UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION and PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, Plaintiffs, v. NATIONAL CHECK REGISTRY, LLC et al., Defendants,	Case No.:

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

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I. INTRODUCTION

The Federal Trade Commission and the People of the State of New York bring this action to stop a debt collection enterprise from continuing to victimize consumers through a host of deceptive and abusive practices. Defendants call consumers from boiler rooms in upstate New York and claim that the consumers are facing pending charges for check fraud or other fraudulent acts. Defendants then threaten that consumers will face drastic consequences—including arrest or imprisonment—if the charges are not resolved. And Defendants assert that the only way consumers can resolve the charges is to make an immediate payment on a debt.

This "pay up or else" collection scheme is a high-pressure hoax: there is no reasonable basis for the claim that consumers committed fraud; the debts are dubious; there are no pending charges; and the threats of dire consequences are a sham. Even more troubling, Defendants often employ their strong-armed tactics without providing legally-required information about purported debts—such as the name of the creditor to whom the debt is owed—even after consumers make repeated requests. When consumers question or challenge Defendants' alarming claims, Defendants refuse to provide any information and instead redouble their shakedown efforts.

These intimidation tactics all serve the single purpose of extracting money from cash-strapped consumers. Since 2011 alone, Defendants have reaped at least $8.7 million in payments from consumers, many of whom paid purely out of fear. And Defendants have continued to profit from their illegal conduct despite repeated private and public enforcement efforts, including an investigation by the Office of the New York State Attorney General that Defendants resolved by entering into an Assurance of Discontinuance ("AOD"). Rather than comply with the AOD and operate lawfully, Defendants started to shift their operation to a new corporate

entity, eCapital Services. Under this new company name, Defendants have continued using the same illegal collection strategy prohibited by the AOD: claiming that consumers committed check fraud and threatening dire consequences if consumers do not make immediate payments.

Defendants' scofflaw operation violates the Federal Trade Commission Act, 15 U.S.C. § 45(a), the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692p, N.Y. Executive Law § 63(12), and N.Y. General Business Law Articles 22-A (Consumer Protection from Deceptive Acts and Practices) and 29-H (Debt Collection). To stop these violations, the FTC and the State of New York seek an *ex parte* temporary restraining order ("TRO") under § 13(b) of the FTC Act, 15 U.S.C. § 53(b), N.Y. Executive Law § 63(12), N.Y. General Business Law §§ 349 and 602(2), and N.Y. Civil Practice Law and Rules ("CPLR") § 6313. The proposed TRO would enjoin Defendants from continuing their illegal practices, freeze Defendants' assets, appoint a receiver over the corporate entities, allow the Plaintiffs immediate access to Defendants' business premises to inspect and copy documents, and impose other relief. These measures are necessary to prevent continued consumer injury, dissipation of assets, and the destruction of evidence, thereby preserving this Court's ability to provide effective final relief.

II. THE DEFENDANTS

Defendants have operated their abusive debt collection enterprise through nine interconnected business entities primarily led by three individuals.

A. Corporate Defendants

Defendants have conducted business through a revolving set of different corporate entities in an attempt to evade scrutiny by, among other things, dispersing consumer complaints across several ostensibly separate businesses.

Check Systems, LLC was one of Defendants' first debt collection businesses, established on July 23, 2009. (PX01 ¶4 at 2, Att. A at 12-13). Interchex Systems, LLC was formed less than one year later on June 22, 2010, American Mutual Holdings was incorporated around January 20, 2011, and Buffalo Staffing was established on April 27, 2011.[1] (PX01 ¶ 4 at 2, Atts. B, C, D at 17-29,).

Three of the corporate defendants—Morgan Jackson, Goldberg Maxwell, and Mullins & Kane—were formed on May 3, 2011. (PX01 ¶ 4 at 2, Atts. E-G at 31-41). Individual Defendant Joseph C. Bella III admitted that these three entities were created to mislead consumers into thinking that successive collection calls were coming from unrelated companies. (PX02 ¶ 3 at Ex. A at 247, 296). Defendant Joseph Bella wanted to ensure that consumers "didn't get sick of the same people with redundancy calling them." (*Id.*).

Following Joseph Bella's strategy, Defendants continued to create additional entities, simultaneously establishing National Check Registry and Consumer Check Reporting on June 15, 2012. (PX01 ¶ 4 at 2, Atts. H-I at 45-51). After the AOD ordered Defendants Joseph Bella, Check Systems, Interchex Systems, Goldberg Maxwell, Mullins & Kane, Morgan Jackson, and National Check Registry to substantially change their business practices and come into compliance with the law, Defendants started to shift some of their operation to Consumer Check Reporting, renamed as eCapital Services on February 7, 2014, and continued their unlawful operation in defiance of the AOD. (PX01 ¶ 5 at 2, Att. J at 53-54).

B. Individual Defendants

The Individual Defendants are: (1) Joseph C. Bella, III; (2) Diane L. Bella; and (3) Luis Shaw.

[1] Joseph Bella has testified that Buffalo Staffing performs employee-related functions for the enterprise, and does not directly collect on consumer debts. (PX02 ¶ 3 at 247, Ex. A at 290-91).

Joseph Bella has been at the center of the debt collection enterprise since its inception, with ownership or management positions for each of the Corporate Defendants. In testimony taken in December 2012, he identified himself as the creator and sole owner of Check Systems, Interchex Systems, Mullins & Kane, Goldberg Maxwell, Morgan Jackson, and National Check Registry. (PX02 ¶ 3 at 247, Ex. A at 263, 285, 292-93, 295-96, 305, 310, 312). He also identified himself as the owner of Buffalo Staffing and American Mutual Holdings. (PX02 ¶ 3 at 247, Ex. A at 290-91). In addition, corporate documents identify Joseph Bella as the CEO, Manager, and a Member of Check Systems, and the Vice President and a Member of Interchex Systems. (PX01 ¶¶ 4, 6, 11 at 2-4, 14-15, Atts. A, K-L, T at 56-80, 115-18). And he has held himself as the President and CEO of American Mutual Holdings, the President of Buffalo Staffing, and the Manager of eCapital Services formerly known as Consumer Check Reporting. (*Id.* at ¶¶ 5, 11, 18 at 2, 4, 6-7, Atts. J, U, II, JJ, KK at 53, 120-22, 200-7). He also has been heavily involved in procuring services for the enterprise, including skip-tracing services and payment processing merchant accounts. (*Id.* at ¶¶ 11, 12, 15 at 4-5, Atts. Q-R, T-W, Y-Z, at 102-9, 115-18, 134-160).

Joseph Bella has been or is a signatory on all of the Corporate Defendants' bank accounts, including the most recent account, which was opened in the name of eCapital Services. (*Id.* at ¶ 18 at 6-7, Atts. FF-QQ at 186-221). Some of these corporate accounts—upon which Joseph Bella has either sole signatory authority or has signatory authority in addition to Luis Shaw—have been routinely used to make tens of thousands of dollars in personal purchases. (PX03 ¶¶ 6, 14-17 at 378-82, Att. E-F at 407-27). Indeed, in one recent six-month period these accounts were used to make over $87,000 in apparent personal, non-business-related expenses. (*Id.*) These purchases range from extravagancies to everyday home goods, including: a $49,900

Pontiac GTO convertible, a multi-thousand-dollar Walt Disney World vacation, over $16,000 in high-end men's clothing, almost $16,000 in restaurant charges, over $6,000 in groceries, over $1,000 in cosmetic surgery, and a slew of other purchases. *(Id.).*

Diane L. Bella is an officer of Interchex Systems and Check Systems. (PX01 ¶ 6 at 3, Atts. K- L at 55-80). Despite Joseph Bella's claims of sole ownership in his December 2012 testimony, Diane Bella has held herself out as having significant membership interests in the debt collection enterprise since at least mid-2010. An Operating Agreement for Interchex Systems dated June 22, 2010 provides that Diane Bella is a Member and 50% owner of that company. (*Id.* at ¶ 6 at 3, Att. L at 76-80). An Amended and Restated Operating Agreement of Check Systems dated September 1, 2012—less than four months before Joseph Bella's testimony—provides that Diane Bella is the Manager and majority owner of Check Systems, with a 60% membership interest and sole authority to bind the company. (PX01 ¶ 6 at 3, Att. K at 55-74). Diane Bella also has held herself out as the owner and President of Interchex Sytems, the CEO of Check Systems, and the Vice President of American Mutual Holdings in obtaining merchant accounts used by the enterprise to process card payments. (PX01 ¶ 11 at 4, Atts. R-U at 104-122).

Diane Bella is or has been a signatory on a corporate account for Interchex Systems. (PX01 ¶ 20 at 7, Att. VV at 234-35). She has received at least $200,000 in direct transfers from the Corporate Defendants between December 2010 and December 2013. (PX03 ¶ 13 at 380, Att. D at 403-6).

