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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION, Plaintiff, v. **ASSET & CAPITAL MANAGEMENT GROUP, INC., *et al.*,** Defendants.	Case No. **CV13-5267 DSF(JCx)** **MEMORANDUM IN SUPPORT OF PLAINTIFF'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER WITH AN ASSET FREEZE AND OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE (LODGED UNDER SEAL)**

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I. INTRODUCTION

Plaintiff, the Federal Trade Commission ("FTC"), brings this action to halt a multi-million dollar debt collection scheme to extract payments from consumers nationwide through intimidation. Defendants use deception, abuse, and harassment to carry out their scheme, which has been victimizing consumers since at least 2009. Defendants' strong-arm tactics violate Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45 (a), and multiple provisions of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 – 1692p.

In brief, Defendants purchase distressed consumer debts and collect payment on their own behalf by means of deception and threats. Their stock collection practices include impersonating process servers in debt collection calls to consumers and third parties; falsely threatening consumers with legal action, wage garnishment, property seizure, and arrest; disclosing debts to third parties; and failing to notify consumers of their right to receive verification of their alleged debts.

Defendants use a sprawling network of dozens of intertwined companies, virtually indistinguishable business names, numerous small boiler rooms, and mail drop addresses to obscure the identities of the network operators and the links between them. Since 2009, Defendants have operated through over 30 companies.

To put an immediate stop to Defendants' illegal conduct, the FTC seeks, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), an *ex parte* temporary restraining order ("TRO") with an order to show cause why a preliminary injunction should not issue. The proposed TRO would enjoin Defendants' illegal practices, freeze their assets, appoint a receiver over the corporate entities, allow the FTC 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 PARTIES

A. Federal Trade Commission

Plaintiff FTC is an independent agency of the United States government created by the FTC Act, 15 U.S.C. §§ 48 – 51. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45 (a), which prohibits unfair and deceptive acts and practices in or affecting commerce, and the FDCPA, 15 U.S.C. §§ 1692 – 1692p, which prohibits unfair, deceptive, and abusive debt collection practices. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 814(a) of the FDCPA, 15 U.S.C. § 1692*l*(a), authorize the FTC, through its own attorneys, to initiate federal court proceedings to enjoin violations of the FTC Act and the FDCPA and to secure such equitable relief as may be appropriate in each case,

including consumer redress and disgorgement of ill-gotten gains. *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996). *See also FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1110-13 (9th Cir. 1982).

B. Defendants

At the heart of Defendants' enterprise are four individuals: Thai Han, Jim Tran Phelps, Keith Hua, and James Novella. Since at least 2009, they have collected consumer debts through a series of interchangeable entities with largely meaningless corporate identities.[1] The elaborate corporate structure has no apparent business rationale and strongly suggests that its purpose is to hide and dissipate assets. Rather than name all of the entities that can be traced to Defendants' operation, the FTC is charging the four individuals – the principals of the enterprise – and seven corporations that are representative of Defendants' corporate structure.[2]

1. Corporate Defendants

The corporate defendants include two "Facilitating Companies" and five "Collection Companies." The Facilitating Companies provide support services for

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[1] A class-action lawsuit by former employees alleging labor law violations identifies more than 30 corporate entities that Defendants have used for their enterprise. (PX38 Att. VV at 704-24.)

[2] As discussed in Section IV.B.C, below, all of the corporate entities have acted in common enterprise to perpetrate Defendants' unlawful scheme. Thus, the FTC does not need to name every member of the enterprise for the Court to hold the named Defendants liable for the activities of the enterprise as a whole.

Defendants' collection companies but generally do not collect debts; the Collection Companies collect debts.

a. Facilitating Companies

Asset and Capital Management Group, Inc. ("ACMG") is a California corporation formed in September 2006. (PX38 Att. A at 483-86.) It was created as a debt collection company but evolved into an umbrella company that brokers service contracts vital to Defendants' operations. (*Id.* at 473-74 ¶31.) ACMG holds, or has held, the contracts that provide telephone, payment processing, and Internet domain services to the enterprise. (*Id.* at 463-64 ¶15, 468 ¶21, 475 ¶36.) ACMG also contracted with Experian to give Defendants' collection companies access to consumer credit databases used to locate consumers for collection attempts. (*Id.* at 473 ¶30.)

As ACMG grew from a debt collection company to an umbrella company, it established the pattern that the enterprise has used to shield itself from detection and liability. After several years as a debt collection business, ACMG largely stopped collecting under its own name and opened ten new collection companies in its place. (*Id.* at 473-74 ¶31.) The new companies used generic-sounding names such as Credit MP, Global AG, Portfolio MG, and Capital FC. (*Id.* at 474 ¶32, Att. PP at 680-83.)

The collection companies, in turn, registered to do business under one or more fictitious names consisting of three or four letters – PCS, PFG, ABA, ARM, AFGA, SRS, LMR, ISAP, ECG, PRA, HGG, RFA, LAR, and so forth – forming a virtual alphabet soup of business names. (*See id.* Att. VV at 704-06 (listing fictitious names).) Consumer complaints to the FTC evidence the confusion the naming scheme caused. For example, one consumer who received a deceptive call from LMR identified the company as both "Almar" and "Lamar." (PX36 Att. A at 376-77.) Another complained that the company's name was: "Lmnr of Lmr or Lmn & Associates (it changes with each call)." (*Id.* at 378-79.) Moreover, in many instances, Defendants used neither their corporate or fictitious names in their contacts with consumers. (PX01 at 1 ¶¶ 2-3 (Defendants left message identifying themselves as "Legal Claims SBC"); PX05 at 30 ¶6, Att. A at 35; PX36 at 371 ¶24, Att. B at 381-94, Att. D at 405-16.) The companies also changed their names and locations frequently. A former employee testified in the labor class-action lawsuit that, over the course of two years, the name of his employer and his work location changed several times. (PX38 Att. WW at 729 (interrogatory responses 16, 17).)

Crown Funding Company, LLC ("Crown") is a Wyoming company that was formed in 2009. (PX38 Att. C at 492-94.) Crown buys portfolios of consumer

credit card and other bank debt and, in turn, purports to sell the debt to Defendants' collection companies. (*Id.* at 474-75 ¶¶33-36, Att. QQ at 685, Att. RR at 689-90.)

Crown registered to do business in California in April 2010 and subsequently reported to a California state agency that it was located at an address in Santa Ana that is one of several known active boiler rooms (referred to hereinafter as the "Brookhollow boiler room"). (*Id.* Att. X at 559.) In April 2012, an Ohio federal court entered a consent order barring several Defendants from engaging in certain illegal collection practices.[3] (*Id.* at 479 ¶42, Att. UU at 700-02.) Apparently in response to that order, in May 2012, Crown directed the Postal Service to deliver its mail to the Santa Ana post office box that subsequently became the repository for the mail of 31 other entities. (*Id.* at 478 ¶38, Att. TT at 695-98.)

b. Collection Companies

Out of the numerous collection companies Defendants have operated, the five Collection Companies described below have received complaints in the past

[3] The consent order enjoined ACMG, One FC, Western Capital, Thai Han, and Jim Phelps from engaging in caller ID spoofing. (*Id.* at 700-02.) As discussed below, the consent order did not stop Defendants from violating the law. Instead, they simply resumed their illegal practices using other, newly-created entities.

year alleging deceptive conduct characteristic of the enterprise.[4] Three of the five companies – One FC, LLC, Credit MP, LLC, and Western Capital Group, Inc. – pre-dated the Ohio federal court order and principals Han, Phelps, and/or Hua appear on their corporate papers.[5] The other two collection companies – SJ Capitol, LLC, and Green Fidelity Allegiance, Inc. – became active after the order was issued and, possibly as a result, do not have Han, Phelps, or Hua on their papers. Nonetheless, the two new entities are operating out of boiler rooms that other Defendant collection companies recently used, engage in illegal practices

[4] The unnamed Collection Companies that, together with the named Defendants, comprise Defendants' enterprise include the following entities: Individual Security & Holdings, Inc., Grant Services Management, LLC, Bureau of Asset Management, Inc., Capital Recoveries, Inc., New Capital Holdings, Inc., Las Vegas Funding & Financial, LLC, Premier PG, LLC, Portfolio MG, LLC, United FP, Inc., First CG, Inc., Global AG, LLC, First FF, LLC, American PG, LLC, Capital FP, LLC, Capital FC, LLC, National FC, LLC, First FS, LLC, Capital IG, LLC, Global Holding Services, LLC, American FP, LLC, United CC Holdings, LLC, National IG, LLC, Pacific Holding Partners, LLC, Freeman United Holdings, LLC, First Planners United, LLC, National Services Partners, LLC, United Services Partnership, LLC, First FG, LLC, Heinz Capital Financial, LLC, Capital Funding Management, LLC (PX38 Att. VV at 704-06), and Revere Recovery Group, LLC (*id.* at 462 ¶12). The FTC believes the enterprise continues to evolve and additional entities will be discovered.

