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OCT 02 2017
STEVEN M. LARMORE
CLERK U.S. DIST. CT.
S. DISTRICT OF FLA.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Civil Case No.

17-61937

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

STUDENT DEBT DOCTOR LLC, a Florida
limited liability company,

and

GARY BRENT WHITE, JR., individually and
as an officer of Defendant Student Debt Doctor
LLC,

Defendants.

CIV - DIMITROULEAS

[FILED UNDER SEAL]

**PLAINTIFF'S *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER
WITH ASSET FREEZE, APPOINTMENT OF A TEMPORARY RECEIVER,
IMMEDIATE ACCESS, OTHER ANCILLARY EQUITABLE RELIEF, AND ORDER
TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE,
WITH MEMORANDUM IN SUPPORT¹**

¹ The Memorandum refers to evidence and exhibits in Volumes I-II. Declarations are cited by Exhibit number and page number, followed by the bracketed name of the declarant and, where indicated, a paragraph number and Exhibit number—e.g., PX 11:3, 33 [Jones] ¶ 7, Ex. B-3 is Plaintiff's Exhibit 11, page 3 of the Jones Declaration, paragraph 7 (on page 3), and Exhibit B-3 (at page 33) attached thereto. To protect consumers, the FTC has redacted most personal and financial information, including income, loan-balance amounts, monthly payment amounts and, in some instances, family-size data.

I. MOTION AND INTRODUCTION

The Federal Trade Commission (“FTC”) respectfully requests that this Court immediately halt Defendants’ scheme (1) to deceive consumers through phony student-debt-relief services and (2) to collect unlawful advanced fees. Defendants have received more than \$7 million from their deceptive operation.

Defendants entice consumers with false promises of eliminated or significantly reduced monthly repayments, by guaranteeing enrollment in various federal student-debt-relief programs, often with impossible claims of short-term loan forgiveness. In addition, Defendants demand illegal advance fees, typically \$750.

After accepting these fees, Defendants often do not deliver the promised results. Defendants claim to enroll consumers into federal repayment programs, but often take no action or merely place consumers’ loans into a temporary forbearance from mandatory monthly payments, during which interest continues to accrue. When Defendants enroll consumers into a consolidation or repayment program, they often do not achieve lower payments for consumers. When Defendants do achieve lower payments, they often provide incorrect data to loan servicers as evidence of the consumer’s eligibility—and thus expose their clients to potential legal liability.

Defendants’ deceptive acts and practices violate Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), and the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310. In order to halt Defendants’ illegalities, protect consumers from further harm, and preserve the Court’s ability to provide redress, the FTC moves this Court for an *ex parte* Temporary Restraining Order (“TRO”) to enjoin Defendants’ wrongful conduct. The FTC also moves the Court to freeze Defendants’ assets, appoint a temporary receiver over the corporate defendant, permit the FTC and the temporary receiver immediate access to the corporate defendant’s business premises and records, require Defendants to fully disclose their assets, submit to other ancillary equitable relief, and require Defendants to show cause why a preliminary injunction should not issue. A Proposed Order has been filed contemporaneously with this Motion and Brief.²

² In similar circumstances, this Court has awarded equivalent relief *ex parte*. See, e.g., *FTC v. Strategic Student Solutions LLC*, Case No. 17-cv-80619-WPD (S.D. Fla. May 15, 2017) (*ex parte* and temporarily sealed TRO, also granting immediate access, temporary receiver, asset freeze, and other relief). Numerous other examples are cited below. See *infra* FN 44.

II. DEFENDANTS' ILLEGAL ACTS AND PRACTICES

Since at least 2014,³ Defendants have deceptively marketed and sold their student-debt-relief services and charged advanced fees in violation of the FTC Act and TSR.

A. Defendants Falsely Promise Lower Monthly Payments and Loan Forgiveness.

Defendants falsely promote their services using (1) their own websites,⁴ (2) prominent social-media platforms,⁵ (3) texts and e-mails,⁶ and (4) inbound and outbound telemarketing.⁷

Defendants market various federal student-debt-relief programs for low-income borrowers, generally known as Income Driven Repayment plans (“IDR”).⁸ They often deceptively refer to these programs as “Obama Loan Forgiveness” or “our loan forgiveness programs.”⁹ Defendants regularly claim that consumers qualify for an IDR that will eliminate or drastically reduce their monthly payments and result in partial or complete loan forgiveness, often in five years or less.¹⁰ Defendants promise to enroll consumers into an IDR for a large, advance fee (typically \$750).¹¹ In some instances, Defendants have falsely, or without substantiation, claimed that (1) some consumers are “pre-qualified,” without knowing the

³ PX 17:2-3 [Liggins] ¶ 6; PX 4:1 [Brady] ¶ 3. Deceptive practices by Defendants and other student-loan-debt-relief companies have caused a surge in consumer complaints to loan servicers since 2014. *See* PX 21:1 [Lee] ¶ 2.

⁴ PX 17:5 [Liggins] ¶¶ 12-13, 16; PX 12:1 [Ronsky] ¶ 3.

⁵ PX 17:7 [Liggins] ¶ 17.

⁶ PX 15:1-2 [Velander] ¶¶ 3, 8; PX 8:1 [Jenkins] ¶ 3.

⁷ PX 15:2 [Velander] ¶¶ 7, 8; PX 14:1 [Tyler] ¶ 3; PX 13:1 [Sansone] ¶¶ 4,5; PX 9:1 [Kelly] ¶ 3; PX 1:1 [Adams] ¶ 3.

⁸ PX 6:2 [Eak] ¶ 6; PX 2:2 [Alexander] ¶ 7; PX 17:4, 58-59 [Liggins] ¶12, Ex. L; *see* PX 21:2-3, 5-6 [Lee] ¶¶ 5, 6-8, 14-15, 18. For additional background on IDRs, *see* PX 21:3, 116-126 [Lee] ¶¶ 10 & Ex. B.