Luis Shaw has been the Chief Operating Officer of Check Systems with a 20% membership interest in the company. (PX01 ¶ 6 at 3, Att. K at 55-74). He also has held himself out as the Treasurer and Manager of Check Systems, the Treasurer of American Mutual

Holdings, and the Treasurer of Buffalo Staffing. (*Id.* ¶¶ 11, 18 at 4, 6-7 Atts. R, FF, II, KK at 104-9, 187, 200, 207). He is or has been a signatory on corporate bank accounts of Check Systems, American Mutual Holdings, National Check Registry, Consumer Check Reporting, and eCapital Services. (*Id.* ¶ 18 at 6-7, Atts. II, OO-QQ at 198-202, 215-21). In addition, Joseph Bella has testified that Shaw has acted as the main compliance officer for the debt collection enterprise. (PX02 ¶ 3 at 247, Ex. A at 327). Three of the corporate accounts that Luis Shaw and Joseph Bella have been a signatory to have been used to make tens of thousands of dollars in personal purchases. (PX03 ¶¶ 6, 14-17 at 378-82, Att. E-F at 407-27).

C. Assurance of Discontinuance

On October 30, 2013, Defendants Joseph Bella, Check Systems, Interchex Systems, Goldberg Maxwell, Mullins & Kane, Morgan Jackson, and National Check Registry ("AOD Defendants") agreed to an AOD with the New York Office of the Attorney General. The AOD resolved allegations that the AOD Defendants illegally collected on payday loans, violated the privacy of consumers by soliciting personal information through employers, and sent letters that falsely purported to be from an attorney. While Buffalo Staffing, eCapital Services, and Consumer Check Reporting were not expressly named in the AOD, the AOD also binds the AOD Defendants' agents, trustees, servants, employees, successors, heirs and assigns, or any other person under their direction and control, whether acting individually or in concert with others, or through any corporate or other entity or device through which they have or are acting or conducting business, operating or doing business in New York State, including businesses in which they have any legal or beneficial interest.

As part of the AOD, the AOD Defendants agreed to abide by all applicable federal and state laws, including the FDCPA. Specifically, they agreed to refrain from:

- representing or implying that the AOD Defendants or a creditor has commenced, or is about to commence, legal action against a consumer when that is untrue;
- representing or implying that a consumer has committed a crime or is subject to arrest;
- threatening to seize a consumer's assets or garnish a consumer's wages;
- communicating with consumers at the consumers' place of employment when the AOD Defendants know, or have reason to know, that the employers do not permit such communications;
- discussing a consumer's alleged debt with third parties—such as the consumer's friends, non-spouse family members, or coworkers—without the consent of the consumer or the consumer's attorney, or unless otherwise permitted by law;
- communicating with third parties for any purpose other than acquiring location information, unless the AOD Defendants have the consent of the alleged debtor or the alleged debtor's attorney, or unless otherwise permitted by law;
- communicating with third parties more than once, except as permitted by the FDCPA or other applicable law; and
- failing to provide consumers, within five (5) days of the initial contact, with the validation rights notice required by the FDCPA, 15 U.S.C. § 1692g.

The AOD also required the AOD Defendants, for a three-year period, to provide the New York Office of the Attorney General with notice in writing within 30 days after incorporating a new debt collection business, or after any of Joseph Bella's debt collection companies start doing business under a new name.

On December 6, 2012, the New York Office of the Attorney General took the testimony of Joseph Bella, who testified that he did not have an interest in any consumer debt collection company apart from Check Systems, Interchex Systems, Goldberg Maxwell, Mullins & Kane, Morgan Jackson, and National Check Registry. (PX02 ¶ 3 at 247, Ex. A at 326**)**. In agreeing to the AOD, the Office of the Attorney General specifically stated that it was relying on the factual representations made by Joseph Bella. (PX02 ¶ 4 at 247, Ex. B at 369). As demonstrated below, Individual Defendant Bella provided false and incomplete information to the Office of the

Attorney General, and the AOD Defendants have breached the AOD in several material respects.

III. DEFENDANTS' UNLAWFUL COLLECTION PRACTICES

The FTC and the Better Business Bureau ("BBB") have received over 660 consumer complaints about Defendants' practices in the last 5 years, 95 of which were filed after Defendants entered into the AOD with the New York Office of the Attorney General. (PX03 ¶¶ 19-23 at 383-85). These practices continue to cause tremendous consumer harm and violate the FTC Act, the FDCPA, N.Y. Executive Law § 63(12), and N.Y. General Business Law §§ 349 and 601. Specifically, Defendants: (1) use false, deceptive, or misleading representations; (2) engage in unlawful communications with consumers' friends, family members, and coworkers; (3) fail to make required disclosures to consumers during collection attempts; (4) fail to provide consumers with required notices that contain basic information about purported debts; and (5) charge consumers unlawful processing fees.

A. Defendants Use 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 § 5 if it involves a material representation, omission, or practice that is likely to mislead consumers who are acting reasonably under the circumstances. *FTC v. Verity Int'l, Ltd.* ("*Verity II*"), 443 F.3d 48, 63 (2d Cir. 2006); *FTC v. Navestad*, No. 09-CV-6329T, 2012 WL 1014818 at *4 (W.D.N.Y. Mar. 23, 2012). In applying this standard, courts look to whether the "overall impression" of the representation at issue was misleading in a manner likely to affect consumers' conduct regarding a product or service. *FTC v. Med. Billers Network, Inc.*, 543 F. Supp. 2d 283, 304 (S.D.N.Y. 2008); *see also FTC v. 1263523 Ontario, Inc.*, 205 F. Supp. 2d 218, 223 (S.D.N.Y. 2002) (observing that the "central issue is whether the misrepresentations tainted the customer's

purchasing decisions"). The FTC need not prove that the misrepresentations were made with an intent to defraud or deceive, or were made in bad faith. *Verity II*, 443 F.3d at 63; *FTC v. Five-Star Auto Club*, 97 F. Supp. 2d 502, 526 (S.D.N.Y. 2000).

The FDCPA similarly 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. The FDCPA provides a non-exhaustive list of actions that violate this prohibition. *Id.* In applying § 1692e, courts look to whether the "least sophisticated consumer" would be deceived, in order to ensure that the statute "protects all consumers, the gullible as well as the shrewd." *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993).

N.Y. Executive Law § 63(12) empowers the Attorney General to seek relief whenever a person or business engages in persistent or repeated "fraud or illegality." Section 63(12) defines the words "fraud" or "fraudulent" to include "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions." A violation of state, federal or local law constitutes illegality within the meaning of § 63(12). *State v. Princess Prestige*, 42 N.Y.2d 104, 105 (N.Y. 1977); *People v. Empyre Inground Pools, Inc*., 227 A.D.2d 731, 732-733 (N.Y. App. Div. 3d Dept 1996). Traditional elements of common law fraud such as reliance, actual deception, knowledge of deception and intent to deceive are not required to establish liability for statutory fraud. *See State v. Apple Health & Sports Clubs, Ltd.* ("*Apple Health III*"), 206 A.D.2d 266, 267 (N.Y. App. Div. 1st Dept 1994), *appeal denied*, 84 N.Y.2d 1004 (N.Y. 1994). The test of fraudulent conduct under § 63(12) "is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *State v. Gen. Elect. Co.*, 302 A.D.2d 314, 314 (N.Y. App. Div. 1st Dept 2003). Section 63(12) protects the credulous and the unthinking as

well as the cynical and intelligent; the trusting as well as the suspicious. *Id*.

N.Y. General Business Law § 349 provides that "[d]eceptive acts or practices in the conduct of any business . . . in this state are hereby declared unlawful." The meaning of deceptive practices under General Business Law § 349 is given parallel construction to that of fraud under Executive Law § 63(12). *State v. Colo. State Christian Coll.*, 76 Misc. 2d 50 (Sup. Ct. N.Y. Co. 1973).

In addition to the general prohibition against deceptive acts and practices, N.Y. General Business Law § 601 sets forth a list of specific prohibited debt collection practices. Among other things, § 601 prohibits debt collectors from: communicating or threatening to communicate the nature of a claim to a consumer's employer prior to obtaining a final judgment; disclosing or threatening to disclose information concerning the existence of a debt known to be disputed by the debtor without disclosing that fact; threatening any action which the debt collector in the usual course of its business did not in fact take; and claiming, or attempting or threatening to enforce a right with knowledge or reason to know that the right does not exist**.**

Defendants' debt collection scheme is wholly reliant on misrepresentations that violate each of these federal and state laws. Specifically, Defendants misrepresent that: (1) consumers have committed check fraud or other fraudulent act; (2) Defendants will have consumers arrested or imprisoned; (3) Defendants have filed or will file legal action against consumers; (4) Defendants will garnish consumers' wages or attach or freeze their assets; and (5) consumers owe debt even when Defendants lack a reasonable basis for making this claim.