[5] Defendants' principals appear to have wound down their operations under the names of the three collection companies as part of the regrouping that followed the federal court order.

identical to those of past Defendant entities, employ Defendants' managers, and, altogether, seem to be the latest entrants into Defendants' enterprise.[6]

One FC, LLC ("One FC"), also doing business as WPG and also known as Western Performance Group, is a California limited liability company formed in July 2009. (*Id.* Att. E at 499-500, Att. R at 547.) In April 2012, One FC was among the companies placed under the Ohio federal court order. (*Id.* Att. UU at 701.) In June 2012, One FC directed the Postal Service to forward its mail to Crown. (*Id.* at 478 ¶38, Att. TT at 695-98.) Defendants appear to have begun winding down their operations under the business names associated with One FC around that time.

Credit MP, LLC ("Credit MP"), also doing business as AFGA and CMP, and also known as AFG & Associates, AF Group, Allied Financial Group and Allied Guarantee Financial, is a California limited liability company formed in July 2009. (PX38 Att. B at 488-90, Att. O at 540, Att. P at 542; PX36 at 371 ¶24, 373 ¶28, Att. B at 381-94; Att. D at 405-16, Att. E at 418-25.) In June 2012, Credit MP directed the Postal Service to forward its mail to Crown, and appears to have begun winding down its operations under the business names associated with Credit MP at that time. (PX38 at 478 ¶38, Att. TT at 695-98.)

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[6] The FTC believes these new entities are indicative of the latest phase of Defendants' evolution, insulating Defendants Han, Phelps, and Hua further by identifying on corporate papers a third party, generally an office manager, as the sole corporate officer.

Western Capital Group, Inc. ("Western Capital"), also doing business as ERA and LMR, and also known as WCG and WC Group, is a Nevada corporation formed in March 2008. (PX38 Att. G at 508-14, Att. L at 531.) Western Capital has held itself out as doing business from at least five addresses in Riverside County, California, including a Harvill Avenue address in Perris, California (the "Harvill Avenue boiler room"), that appears to be the site of another known boiler room through which Defendants' enterprise is now operating. (PX37 at 455-56 ¶¶5,6; PX38 at 472 ¶25, Att. KK at 644-46.)) Western Capital was one of the entities placed under the Ohio federal court order in April 2012. (PX38 Att. UU at 701.) Defendants appear to have begun winding down its operations under the business names associated with Western Capital around that time. Nonetheless, the principals are continuing to operate the Harvill Avenue boiler room through defendant SJ Capitol. (PX37 at 455-56 ¶¶5,6; PX38 Att. K at 528.) In June 2012, Western Capital directed the Postal Service to forward its mail to Crown. (PX38 at 478 ¶38, Att. TT at 695-98.)

SJ Capitol, LLC ("SJ Capitol"), also doing business as SCG, is a California limited liability company formed in March 2010. (PX38 Att. F at 502-06.) A longtime entity in Defendants' enterprise, it began collecting debts in its own right in June 2012, soon after the Ohio federal court order was issued. That month, SJ Capitol registered to do business as SCG (*Id.* Att. K at 528) and thereafter, posted

the name SCG on the door to Western Capital's Harvill Avenue boiler room. (PX37 at 455-56 ¶¶5,6.) Through June 2012, SJ Capitol received regular payments from Western Capital. (PX38 at 472 ¶26, Att. LL at 648-51.) In corporate papers, SJ Capitol holds itself out as doing business from a Moreno Valley, California maildrop location. (*Id.* Att. F at 506.)

Green Fidelity Allegiance, Inc. ("Green Fidelity"), also doing business as WRA, is a California corporation that was formed in June 2012. (*Id.* Att. D at 496-97, Att. Q at 544.) It appears to be Defendants' newest entity. Green Fidelity operates from the Brookhollow boiler room. (PX37 at 457 ¶7; PX38 Att. D at 497, Att. Q at 544.) Defendants previously used the boiler room for National Services Partners, LLC, which did business as AMA ("National Services"), one of the collection companies that shut down in or around June 2012 and forwarded its mail to Crown. (PX38 at 478 ¶38, Att. TT at 695-98.)

2. Individual Defendants

Thai Han has been at the center of the enterprise since at least 2009. He has been listed on corporate documents as the president, chief financial officer, secretary and manager of ACMG (*Id.* Att. A at 484-85, Att. CC at 588, 594, Att. DD at 599, Att. FF at 617, Att. UU at 701), the manager of Crown (*Id.* Att. FF at 616), the president, secretary, and director of Western Capital (*Id.* Att. G at 509-14, Att. II at 627, Att. JJ at 641-42, Att. UU at 701), and vice-president of Credit MP

(*Id.* Att. EE at 609). He is a signatory to the bank accounts of ACMG, Crown, Western Capital, Credit MP and One FC, and to the various Bank of America, Wells Fargo and JP Morgan Chase accounts of at least thirteen other entities linked to the enterprise. (*Id.* at 461-62 ¶12 Table 1, 469 ¶23, Att. CC at 588, Att. DD at 599, Att. EE at 601-14, Att. FF at 616-17, Att. HH at 623-24, Att. II at 627-39, Att. JJ at 641-42.) He also is listed as the owner for Defendants' various merchant accounts. (*Id.* at 475-76 ¶36, Att. SS at 692.) He pays invoices for Defendants' website, email, and domain hosting services. (*Id.* at 463-64 ¶15.) He is also listed as the billing contact for Defendants' telephone service. (*Id.* at 468 ¶21, Att. BB at 579, 581.) The Ohio federal court specifically named Han as an owner of Defendants' entities named in that lawsuit. (*Id.* Att. UU at 700-02.)

Jim Tran Phelps is the secretary and treasurer of ACMG (*Id.* Att. A at 484, Att. DD at 599, Att. FF at 617, Att. UU at 701) and secretary, treasurer, and director of Western Capital, which he and Han formed (*Id.* Att. G at 509-14, Att. II at 630, Att. JJ at 641-42, Att. UU at 701). Like Han, Phelps has been central to the enterprise since at least 2009 and is a signatory to the bank accounts of at least seven entities linked to the operation, including defendants ACMG and Western Capital. (*Id.* at 462-3 ¶12 Table 4, 469 ¶23, Att. CC at 589-91, 594, Att. DD at 599, Att. FF at 617, Att. II at 627-39, Att. JJ at 641-42.) With Han, he is listed as the billing contact for Defendants' telephone service. (*Id.* at 468 ¶21, Att. BB at 580,

582-86.) Phelps is also the billing contact for Defendants' Experian account. (*Id.* Att. OO at 677.) Like Han, the Ohio federal court specifically named Phelps as an owner of Defendants' entities named in that lawsuit. (*Id.* Att. UU at 700-02.)

Keith Hua is the manager of ACMG, Crown, and Western Capital, president of Credit MP, president of One FC, and a signatory to their bank accounts. (*Id.* at 469 ¶23, Att. DD at 599, Att. EE at 601-14, Att. FF at 616, Att. HH at 623-24, Att. JJ at 641.) He also is the president of several unnamed collection companies. (*Id.* at 462 ¶12 Table 2.) His involvement in the enterprise also dates back to at least 2009. Hua also was a signatory to the account of National Services, the company that appears to be the predecessor to defendant Green Fidelity. (*Id.* at 462 ¶12 Table 2.) He is also the contact person for Defendants' website, email, and domain hosting provider. (*Id.* at 463¶15.)