⁹ PX 17:7, 153, 155, 157, 161, 165 [Liggins] ¶ 17, Exs. Q, R, S, U, W; PX 21:5 [Lee] ¶ 13; PX 1:1 [Adams] ¶ 4; PX 7:1 [Hansen] ¶ 3; PX 8:1 [Jenkins] ¶ 4; PX 19:2, 9, 34 [Weber] ¶¶ 5-6, Ex. A at 5:7-9, Ex. B at 6:22-25. Defendants also market enrollment in more “specialized” federal forgiveness programs, which provide more generous benefits (and have far narrower eligibility requirements), such as total- and permanent-disability discharge, closed-school discharge, and public-service and teacher loan forgiveness. *See* PX 17:5, 7, 73-74, 153, 159 [Liggins] ¶12, 17, Exs. L, Q (“It’s Teacher Appreciation Week! Student Loan Forgiveness Programs are now available! Get \$500 immediately knocked off of your loans”), T (“loan forgiveness programs...#teacher #nurse #police # firefighter #nonprofit #apply”); *see also* PX 21:4 [Lee] ¶ 9.

¹⁰ PX 1:1-2 [Adams] ¶¶ 4-6, 9; PX 6:2-3 [Eak] ¶¶ 6-8; PX 7:1-2 [Hansen] ¶¶ 3-4, 6; PX 8:1 [Jenkins] ¶ 4; PX 12:2 [Ronsky] ¶ 6; PX 13:2 [Sansone] ¶ 6; PX 21:2-3, 6-7 [Lee] ¶¶ 6, 18, 19; PX 18:2, 7 [Jackson] ¶ 5-6, Att. A; PX 20:3-4, 24-25 [Mason] ¶¶ 12-13, Ex. A-8.

¹¹ PX 19:2, 12, 39 [Weber] ¶¶ 4-6, Ex. A at 8:13-16, Ex. B at 11:9-17; *see infra* FN 32.

consumer's income;¹² (2) enrollment in these programs is available only through Defendants or similar companies for a sizable fee when, in fact, qualified consumers can enroll in these programs only through their loan servicers, and free of charge;¹³ and (3) the Trump Administration will terminate these programs, and consumers' eligibility will end unless they sign up quickly.¹⁴

Defendants' false claims often have harsh consequences for consumers—typically, higher payments and loan balances. Some consumers' monthly payments and loan balances increased, others' remained the same, or decreased by less than the promised amount.¹⁵ Despite Defendant's claims, loan forgiveness is generally not possible under these programs until after 20 or 25 years of regular payments.¹⁶ In addition to their nearly impossible claims of loan forgiveness in five years or less,¹⁷ Defendants have also promised forgiveness within 10 years, under narrow federal programs, even though particular consumers are plainly ineligible—e.g., under the Public Service Loan Forgiveness Program, which is limited to teachers, governmental, and certain non-profit employees.¹⁸ In many cases, Defendants provide no service whatsoever.¹⁹

¹² PX 7:1 [Hansen] ¶¶ 3, 5.

¹³ PX 9:3 [Kelly] ¶ 11; PX 21:1, 5 [Lee] ¶¶ 3, 13. Defendants altered SDD's website in 2017 to include disclaimers that student-debt-relief services are available for free from other organizations. *Compare* PX 18:2, 4-9 [Jackson] ¶¶ 5-6, Att. A to PX 17:5, 126 [Liggins] ¶ 13, Ex. M.

¹⁴ PX 17:7, 161 [Liggins] ¶ 17, Ex. U (“#election time is here #studentloanforgiveness programs will expire. Contact us today”); PX 1:2 [Adams] ¶ 8; PX 7:1 [Hansen] ¶ 3; PX 11:1 [McTaggart] ¶ 3; *see* PX 9:2 [Kelly] ¶ 6; PX 12:2 [Ronsky] ¶ 6. Defendants' representations often led consumers to believe, incorrectly, that Defendants are affiliated, or have a special relationship, with the federal government, the Department of Education, or the authorized loan servicers. PX 1:1-2 [Adams] ¶¶ 4, 8; PX 7:1 [Hansen] ¶ 4, PX 9:1 [Kelly] ¶ 4; *see* PX 13:1-2 [Sansone] ¶ 5; PX 16:1 [Williams] ¶ 5.

¹⁵ PX 4:2 [Brady] ¶ 11; PX 8:2 [Jenkins] ¶ 12; PX 10:2 [Knutson] ¶ 6; PX 3:2 [Blanovsky] ¶ 7; PX 6:5 [Eaks] ¶ 17; PX 12:3 [Ronsky] ¶ 13; *see also* PX 20:3-4, 15-16, 26-27, 32-34 [Mason] ¶¶ 12-13, Ex. A-4, A-9, A-12.

¹⁶ PX 21:2-4, 123 [Lee] ¶¶ 6-8, 10, Ex. B. § 10.

¹⁷ *Id.*; PX 1:2 [Adams] ¶ 6; PX 3:1 [Blanovsky] ¶ 4; PX 6:2-3 [Eak] ¶ 8; PX 12:2 [Ronsky] ¶ 6; PX 13:2 [Sansone] ¶ 6; PX 21:2-3 [Lee] ¶¶ 5-6.

¹⁸ PX 4:1 [Brady] ¶ 5; PX 21:4 [Lee] ¶ 9.

¹⁹ PX 2:2-4 [Alexander] ¶¶ 8-9, 14; PX 8:2 [Jenkins] ¶ 12; PX 9:3-4 [Kelly] ¶¶ 11-13, 17; PX 11:2 [McTaggart] ¶ 7; PX 13:2 [Sansone] ¶ 8; PX 20:3-4, 20-21 [Mason] ¶¶ 12-13, Ex. A-6. *See also* PX 19:2, 39-40 [Weber] ¶¶ 4-6, Ex. B at 11:22-23, 12:6-12, *but cf.*, PX 16:1-3 [Williams] ¶¶ 6, 9-11.

Many consumers stop making their regular loan payments, based on Defendants' false representations that: (1) the consumers' payments to Defendants were being used to pay down their loans;²⁰ (2) Defendants had placed consumers' loans into temporary forbearance or deferment while consumers' applications for IDRs were pending;²¹ and (3) if consumers made every installment payment toward Defendants' fees, they would be excused from making monthly payments to their loan servicers for the remainder of the following year.²² As a result, these consumers missed required payments,²³ suffered a decreased credit score,²⁴ and were denied a mortgage.²⁵ Moreover, Defendants often do not expressly inform consumers that interest accrues during the forbearance and increases the unpaid principal, resulting in higher debt.²⁶ Exacerbating their misleading tactics, Defendants instructed consumers not to communicate with their loan servicers.²⁷

Further putting consumers at risk, Defendants submitted forms to loan servicers on the consumer's behalf with false claims about the consumer's eligibility for IDR benefits. Eligibility is mainly a function of the consumer's annual income and family size.²⁸ Defendants routinely recite an overbroad definition of "family size" to consumers that is plainly inconsistent with federal regulations. Specifically, consumers are told that family size includes anyone, regardless of residency, to whom they provide any assistance whatsoever, regardless of the type, amount, or frequency of the assistance.²⁹ Federal regulations are far more stringent, and provide that family size includes only those who "live with the borrower" and "receive more than half their support

²⁰ PX 1:1 [Adams] ¶ 5; PX 9:2 [Kelly] ¶ 9; PX 21:5 [Lee] ¶ 12; PX 20:3-4, 10-11, 22-23 [Mason] ¶¶ 12-13, Exs. A-2, A-7.