Defendants' scare tactics are regularly premised on a core misrepresentation: that consumers have committed check fraud or other fraudulent act. (PX01 ¶ 23-24, Atts. WW, XX at 237-40; PX04 ¶¶ 3, 7-8 at 430-31; PX05 ¶¶ 7, 11, 15, 18 at 434-38, Atts. B, D at 445-446,

453; PX06 ¶¶ 3, 8-11, at 455-58, Att. C at 474, 480-82, ; PX11 ¶ 4 at 544; PX12 ¶¶ 5, 7 at 550; PX13 ¶ 3 at 553; PX15 ¶¶ 7, 11, 14 at 570-72; PX16 ¶¶ 10, 13 at 576-77; PX17 ¶ 5 at 580-81; PX18 ¶¶ 3-4, 7, 10, 14 at 583-86; PX19 ¶¶ 4, 9 at 590-91; PX21 ¶ 3 at 595; PX22 ¶ 3 at 596; PX23 ¶ 3 at 598; PX24 ¶ 3 at 600; PX25 ¶¶ 3, 5-6 at 601-2). Often, in an attempt to bolster their allegations of fraud and imminent legal action, Defendants will claim to be an "investigator" (PX01 ¶ 23-24, Att. WW at 237-40; PX05 ¶¶ 11, 15 at 435-37; Att. B at 445-46), "paralegal" (PX01 ¶ 28-31, Att. ZZ at 237-40; PX08 ¶ 4 at 499, Att. A at 506), "mediator" (PX02 ¶ 9 at 248, Ex. D at 376; PX10 ¶¶ 3, 5, 7, 9 at 529-32, Att. A at 538-40) or representative of a law firm or legal department. (PX07 ¶ 3 at 497; PX12 ¶ 4 at 550; PX13 ¶ 6 at 553; PX15 ¶ 9 at 571; PX16 ¶ 8 at 576). In some cases, Defendants will tell consumers that they are going to consult with a "legal team," send the matter to the Defendants' "attorney network," or have the police serve the consumer with legal documents. (PX05 ¶ 7 at 434; PX06 ¶ 14 at 458-59, Att. C at 474-75, 486, 488; PX11 ¶¶ 6, 8, 10 at 544-45; PX13 ¶¶ 8, 11 at 554-55; PX15 ¶ 12 at 571-72; PX16 ¶ 11 at 576-77).

Building on this fundamental misrepresentation, Defendants threaten consumers with civil or criminal sanctions. In many instances, Defendants have threatened to have consumers arrested or imprisoned. (PX04 ¶ 8 at 431; PX06 ¶ 4 at 455; PX07 ¶ 5 at 497; PX13 ¶ 6 at 553; PX15 ¶ 12 at 571-72; PX16 ¶ 16 at 578; PX19 ¶ 9 at 591; PX21 ¶ 5 at 595). For example, Defendants told a consumer that the police would come to her work and arrest her on felony fraud charges (PX04 ¶ 3-4, 8 at 430-31), and told another consumer that Defendants would obtain a warrant issued for her arrest. (PX15 ¶¶ 12, 18-19 at 571, 573; PX16 ¶¶ 11, 16-17 at 576, 578). In another instance, Defendants told a consumer that he would face jail time and could be arrested at work, and added that the representative would be there watching the consumer get

handcuffed. (PX06 ¶ 4 at 455). In yet another instance, Defendants told a consumer that his mother would be arrested by the U.S. Marshals. (PX07 ¶ 5 at 497).

Defendants also have threatened to file lawsuits against consumers (PX01 ¶¶ 23-31, Atts. WW-ZZ at 237-40; PX02 ¶ 9 at 248, Ex. D at 376; PX05 ¶ 3, 6, 11, 18 at 434-35, 437-38, Atts. B, D at 445-46, 453; PX06 ¶¶ 8-9, 14, 19 at 456-460, Att. C at 479, 482; PX07 ¶ 6 at 497; PX08 ¶¶ 4-5 at 499 Att. A at 506; PX09 ¶¶ 4, 11, 14 at 514- 516, Att. A at 523; PX10 ¶¶ 3-10 at 529-31, Att. A at 538-42; PX11 ¶¶ 3-8, 16 at 544-46; PX12 ¶¶ 5, 7, 11 at 550-51; PX13 ¶¶ 3, 5, 8, 11, 12 at 553-55; PX14 ¶ 4 at 557; PX15 ¶¶ 4, 11-12, 14, 19 at 570-73; PX16 ¶¶ 3, 5-6, 8, 10-11, 13 at 575-77; PX17 ¶¶ 3-5 at 580-81; PX18 ¶¶ 3, 7, 9, 12, 14 at 583-86; PX20 ¶¶ 6, 9 at 592; PX21 ¶¶ 3, 5 at 595; PX24 ¶ 3 at 600; PX25 ¶ 5 at 601; PX26 ¶¶ 3, 5 at 603) and to garnish consumers' wages (PX04 ¶ 4 at 430; PX05 ¶ 7 at 434; PX07 ¶ 6 at 497; PX11 ¶¶ 7-8 at 544-45; PX13 ¶¶ 3, 11 at 553-55; PX 15 ¶ 11; PX 16 ¶ 13; PX17 ¶ 6 at 581; PX18 ¶¶ 3-4, 14 at 583-84, 586; PX19 ¶ 9 at 591; PX21 ¶ 5 at 595; PX25 ¶ 3 at 601). For example, in a series of five voicemails left for the same consumer by three different representatives of the Defendants, Defendants said that their "firm" had been "retained" to contact her "regarding pending allegations," and that Defendants would "proceed legally" if she did not respond immediately. (PX02 ¶ 9 at 248, Ex. D at 376; PX10 ¶¶ 3-10, & Att. A at 538-42).

Defendants have amplified these threats in a number of ways. Defendants often have told consumers that purported lawsuits are imminent or pending, and that if the consumer does not resolve the matter within a handful of days—or even hours—suit will be filed. (PX01 ¶¶ 25-26, 28-31, Atts. YY, ZZ at 237-40; PX04 ¶¶ 4, 9 at 430-31; PX07 ¶ 5 at 497; PX08 ¶ 4 at 499, Att. A at 506; PX09 ¶ 14 at 515-16, Att. A at 523; PX11 ¶¶ 6, 9 at 544-45; PX17 ¶ 5 at 580-81; PX18 ¶¶ 3, 12 at 583-84; PX26 ¶¶ 3, 5 at 603). Defendants also have stated that when Defendants sue,

the consumers will end up owing hundreds or thousands of dollars in additional court costs, attorneys' fees, or fines. (PX04 ¶ 4 at 430; PX09 ¶¶ 4, 11 at 514-15; PX11 ¶ 6 at 544; PX15 ¶ 11 at 571; PX16 ¶ 5 at 575; PX17 ¶ 5 at 580). In addition, Defendants have said that they will intercept consumers' tax refunds (PX11 ¶ 7 at 544; PX13 ¶ 13 at 555; PX17 ¶ 6 at 581), levy or freeze consumers' bank accounts (PX05 ¶ 7 at 434; PX21 ¶ 5 at 595), and report purported debts to consumer reporting agencies (PX04 ¶¶ 3, 8 at 430-31; PX17 ¶ 6 at 581; PX21 ¶ 5 at 595; PX25 ¶ 7 at 602).

In some instances, Defendants have threatened to interfere with the consumer's employment as a result of the purported fraud charges. (PX01 ¶¶ 23-26, Att. XX-YY at 237-40; PX04 ¶ 8 at 431; PX05 ¶¶ 7, 18 at 434, 437-38, Att. D at 453; PX09 ¶ 14 at 515-16, Att. A at 523; PX18 ¶ 3 at 583; PX21 ¶ 5 at 595). For example, Defendants told one consumer that the police and a process server would serve him with legal papers at work, he would lose his professional license, and Defendants would tell his supervisor that he had distributed bad checks. (PX01 ¶¶ 23-24, Att. XX at 237-40; PX05 ¶¶ 7, 18 at 434, 437-38, Att. D at 453). Similarly, Defendants told another consumer that they had "no other choice" but to directly contact her employer's "human resource department to find out how to file papers," and later claimed to have "left a message with human resources . . . regarding to having [her] pulled aside and signing for [her] legal documents." (PX02 ¶ 9 at 248, Ex. D at 376; PX10 ¶ 9-10 at 531-32, Att. A at 541).