James Novella is the president of Green Fidelity and a director of ACMG. (*Id.* Att. A at 484, Att. GG at 619-20.) He has signatory authority over Green Fidelity's accounts. (*Id.* Att. GG at 619-21.) Payments that a number of Defendants' collection companies made to a shell company that Novella controls (*Id.* at 471 ¶24 (payments to Hush Lah)) suggest that Novella is responsible for the operations of several boiler rooms in addition to the Brookhollow boiler room that Green Fidelity is now operating. Novella also has been involved with the enterprise since at least 2009. He is a manager of National Services, the company

that appears to be the predecessor to defendant Green Fidelity. (*Id.* at 462 ¶12 Table 3.)

III. DEFENDANTS' DECEPTIVE AND ABUSIVE COLLECTION PRACTICES

Defendants collect consumer debt nationwide on their own behalf. Defendants buy debt portfolios from banks and third-party brokers through Crown and ACMG. (*Id.* at 474-75 ¶¶34, 35, Att. RR at 689-90.) Their collection companies then set about extracting payment from consumers through misrepresentations aimed at convincing them that a debt collection lawsuit has been filed or imminently will be filed against them and will result in devastating consequences unless the consumer immediately pays Defendants.

Consumers have filed at least 1,047 complaints with the FTC since 2009 against various entities linked to Defendants, including at least 553 complaints filed against the named corporate defendants. (PX36 at 366-67 ¶¶12, 13.) Further, consumers have filed at least 15 federal court lawsuits against Defendant entities for violations of the FDCPA and state fair debt collection laws.[7] (PX38 at 477-79 ¶41.)

Defendants' unlawful practices fall into four main categories: (1) using false and misleading representations to collect debts; (2) engaging in prohibited

[7] Consumers also have filed civil lawsuits in state courts but, because state courts do not make their dockets accessible through a central, searchable database such as PACER, an accurate count of the state court lawsuits is not available.

communications with third parties; (3) failing to make required disclosures during collection calls; and (4) failing to provide consumers with required validation notices. These practices violate Section 5 of the FTC Act and multiple provisions of the FDCPA.[8]

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 Section 5(a) if it involves a material representation or omission that is likely to mislead consumers acting reasonably under the circumstances. *FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009). A misrepresentation is material if it involves facts that a reasonable person would consider important in choosing a course of action. *See FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006). Express claims are presumed material, so consumers are not required to question their veracity to be deemed reasonable. *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095-96 (9th Cir. 1994). The FTC need not prove reliance by each consumer

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[8] Defendants are debt buyers and collectors. (PX38 at 474 ¶33, Att. QQ at 685.) Debt buyers – parties that acquire debt and that collect the debt on their own behalf – are covered by the FDCPA if the accounts were in default at the time the debt buyers purchased them. 15 U.S.C. §§ 1692a(4) and (6); *see also Ruth v. Triumph P'ships*, 557 F.3d 790, 796-97 (7th Cir. 2009); *FTC v. Check Investors, Inc.*, 502 F.3d 159, 171-72 (3d Cir. 2007). Thus, Defendants' activities are covered by the FDCPA because Defendants acquire and collect debt that was in default at the time of purchase.

misled by Defendants. *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1275 (S.D. Fla. 1999). "Requiring proof of subjective reliance by each individual consumer would thwart effective prosecutions of large consumer redress actions and frustrate the statutory goals of [Section 13(b)]." *FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 605 (9th Cir. 1993) (citations omitted).

In considering whether a claim is deceptive, the Court must consider the "net impression" created by the representation. *Cyberspace.com*, 453 F.3d at 1200 (solicitation can be deceptive by virtue of its net impression even if it contains truthful disclosures); *FTC v. Five-Star Auto Club*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) ("the Court must consider the misrepresentations at issue, by viewing [them] as a whole without emphasizing isolated words or phrases apart from their context"). The FTC need not prove that Defendants' misrepresentations were made with an intent to defraud or deceive or were made in bad faith. *See, e.g., Removatron Int'l Corp. v. FTC*, 884 F.2d 1489, 1495 (1st Cir. 1989); *FTC v. World Travel Vacation Brokers*, 861 F.2d 1020, 1029 (7th Cir. 1988).

Similarly, Section 807 of the FDCPA prohibits the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. Section 807 lists examples of actions that violate its strictures, but provides that prohibited actions are not limited to the examples. In determining whether a practice or statement is deceptive, courts use the "least

sophisticated consumer" standard to ensure that the FDCPA "protects all consumers, the gullible as well as the shrewd." *Clark v. Capital Credit & Collection Servs.*, 460 F.3d 1162, 1171 (9th Cir. 2005) (citations omitted).

According to former employees[9] and confirmed by consumers' experiences, Defendants generally employ a two-step process to extract money deceptively from consumers. The first step involves misrepresenting their status as process servers or employees of law firms. The second step involves misrepresenting the consequences consumers will face for nonpayment of purported debts. Consumers do not always recall the separate steps; however, consumers consistently report hearing the central misrepresentations made by Defendants.

1. Defendants Misrepresent Their Status as Process Servers or as Employees of Law Firms

In the first step, Defendants' collectors call consumers or third parties in the guise of a process server or an employee of a law office. (PX01 at 1 ¶2 (call from "Legal Claims SBC"); PX05 at 29 ¶2 (collector said he was from the "Legal Department" calling about a legal matter); PX06 at 36 ¶2; PX08 at 44 ¶2 (collector said he was a process server); PX09 at 58 ¶2 (collector said he was a process

[9] Several former employees sued Defendants for labor law violations. (PX38 at 480 ¶43.) The class-action complaint states that Defendants employed the workers as "dialers" and "collectors," and explained, "[a] dialer's job is to initiate the debt collection process by calling a debtor and leaving messages. A collector's job is to convince the debtor to pay off the delinquent account and close the account." (*Id.* Att. VV at 707.)

server); PX17 at 156 ¶2 (collector claimed he was a county process server); PX18 at 173 ¶2; PX19 at 178 ¶¶2, 3; PX20 at 199 ¶3; PX21 at 210 ¶2; PX22 at 218 ¶3; PX23 at 221 ¶2; PX24 at 226 ¶2; PX25 Att. A at 257-59 (transcript of voicemail left by Defendants); PX30 Att. A at 295 (transcript of voicemail left by Defendants); PX32 at 303 ¶2; PX33 at 319 ¶2; PX34 at 323 ¶2; PX35 at 339 ¶2, Att. A at 347-351 (transcript of recorded conversation).) Defendants often state that they need to confirm that the consumer will be in a certain location – frequently the consumer's workplace – at a certain time because the consumer will be served there with court documents. (PX05 at 29 ¶2; PX06 at 36 ¶2; PX08 at 44 ¶2; PX09 at 58 ¶2; PX11 at 69 ¶2; PX12 at 94 ¶2; PX13 at 97, 99 ¶¶2, 9; PX15 at 137 ¶2; PX17 at 156 ¶2; PX18 at 173 ¶2; PX19 at 178 ¶2; PX20 at 199 ¶3; PX25 Att. A at 257-59 (transcript of voicemail left by Defendants); PX28 at 275 ¶2; PX33 at 319 ¶2; PX34 at 323 ¶2.) When the alarmed consumer or third party asks what has prompted such drastic action, the caller gives the call recipient a telephone number for the consumer to call for information, often along with a "case number." (PX05 at 29 ¶2; PX08 at 44 ¶2; PX09 at 58 ¶2; PX10 at 66 ¶¶2, 4; PX12 at 94 ¶2; PX17 at 157 ¶2; PX18 at 173 ¶2; PX19 at 178 ¶¶2, 3; PX22 at 218 ¶3; PX24 at 226 ¶2; PX25 Att. A at 257-59 (transcript of voicemail left by Defendants); PX28 at 275 ¶2; PX30 Att. A at 295 (transcript of voicemail left by Defendants); PX32 at 303 ¶2; PX33 at 319 ¶2; PX34 at 323 ¶2; PX35 at 339 ¶2,

Att. A at 347-351 (transcript of recorded conversation).) Often, the collector warns that if the consumer does not call back within a limited time period, generally two or three hours, the consumer will be served with a lawsuit or, in some instances, arrested. (PX03 at 9 ¶2 (Defendants left message for consumer saying that if she did not call back there would be serious consequences); PX05 at 29 ¶2 (Defendants warned consumer that only by calling could he avoid the embarrassment of being served a subpoena at work); PX07 at 39 ¶2 (consumer told he had 24 hours to call or be sued); PX08 at 44 ¶2 (told if did not call right away, the police would be at his workplace); PX14 at 133 ¶2; PX17 at 156 ¶ (collector told consumer if she did not call back by next day, he would ask the judge for a ruling against her for failing to appear in court); PX23 at 221 ¶2 (Defendants told consumer's step-mother's husband that if consumer did not call back right away a warrant for her arrest would be issued); PX30 Att. A at 295 (transcript of voicemail left by Defendants); PX35 at 339 ¶2, Att. A at 347-351 (transcript of recorded conversation).)