²¹ PX 16:2 [Williams] ¶ 9; PX 12:3-4 [Ronsky] ¶ 14. In another instance, a consumer complained that Defendants told her that they had placed her in a \$0 per month repayment program, but they only had placed her in a temporary forbearance. PX 20:3-4, 37 [Mason] ¶¶ 12-13, Ex. A-13. As a result, her loan balance increased because of accrued interest. *Id.*

²² PX 1:1 [Adams] ¶ 5; PX 13:2 [Sansone] ¶ 6.

²³ PX 2:2 [Alexander] ¶ 8; PX 9:2-3 [Kelly] ¶¶ 9, 11; PX 20:3 [Mason] ¶ 13.

²⁴ PX 16:2 [Williams] ¶ 9.

²⁵ PX 12:3-4 [Ronsky] ¶ 14.

²⁶ PX 12:3 [Ronsky] ¶ 12; PX 14:1 [Tyler] ¶ 3; PX 16:2 [Williams] ¶ 8. *See* PX 21:4-5 [Lee] ¶ 11, 12; *see* PX 3:1-3 [Blanovsky] ¶¶ 4-5.

²⁷ PX 6:2 [Eak] ¶ 6; *see* PX 9:2 [Kelly] ¶ 9; PX 21:2, 6, 76-79 [Lee] ¶¶ 4-5, 18, Att. A-19.

²⁸ PX 21:3-4 [Lee] ¶¶ 8, 10, Att. B § 10; PX 19:2, 10, 34-35 [Weber] ¶¶ 4-6, Ex. A at 6:4-7, Ex. B at 6:22-7:2.

²⁹ PX 19:2, 14-15, 35-36 [Weber] ¶¶ 4-6, Ex. A at 10:4-11:18, Ex. B at 7:8-8:10. In the latter excerpt, SDD's telemarketer calls this definition "the secret sauce" of Defendants' scheme.

from the borrower.”³⁰ Defendants have exaggerated family-size numbers, and falsely reported consumers’ income or unemployment status, in order to get consumers’ monthly payments eliminated or greatly reduced under these federal programs.³¹

B. Defendants Improperly Requested, Collected, and Retained Advance Fees.

Defendants also injure consumers by demanding an upfront fee (typically \$750) in a lump sum or installments before Defendants achieve any debt relief.³² Although Defendants’ guarantee their work,³³ and their standard contract with consumers includes limited refund provisions,³⁴ Defendants often do not honor their promise, or only partially honor it—and then typically only after the consumer has filed a complaint with the Better Business Bureau and agrees to withdraw the complaint in exchange for a partial or full refund.³⁵ Defendants have illegally collected at least \$7 million from consumer through their scheme.³⁶

³⁰ 34 CFR § 682.215(a)(3); *see also* PX 21:4, 6, 121 [Lee] ¶¶ 10,16, Ex. B § 9. The application for these programs, *which Defendants complete for their clients* (*see* PX 19:2,13 [Weber] ¶¶ 4-6, Ex. A at 9:10), plainly recites the narrower definition from the federal regulations and repeatedly warns that “any person who knowingly makes a false statement ... on this form can be subject to penalties including fines, imprisonment, or both.” PX 21:4, 6, 117, 118-120, 121 [Lee] ¶ 10, 18, Ex. B at § 9 (and numerous prominent text boxes throughout document).

³¹ PX 9:4 [Kelly] ¶ 16; PX 12:1-2 [Ronsky] ¶ 5; PX 16:3 [Williams] ¶ 12; PX 4:3-4 [Brady] ¶ 16; PX 21:6 [Lee] ¶ 18; PX 20:4, 17-19, 32-34 [Mason] ¶ 14, Exs. A-5 (same consumer as PX 4), A-12; *see* PX 19:2, 14-15, 35-36 [Weber] ¶¶ 4-6, Ex. A at 10:4-11:18, Ex. B at 7:8-8:10. Defendant Student Debt Doctor LLC’s Christy Tripp sent text messages telling one consumer that the Defendant had increased the consumer’s family size and proof of income “in order to achieve the desired payment.” PX 4:3-4, 7-10 [Brady] ¶¶ 14, 16, Exs. B-1, B-2, B-3, B-4, B-7; *see* PX 18:2, 11 [Jackson] ¶ 7, Att. B (State corporate filing listing Tripp as one of Defendant Student Debt Doctor LLC’s three “administrators” along with Michael De Jura and Defendant Gary White).

³² PX 1:1 [Adams] ¶ 5; PX 2:2 [Alexander] ¶ 6; PX 3:2 [Blanovsky] ¶ 6; PX 4:1-2 [Brady] ¶¶ 4, 9; PX 6:3 [Eak] ¶ 11; PX 8:1-2 [Jenkins] ¶¶ 5,8; PX 9:2 [Kelly] ¶ 6; PX 10:1 [Knuston] ¶ 4; PX 11:1-2 [McTaggart] ¶ 4; PX 12:2 [Ronsky] ¶ 6; PX 13:2 [Sansone] ¶ 6; PX 14:1 [Tyler] ¶ 3; PX 15:1-2 [Velandar] ¶ 5; PX 16:1-2 [Williams] ¶ 6.

³³ PX 3:2 [Blanovsky] ¶ 5; PX 19:2, 12-13, 24, 45 [Weber] ¶¶ 4-6, Ex. A at 8:24-25, 9:3-4, 20:11-12, Ex. B at 17:7-9.

³⁴ *See, e.g.*, PX 9:2, 5-6 [Kelly] ¶ 7, Ex. A at §§ 9 (refund only available if requested within three days of signing agreement), 12.