In many cases, Defendants give their threats a false aura of credibility by specifically referencing a consumer's local court system or law enforcement agency. (PX01 ¶¶ 25-26, 28-31, Atts. YY, ZZ at 237-40; PX04 ¶ 3 at 430; PX08 ¶ 4 at 499, Att. A at 506; PX09 ¶ 14 at 415-16, Att. A at 523; PX15 ¶¶ 14, 18 at 572-73; PX16 ¶¶ 13, 16 at 577-78; PX20 ¶ 9 at 592; PX17 ¶ 4 at

580). For example, Defendants threatened one consumer living in Washington State to forward papers to the "Washington County Court" and to have the "Washington County Police" issue an arrest warrant (PX15 ¶18 at 573; PX16 ¶16 at 578). Defendants left another consumer a voicemail stating that the consumer was "being contacted regarding" the consumer's "failure to answer a summon[s] of compliance that is scheduled to be forwarded to the Northern County court for execution." (PX08 ¶ 4 at 499, Att. A at 506). And in at least one case, Defendants threatened to bring an action under the Uniform Military Code of Justice against a consumer who was a member of the Armed Forces. (PX06 ¶ 19 at 460).

But Defendants' threats of legal action are entirely false: Defendants lack a reasonable basis for the claim that consumers have committed fraud, and none of the threats of criminal or civil proceedings are legitimate. *First*, there is no evidence that the consumers from whom Defendants have attempted to collect debts knew or intended to provide creditors with a dishonored check. *See Bass v. Stopher, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322, 1329 (7th Cir. 1997) (discussing basic requirements of check fraud).

Second, Plaintiffs are not aware of any consumers—including those who refused to pay Defendants and those who paid only a portion of the amount demanded—who were sued by Defendants, the original creditors, a District Attorney, or anyone else regarding the debts. (PX03 ¶¶ 26-27 at 385). A search of LexisNexis' CourtLink and other databases also found no evidence that Defendants obtained judgments or liens against any consumers. (*Id.*). And Defendants do not have the ability to impose criminal sanctions against consumers for failure to pay private debts. Not surprisingly, therefore, Plaintiffs are not aware of any consumers who have been arrested for failing to pay any debts claimed by Defendants.

In the face of these intimidating and disturbing threats, consumers frequently ask for

additional information related to Defendants' allegations of fraud or another criminal act. To deflect those inquiries, Defendants often respond by telling consumers that the fraud is related to a loan that the consumer obtained from a generic-sounding creditor, like "Loan.com" or "Loans.com."[2] (PX09 ¶ 8 at 514-15, Att. C at 528; PX14 ¶¶ 4, 9 at 557-58; PX15 ¶¶ 5, 10 at 570-71; PX16 ¶¶ 4, 9 at 575-76; PX17 ¶ 5 at 580-81; PX19 ¶ 7 at 590). In other instances, Defendants simply refuse to provide the name of the creditor. (PX07 ¶ 7 at 497; PX11 ¶ 6 at 544).

Even when Defendants provide some potentially verifiable information to consumers—like the name of an identifiable creditor—the information is often false or insufficient. In some instances, consumers have contacted the purported creditors identified by Defendants, and learned from the purported creditor that they did not have an outstanding loan with that creditor. (PX05 ¶¶ 8-10 at 434-35; PX09 ¶ 6 at 514; PX12 ¶¶ 12-13 at 551; PX15 ¶¶ 13, 17 at 572-73; PX16 ¶¶ 12, 15 at 577-78; PX18 ¶ 11 at 585-86; PX19 ¶ 6-7 at 590).

In other instances, consumers have provided information that has contradicted or challenged the Defendants' claims. (PX04 ¶ 8 at 431; PX06 ¶¶ 19-20 at 460; PX15 ¶¶ 10, 14 at 571-72; PX16 ¶¶ 9, 11 at 576-77; PX17 ¶ 5 at 580-81; PX26 ¶ 7 at 603-4). For example, one consumer informed the Defendants that she had declared bankruptcy after the date the purported loan was made and that the debt from the loan would have been discharged as part of the bankruptcy proceeding. (PX17 ¶ 5 at 580-81). Some consumers told Defendants that they had either closed the account in question before the purported loan was allegedly made, or had

[2] To the extent that these creditor names refer to internet websites, it does not appear that either "Loans.com" or "Loan.com" issues credit. Loans.com appears to be owned by Bank of America, and contains links to that institution's websites for Home Loans, Auto Loans, Credit Cards, and Business Financing. *See* Loans.com, www.loans.com (last visited June 9, 2014). Loan.com appears to be a consumer advice website operated by the online media company Internet Brands, and does not appear to provide consumer loans directly. *See* Loan.com, www.loan.com (last visited June 9, 2014).

documentary evidence that showed the loan in question had been paid off. (PX04 ¶ 8 at 431; PX12 ¶¶ 12-13 at 551; PX15 ¶ 10 at 571; PX16 ¶ 9 at 576). And when one consumer presented evidence that he was already in a payment plan to resolve the purported loan with a different collection agency, Defendants told him that he should stop making payments on the plan and should instead start paying Defendants. (PX26 ¶ 7 at 603-4).

In some cases, Defendants *themselves* have provided consumers with contradictory information. For example, one consumer received two letters from Check Systems about the same debt, but with conflicting information. Although the letters had some similarities, they listed inconsistent information regarding the creditor that made the loan, the amount owed by the consumer, the consumer's account number, and the consumer's identification number (PX06 ¶¶ 19-20 at 460, Atts. A, D at 463, 494). Similarly, Defendants provided another consumer with two different purported creditors in attempting to collect on a single debt. (PX13 ¶¶ 6-9 at 553-54).

In sum, Defendants' collection scheme consists largely of blatant misrepresentations aimed at pressuring consumers into making immediate payments on unfamiliar and dubious debts. These misrepresentations violate § 5 of the FTC Act, multiple provisions of the FDCPA,[3] N.Y. Executive Law § 63(12), N.Y. General Business Law §§ 349 and 601, and the AOD, as

[3] These provisions include several subsections of Section 807 of the FDCPA, 15 U.S.C. § 1692e:

(1) subsection two, which prohibits the false representation of the character, amount, or legal status of a debt;

(2) subsection four, which prohibits the false representation or implication that nonpayment 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 is not intended;

(3) subsection five, which prohibits threatening to take action that is not lawful or intended;

(4) subsection seven, which prohibits falsely representing or implying that a consumer has committed any crime or other conduct in order to disgrace the consumer; and

(5) subsection ten, which prohibits the use of a false representation or deceptive means to collect or attempt to collect a debt, or to obtain information concerning a consumer.

alleged in Counts I, II, IV, and VII-X of the Complaint.

B. Defendants Engage in Prohibited Communications with Third Parties

The FDCPA bars debt collectors from communicating with third parties—such as a consumer's friends, coworkers, or non-spouse family members—other than for the purpose of obtaining a consumer's home or workplace address or telephone number, unless the consumer consents to the third-party communication or the communication is reasonably necessary to effectuate a post-judgment judicial remedy. 15 U.S.C. § 1692c(b); *see, e.g. Bonafede v. Advanced Credit Solutions, LLC*, No. 10-cv-956S, 2012 WL 400789 (W.D.N.Y. Feb. 7, 2012) (debt collector's contact with consumer's mother violated the FDCPA); *Engler v. Atl. Res. Mgmt., LLC*, No. 10-CV-9688, 2012 WL 464728 (W.D.N.Y. Feb. 13, 2013) (debt collector's contact with work supervisor violated the FDCPA); *Twarozek v. Midpoint Resolution Grp., LLC*, No. 09-cv-731S, 2011 WL 3440096 (W.D.N.Y. Aug. 8, 2011) (debt collector's contact with consumer's daughter violated the FDCPA). In addition, N.Y. General Business Law §§ 601(4)-(5) prohibit communicating the nature of a claim to a consumer's employer prior to obtaining a final judgment against the consumer and disclosing a debt that is known to be disputed without disclosing the debt's disputed nature. The AOD also explicitly bars the Defendants from violating the FDCPA's provisions regarding third-party communications. (PX02 ¶ 4 at 247, Ex. B at 365).