In fact, Defendants are not process servers seeking to serve legal papers on consumers. Nor do they work for or with lawyers who are preparing lawsuits against consumers. (PX38 at 480-81 ¶45.) Thus, Defendants have violated

Section 5 of the FTC Act, as alleged in Count I.a. and I.b. of the Complaint, and Section 807(10) of the FDCPA,[10] as alleged in Count IV.d. of the Complaint.

2. Defendants Misrepresent the Consequences That Consumers Face for Nonpayment of Purported Debts

The second step of Defendants' collection process generally occurs when a consumer calls the number provided in the initial call and speaks with another of Defendants' collectors. At that point, Defendants assert that consumers owe money on a purported debt. (PX01 at 1 ¶3; PX03 at 9-10 ¶4; PX05 at 29 ¶3; PX06 at 36 ¶3; PX07 at 39 ¶3; PX09 at 58 ¶3; PX10 at 67 ¶5; PX11 at 69 ¶4; PX12 at 94 ¶4; PX13 at 97, 99 ¶¶3; PX14 at 134 ¶5, 10; PX15 at 137 ¶3; PX16 at 148 ¶2; PX17 at 158 ¶4; PX18 at 173 ¶3; PX19 at 179 ¶4; PX20 at 200 ¶5; PX21 at 210 ¶3; PX23 at 221 ¶4; PX24 at 226 ¶3; PX27 at 267 ¶3; PX28 at 275 ¶3; PX30 at 286 ¶5; PX32 at 303 ¶3; PX35 at 340 ¶4.) In some instances, Defendants' collectors also misrepresent their status as lawyers, or employees of law offices. (PX08 Att. A at 49, Att. C at 53, Att. D at 57 (collector sent email signed as "Legal Administrator"); PX17 at 157 ¶4 (collector said he was with Western Performance Law Group and said that his firm had filed a lawsuit against the consumer); PX18 at 173 ¶3 (collector identified himself as part of the "litigation department of

[10] Section 807(10) of the FDCPA prohibits "the use of any false representation or deceptive means to collect or attempt to collect any debt." 15 U.S.C. § 1692e(10). Section 807(10) is a "catch-all" deception provision that can be violated in "any number of novel ways." *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1062 (9th Cir. 2011).

Western Performance Law Group"); PX23 at 221 ¶3 (collector said that he was with WPG & Associates, a law firm); PX24 at 226 ¶3 (collector told consumer he needed to go to the "attorney's office" to pull his file); PX28 at 277 ¶7 (purported collection manager told consumers he was an attorney with SCG); PX32 at 303 ¶3 (collector said he was a lawyer working with a legal office).)

Defendants' collectors advise consumers that they will be sued and have their wages garnished or property seized if they do not pay the alleged debt. (PX01 at 1-2 ¶4; PX02 at 6 ¶4; PX03 at 10 ¶4; PX05 at 29-30 ¶3; PX07 at 39 ¶3; PX09 at 58-59 ¶¶4, 5; PX10 at 67 ¶5; PX14 at 134 ¶6; PX15 at 137 ¶3; PX16 at 148 ¶2; PX17 at 157-58 ¶4; PX18 at 174-75 ¶6; PX19 at 178 ¶3; PX20 at 200 ¶5; PX21 at 210-11 ¶¶4, 5; PX22 at 219 ¶9; PX23 at 221 ¶3; PX27 at 267 ¶2; PX28 at 276 ¶4, 277 ¶7; PX29 at 283 ¶4; PX30 at 286 ¶5, Att. A at 296 (transcript of voicemail from Defendants); PX32 at 303 ¶3; PX34 at 323 ¶3; PX35 at 340 ¶4.) In other instances, Defendants warn that consumers will be arrested if they do not pay. (PX04 at 26 ¶2; PX06 at 37 ¶5; PX09 at 58-59 ¶¶4,5; PX11 at 69 ¶3; PX23 at 221 ¶3; PX26 at 261 ¶3; PX29 at 283 ¶4; PX31 at 300 ¶3 (Defendants left voicemail saying "you can't run from us" and "you're going to get what's coming to you"); PX34 at 323 ¶¶3,4.)

After detailing the consequences of nonpayment, Defendants' collectors generally offer consumers a "settlement" that is substantially less than the amount

they claim the consumers owe. (PX01 at 2 ¶6; PX03 at 9-10 ¶4; PX04 at 27 ¶5; PX05 at 30 ¶5; PX07 at 40 ¶5; PX09 at 59 ¶6; PX10 at 67 ¶7; PX11 at 70 ¶5; PX13 at 97 ¶4; PX14 at 134 ¶6; PX15 at 138 ¶5; PX17 at 159 ¶7; PX18 at 175 ¶7; PX19 at 179 ¶4; PX20 at 200 ¶7; PX21 at 210-11 ¶¶4, 7; PX23 at 221 ¶4; PX26 at 261 ¶4; PX27 at 268 ¶4; PX29 at 283 ¶5; PX35 at 340 ¶4.) Indeed, many consumers stated they agreed to pay the settlement even though they were unsure if the debt was valid because they were afraid of the threatened consequences. (PX01 at 2 ¶6; PX04 at 26 ¶2; PX05 at 30 ¶4; PX11 at 70 ¶5; PX15 at 138 ¶5; PX16 at 148 ¶4; PX17 at 158 ¶5; PX18 at 175 ¶7; PX19 at 179 ¶6; PX21 at 211 ¶8; PX26 at 261 ¶4; PX28 at 276 ¶4; PX29 at 283 ¶¶4, 5; PX34 at 323-24 ¶4; PX35 at 341 ¶5; *see also* PX09 at 59 ¶6 (consumer agreed because he felt pressured and bullied).)

There is, in fact, no evidence that Defendants sue consumers to collect debts or have any intention of doing so. The FTC is 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, or anyone else to collect the debts. (PX01 at 4-5 ¶16; PX03 at 12 ¶13; PX05 at 32 ¶14; PX06 at 38 ¶9; PX07 at 41 ¶12; PX08 at 46 ¶10; PX10 at 68 ¶10; PX12 at 94-95 ¶¶ 5, 9; PX14 at 136 ¶15; PX15 at 140 ¶15; PX17 at 161 ¶10; PX18 at 176-77 ¶¶10, 11; PX19 at 183 ¶20; PX20 at 203 ¶20; PX22 at 220 ¶10; PX23 at 225 ¶16;

PX24 at 230 ¶17; PX25 at 250 ¶19; PX26 at 262 ¶10; PX27 at 270 ¶19; PX28 at 277 ¶9; PX29 at 284 ¶11; PX30 at 289 ¶13; PX31 at 302 ¶10; PX32 at 306 ¶12; PX34 at 329 ¶16.) A search of LexisNexis' CourtLink and other databases found no evidence that Defendants obtained judgments or liens against any consumers. (PX38 at 477 ¶40.) Nor do Defendants have any authority to arrest consumers or impose other criminal sanctions for failure to pay alleged private debts. Thus, Defendants violate Section 5 of the FTC Act, as alleged in Counts I.c. and I.d. of the Complaint, Section 807(4) of the FDCPA,[11] as alleged in Count IV.b. of the Complaint, Section 807(5) of the FDCPA,[12] alleged in Count IV.c. of the Complaint, and Section 807(10) of the FDCPA, as alleged in Count IV.d. of the Complaint.

By claiming that they have filed, or intend to file imminently, lawsuits against consumers, or that nonpayment of purported debts will result in arrest or seizure, garnishment, or attachment of property or wages, Defendants misrepresent "the character, amount, or legal status of any debt." *See Johnson v. Eaton*, 873 F. Supp. 1019, 1025-26 (M.D. La. 1995) (claims that consumer was liable for court

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[11] Section 807(4) of the FDCPA prohibits "the representation or implication that nonpayment of a debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action." 15 U.S.C. §1692e(4).