³⁵ PX 8:2 [Jenkins] ¶ 10; PX 3:3-4 [Blanovsky] ¶¶ 9, 12; PX 16:3 [Williams] ¶ 14; *see also* PX 20:4, 8-9, 20-21, 38-39 [Mason] ¶ 12, Exs. A-1, A-6, A-14; *compare* PX 14:7 [Tyler] ¶ 7. Defendants were highly motivated to resolve BBB complaints, which are posted on BBB’s public website and affect its BBB rating. PX 20:3, 4-7 [Mason] ¶¶ 10, 11, 16-28; *see* PX 4:3-4, 7 [Brady] ¶¶ 14-17, Ex. B-1 (in message to Defendants “[a]fter I filed [a BBB complaint] I magically heard back from you guys”). White told the BBB that these complaints were “killing

III. THE DEFENDANTS

Individual defendant Gary Brent White, Jr. (“White”), formed corporate defendant Student Debt Doctor, LLC (“SDD”), a Florida limited liability company, in January 2014.³⁷ SDD has marketed student-debt-relief services to consumers throughout the United States and Puerto Rico.³⁸ White is the president, manager, and sole owner of SDD³⁹ and is also the sole authorized signatory on the two SDD bank accounts known to Plaintiff.⁴⁰ He also has received and responded personally to consumer complaints against SDD filed with the Better Business Bureau (“BBB”) and Florida governmental authorities.⁴¹

IV. LEGAL ARGUMENT

The FTC requests the Court issue an *ex parte* order temporarily enjoining Defendants’ illegal conduct, freezing Defendants’ assets, appointing a temporary receiver, granting immediate access to Defendants’ business premises, providing for other ancillary equitable relief, and requiring Defendants to show cause why a preliminary injunction should not issue.

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

Section 13(b) of the FTC Act authorizes the FTC to seek, and the Court to issue, permanent injunctions, together with “any ancillary relief necessary to accomplish complete justice.”⁴² This Court’s ancillary power includes the ability to enter the relief requested here.⁴³

my business.” PX 20:4, 57 [Mason] ¶ 16, Ex. C. Defendants’ claims that they had resolved the consumer complaints did not satisfy the BBB. PX 20:6 [Mason] ¶ 26.

³⁶ PX 20:4-5, 59, 62, 64 [Mason] ¶¶ 17, 18-19, 21, 24, Exs. D, E, F; *see also* PX 17:7-8 [Liggins] ¶¶ 18, 20.

³⁷ PX 17:3, 9-21 [Liggins] ¶ 6 & Exs. A-C.

³⁸ PX 17:2, 5, 126 [Liggins] ¶¶ 5, 13, Ex. M (Defendants’ website instructs residents of Puerto Rico to call a specific phone number—“Para Puerto Rico, Por favor llame al 787-488-0082”); PX 20:3 [Mason] ¶ 12; PX 1:1 [Adams] ¶ 2; PX 3:1 [Blanovsky] ¶ 2; PX 18:2, 11 [Jackson] ¶ 7, Att. B.

³⁹ PX 20:4-5, 54-55, 60 [Mason] ¶¶ 15-16, Exs. B, D; PX 22:1-2, 8, 38, 42 [Compton] ¶¶ 5, 8, Exs. A, B-1, B-2; PX 17:3, 9-21 [Liggins] ¶ 6 & Exs. A-C.

⁴⁰ PX 17:6-7, 169, 173 [Liggins] ¶¶ 18-21 & Exs. Y & AA.

⁴¹ PX 20:3-4, 57 [Mason] ¶ 16, 17, 19, 23, Ex. C.; PX 22:1-2, 8, 38, 42 [Compton] ¶¶ 5-8, Exs. A, B-1, B-2.

⁴² *FTC v. USA Financial, LLC*, 415 F. App’x 970, 976 (11th Cir. 2011); *AT&T Broadband v. Tech Comm’n, Inc.*, 381 F.3d 1309, 1316 (11th Cir. 2004) (citing *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432-34 (11th Cir. 1984) (quoting *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982)); *FTC v. U.S. Mortg. Funding, Inc.*, No. 11-CV-80155, 2011 U.S. Dist. LEXIS 31148, at *17-18 (S.D. Fla. Mar. 1, 2011); *see* 15 U.S.C. § 53(b); *see also* *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468-70 (11th Cir. 1996).

The Court may also grant the Proposed Order *ex parte*.⁴⁴ Indeed, in FTC matters like this one, this Court routinely issues *ex parte* TROs granting all the ancillary relief in the Proposed Order.⁴⁵ Of course, the evidence may include “affidavits and hearsay materials.”⁴⁶

B. The FTC Meets the Standard for Immediate Injunctive Relief.

In the Eleventh Circuit, “[f]or the FTC to obtain injunctive relief, it must show [only] that (1) it is likely to succeed on the merits, and (2) injunctive relief is in the public interest.”⁴⁷ Unlike in private disputes, irreparable injury need not be shown.⁴⁸

When demonstrating the likelihood of success, a strong probability is not required, although here the evidence demonstrates it. Rather, the FTC need only show “probable success on the merits.”⁴⁹ Moreover, when a district court balances the parties’ interests, the public’s interests should receive greater weight.⁵⁰ Here, the comparative interests weigh heavily in favor of granting preliminary relief—to protect the public from Defendants’ illegalities and to preserve the Court’s ability to provide complete redress to injured consumers.

1. The FTC Is Likely to Succeed on the Merits.

⁴³ See *Gem Merch. Corp.*, 87 F.3d at 469; *U.S. Oil & Gas*, 748 F.2d at 1432-34; *FTC v. USA Fin., LLC*, 415 F. App’x at 976; *U.S. Mort. Funding*, 2011 U.S. Dist. LEXIS 31148, at *5-6, 18; see also *FTC v. USA Beverages, Inc.*, No. 05-61682, 2005 U.S. Dist. LEXIS 39042, at *8-38 (S.D. Fla. Nov. 4, 2005).