Notwithstanding these clear prohibitions, Defendants unlawfully contact third parties in an attempt to frighten and embarrass consumers and pressure them—or the third parties—into paying purported debts. (PX05 ¶¶ 12, 14 at 435-36; PX07 ¶¶ 10-11 at 497-8; PX08 ¶ 3 at 499; PX09 ¶ 15 at 516; PX11 ¶ 16 at 546; PX17 ¶ 9 at 581; PX18 ¶¶ 4, 6 at 583-84; PX22 ¶ 3 at 596; PX25 ¶ 5 at 601). Echoing the misrepresentations that Defendants make directly to consumers,

Defendants have told consumers' friends, family members, and employers that the consumers are facing imminent civil or criminal sanctions. For example, Defendants told one consumer's mother that the consumer was facing legal action and told the consumer's employer that the consumer could be served with legal documents at work. (PX05 ¶¶ 12, 14, at 435-36). In other instances, Defendants informed another consumer's sister that the consumer and the consumer's ex-husband were being investigated for check fraud (PX22 ¶ 3 at 596), and told a consumer's daughter that the daughter could be held responsible for the consumer's fraud. (PX18 ¶ 4 at 583-84). And in yet another instance, Defendants left a message with a consumer's employer, stating that the consumer would be served with legal papers at work regarding a pending legal allegation. (PX10 ¶ 10 at 532). These improper contacts with, and misrepresentations to, third parties violate the FDCPA, N.Y. Executive Law § 63(12), N.Y. General Business Law §§ 349 and 601(4)-(5), and the AOD, as alleged in Counts III and VII-X.

C. Defendants Fail To Make Required Disclosures That They Are a Debt Collector and That They Are Contacting Consumers To Collect on a Debt

The FDCPA requires debt collectors to disclose in their initial communication 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).

Yet Defendants routinely fail to make these basic required disclosures. (PX04 ¶ 11 at 431; PX05 ¶ 20 at 438; PX06 ¶ 21 at 460; PX07 ¶ 15 at 498; PX08 ¶ 10 at 500; PX10 ¶ 11 at 533; PX12 ¶ 16 at 552; PX13 ¶ 17 at 556; PX14 ¶ 15 at 559; PX15 ¶ 24 at 574; PX16 ¶ 22 at 578; PX17 ¶ 11 at 582; PX18 ¶ 17 at 587; PX19 ¶ 13 at 591; PX20 ¶ 13 at 593; PX21 ¶ 8 at 596; PX23 ¶ 9 at 599). Indeed, as described above, Defendants' representatives often falsely identify themselves as "investigators" or "paralegals" or indicate they are working in a legal office. *See*

supra, Part III(A). Defendants' failure to disclose that they are a debt collector reinforces these misrepresentations, deprives consumers of statutorily-required information that would assist them in avoiding Defendants' fraudulent scheme, and violates the FDCPA, N.Y. Executive Law § 63(12), and the AOD, as alleged in Counts IV, VII, and X. Defendants' misrepresentations about their identity violates N.Y. Executive Law § 63(12) and N.Y. General Business Law §§ 349 and 601(9), as alleged in Counts VIII and IX.

D. Defendants Unlawfully Charge Processing Fees To Which They Are Not Legally or Contractually Entitled.

The FDCPA specifically prohibits "[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law." 15 U.S.C. § 1692f(1). Notwithstanding this prohibition, Defendants have added a fee of eight dollars, which is made directly to Defendants, onto payments that consumers make on purported debts. (PX11 ¶ 11 at 545, Att. A at 548 (charging $8 processing fee); *see also* PX14 ¶ 11 at 559, Atts. B, C at 566, 568-69 (charging four payments of $108); PX26 ¶ 6 at 603, Ex. B at 607 (offering a settlement of $450 with two payments of $108 and a final payment of $258)). In many instances, the processing fee has not been expressly authorized by any agreement nor permitted by law. Hence, Defendants have collected these processing fees in violation of § 808(1) of the FDCPA, 15 U.S.C. § 1692f(1), as alleged in Count V of the Complaint. *Hallmark v. Cohen & Slamowitz, LLP*, 293 F.R.D 410, 414-15 (W.D.N.Y. Sept. 16, 2013) (finding a viable claim for violating Section 1692f(1) where defendant sought to collect a $140 court filing fee from consumers); *Quinteros v. MBI Assocs.*, No. 12-CV-2517 (WFK)(SMG), 2014 WL 793138 at *3-4 (E.D.N.Y. Feb. 28, 2014) (finding a viable FDCPA claim for charging a $5 credit card processing fee and citing two other cases from the Second Circuit finding that similar fees could violate Section

1692f(1) if not authorized by agreement or permitted by law).

E. Defendants Fail To Provide Consumers with Required Validation Notices

The FDCPA also 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. This notice also must contain statements 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 disputes the debt in writing within the 30-day period. 15 U.S.C. § 1692g. The notice requirement is intended to minimize instances of mistaken identity or mistakes regarding the amount or existence of a debt. *See* S. Rep. No. 382, 9th Cong., 1st Sess. 4, at 4, *reprinted in* 1977 U.S.C.C.A.N. 1695, 1696.

Defendants routinely disregard the FDCPA's notice requirement and fail to provide information about how to dispute a debt to consumers even after repeated requests. (PX04 ¶¶ 5, 12 at 430, 432; PX05 ¶ 19 at 438; PX07 ¶¶ 14-15 at 498; PX08 ¶ 9 at 500; PX10 ¶ 11 at 533; PX11 ¶¶ 14, 17, at 546; PX12 ¶¶ 15-16 at 552; PX13 ¶ 16 at 556; PX14 ¶ 15 at 559-60; PX15 ¶¶ 23-24 at 574; PX16 ¶¶ 21-22 at 578; PX17 ¶ 11 at 582; PX18 ¶¶ 16-17 at 587; PX19 ¶ 14 at 591; PX20 ¶¶ 12-13 at 593; PX21 ¶¶ 7-8 at 596; PX22 ¶ 6 at 596; PX23 ¶ 8 at 598-99; PX24 ¶ 6 at 600; PX25 ¶ 9 at 602). In some instances, Defendants flatly refuse to provide even a company name, the name of the representative to whom the consumer is speaking, or a company address. (PX04 ¶ 4 at 430; PX08 ¶ 5 at 499; PX15 ¶ 21 at 573; PX16 ¶ 19 at 578; PX20 ¶¶ 8, 13 at 592-93; PX25 ¶¶ 9-10 at 602). And when Defendants do provide some written statement about the debt, this information is frequently inaccurate or contradictory. *See supra*, Part III(A).

Defendants' refusal to provide statutorily-required information extends even to

consumers who would clearly benefit from information about how to dispute purported debts: those who do not recognize the purported creditor or have received information from the purported creditor that contradicts Defendants' claims. For example, Defendants refused to provide a written notice to a consumer who did not recognize the loan that Defendants claimed she had taken out, and who offered proof that the only payday loan she had obtained had been paid back in full. (PX04 ¶¶ 4-5, 8 at 430-31). Similarly, Defendants refused to provide a written notice to a consumer even after the consumer informed Defendants that he had called the purported original creditor of the debt and the creditor informed him that the loan he had with that creditor had been paid in full. (PX12 ¶¶ 12-13 at 551). Instead of sending anything in writing or providing additional information, Defendants told the consumer that the representative did not believe the consumer and would continue to "investigate the fraud." (PX12 ¶ 13 at 551).

Defendants' routine failure to send required notices has deprived consumers of statutorily-required information that would allow them to evaluate or dispute purported debts, and violates § 809(a) of the FDCPA, N.Y. Executive Law § 63(12), and the AOD, as alleged in Counts VI, VII, and X of the Complaint. In addition, by providing inaccurate information to consumers, Defendants have violated N.Y. Executive Law § 63(12) and N.Y. General Business Law § 349, as alleged in Counts VII and VIII of the Complaint.

IV. A TEMPORARY RESTRAINING ORDER SHOULD ISSUE AGAINST THE DEFENDANTS

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

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to seek, and the Court to issue, temporary, preliminary, and permanent injunctions. The second proviso of Section 13(b), under which the FTC brings this action, provides that "the Commission may seek, and after proper proof, the court may issue, a permanent injunction" against violations of "any

provision of law enforced by the Federal Trade Commission." 15 U.S.C. § 53(b). Similarly, N.Y. Executive Law § 63(12) and N.Y. General Business Law §§ 349(b) and § 602(2) authorize the Office of the New York Attorney General to obtain equitable relief—including a permanent injunction—against persons and businesses who engage in illegal, fraudulent and/or deceptive business practices.[4] Incident to its authority to issue permanent injunctive relief, this Court has the "broad equitable authority to 'grant any ancillary relief necessary to accomplish complete justice.'" *Five-Star Auto Club, Inc.*, 97 F. Supp. 2d at 533 (quoting *FTC v. H.N. Singer, Inc.*, 668 F.2d 1108 (9th Cir. 1982)). This ancillary relief can include a temporary restraining order, an asset freeze, expedited discovery, and other appropriate remedies. *See, e.g.*, *id.*; *FTC v. Strano*, 528 Fed. Appx. 47, 49 (2d Cir. June 20, 2013) (holding that an asset freeze was appropriate ancillary relief).