[12] Section 807(5) of the FDCPA prohibits "the threat to take any action that cannot legally be taken or that is not intended to be taken." *Id.* § 1692e(5).

costs when no suit had been filed falsely represented legal status); *Crossley v. Lieberman*, 868 F.2d 566, 571 (3d Cir. 1989) (letter that falsely implied that mortgage foreclosure case was already in litigation falsely represented the legal status of the debt). Thus, Defendants violate Section 807(2) of the FDCPA,[13] as alleged in Count IV.a. of the Complaint.

B. Defendants Engage in Prohibited Communications with Third Parties

Section 805(b) of the FDCPA bars debt collectors from communicating with third parties other than for the purpose of obtaining a consumer's home or workplace address or telephone number, unless the consumer consents to the third-party communication or the communication is reasonably necessary to effectuate a post-judgment judicial remedy. 15 U.S.C. § 1692c(b). Prohibited third-party communications include contacts with a debtor's family members such as parents, grandparents, aunts, uncles, siblings, and children, *see West v. Costen*, 558 F. Supp. 564, 575 (W.D. Va. 1983), as well as a debtor's employer or co-workers. *See, e.g., Padilla v. Payco Gen. Am. Credits, Inc.*, 161 F. Supp. 2d 264, 274 (S.D.N.Y. 2001); *Austin v. Great Lakes Collection Bureau, Inc.*, 834 F. Supp. 557, 559 (D. Conn. 1993); *Costen*, 558 F. Supp. at 575 ("prohibition against . . . third party contacts . . . is designed to protect a consumer's reputation and privacy, as

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[13] Section 807(2) of the FDCPA prohibits "falsely representing the character, amount, or legal status of a debt." *Id.* § 1692e(2).

well as to prevent loss of jobs"). *See also* 15 U.S.C. § 1692(a) (Congressional finding that abusive, deceptive, and unfair debt collection practices "contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy").

Here, Defendants routinely contact third parties about consumers' alleged debts for improper purposes, often disclosing the debt in the process. First, Defendants regularly contact consumers' family members. (PX02 at 6 ¶2 (Defendants called consumer three times regarding her adult son's debts); PX06 at 37 ¶5 (Defendants called consumer's mother and told her that if her son did not pay his debt they would take him to jail for check fraud); PX10 at 66 ¶2 (Defendants called consumer's adult daughter saying that her father owed a large debt); PX22 at 218 ¶¶2-3 (Defendants' collector called mother of consumer's ex-boyfriend, saying he had a summons for the consumer), 218-19 ¶6 (later Defendants disclosed information about debts of consumer's ex-boyfriend); PX23 at 221-22 ¶¶2, 6, 7 (Defendants called consumer's step-mother's husband, brother, and father); PX25 at 245 ¶¶2-3 (Defendants called consumer asking for his brother-in-law, the alleged debtor); PX30 at 286 ¶3, Att. A at 295 (transcript of voicemail left by Defendants for consumer regarding her father who was stationed in Afghanistan), 286 ¶5 (collector discussed father's debt with adult daughter); PX33 at 319 ¶2 (Defendants called consumer's father, mother, and brother and told

them she was being sued).) Second, Defendants contact consumers' employers. (PX01 at 1 ¶2 (Defendants spoke to consumer's colleague); PX03 at 9 ¶2 (consumer, a teacher, reports that her school's principal pulled her out of her classroom and told her that a debt collector was calling her); PX05 at 31 ¶10 (consumer stopped payment to Defendants after reading negative information about them on the Internet, prompting Defendants to call his payroll department); PX13 at 97, 99 ¶¶2, 9 (Defendants called consumer's supervisor saying they had legal paperwork to serve on her); PX18 at 173 ¶2 (Defendants told consumer's boss that consumer was being served with a court summons); PX35 at 339 ¶2, Att. A at 347-351 (transcript of recorded conversation in which Defendants called the 911 emergency services center where consumer worked and told a colleague that a complaint had been filed against the consumer).) Thus, Defendants violate Section 805(b) of the FDCPA, as alleged in Count II of the Complaint.

C. Defendants Fail to Make Required Disclosures in Their Collection Calls

Section 806(6) of the FDCPA prohibits debt collectors from placing telephone calls to consumers "without meaningful disclosure of the caller's identity." 15 U.S.C. § 1692d(6). Courts have interpreted Section 806(6) to require the caller to "[s]tate his or her name and capacity, and disclose enough information so as not to mislead the recipient as to the purpose of the call." *Costa v. Nat'l Action Fin. Servs.*, 634 F. Supp. 2d 1069, 1074 (E.D. Cal. 2007) (citations

omitted). When dealing directly with consumers, Section 806(6) requires collectors to disclose the name of their collection company and that they are calling to collect a debt. *See Hosseinzadeh v. M.R.S. Assocs., Inc.*, 387 F. Supp. 2d 1104 (C.D. Cal. 2005) (collectors who failed to identify their employer and state the purpose of their call in telephone messages violated § 806(6)).

Similarly, Section 807(11) of the FDCPA requires debt collectors to disclose in their initial communications with consumers "that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose," and "to disclose in subsequent communications that the communication is from a debt collector." 15 U.S.C. § 1692e(11). The Ninth Circuit has observed that the disclosures required by Section 807(11), often referred to as a mini-Miranda, are intended to deter collectors from tricking consumers into communicating with them. *Romine v. Diversified Collection Serv., Inc.*, 155 F.3d 1142, 1149 (9th Cir. 1998).

Here, Defendants routinely fail to make these required disclosures. Rarely, if ever, in their initial communication (the first step described above) do Defendants make a meaningful disclosure of their identity, that they are debt collectors, or that they are calling in an attempt to collect a debt. Instead, Defendants often either do not identify themselves or deceptively identify themselves generically as process servers or as employees of law firms or legal

departments. (PX01 at 1 ¶2 (Defendants left message to call "Jacob" at "Legal Claims SBC"); PX05 at 29 ¶2 (Defendants identified themselves merely as "Legal Department"); PX06 at 36 ¶2; PX08 at44 ¶2; PX09 at 58 ¶2; PX10 at 66 ¶2; PX12 at 94 ¶2; PX14 at 133 ¶2; PX17 at 156 ¶2; PX18 at 173-74 ¶¶ 2, 3; PX19 at 178 ¶2; PX21 at 210 ¶2; PX22 at 218 ¶2; PX23 at 221 ¶2; PX24 at 226 ¶2; PX25 Att. A at 257-59 (transcript of voicemail left by Defendants); PX28 at 275 ¶2; PX32 at 303 ¶2; PX34 at 323 ¶2; PX35 at 339 ¶2, Att. A at 347-351 (transcript of recorded conversation.) Nor do they make required mini-Miranda disclosures in subsequent communications. (PX03 Att. A at 14, Att. B at 16; PX08 Att. A at 49, Att. C at 53-54, Att. D at 56-57; PX09 Att. A at 63; PX17 Att. 1 at 165, Att. 2 at 167; PX21 Att. A at 215; PX22 at 219 ¶8; PX26 Att. A at 266; PX35 at Att. B at 354-56, Att. D at 361.)

In some instances, consumers do not learn they are dealing with a debt collector (rather than a process server or lawyer) until after they agree to pay. For example, after providing his debit card information to avoid being served with court papers at work, one consumer received a confirmation letter from One FC, even though he had been talking with someone who had identified herself as with the "Legal Department" of "Western Performance Group." (PX05 at 29-30 ¶¶ 3, 6, Att. A at 34-35.) Thus, Defendants violate Section 806(6) of the FDCPA, as

alleged in Count III of the Complaint, and Section 807(11) of the FDCPA, as alleged in Count IV.e. of the Complaint.