⁴⁴ See, e.g., *FTC v. Mail Tree, Inc.*, No. 0:15-CV-61034-JIC (S.D. Fla. May 19, 2015); *FTC v. Inbound Call Experts, LLC*, No. 14-81395-CIV-MARRA (S.D. Fla. Nov. 12, 2014); *FTC v. FMC Counseling Servs.*, No. 14-61545-CIV-ZLOCH (S.D. Fla. July 7, 2014); *FTC v. Centro Natural Corp.*, 14-23879-CIV-ALTONAGA (S.D. Fla. Oct. 20, 2014); *FTC v. 7051620 Canada, Inc.*, No. 1:14-CV-22132 (S.D. Fla. June 12, 2014); *FTC v. Your Yellow Pages, Inc.*, No. 1:14-CV-22129 (S.D. Fla. June 12, 2014); *FTC v. Shopper Systems, LLC*, No. 0:12-CV-23919 (S.D. Fla. Oct. 31, 2012); *FTC v. Prime Legal Plans LLC*, No. 0:12-CV-61872 (S.D. Fla. Sept. 24, 2012); *FTC v. IAB Mktg. Assocs., LP*, No. 0:12-CV-61830 (S.D. Fla. Sept. 18, 2012); *FTC v. Premier Precious Metals, Inc.*, No. 12-CV-60504 (S.D. Fla. Mar. 20, 2012); *FTC v. U.S. Mortg. Funding, Inc.*, No. 11-CV-80155 (S.D. Fla. Feb. 20, 2011); see also *FTC v. Regency Fin. Servs.*, No. 1:15-CV-20270-DPG (S.D. Fla. Jan. 27, 2015) (*ex parte* TRO with asset freeze); *FTC v. Diversified Educ. Res.*, No. 0:14-CV-62116-JIC (S.D. Fla. Sept. 14, 2014) (*ex parte* TRO with asset freeze and access to business premises); *FTC v. Southeast Trust, LLC*, No. 12-CV-62441 (S.D. Fla. Dec. 11, 2012) (same).

⁴⁵ See Notes 43 & 44.

⁴⁶ *Levi Strauss & Co. v. Sunrise Int’l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995).

⁴⁷ *FTC v. IAB Mktg. Assoc., LP*, 746 F.3d 1228, 1232 (11th Cir. 2014).

⁴⁸ *Id.*

⁴⁹ *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989).

⁵⁰ *Id.*; see also *FTC v. World Travel Vacation Brokers*, 861 F.2d 1020, 1030 (7th Cir. 1988); see *FTC v. USA Beverages, Inc.*, No. 05-61682, 2005 U.S. Dist. LEXIS 39075, at *15.

To demonstrate a likelihood of success on the merits, the FTC need only show probability, and the quantum of evidence for preliminary relief is far less than that needed to support a final determination on the merits.⁵¹ As shown in detail below, Defendants' scheme violates Section 5 of the FTC Act and TSR, and Defendant White has the requisite control, participation, and knowledge for joint and several liability.

a. Defendants Have Violated Section 5 of the FTC Act.

Section 5 of the FTC Act, 15 U.S.C. § 45(a), prohibits deceptive acts or practices in or affecting interstate commerce. An act or practice is deceptive if it involves a material representation or omission that would likely mislead consumers acting reasonably under the circumstances.⁵²

False or unsubstantiated⁵³ claims are deceptive.⁵⁴ Courts consider the overall net impression of the representation when determining deception.⁵⁵ A solicitation may be likely to deceive by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.⁵⁶ “[D]eception is evaluated from the perspective of ... a reasonable consumer in the audience targeted” by Defendants.⁵⁷ That is, “consumer interpretation informs

⁵¹ *Univ. Health*, 938 F.2d at 1218; *see also World Wide Factors*, 882 F.2d at 347.

⁵² *FTC v. Peoples Credit First, LLC*, 244 Fed. App'x 942, 944 (11th Cir. 2007) (following *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003)).

⁵³ Claims that Defendants will achieve specified results for consumers necessarily include an express or implied representation that Defendants had a reasonable basis for the claims. *FTC v. RCA Credit Servs., LLC*, 727 F. Supp. 2d 1320, 1329 (M.D. Fla. 2010) (quotations omitted); *FTC v. Tashman*, 318 F.3d 1273, 1276 (11th Cir. 2003) (reversing judgment in favor of defendant and rendering judgment in favor of plaintiff, finding that “[u]nfortunately for [Defendant’s] customers, [Defendant] has no basis for many of its claims.”); *see also FTC v. Nat’l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1190 (N.D. Ga. 2008).

⁵⁴ *See* FTC Policy Statement Regarding Advertising Substantiation, 104 F.T.C. 648, 839 (1984).

⁵⁵ *See FTC v. Nat’l Urological Group, Inc.*, 645 F. Supp. 2d 1167, 1189 (N.D. Ga. 2008), *aff’d* 356 Fed. App'x 358 2009 WL 4810345 (11th Cir.), *reh’g and reh’g en banc denied*, 401 F. App'x 522, 2010 WL 2787701 (11th Cir.), *cert. denied*, 131 S. Ct. 505 (2010); *FTC v. Peoples Credit First, LLC*. No. 8:03-CV-2353, 2005 U.S. Dist. LEXIS 38545, at *24 (M.D. Fla. Dec. 18, 2005), *aff’d*, 244 F. App'x 942 (11th Cir. 2007); *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993 (N.D. Ind. 2000).

⁵⁶ *FTC v. RCA Credit Servs., LLC*, 727 F. Supp. 2d 1320, 1329 (M.D. Fla. 2010) (quotations omitted).

⁵⁷ *FTC v. Washington Data Res.*, 856 F. Supp. 2d 1247, 1272 (M.D. Fla. 2012) *aff’d sub nom. FTC v. Washington Data Res., Inc.*, 704 F.3d 1323 (11th Cir. 2013).

whether a communication was deceptive.⁵⁸ The FTC need not prove that Defendants intended to deceive consumers.⁵⁹

A misrepresentation is material if it “involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.”⁶⁰ Express claims, and deliberately made implied claims, are presumably material.⁶¹ The FTC need not prove actual reliance by consumers to establish materiality.⁶²

The evidence, set forth above in Section II, shows that Defendants have violated the FTC Act by making material misrepresentations, expressly or by implication, to consumers acting reasonably under the circumstances. Specifically, Defendants, representing themselves as experts in student-debt relief,⁶³ falsely promised consumers (1) eliminated or significantly reduced monthly payments, (2) short-term loan forgiveness, often in five years or less, and (3) that they are eligible for the promised benefits.

Defendants’ claims are false, and often impossible or unsubstantiated as well.⁶⁴ In numerous instances, Defendants have not enrolled consumers into federal repayment or loan forgiveness programs, or they have not eliminated or reduced consumers’ monthly payments. Consumers have complained that (i) Defendants have done little or nothing to provide them any debt relief,⁶⁵ (ii) Defendants placed consumers only in a temporary forbearance that suspended, rather than eliminated or reduced, their monthly payments,⁶⁶ and (iii) Defendants enrolled

⁵⁸ *Id.* at 1273.

