemed an unfair or deceptive act or practice in violation of the FTC Act.

51. Throughout this Complaint, the term "consumer" as defined in Section 803(3) of the FDCPA, 15 U.S.C. § 1692a(3), means "any natural person obligated or allegedly obligated to pay any debt."

52. Throughout this Complaint, the term “debt” as defined in Section 803(5) of the FDCPA, 15 U.S.C. § 1692a(5), means “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.”

53. The term “location information” as defined in Section 803(7) of the FDCPA, 15 U.S.C. § 1692a(7), means “a consumer’s place of abode and his telephone number at such place, or his place of employment.”

COUNT III

False, Deceptive, or Misleading Representations to Consumers

54. In numerous instances, in connection with the collection of debts, Defendants, directly or indirectly, have used false, deceptive, or misleading representations or means, in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, including, but not limited to:

- a. Falsely representing that the Defendants are affiliated with the United States or any State, including government law enforcement agencies, in violation of Section 807(1) of the FDCPA, 15 U.S.C. § 1692e(1);
- b. Falsely representing the character, amount, or legal status of a debt, in violation of Section 807(2) of the FDCPA, 15 U.S.C. § 1692e(2);
- c. Falsely representing or implying that non-payment of a debt will result in the arrest or imprisonment of a person or the seizure, garnishment, or attachment of a person’s property or wages, when such action is not lawful or when Defendants have no intention of taking such action, in violation of Section 807(4) of the FDCPA, 15 U.S.C. § 1692e(4);

- d. Threatening to take action that is not lawful or that Defendants do not intend to take, such as filing a lawsuit, in violation of Section 807(5) of the FDCPA, 15 U.S.C. § 1692e(5);
- e. Falsely representing or implying that a consumer has committed any crime or other conduct in order to disgrace the consumer, in violation of Section 807(7) of the FDCPA, 15 U.S.C. § 1692e(7);
- f. Using a false representation or deceptive means to collect or attempt to collect a debt, or to obtain information concerning a consumer, in violation of Section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10); and
- g. Failing to disclose in the initial communication with a consumer that Defendants are debt collectors attempting to collect a debt and that any information obtained will be used for that purpose, in violation of Section 807(11) of the FDCPA, 15 U.S.C. § 1692e(11).

COUNT IV

Prohibited Communications With Third Parties

55. In numerous instances, in connection with the collection of debts, Defendants have communicated with persons other than: the consumer; the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator; the consumer's attorney; a consumer reporting agency if otherwise permitted by law; the creditor; the attorney of the creditor; or the attorney of the debt collector. In numerous instances, Defendants have made these communications for purposes other than acquiring location information about a consumer, without having obtained directly the prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a post-judgment

judicial remedy in violation of Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b).

COUNT V

Failure To Provide A Validation Notice

56. In numerous instances, in connection with the collection of debts, Defendants have failed to provide consumers, either in the initial communication with a consumer or in a written notice sent within five days after the initial communication, with statutorily-required information about the debt and the right to dispute the debt in violation of Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a).

RELIEF DEFENDANT

COUNT VI

Unjust Enrichment of Relief Defendant

57. The Relief Defendant Empowered Racing has received, directly or indirectly, funds and other assets from Defendants that are traceable to funds obtained from consumers through Defendants' deceptive, abusive, and unlawful acts and practices described herein.

58. Relief Defendant Empowered Racing is not a bona fide purchaser with legal and equitable title to funds or other assets obtained from consumers through Defendants' deceptive, abusive, and unlawful acts and practices described herein. Relief Defendant will be unjustly enriched if it is not required to disgorge the funds or the value of the benefit it received as a result of Defendants' deceptive, abusive, and unlawful acts and practices. By reason of the foregoing, Relief Defendant holds funds and assets in constructive trust for the benefit of consumers harmed by Defendants.

CONSUMER INJURY

59. Consumers have suffered and will continue to suffer substantial injury as a result

of Defendants' violations of the FTC Act and the FDCPA. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

60. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), empower this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, temporary and preliminary injunctions, an order freezing assets, immediate access to business premises, and appointment of a receiver;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the FDCPA by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the FDCPA, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and disgorgement of ill-gotten monies;

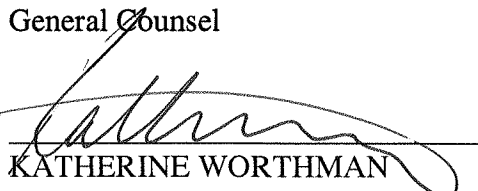
D. Enter an order requiring Relief Defendant Empowered Racing to disgorge all funds and assets, or the value of the benefit they received from the funds and assets, which are traceable to Defendants' unlawful acts or practices; and

E. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: February 24, 2014

Respectfully submitted,

JONATHAN E. NUECHTERLEIN
General Counsel



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