Temporary restraining orders with asset freezes and other ancillary relief have been granted in the Second Circuit—including this District—under Section 13(b). *See, e.g.*, *FTC v. Fed. Check Processing, Inc.*, 14-CV-0122S (W.D.N.Y. Feb. 24, 2014); *FTC v. Navestad*, No. 09-CV-6329T (W.D.N.Y. July 1, 2009) (granting *ex parte* TRO, asset freeze, and temporary receiver).

B. Plaintiffs Meet the Standard for Granting a Government Agency's Request for Preliminary Injunctive Relief

The FTC may obtain a preliminary injunction "[u]pon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would

[4] Pursuant to Executive Law § 63(12), courts are empowered to grant wide-ranging equitable relief to redress the kind of illegal and deceptive conduct engaged in by the Defendants. Such remedial orders are to be broadly fashioned. *See Princess Prestige*, 42 N.Y.2d at 105*; State v. Scottish-Am. Ass'n*, 52 A.D.2d 528 (N.Y. App. Div. 1st Dept 1976), *appeal dismissed*, 39 N.Y.2d 1057 (N.Y. 1976); *reported in full* 39 N.Y.2d 1033 (N.Y. 1976). The power of the court to grant, and the standing of the State of New York to seek, broad remedial relief is not simply a matter of statutory authorization under Executive Law § 63(12), but is grounded in general equitable principles. Dobbs, *Remedies* ¶ 222 *et seq.* (1973).

be in the public interest." *FTC v. Cuban Exch., Inc.*, No. 12 CV 5890(NGG)(RML), 2012 WL 6800794 at *1 (E.D.N.Y. Dec. 19, 2012); *see also* 15 U.S.C. § 53(b).[5] Pursuant to CPLR § 6301, N.Y. Executive Law § 63(12), and N.Y. General Business Law §§ 349(b) and 602(2), the Attorney General may obtain a preliminary injunction upon a similar showing. Unlike private litigants, Plaintiffs need not prove irreparable injury because this injury is presumed in a statutory enforcement action.[6] *People v. P.U. Travel, Inc.* 2003 N.Y. Misc. LEXIS 2010 at *7-8, (Sup. Ct. N.Y. Cnty 2003); *FTC v. Verity Int'l* ("*Verity I*"), 124 F. Supp. 2d 193, 199 (S.D.N.Y. 2000); *People v. Apple Health & Sports Club, Ltd.* ("*Apple Health I*"), 174 A.D.2d 438, 439 (N.Y. App. Div. 1st Dept 1991), *aff'd*, 80 N.Y.2d 803 (N.Y. 1992).

As set forth in this memorandum, Plaintiffs have amply demonstrated that they will ultimately succeed on the merits of their claims and that the balance of equities favors injunctive relief.

1. Plaintiffs Have Demonstrated a Likelihood of Success on the Merits

The FTC meets its burden to show likelihood of ultimate success if "it shows preliminarily, by affidavits or other proof, that it has a fair and tenable chance of ultimate success on the merits." *FTC v. Lancaster Colony Corp., Inc.*, 434 F. Supp. 1088, 1090 (S.D.N.Y. 1977);

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

[6] Although not required to do so, Plaintiffs also meet the Second Circuit's four-part test for private litigants to obtain injunctive relief. As stated above, irreparable injury exists simply because a federal statute is violated. *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1218 (2d Cir. 1991). Vulnerable consumers will continue to be injured by Defendants' deceptive and abusive collection practices. Moreover, the public interest in ensuring the enforcement of federal consumer protection laws is strong. *FTC v. Mallett*, 818 F. Supp. 2d 142, 149 (D.D.C. 2011). 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.

see also Verity I, 124 F. Supp. 2d 193, 199 (S.D.N.Y. 2000). The standard for granting injunctive relief pursuant to N.Y. Executive Law § 63(12) is similar: a "likelihood of success on the merits, and a balancing of the equities in petitioner's favor." *Apple Health I*, 174 A.D.2d at 438. In considering an application for a TRO or preliminary injunction, the Court has the discretion to consider hearsay evidence. *Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010) (finding that hearsay may be considered by a district court in determining whether to issue a preliminary injunction). As set forth in Part III above, Plaintiffs have presented ample evidence that they are likely to succeed on the merits of their claims that Defendants violated Section 5 of the FTC Act, multiple provisions of the FDCPA, and New York state law. In addition to the more than 660 complaints against Defendants that have been received by the FTC, this evidence includes 23 consumer declarations, 10 recordings of voicemail messages Defendants left for consumers, and at least 21 private lawsuits filed by consumers against Defendants. (PX01 ¶¶ 22-30 at 8-9, Atts. WW-AAA at 236-39 (voicemail recordings); PX02 ¶¶ 8-9 at 248, Ex. D at 376 (voicemail recordings); PX03 ¶ 28 at 385-86 (private lawsuits); PX04-PX26 (23 consumer declarations)).

2. The Equities Weigh in Favor of Granting Injunctive Relief

Once Plaintiffs establish the likelihood of ultimate success on the merits, preliminary injunctive relief is warranted if the Court, weighing the equities, finds that relief is in the public interest. Although there is "some disagreement among circuits" about whether *any* weight should be given to private hardship, *Verity I*, 124 F. Supp. 2d at 199 n.38, in any case public equities must be given far greater weight. *See, e.g.*, *Lancaster Colony Corp.*, 434 F. Supp. at 1096 ("The equities to be weighed . . . are not the usual equities of private litigation but public equities."); *Univ. Health, Inc.*, 938 F.2d at 1225 ("While it is proper to consider private equities

in deciding whether to enjoin a particular transaction, we must afford such concerns little weight, lest we undermine section 13(b)'s purpose of protecting the 'public-at-large, rather than individual private competitors.'").

The evidence demonstrates that the public equities—protection of consumers from Defendants' deceptive and abusive 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 this relief is also necessary because Defendants' conduct indicates that they will likely continue to deceive the public. *Five-Star Auto Club*, 97 F. Supp. 2d at 536 ("[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 Cuban Exch., Inc.*, 2012 WL 6800794 at *2 ("A preliminary injunction would not work any undue hardship on the defendants, as they do not have the right to persist in conduct that violates federal law."). Hence, because Defendants "can have no vested interest in business activity found to be illegal," the balance of equities tips decidedly toward granting the relief. *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972). Indeed, the need for injunctive relief is particularly acute here given the Defendants' material breaches of the AOD entered with the New York Office of the Attorney General.

C. Defendants Are a Common Enterprise and Jointly and Severally Liable for the Law Violations

The Corporate Defendants operate as a common enterprise and are jointly and severally liable for their conduct. When determining whether a common enterprise exists, courts in the Second Circuit consider whether "the same individuals were transacting an integrated business through a maze of interrelated companies." *Del. Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir.

1964). Factors that indicate a common enterprise include whether the nominally distinct entities "(1) maintain officers and employees in common, (2) operate under common control, (3) share offices, (4) commingle funds, and (5) share advertising and marketing." *FTC v. Consumer Health Benefits Ass'n*, No. 10 Civ. 3551(ILG)(RLM), 2012 WL 1890242, at *5 (E.D.N.Y. May 23, 2012) (citations omitted). Defendants found to be in a common enterprise are jointly and severally liable for the injury caused by their violations of the FTC Act. *Id.*

Applying the common enterprise factors here, the Corporate Defendants are controlled by common officers and share employees. As discussed above, each of the three Individual Defendants—Joseph Bella, Diane Bella, and Luis Shaw—are principals or officers of numerous Corporate Defendants. In his testimony and in corporate documents, Joseph Bella has been identified as the owner or principal of each of the Corporate Defendants. *See supra* Part II(B). Moreover, Diane Bella and Luis Shaw have held officer roles for multiple Corporate Defendants. *See supra* Part II(B). And wage reports for Interchex Systems, Check Systems, and eCapital Services show that there are at least 21 employees who have moved from one company to another. (PX03 ¶ 18 at 382).

Moreover, Defendants have admitted that the Corporate Defendants operate as a commonly-controlled enterprise that collects on consumer debts. Individual Defendant Joseph Bella has testified as to how many of the companies are interrelated. For example, he noted that three companies—Mullins & Kane, Morgan Jackson, and Goldberg Maxwell—were intended to all collect on the same debt. (PX02 ¶ 3 at 247, Ex. A at 291). He also stated that Buffalo Staffing has provided staffing services to American Mutual Holdings, Mullins & Kane, Morgan Jackson, and National Check Registry. (*Id.* ¶ 3 at 247, Ex. A at 291-92, 297, 307). And he described how American Mutual Holdings places debt with Morgan Jackson, Mullins & Kane,

Goldberg Maxwell, and National Check Registry. (*Id.* ¶ 3 at 247, Ex. A at 311-12, 323). Moreover, internal emails sent by the Corporate Defendants' employees to third-party providers confirm that Interchex Systems, Check Systems, and Morgan Jackson are all part of a single operation. (PX01 ¶ 16 at 5-6, Atts. BB-CC at 173-79).