⁵⁹ *See, e.g., FTC v. Capital Choice Consumer Credit, Inc.*, No. 02-21050-CIV, 2004 WL 5149998, at *33 (S.D. Fla. Feb. 20, 2004); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988).

⁶⁰ *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006) (quoting *In the matter of Cliffdale Associates, Inc.*, 103 F.T.C. 110, 165 (1984)).

⁶¹ *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1266 (S.D. Fla. 2007) (“Express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service are presumed to be material.”); *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999).

⁶² *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1266-67; *SlimAmerica*, 77 F. Supp. 2d at 1272.

⁶³ *See infra* FN 72.

⁶⁴ *See* FTC Policy Statement Regarding Advertising Substantiation, 104 F.T.C. 648, 839 (1984) (appended to *Thompson Med. Co.*, 104 F.T.C. 648 (1984)).

⁶⁵ PX 1:3 [Adams] ¶ 14; PX 2:2-4 [Alexander] ¶¶ 8-9, 14; PX 8:12 [Jenkins] ¶ 12; PX 9:3-4 [Kelly] ¶¶ 11, 17; PX11:2 [McTaggart] ¶ 7; PX 13:2 [Sansone] ¶ 8; *see* PX 16:1-3 [Williams] ¶¶ 6, 9-11; PX 20:3, 21 [Mason] Ex. A-6.

⁶⁶ PX 20:3, 37. [Mason] Ex. A-13.

consumers in programs that actually increased their payments or did not reduce their payments by the promised amounts.⁶⁷

In many instances, Defendants had no basis for believing the promises they made to consumers. Their history of consumer complaints demonstrate this truth. Defendants' promises of short-term loan forgiveness generally are impossible.⁶⁸

Even when Defendants achieve the promised results for consumers, they often do so by misrepresenting the consumer's eligibility to their loan servicers and the Department of Education by misstating their income and family size.⁶⁹

Finally, Defendants' express claims are presumed material because they influenced consumers to pay for Defendants' services.⁷⁰ Consumers would have avoided Defendants if they had known Defendants' promises were false or illegal.⁷¹ Moreover, because Defendants represented themselves as experts upon whom consumers could rely concerning these complex federal programs, consumers' belief in Defendants' false claims was reasonable under the circumstances.⁷²

⁶⁷ PX 4:2 [Brady] ¶ 11; PX 8:2. [Jenkins] ¶ 12; PX 10:2 [Knutson] ¶ 6; PX 12:3 [Ronsky] ¶ 13; PX 3:1-2 [Blanovsky] ¶¶ 4, 7; *see also* PX 20:3, 13, 27, 33 [Mason] Exs. A-4 (Blanovsky's BBB complaint), A-9, A-12.

⁶⁸ PX 21:3 [Lee] ¶¶ 6-8.

⁶⁹ PX 9:4 [Kelly] ¶ 16; PX 12:1 [Ronsky] ¶ 5; PX 16:3 [Williams] ¶ 12; PX 4:3-4 [Brady] ¶¶ 14, 16; App. [Lee] ¶ 18; PX 20:14, 18, 31 [Mason] ¶ 14 & Exs. A-5 & A-12; PX 19:2, 14-15, 35-36 [Weber] ¶¶ 4-6, Ex. A at 10:4-11:18, Ex. B at 7:8-8:10; *see also* PX 19:2, 38 [Weber] ¶ 6, Ex. B at 10:11-17.

⁷⁰ *See, e.g.*, PX 12:2 [Ronsky] ¶ 7 ("SDD's offer sounded pretty good to me."); PX 13:2 [Sansone] ¶ 7 ("Because the program sounded like a great way to reduce my debt, I agreed to enroll and make payments to SDD."); PX 3:1 [Blanovsky] ¶ 4 ("I asked [SDD's telemarketer] over and over [his claims were] in fact true and he assured me than [they were]."); PX 1:2 [Adams] ¶ 6 ("According to [what] Jyni [SDD's representative] [stated] ... I thought ... I could save in the long-run by paying [SDD] ... and receiving forgiveness in just five years of payments."); PX 16:1 [Williams] ¶ 4 ("SDD's assurance that the forbearance would be automatically renewed was very appealing to me....").

⁷¹ *See, e.g.*, PX 5:2 [Cooper] ¶ 10; PX 20:3, 31, 33, 37 [Mason] Exs. A-11 ("I want no part of their 'forgiveness program' and want to escape this scam."), A-12 ("I want a complete refund. This has been a complete waste of money and a headache...."), A-13 ("I feel as if I have been taken for a ride here. This is unfair and deceptive.... I am going to need to contact a lawyer to ... get my money back from studentdebtdoctor.org as it is obvious that they are a scam.").

⁷² *See, e.g.*, PX 17:12, 48, 127-128 [Liggins] Exs. L ("Certified Specialist Waiting [for your call]"), Ex. M ("We ... provide information and put you in contact with experienced representatives who can inform [sic] of the programs that may be available to you. ... Company

b. Defendants' Have Violated the TSR.

The TSR regulates telemarketing by prohibiting deceptive and abusive practices. It defines “telemarketing” as a “plan, program, or campaign which is conducted to induce the purchase of goods or services ... by use of one or more telephones and which involves more than one interstate telephone call.” The TSR also specifically regulates debt-relief providers like Defendants. The TSR applies to any “seller”⁷³ or “telemarketer”⁷⁴ of “debt relief services,” which are defined as “any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors....”⁷⁵ Since 2014, Defendants have marketed their services via innumerable interstate telephone calls;⁷⁶ thus, Defendants are sellers, telemarketers, and debt-relief service providers subject to the TSR.⁷⁷

The TSR prohibits debt-relief sellers or telemarketers from misrepresenting any material aspect of their services, such as the amount of money that consumers will save.⁷⁸ Simply put, Defendants’ material misrepresentations in violation of Section 5 of the FTC Act, outlined in Sections II(A) and IV(B)(1)(a) above, also constitute violations of the TSR.

In addition, the TSR prohibits sellers and telemarketers of debt-relief services from requesting or receiving advance fees—i.e., fees before the seller, among other things, successfully renegotiates or settles one of the consumer’s debts. Here, Defendants have requested

representatives are available to help you navigate all these programs.”); *see also* PX19:2, 45 [Weber] Ex. B at 17:10-20 (“We’re here to hold your hand and walk you through the whole process....”).