D. Defendants Fail to Provide Consumers with a Validation Notice

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

Here, Defendants do not provide required notices to consumers. (PX01 at 4 ¶15; PX03 at 12 ¶14; PX04 at 28 ¶8; PX06 at 37 ¶7; PX07 at 41 ¶10; PX10 at 68 ¶9; PX12 at 95 ¶7; PX14 at 136 ¶13; PX15 at 140 ¶13; PX16 at 150 ¶11; PX19 at 180 ¶9; PX20 at 203 ¶19; PX21 at 213 ¶13; PX23 at 224 ¶14; PX24 at 230 ¶16;

PX27 at 270 ¶18; PX29 at 284 ¶12; PX31 at 301 ¶6; PX35 at 342 ¶13.) Moreover, Defendants have flatly refused to provide verification to consumers who questioned their alleged debts. (PX03 at 11 ¶10, Att. D at 22-23, at 12 ¶12; PX21 at 210 ¶3; PX23 at 223 ¶11 (when asked to provide verification, collector replied that he did not have to send consumer anything because consumer was the one who owed the money); PX24 at 228 ¶8 (collector told consumer that he had to pay $250 to receive the verification); PX29 at 282 ¶3; PX31 at 301 ¶6; PX32 at 304 ¶4 (when consumer asked for proof of her debt, collector replied she needed to conduct her own research); PX34 at 327 ¶5.) Thus, Defendants violate Section 809(a) of the FDCPA, as alleged in Count V of the Complaint.

E. Scope of Defendants' Operation

Preliminary estimates suggest that Defendants have extracted payments from scores of thousands of consumers. As recently as January 2013, Defendants maintained 83 domain names and more than 600 different user email accounts. (PX38 at 464 ¶17.) Communications sent by Defendants to their email provider in 2009 suggest, at the time, they employed approximately 200 collectors across 10 locations. (*Id.* at 464 ¶16, Att. Z at 568.) Former employees estimate that at any given time Defendants had more than 300 employees. (*Id.* Att. VV at 713.) Meanwhile, bank records indicate that Defendants had gross revenues of $140 million between 2009 and 2013. (PX39 at 757-58 ¶¶8, 9.)

IV. A TEMPORARY RESTRAINING ORDER SHOULD ISSUE AGAINST DEFENDANTS

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

The second proviso of Section 13(b) of the FTC Act authorizes the FTC to seek, and gives the Court the authority to grant, permanent injunctive relief to enjoin practices that violate any law enforced by the FTC.[14] 15 U.S.C. § 53(b); *H.N. Singer*, 668 F.2d at 1111-13. Incident to its authority to issue permanent injunctive relief, this Court has the inherent equitable power to grant all temporary and preliminary relief necessary to effectuate final relief, including a TRO, an asset freeze, expedited discovery, a preliminary injunction, and other necessary remedies. *Pantron I*, 33 F.3d at 1102 (holding that section 13(b) "gives the federal courts broad authority to fashion appropriate remedies for violations of the [FTC] Act"); *H.N. Singer*, 668 F.2d at 1113 ("We hold that Congress, when it gave the district court authority to grant a permanent injunction against violations of any

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[14] 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 second proviso, without being conditioned on the first proviso requirement that the FTC institute 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).

provisions of law enforced by the Commission, also gave the district court authority to grant any ancillary relief necessary to accomplish complete justice . . . ."). Ancillary relief may include asset freezes and expedited discovery. *H.N. Singer*, 668 F.2d at 1112.[15]

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

In determining whether to grant a preliminary injunction under Section 13(b), a court "must 1) determine the likelihood that the Commission will ultimately succeed on the merits and 2) balance the equities." *Affordable Media,* 179 F.3d at 1233 (quoting *FTC v. Warner Commc'ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)). *See also FTC v. World Wide Factors*, 882 F.2d 344, 346 (9th Cir. 1989) (holding same). Unlike private litigants, the FTC need not prove irreparable injury. *Affordable Media*, 179 F.3d at 1233. Moreover, in balancing the equities,

[15] Numerous courts in this district have granted or affirmed injunctive relief similar to that requested here. *See FTC v. Rincon Mgmt. Servs. LLC*, CV-11-01623-VAP-SP (Oct. 11, 2011) (*ex parte* TRO with asset freeze, appointment of Receiver, immediate access to business premises granted in case involving deceptive debt collection practices); *FTC v. Forensic Case Mgmt. Servs., Inc.*, CV-11-07484-RGK-SS (Sept. 12, 2011) (same). *See also FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1232-33 (9th Cir. 1999) (*ex parte* TRO, preliminary injunction, asset freeze, accounting); *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997) (*ex parte* TRO, preliminary injunction); *FTC v. Am. Mortgage Consulting Group, LLC,* SACV12-01561-DOC (JPRx) (Sept. 18, 2012) (*ex parte* TRO with asset freeze, appointment of receiver, immediate access to business premises); *FTC v. Nelson Gamble & Assoc., LLC*, SACV12-1504-JST (MLGx) (Sept. 10, 2012) (*ex parte* TRO with asset freeze); *FTC v. US Homeowners Relief, Inc.*, CV-10-01452-JST-PJW (Sept. 28, 2010) (*ex parte* TRO with asset freeze, appointment of Receiver, and immediate access to business premises).

the public interest should receive greater weight than private interests. *World Wide Factors*, 882 F. 2d at 347. As set forth in this memorandum, the FTC has amply demonstrated that it will ultimately succeed on the merits of its claims and that the balance of equities favors injunctive relief.[16]

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

Generally, the FTC "meets its burden on the likelihood of success issue if it shows preliminarily, by affidavit or other proof, that it has a fair and tenable chance of ultimate success on the merits." *FTC v. Beatrice Foods Co.*, 587 F.2d 1225, 1229 (D.C. Cir. 1978). Moreover, in considering an application for a TRO or preliminary injunction, the Court has the discretion to consider hearsay evidence. *Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) (court may give inadmissible evidence some weight when doing so serves the purpose of preventing irreparable harm before trial); *see also Heideman v. S. Salt Lake City*, 348 F. 3d 1182, 1188 (10th Cir. 2003) ("The Federal Rules of Evidence do not apply to preliminary injunction hearings."). As set forth in Section III above, the FTC has presented ample evidence showing that it is likely to succeed

[16] Although not required to do so, the FTC also meets the Ninth Circuit's four-part test for private litigants to obtain injunctive relief. Without the requested relief, the public and the FTC will suffer irreparable harm from the continuation of Defendants' scheme and the likely destruction of evidence and dissipation of assets.

on the merits of its claims that Defendants violated Section 5 of the FTC Act and multiple provisions of the FDCPA.

2. The Equities Weigh in Favor of Granting Injunctive Relief

Once the FTC establishes the likelihood of its ultimate success on the merits, preliminary injunctive relief is warranted if the Court, weighing the equities, finds that relief is in the public interest. In balancing the equities between the parties, the public equities must be given far greater weight. *Affordable Media*, 179 F.3d at 1236. Because Defendants "can have no vested interested in a business activity found to be illegal," *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972) (internal quotations and citations omitted), the balance of equities tips decidedly toward granting the requested relief. *See also CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977) (quoting *FTC v. Thomsen-King & Co.*, 109 F.2d 516, 519 (7th Cir. 1940)) ("[a] court of equity is under no duty 'to protect illegitimate profits or advance business which is conducted illegally'").

The evidence 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 such 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."); *SEC v. R.J. Allen & Assoc., Inc.*, 386 F. Supp. 866, 877 (S.D. Fla. 1974) (past misconduct suggests likelihood of future violations); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979).

By contrast, the private equities in this case are not compelling. Compliance with the law is hardly an unreasonable burden. *See World Wide Factors*, 882 F.2d at 347 ("there is no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment"). Because the injunction will preclude only harmful, illegal behavior, the public equities supporting the proposed injunctive relief outweigh any burden imposed by such relief on Defendants. *See, e.g., Nat'l Soc'y of Prof. Eng'rs. v. United States*, 435 U.S. 679, 697 (1978).

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

"When one or more corporate entities operate as a common enterprise, each may be held liable for the deceptive acts and practices of the others." *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993, 1011 (N.D. Ind. 2000), *aff'd* 312 F.3d 259 (7th Cir. 2002). When determining whether a common enterprise exists, courts consider "common control; the sharing of office space and officers; whether business is transacted through a maze of interrelated companies; the commingling

of corporate funds and failure to maintain separation of companies; unified advertising; and evidence that reveals that no real distinction exists between the corporate defendants." *FTC v. Grant Connect, LLC,* 2011 U.S. Dist. LEXIS 123702, *36-37 (D. Nev. Oct. 25, 2011) (citations omitted); *FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000). Where the same individuals transact business through a "maze of interrelated companies," the whole enterprise may be held liable as a joint enterprise. *FTC v. John Beck Amazing Profits, LLC,* 865 F. Supp. 2d 1052, 1082 (C.D. Cal. 2012) (quoting *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964)).