The Corporate Defendants' use of shared office space further demonstrates that their operations are intertwined. Over the past three years many of the Corporate Defendants—including Check Systems, Interchex Systems, American Mutual Holdings, and Morgan Jackson—have operated out of 268 Main Street, Suites 100-102, Buffalo, New York 14202. (*Id.* at ¶¶ 11, 16 at 4-6, Atts. Q-U, DD-EE at 101-122, 180-84; PX02 ¶ 3 at 247, Ex. A at 266, 286-87, 304). Most recently, the enterprise appears to have moved its operation to adjacent suites—115 and 120-122 at 295 Main Street, Buffalo, New York, 14203—before consolidating operations under Check Systems and the newly-created eCapital Services. (PX01 ¶¶ 11, 15 at 4-5, Atts. Q, AA at 101-3, 161-172; PX02 ¶ 6 at 248, Ex. C at 375; PX03 ¶¶ 12, 18-19 at 382-83, Att. C, G at 399, 429; PX10; PX26 ¶ 4 at 603, Ex. A, B at 606-7).

Finally, the finances of the Corporate Defendants are deeply commingled. Defendants obtain consumer funds through three merchant accounts in the names of American Mutual Holdings, Check Systems, and Interchex Systems. (PX03 ¶ 9-12 at 380). These funds are then distributed both among the three merchant accounts and to the corporate accounts of Buffalo Staffing, American Mutual Holdings, Mullins & Kane, Goldberg Maxwell, Morgan Jackson, and National Check Registry. (*Id.*).

D. The Individual Defendants Are Liable for Injunctive and Monetary Relief

In addition to the Corporate Defendants, Individual Defendants Joseph Bella, Diane Bella, and Shaw are each liable for injunctive and monetary relief for law violations committed

by the Corporate Defendants. Under the FTC Act, individual defendants "may be liable for corporate acts or practices if they (1) participated in the acts or had authority to control the corporate defendant and (2) know of the acts or practices." *Med. Billers Network, Inc.*, 543 F. Supp. 2d. at 320. "Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer." *Id.* (quoting *FTC v. Amy Travel*, 875 F.2d 564, 575 (7th Cir. 1989)); *Five-Star Auto Club, Inc.*, 97 F. Supp. 2d at 535 ("Assuming the duties of a corporate officer establishes authority to control."). Even when an individual is not officially designated as a corporate officer, courts consider "the control that a person actually exercises over given activities." *FTC v. Windward Mktg., Inc.*, No. Civ.A 1:96-CV-615F, 1997 WL 33642380 at *5 (N.D. Ga. Sept. 30, 1997) (holding that defendant did not need to be an officer or even an employee to control corporate activities).[7] In particular, bank signatory authority or acquiring services on behalf of a corporation evidences authority to control. *FTC v. USA Fin., LLC*, 415 Fed. Appx. 970, 974-75 (11th Cir. Feb. 25, 2011).

An individual does not need to "*intend*[ ] to defraud consumers in order to hold that individual personally liable." *Med. Billers Network*, 543 F. Supp. 2d at 283 (quoting *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997)). Instead, Plaintiffs need only demonstrate that the individual "had actual knowledge of material representations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth." *Id.* (quoting *Amy Travel*,

[7] Executive Law § 63(12) is directed against "any person" who "shall engage in repeated fraudulent or illegal acts." It is well-settled that corporate officers and directors are liable for fraud if they personally participate in the misrepresentation or have actual knowledge of such acts. *Apple Health II*, 80 N.Y.2d at 807; *People v. Empyre Inground Pools, Inc.*, 227 A.D.2d 731 (N.Y. App. Div. 3d Dept 1996).

875 F.2d at 574); *Consumer Health Benefits*, 2012 WL 1890242, at *5. The extent to which an individual participated in business affairs is probative of knowledge. *Med. Billers Network*, 543 F. Supp. 2d at 283; *Consumer Health Benefits*, 2012 WL 1890242, at *5.

As discussed above, the three Individual Defendants are the principals and sole officers of the Corporate Defendants. They have signatory authority over the Corporate Defendants' bank accounts as well other services. *See supra* Part II(B). Each Individual Defendant has had a long association with the Corporate Defendants that has extended through numerous name changes, location changes, the investigation of the New York Attorney General's office and the subsequent AOD, and multiple private lawsuits alleging unlawful collection practices. There can be little doubt that the individual defendants participated in the wrongful acts (or had the ability to control the corporate entities) and are aware of the companies' wrongful acts. Accordingly, they should be enjoined from violating the FTC Act, the FDCPA, N.Y. Executive Law § 63(12), and N.Y. General Business Law Articles 22-A, and 29-H, and held liable for consumer redress or other monetary relief in connection with Defendants' activities.

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

The evidence demonstrates that Plaintiffs are likely to succeed in proving that Defendants are engaging in deceptive and unfair practices in violation of the FTC Act, the FDCPA, and New York State law and that the balance of equities strongly favors the public. Thus, preliminary injunctive relief is justified. Courts, including Chief Judge Skretny in the FTC's recently-filed *Federal Check Processing* case also pending in this District, have regularly granted temporary restraining orders with the relief requested here, including on an *ex parte* basis. *See, e.g.*, *FTC v. Fed. Check Processing, Inc.*, 14-CV-0122S (W.D.N.Y. Feb. 24, 2014) (granting *ex parte* TRO, asset freeze, and temporary receiver); *FTC v. Navestad*, 09-CV-6329T, 2012 WL 1014818

(W.D.N.Y. filed July 1, 2009) (granting *ex parte* TRO, asset freeze, and temporary receiver); *FTC v. Guzzetta*, No. 01-2335 (E.D.N.Y. filed April 14, 2001) (granting *ex parte* TRO, asset freeze); *FTC v. Five-Star Auto Club, Inc.*, No. 99-1693 (S.D.N.Y. filed Mar. 8, 1999) (granting *ex parte* TRO, asset freeze, and temporary receiver).

Each of the principal components of the proposed order—conduct relief, asset freeze, appointment of receiver, record preservation, and expedited discovery—are discussed below.

A. Conduct Relief

To prevent ongoing consumer injury, the proposed TRO prohibits Defendants from making future misrepresentations concerning the collection of debts. The proposed order also prohibits Defendants from engaging in any conduct that violates the FTC Act, the FDCPA, or New York law, 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.

As discussed above, this Court has broad equitable authority under § 13(b) of the FTC Act to grant ancillary relief necessary to accomplish complete justice. *Five-Star Auto Club, Inc.*, 97 F. Supp. 2d at 533. Pursuant to N.Y. Executive Law § 63(12), courts are empowered to grant wide-ranging equitable relief, including temporary restraining orders or preliminary injunctions, to redress the kind of fraudulent or illegal conduct engaged in by Defendants. *See, e.g., People v. Apple Health & Sports Clubs, Ltd.* ("*Apple Health II*"), 80 N.Y.2d 803, 807 (N.Y. 1992). The requested conduct prohibitions in the proposed TRO do no more than require Defendants to comply with the FTC Act, the FDCPA, and New York state law.

B. An Asset Preservation Order Is Necessary To Preserve the Possibility of Final Effective Relief

When a district court determines plaintiffs are likely to prevail in a final determination on the merits, it has a "duty to ensure that . . . assets . . . [are] available to make restitution to the injured customers." *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1031 (7th Cir. 1988); *see also P.U. Travel*, 2003 N.Y. Misc. LEXIS 2010 at *8 (finding that where there is a clear probability of success on the merits, "consumers would be irreparably injured in the absence of a court order insuring that any funds held by [the Defendant] now or in the future would be used to compensate customers for their losses"). The Second Circuit has repeatedly upheld the authority of district courts to order an asset freeze and preserve the possibility of consumer redress. *See Strano*, 528 Fed. Appx. at 49 ; *Smith v. SEC*, 653 F.3d 121, 127 (2d Cir. 2011) (noting the propriety of an asset freeze "to ensure 'that any funds that may become due can be collected.'") (quoting *SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2d Cir. 1990)).[8]

A freeze of Defendants' assets is appropriate here to preserve the *status quo*, to ensure that funds do not disappear during the course of this action, and to preserve Defendants' assets for final relief. Defendants have taken in gross deposits approaching $8.7 million in revenue since 2011, substantial amounts of which have been diverted to the Individual Defendants through direct transfers and the routine use of corporate accounts to purchase personal goods and services. As described in Part II(B) of this memo, in just one six-month period these purchases