⁷³ The TSR defines “seller” as “any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.” 16 CFR § 310.2(DD)

⁷⁴ The TSR defines “telemarketer” as “any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.” 16 CFR § 310.2(ff).

⁷⁵ 16 CFR § 310.2(o).

⁷⁶ *See generally* PX 22 [Compton] (authenticating Defendants’ telemarketing license application, including sample telemarketing script); *see, e.g.*, PX15:2 [Velandar] ¶¶ 7, 8; PX 14:1 [Tyler] ¶ 3; PX 13:1 [Sansone] ¶¶ 4, 5; PX 9:1 [Kelly] ¶ 3; PX 1:1 [Adams] ¶ 3; *see also* PX 17:5, 48, 126 [Liggins] ¶ 12, Exs. L (SDD’s toll-free telephone number prominently displayed), M (same, with separate number for callers in Puerto Rico).

⁷⁷ *FTC v. Partners in Health Care Ass’n, Inc.*, No. 14–23109 CIV–SCOLA, 2014 WL 12516235 (S.F. D). Aug. 25, 2014); *FTC v. FSC Admin., LLC*, No. 15-0084-WS-B, 2016 WL 3406113 at *8-10 (S.D. Ala. June 17, 2016).

⁷⁸ 16 CFR § 310.3(a)(2)(x).

and received fees well before renegotiating or settling their clients' debts.⁷⁹ Defendants' standard contract typically provides that consumers will be charged the same day that the contract is signed, or very shortly afterwards.⁸⁰ Consumers' also report being charged immediately or very soon after signing the contract.⁸¹

The TSR, however, permits Defendants to request and receive advances fees if (1) the funds are placed in an interest-bearing account with certain insured financial institutions, and (2) the consumer continues to own the funds, may withdraw from Defendants' services at any time without penalty, and receives a full refund upon request within seven business days (minus fees earned by Defendants in compliance with applicable laws).⁸² Although Defendants, through counsel, have self-servingly represented to the BBB that they regularly deposit consumer fees into a third-party savings account until earned,⁸³ all available evidence points to the contrary. Defendants' standard contract reflects exactly the opposite arrangement: under its terms, consumers are permitted to receive a full refund only if (1) they cancel the contract within three days of execution or (2) Defendants "fail[] to enroll the client in the loan forgiveness program...."⁸⁴ No consumers known to the FTC are aware of any escrow-like arrangement.⁸⁵ Available bank records of the corporate Defendant do not reflect that consumer payments are, or ever have been, placed in escrow-like subaccounts.⁸⁶

⁷⁹ PX 1:1 [Adams] ¶ 5; PX 2:2 [Alexander] ¶ 6; PX 3:2 [Blanovsky] ¶ 6; PX 4:1-2 [Brady] ¶¶ 4, 9; App. [Eak] ¶ 11; PX 8:1-2 [Jenkins] ¶¶ 5, 7-8; PX 9:2 [Kelly] ¶ 6; PX 10:1 [Knuston] ¶ 4; PX 11:1-2 [McTaggart] ¶ 4; PX 12:2 [Ronsky] ¶ 6; PX 13:2 [Sansone] ¶ 6; PX 14:1 [Tyler] ¶ 3; PX 15:1 [Velandar] ¶ 5; PX 16:1-2 [Williams] ¶ 6.

⁸⁰ See, e.g., PX 9:5, 6 [Kelly] ¶ 7, Ex. A, §10 (first installment payment charged one day after consumer's execution of contract); PX 3:2, 5 [Blanovsky] ¶ 6, Ex. A-1, § 7 (full charge four days after consumer's execution of contract); PX 5:1, 5 [Cooper] ¶ 5, Ex. A, § 10 (first installment charged day before execution);

⁸¹ See, e.g., PX 6:3 [Eak] ¶¶ 9, 11 (consumer charged approximately one day after signing contract).

⁸² 16 CFR §310.4(a)(5)(ii).

⁸³ PX 20:6, 69 [Mason] ¶ 28, Ex. G ("Student Debt's customers utilize a dedicated account provider in order to establish a savings account in their name for the purpose of reserving their funds to pay Student Debt's fees. Student Debt does not receive a fee until ... its customers receive a result from the work Student Debt has completed for its customers.").

⁸⁴ PX 12:2 [Ronsky] ¶ 7, Ex. A-1; PX 20:4, 48-50 [Mason] ¶ 14, Ex. A-18 (SDD representative quoting three-day cancellation policy, and attached standard contract [quoted language at § 9 of contract]. SDD's standard contract includes an integration clause, see § 8).

⁸⁵ PX 2:2 [Alexander] ¶ 6; PX 5:2 [Cooper] ¶ 6; PX 6:3 [Eak] ¶ 11; PX 16:2 [Williams] ¶ 8.

⁸⁶ PX 17:7-8, 169, 173 [Liggins] ¶¶ 18-21 & Atts. Y & AA.

Defendants' have denied refunds to consumers who have sought to withdraw from their services.⁸⁷ Consumers who have received refunds have encountered difficulty because Defendants often offered only partial refunds, or required consumers to first retract complaints with the BBB.⁸⁸ No customers known to the FTC received a refund within seven days of the request or were paid accrued interest.⁸⁹

c. Individual Defendant White Is Liable for the Unlawful Acts of the Corporate Defendant.

Under the FTC Act, White, as an individual defendant, is liable for corporate defendant SDD's unlawful acts and practices if he (1) participated directly or had authority to control the company's unlawful conduct and (2) had some knowledge of the unlawful conduct.⁹⁰ "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."⁹¹ "Moreover, in the case of a small, closely-held corporation, an individual's status as a corporate officer gives rise to a presumption of ability to control."⁹² Bank signatory authority also evidences authority to control.⁹³ Individual liability also requires that the individual (i) had, or should have had, knowledge of the illicit conduct; (ii) showed reckless indifference to the truth or falsity of a representation; or (iii) had an awareness of a high probability of fraud with an intentional avoidance of the truth.⁹⁴ Participation in corporate affairs is probative of knowledge.⁹⁵ The FTC

⁸⁷ See, e.g., PX 14:2 [Tyler] ¶ 7.

⁸⁸ See, e.g., PX 3:4 [Blanovsky] ¶ 12; PX 4:3 [Brady] ¶¶ 15, 17.