Further, it is not necessary that all members of a common enterprise be named as defendants for those members who are named to be held liable for the actions of the enterprise as a whole. In the context of conspiracy (which can be viewed as the criminal analog to common enterprise), courts have routinely held that "the identity of the other members of the conspiracy is not needed, inasmuch as one person can be convicted of conspiring with persons whose names are unknown." *United States v. Rogers*, 340 U.S. 367, 375 (1950). The government need merely to show that a conspiracy existed and that the particular co-conspirator was a party thereto. *United States v. Vonstein*, 1996 U.S. App. LEXIS 33311 at *4-5 (9th Cir. Dec. 19, 1996) (citing *Didenti v. United States*, 44 F.2d 537, 538 (9th Cir. 1930)). Similarly, the FTC need not name all members of a

common enterprise. *See FTC v. Think Achievement*, 144 F. Supp. 2d 1013, 1018-19 (N.D. Ind. 2000), *aff'd* 312 F.3d 259 (7th Cir. 2002) (holding named defendants liable for consumer injury caused by unnamed members of common enterprise).

Here, the Corporate Defendants, together with the numerous other unnamed collection companies controlled by the individual defendants, operate as a common enterprise to collect purported debts from consumers. There is substantial evidence of the entities' intertwinement. Among other things, the various business entities share common ownership and management. (*See* PX38 at 461-63 ¶12, Att. S at 549, Att. T at 551, Att. U at 553, Att. V at 555, Att. W at 557, Att. UU at 701, Att. WW at 732-33 (interrogatory response 98), Att. XX at 741 (interrogatory response 98), Att. YY at 748-49 (interrogatory response 98).) They also share employees. (PX36 at 373 ¶29, Att. F at 427-32 (Credit MP and One FC issuing paychecks to employees working at the same address); PX38 at 466-67 ¶19, 472-73 ¶¶27-28, Att. MM at 653-68, Att. NN at 670-75.) They share office space and mailing addresses. (PX37 at 455-57 ¶¶5, 7 (various business entities operated out of Harvill and Brookhollow addresses); PX38 at 476 ¶38, Att. TT at 695-98, Att. WW at 729 (interrogatory response 16 and 17), Att. XX at 737-38 (interrogatory response 16 and 17).) In the class-action labor lawsuit filed against Defendants and the unnamed collection companies, the same lawyer represented all of the entities. (PX38 Att. ZZ at 752-54.) Defendants' merchant accounts are all owned

by defendant Han. (*Id.* at 475 ¶36, Att. SS at 692.) Defendants have commingled funds by transferring large amounts of money between accounts held by the various business entities (PX39 at 757-58 ¶¶9, 10) or by depositing consumer checks payable to the various collection companies into common accounts. (PX34 at 324 ¶7, Att. A. at 332 (consumer agreed to pay collector working for "Asset Management Associates" but her payment was debited by "WPG"); PX35 at 340 ¶4, 341¶¶7-8, 342 ¶10, Att. B at 354-55, Att. C at 359 (consumer spoke with collector at "Global Pacific Group," received settlement confirmation from same collector at "Global Pacific Financial Services," but her payment was debited by "First Quality Fin"); PX36 Att. C at 396-403 (consumer checks payable to "Atlantic Resource Management," "American RPA," "National First Capital," and "SRS Associates" all deposited into Crown accounts), Att. E at 418-25 (consumer checks payable to "Allied Financial Group and Associates" deposited into Crown and Credit MP accounts), Att. H at 442-45 (consumer checks payable to "WCG Associates" and "WC Group" deposited into Crown accounts), Att. I at 447-54 (consumer checks payable to "SRS Legal Service," "SRS and Associates Inc.," "SRS & Associates," and "SRS Associates" deposited into Crown and First Planners United accounts).) This evidence suggests that not only are Defendants a common enterprise, but that each corporate identity or fictitious trade name they

use is a sham, created only to shield Defendants from scrutiny by giving the impression that each entity is distinct from the rest.

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

In addition to the Corporate Defendants, Individual Defendants Han, Phelps, Hua, and Novella are liable for injunctive and monetary relief for law violations committed by the Corporate Defendants. To obtain an injunction against an individual, the FTC must show that the individual either had the authority to control the unlawful activities or participated directly in them. *See Affordable Media*, 179 F.3d at 1234. In general, an individual's status as a corporate officer gives rise to a presumption of liability to control a small, closely held corporation. *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973). More particularly, assuming the duties of a corporate officer is probative of an individual's participation or authority. *FTC v. Amy Travel Serv. Inc.*, 875 F.2d 564, 573 (7th Cir. 1989); *Five-Star Auto Club*, 97 F. Supp. 2d at 538.

An individual may be held liable for monetary redress for corporate practices if the individual had, or should have had, knowledge or awareness of the corporate defendants' misrepresentations. *Affordable Media*, 179 F.3d at 1231. This knowledge element, however, need not rise to the level of subjective intent to defraud consumers. *Id.* at 1234. Instead, the FTC need only demonstrate that the individual had actual knowledge of material misrepresentations, reckless

indifference to the truth or falsity of such representations, or an awareness of a high probability of fraud, coupled with the intentional avoidance of the truth. *Id.* at 1234. Participation in corporate affairs is probative of knowledge. *Id.* at 1235.

As discussed above, defendants Han, Phelps, Hua, and Novella are the principals and sole officers of the corporate defendants. (*See* PX38 at 461-63 ¶12, Att. S at 549, Att. T at 551, Att. U at 553, Att. V at 555, Att. W at 557, Att. WW at 730-33 (interrogatory response 18, 93, 95, 96, 98), Att. XX at 738-41 (interrogatory response 18, 93, 95, 96, 98), Att. YY at 746-49 (interrogatory response 18, 93, 95, 96, 98).) They have signatory authority over the Corporate Defendants' bank accounts (*Id.* at 469 ¶23, Att. CC at 588-97, Att. DD at 599, Att. EE at 601-14, Att. FF at 616-17, Att. GG at 619-21, Att. HH at 623-25, Att. II at 627-39, Att. JJ at 641-42), merchant accounts (*Id.* at 475 ¶36, Att. SS at 692), and are the billing contacts for Defendants' Experian accounts and their websites, email, and telephone service (*Id.* at 463-64 ¶15, 468 ¶21, 473 ¶30, Att. BB at 579-86). Han and Phelps were placed under order in the Ohio action alleging FDCPA violations. (*Id.* Att. UU at 700-02.) There can be little doubt that the Individual Defendants had authority to control, and direct knowledge of, Defendants' wrongful acts. Accordingly, they should be enjoined from violating the FTC Act and the FDCPA and held liable for consumer redress or other monetary relief in

connection with Defendants' activities. Thus, preliminary relief is appropriate against them.

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

As the evidence has forcefully shown, the FTC is likely to succeed in proving that Defendants are engaging in deceptive and unfair practices in violation of the FTC Act and the FDCPA, and that the balance of equities strongly favors the public. Preliminary injunctive relief is thus justified.

A. Conduct Relief

To 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 or the FDCPA, including but not limited to: communicating with third parties regarding consumers' debts, failing to disclose the caller's identity when calling consumers, 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 Section 13(b) of the FTC Act to grant ancillary relief necessary to accomplish complete justice. *H.N. Singer*, 668 F.2d at 1113. These requested prohibitions do no more than order that Defendants comply with the FTC Act and the FDCPA.

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

As part of the permanent relief in this case, the FTC will seek equitable monetary relief, including consumer redress and/or disgorgement of ill-gotten gains. To preserve the availability of funds for such equitable monetary relief, the FTC requests that the Court issue an order requiring the preservation of assets and evidence. Such an order is well within the Court's authority, *World Wide Factors*, 882 F.2d at 347 (9th Cir. 1989) ("Since the FTC has shown a probability of success on the merits, the district court did not abuse its discretion in granting the injunction to freeze World Wide's assets"); *H.N. Singer*, 668 F.2d at 1113 ("13(b) provides a basis for an order freezing assets"), and similar to the equitable relief granted in prior FTC cases in this District and the Ninth Circuit. *See* note 15 *supra*.