[8] Similarly, New York state courts have regularly used their equitable powers under N.Y. Executive Law § 63(12) to impose such financial restrictions or requirements as they deem necessary to protect consumers. *See, e.g., Apple Health II*, 80 N.Y.2d 803 (upholding trial court's grant of a temporary restraining order freezing respondents' bank accounts); *People v. Court Reporting Inst., Inc.*, 240 A.D.2d 413 (N.Y. App. Div. 2d Dept 1997) (denying respondents' motion to modify a stipulation entered into after the court granted a temporary restraining order enjoining respondent school from accepting new students and from disposing of funds in its bank account); *People v. 21st Century Leisure Spa, Int'l*, 153 Misc.2d 938 (Sup. Ct. N.Y. Co. 1991) (enjoining respondent owner of company from transferring, withdrawing or otherwise disposing of funds in any bank account in New York State except for ordinary living expenses); *State v. Abortion Info. Agency*, 69 Misc. 2d 825, 830 (Sup. Ct. N.Y. Co. 1971), *aff'd*, 37 A.D.2d 142 (1st Dept 1972) (enjoining respondents "from transferring or otherwise disposing of corporate assets or property" and appointing receiver to preserve assets).

ranged from big-ticket items including sports cars, airline tickets, and high-end men's clothing, to everyday purchases including groceries and pharmaceuticals. (PX03 ¶¶ 6, 14-17 at 378-82, Att. E-F at 407-27).

Without an asset freeze, the dissipation and misuse of assets is likely. Defendants who have engaged in fraudulent activities are likely to waste assets prior to resolution of the action. *See SEC v. Manor Nursing Ctrs. Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972) ("Because of the fraudulent nature of appellants' violations, the court could not be assured that appellants would not waste their assets prior to refunding public investors' money."). In the FTC's experience, defendants engaged in similarly unlawful practices have secreted assets and destroyed documents upon learning of an impending law enforcement action. (Cert. & Decl. of Colin Hector ¶¶ 13-14).

Here, Defendants have not only run a thoroughly deceptive and abusive operation, but have made continuing efforts to evade liability for their illegal conduct. Defendants have operated under multiple business names at the same time in an attempt to disperse negative attention among several ostensibly distinct entities. Joseph Bella himself admitted that his intent in creating three different entities at the same time—Goldberg Maxwell, Mullins & Kane, and Morgan Jackson—was to collect on the same debts under different names, so that a consumer would be unaware that they were receiving multiple calls from the same operation. (PX02 ¶ 3 at Ex. A at 247, 296) Joseph Bella also failed to identify his interest in eCapital Services, formerly known as Consumer Check Reporting, which has become the operation's newest consumer-facing entity.

Moreover, even after signing the AOD with the Office of the New York Attorney General, Defendants continued their unlawful practices and have taken steps to avoid further

scrutiny. Far from abiding by the AOD, as shown above, Defendants have preserved their core business practice of making high-pressure false threats to collect on dubious debts. Defendants have done so by transplanting the operation rather than reforming it. At least as early as February 2014, if not sooner, Defendants began operating under a new entity name—eCapital Services—without disclosing this change to the Attorney General as required by the AOD. (*See* PX01 ¶¶ 5, 28 at 2, 9, Atts. J, QQ at 52-54, 219-21; PX02 ¶¶ 3, 7 at 247-48, Exs. A, D at 326, 376; PX03 ¶ 12, 18-19, 21 at 380, 382-83, 384, Atts. C, G at 399-402, 429; PX26 ¶ 4 at 603, Ex. A, B at 606-7). Along with the name change, Defendants obtained a slew of new phone numbers with Pennsylvania area codes, even though Defendants continue to operate out of boiler rooms in upstate New York. (PX01 ¶ 9 at 3-4; *Compare* PX01 Att. N at 83-89 *to* PX01 Att. O at 90-97). Under this new guise, Defendants have continued their unlawful practices, despite having ample notice—and a binding agreement—alerting them to the illegality of their conduct.

Defendants have disregarded the law and the AOD, and have routinely shifted corporate funds to the Individual Defendants. This conduct establishes a high risk that assets will be concealed or dissipated without the requested relief. Therefore, an asset freeze is required to preserve the funds derived from Defendants' unlawful activities so that the Court can retain its ability to fashion meaningful relief later.

C. A Receiver Is Necessary To Protect the Public and Injured Consumers

The appointment of a receiver is also necessary to prevent irreparable injury. In determining whether to appoint a receiver, courts consider factors including the defendant's fraudulent conduct, the danger that property will be lost or squandered, the interests of the plaintiff and the parties opposing the appointment, and the plaintiff's probability of success on the merits. *U.S. Bank Nat'l Ass'n v. Nesbitt Bellevue Prop. LLC*, 866 F. Supp.2d 247, 249-50

(S.D.N.Y. 2012); *see also In re Matter of McGaughey*, 24 F.3d 904, 907 (7th Cir. 1994) (observing in context of IRS action that receivership "is an especially appropriate remedy in cases involving fraud and the possible dissipation of assets"). The district court has broad discretion in appointing a receiver. *See FTC v. Pricewert, LLC*, No. C-09-2407 RMW, 2009 WL 1689598, at *1-2 (N.D. Cal. Jun. 15, 2009); *FTC v. Equinox Int'l Corp.*, No. CV-S-990969HBR (RLH), 1999 WL 1425373, at *5 (D. Nev. Sep. 14, 1999). In balancing the interests of the public and the Defendants in the context of determining whether to appoint a receiver over an operation that Plaintiffs will show to be a deceptive enterprise, "the potential harm to the public outweighs any harm that Defendants may suffer" from surrendering control of their operations and "[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 *11 (N.D. Okla. Aug. 31, 2001). As noted in the introduction to Part V, the appointment of a receiver is a common equitable remedy in FTC matters, including other FTC matters in this District.

A receiver is necessary here because, as shown in Part III, Defendants' business is permeated by fraud. Given the pervasiveness of Defendants' unlawful conduct, including in particular their recidivist and widespread breaches of the AOD, a receiver is needed to ensure compliance and preserve property. Specifically, a receiver would be able to secure locations, perform standard functions such as ensuring corporate compliance with any order, tracing and securing assets, and taking possession of computers, documents, and other evidence of Defendants' illegal practices. The requested provisions allowing Plaintiffs immediate access to the Defendants' business premises serve a similar purpose, and would ensure that evidence of unlawful conduct can be identified and secured in a timely manner. Plaintiffs have identified

two candidates in the pleading entitled "Plaintiff's Recommendation for Temporary Receiver," filed simultaneously with this memorandum.

D. Preservation of Records

The proposed order contains a provision directing Defendants to preserve records, including electronically stored records, and evidence. 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").

E. Expedited Discovery

Plaintiffs seek leave of Court for limited discovery to locate and identify documents and assets. District courts are authorized to fashion discovery to meet needs in 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. *Fed. Express Corp. v. Fed. Expresso, Inc.*, No. Civ.A. 97CV1219RSPGJD, 1997 WL 736530 (N.D.N.Y. Nov. 24, 1997) (noting that expedited 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 Plaintiffs immediate access to Defendants' business premises, expedited discovery is warranted to locate assets, locate documents, and ensure compliance with an order of this Court. The request for expedited discovery is limited to this purpose, and is necessary to prevent irreparable harm in the form of the dissipation or concealment of assets or

documents.

F. The Temporary Restraining Order 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 further prosecution of the action." *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322 (7th Cir. 1984); *In re Vuitton et Fils, S.A.*, 606 F.2d 1, 4-5 (2d Cir. 1979). Mindful of this problem, courts, including courts in this District, have regularly granted the FTC's request for *ex parte* temporary restraining orders in Section 13(b) cases.[9]

As discussed above, Defendants' business operations are permeated by, and reliant upon, unlawful practices. Plaintiff FTC's past experiences have shown that, upon discovery of impending legal action, defendants engaged in fraudulent schemes, withdrew funds from bank accounts, and destroyed records. (Cert. & Decl. of Colin Hector ¶¶ 13-14). As in those matters, the record here fully supports *ex parte* relief. Defendants' conduct—which includes the routine use of corporate funds for the Individual Defendants' personal expenditures and the continuing noncompliance of Defendants' illegal scheme even after entering into the AOD—constitutes a clear showing 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 necessary to

[9] *See supra* the introduction to Part V and the cases cited therein. In addition, Congress has observed with approval the use 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.

enable full and effective final relief, and it is in the interest of justice to waive the notice requirement of Local Rule 65(b).

VI. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for an *Ex Parte* TRO, with other relief as set forth in the accompanying proposed order, should be granted.

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Respectfully submitted,

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