"A party seeking an asset freeze must show a likelihood of dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not granted." *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009). In *Johnson*, the Ninth Circuit upheld an asset freeze because plaintiffs had established they were "likely to succeed in proving that [Defendant] impermissibly awarded himself tens of millions of dollars." *Id.* at 1085. A defendant's prior attempt to hide assets establishes the likelihood that, without an asset freeze, the plaintiff will

be unable to recover any funds. *Affordable Media*, 179 F.3d at 1236 (likelihood of dissipation existed "[g]iven the [defendants'] history of spiriting their commissions away to a Cook Islands trust"). Courts have also concluded that an asset freeze is justified where a Defendant's business is permeated with fraud. *See, e.g., SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2nd Cir. 1972); *R.J. Allen & Assoc.*, 386 F.Supp. at 881.

This Court has the authority to direct third parties to effectuate the purpose of the TRO. *See, e.g., Deckert v. Independence Shares Corp.*, 311 U.S. 282, 290 (1940) (holding that courts have authority to direct third parties to preserve assets); *United States v. First Nat'l City Bank*, 379 U.S. 378, 385 (1965); *Reebok Int'l, Ltd. v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995). Further, the Court can order Defendants' assets to be frozen whether the assets are inside or outside the United States.[17] *First Nat'l City Bank*, 379 U.S. at 384 ("Once personal jurisdiction of a party is obtained, the District Court has authority to order it to 'freeze' property under its control, whether the property be within or without the United States"). In addition to freezing company assets, courts have frozen individual defendants' assets where the individual defendants controlled the deceptive activity and had

[17] The proposed TRO also includes a provision that restrains Defendants from taking any action that may result in the encumbrance or dissipation of foreign assets, including taking any action that would invoke a duress clause. This provision is important because it appears Defendants have created offshore asset protection trusts that could frustrate the Court's ability to provide consumer redress. *See Affordable Media*, 179 F.3d at 1239-44.

actual or constructive knowledge of the deceptive nature of the practices in which the companies were engaged. *Amy Travel*, 875 F.2d at 574.

A freeze of the Defendants' assets is appropriate here to preserve the status quo, ensure that funds do not disappear during the course of this action, and preserve Defendants' assets for final relief. The Corporate Defendants have taken in gross deposits approaching $140 million in revenue since 2009. Defendants have diverted at least $2,177,763 of corporate assets to the individual Defendants. (PX38 at 469-71 ¶24.) Moreover, Defendants have moved at least $550,000 to accounts located offshore. (*Id.* at 471-72 ¶24.) A temporary asset freeze is required to preserve the Court's ability to order disgorgement of profits.

Without an asset freeze, the dissipation and misuse of assets is likely. Defendants who have engaged in illegal activities are likely to waste assets prior to resolution of the action. *See Manor Nursing Ctrs.*, 458 F.2d at 1106. In the FTC's experience, defendants engaged in similarly serious unlawful practices secreted assets and destroyed documents upon learning of an impending law enforcement action. (Decl. Pl.'s Counsel Supp. Pl. Mot. TRO ¶10 [filed concurrently herewith].) As discussed above, the evidence here demonstrates that Defendants' enterprise is permeated by deception and unlawful activity. Moreover, Defendants have actively sought to conceal their identities as the people and businesses orchestrating the unlawful activities by constantly changing their trade names.

Defendants have continued their unlawful practices even though one federal court order, multiple private lawsuits, and countless consumer complaints have alerted them to the illegality of their conduct. 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 final relief.

C. A Receiver Is Necessary To Protect The Public And Injured Consumers

The appointment of a receiver is a sound equitable remedy in cases involving deception. *In the Matter of McGaughey*, 24 F.3d 904, 907 (7th Cir. 1997); *see also U.S. Oil & Gas*, 748 F.2d at 1432. A receiver is necessary to take control of the corporate defendants' operations, prevent the destruction of documents and computer records, help identify injured consumers and the extent of consumer harm, determine the corporate defendants' financial status, and locate, marshal and safeguard corporate assets. *See SEC v. First Fin. Group of Tex.*, 645 F.2d 429, 438 (5th Cir. Unit A May 1981). *See also McGaughey*, 24 F.3d at 907; *U.S. Oil & Gas*, 748 F.2d at 1432.

A receiver is necessary here because, as shown above, Defendants' business is permeated by deceptive activities. *See R. J. Allen & Assoc.*, 386 F. Supp. at 878 ("the appointment of a receiver is necessary to prevent diversion or waste of assets to the detriment of those for whose benefit, in some measure, the injunction action is brought"). A receiver would be able to secure multiple locations, as well as

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 FTC has identified a candidate in the pleading entitled "Plaintiff's Recommendation for Temporary Receiver," filed simultaneously with this memorandum.

D. Preservation of Records

In addition, the proposed order contains a provision directing Defendants to preserve records, including electronic 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

The FTC seeks leave of Court for limited discovery to locate and identify documents and assets. District courts are authorized to depart from normal discovery procedures and fashion discovery to meet discovery needs in particular cases. Federal Rules of Civil Procedure 26(d), 33(a), and 34(b) authorize the Court to alter the standard provisions, including applicable time frames, that govern depositions and production of documents. This type of discovery order reflects the Court's broad and flexible authority in equity to grant preliminary emergency relief in cases involving the public interest. *See Porter v. Warner Holding*, 328 U.S. 395, 398 (1946); *FSLIC v. Dixon*, 835 F.2d 554, 562 (5th Cir. 1987); *Federal*

Express Corp. v. Federal Expresso, Inc., 1997 U.S. Dist. LEXIS 19144, at * 6 (N.D.N.Y. Nov. 24, 1997) (early discovery "will be appropriate in some cases, such as those involving requests for a preliminary injunction") (quoting commentary to Fed. R. Civ. P. 26(d)); *Benham Jewelry Corp. v. Aron Basha Corp.*, 1997 U.S. Dist. LEXIS 15957, at *58 (S.D.N.Y. July 18, 1997) (courts have broad powers to grant expedited discovery).

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 the further prosecution of the action." *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322 (7th Cir. 1984); *see also Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974); *In re Vuitton et Fils, S.A.*, 606 F.2d 1, 4-5 (2d Cir. 1979). The court noted in *Cenergy Corp. v. Bryson Oil & Gas P.L.C.*, 657 F. Supp. 867, 870 (D. Nev. 1987), that given the pervasive deception in the case, "it [is] proper to enter the TRO without notice, for giving notice itself may defeat the very purpose

for the TRO." Mindful of this problem, courts have regularly granted the FTC's request for *ex parte* temporary restraining orders in Section 13(b) cases.[18]

As discussed above, Defendants' business operations are permeated by, and reliant upon, unlawful practices. The FTC's past experiences have shown that, upon discovery of impending legal action, defendants engaged in fraudulent schemes withdrew funds from bank accounts and destroyed records. (Decl. Pl.'s Counsel Supp. Pl. Mot. TRO ¶10.) Defendants' conduct – including moving large sums from the Corporate Defendants' coffers to Individual Defendants' accounts, some overseas – and the nature of Defendants' illegal scheme provide ample evidence that it is highly likely that Defendants would conceal or dissipate assets absent *ex parte* relief. Thus, this case fits squarely into the narrow category of situations where *ex parte* relief is appropriate to make possible full and effective final relief, and it is in the interest of justice to waive the notice requirement of Local Rule 7-19.2.

VI. CONCLUSION

For the above reasons, the FTC respectfully requests that this Court issue the attached proposed TRO with asset freeze, expedited discovery, and other equitable

[18] *See supra* note 15 and the cases cited therein. Indeed, Congress has looked favorably on the availability of *ex parte* relief under the FTC Act: "Section 13 of the FTC Act authorizes the FTC to file suit to enjoin any violation of the FTC [Act]. The FTC can go into court *ex parte* to obtain an order freezing assets, and is also able to obtain consumer redress." S. Rep. No. 130, 103rd Cong., 2d Sess. 15-16, *reprinted in* 1994 U.S. Code Cong. & Admin. News 1776, 1790-91.

relief, and require Defendants to show cause why a preliminary injunction should not issue.

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Respectfully submitted,

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