⁸⁹ See, e.g., PX 8:2 [Jenkins] ¶ 11.

⁹⁰ *Gem Merch.*, 87 F.3d at 470; *FTC v. USA Fin., LLC*, 415 F. App'x 970, 974-75 (11th Cir. 2011); *FTC v. World Media Brokers*, 415 F.3d 758, 764 (7th Cir. 2005); *FTC v. Bay Area Bus. Council*, 423 F.3d 627, 636 (7th Cir. 2005); *FTC v. 1st Guaranty Mortgage Corp.*, No. 09-CV-61840, 2011 U.S. Dist. LEXIS 38152, *52 (S.D. Fla. Mar. 30, 2011).

⁹¹ *FTC v. Am. Precious Metals, LLC*, No. 11-61072-CV, 2012 WL 3683467, at *2 (S.D. Fla. Aug. 24, 2012) (quoting *Wilcox*, 926 F. Supp. at 1104) (brackets omitted); *FTC v. Wilcox*, 926 F. Supp. 1091, 1104 (S.D. Fla. 1995) (quoting *FTC v. Amy Travel Serv.*, 875 F.2d 564, 573 (7th Cir.), cert. denied, 493 U.S. 954, (1989)); see also *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1270 ("An individual's status as a corporate officer gives rise to the presumption of ability to control a small, closely-held corporation) (citations omitted); *IAB Mktg.*, 746 F.3d at 1233.

⁹² *FTC v. Am. Precious Metals, LLC*, No. 11-61072-CV, 2012 WL 3683467, at *2 (S.D. Fla. Aug. 24, 2012) (internal punctuation and citations omitted).

⁹³ See, e.g., *FTC v. USA Fin., LLC*, 415 F. App'x 970, 974-75 (11th Cir. 2011).

⁹⁴ *FTC v. The Primary Group*, No. 16-13532, 2017 WL 4329713 (11th Cir. Sept. 29, 2017).

⁹⁵ *FTC v. 1st Guar. Mortg. Corp.*, No. 09-CV-61840, 2011 WL 1233207, at *15 (S.D. Fla. Mar. 30, 2011).

is *not* required to prove the individual's subjective intent to defraud.⁹⁶ Here, Defendant White cannot hide behind the corporate form to evade individual liability because he participated directly in, had authority to control, and had knowledge of the corporate defendant's unlawful acts. Indeed, White is the ringleader of the scam.

Defendant White solely owns and controls the corporate defendant.⁹⁷ White is an authorized signatory on the corporate defendant's bank accounts, signed documents on SDD's behalf that were submitted to government regulators, and has identified himself as the "president" of the corporate defendant to the BBB and the general public.⁹⁸ White directs the everyday activities of the corporate defendant and controls its employees.⁹⁹

Defendant White has *actual knowledge* of the corporate defendant's bad acts and practices. He received numerous consumer complaints filed with the BBB and the state of Florida and personally attempted to resolve many of them.¹⁰⁰ White also authorized refunds or partial refunds to consumers to resolve such complaints.¹⁰¹ He also addressed complaints made by consumers directly to the company.¹⁰²

⁹⁶ *USA Fin., LLC*, 415 F. App'x at 974 (11th Cir. 2011) (citing *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1368 (11th Cir. 1988)); *FTC v. FTN Promo., Inc.*, No. 8:07-CV-1279, 2008 U.S. Dist. LEXIS 125419, *6 (M.D. Fla. Mar. 26, 2008), *aff'd*, 2008 U.S. Dist. LEXIS 28149; *FTC v. Jordan Ashley*, No. 93-2257, 1994 U.S. Dist. LEXIS 7494, *11 (S.D. Fla. April 5, 1994); *World Media Brokers*, 415 F.3d at 764.

⁹⁷ PX 17:2-3, 9-21 [Liggins] ¶ 6, Exs. A-C.

⁹⁸ PX 17:7-8, 169, 173 [Liggins] ¶¶ 19, 21 & Att. Y & AA; PX 22:2, 38, 42 [Compton] Exs. B-1, B-2; PX 20:1 [Mason] ¶ 5, Ex. A (at PX 22:16); PX 20:4-5, 54, 60 [Mason] ¶¶ 15-17, Exs. B, D; PX 17:5, 55 [Liggins] ¶¶ 11-12, Att. L.

⁹⁹ *See, e.g.*, PX 4:3 [Brady] ¶ 14 (White directing SDD employee to resolve consumer's complaint); PX 20:3, 18 [Mason] Ex. A-5 (same consumer, but at different point in time); PX 20:4, 57 [Mason] ¶ 16, Ex. C (e-mail showing that White directed SDD employee to send company information to BBB).

¹⁰⁰ PX 8:2 [Jenkins] ¶ 7; PX 20:4, 57 [Mason] ¶ 16, Ex. C (e-mail from White discussing consumer complaints filed with the BBB, and complaining that they are "killing my business...."); PX 22:2, 38, 42 [Compton] ¶¶ 7-8, Ex. B (White's written responses to two complaints).

¹⁰¹ *See, e.g.*, PX 8:2 [Jenkins] ¶ 10.

¹⁰² *See, e.g., id.*

2. The Public's Interests Outweigh the Defendants' Interests.

"[W]hen a district court balances the hardships of the public interest against a private interest, the public interest should receive greater weight."¹⁰³ This principle is especially applicable to consumer-protection actions like this one.¹⁰⁴

The public interest in this case is obvious and compelling. The requested relief will immediately halt Defendants' unlawful conduct; protect vulnerable, low-income consumers, including those in Puerto Rico; preserve evidence; and protect assets so that effective final relief may be afforded to victims and Defendants are not unjustly enriched. Moreover, consumers can freely receive the same student-debt relief through their loan servicers.¹⁰⁵ Defendants, by contrast, have no legitimate interest in continuing to unlawfully mislead consumers.¹⁰⁶ Defendants' past conduct also indicates that they will likely continue to deceive consumers,¹⁰⁷ as explained in Section III(C)(1) immediately below. Moreover, compliance with the law is not a cognizable burden.¹⁰⁸ The public equities supporting the proposed order far outweigh the burden imposed on Defendants.

C. *Ex Parte* Relief Is Necessary and Appropriate to Prevent Further Harm and Preserve Effective Final Relief.

The requested *ex parte* TRO requires that Defendants' cease their deceptive practices, freezes their assets, appoints a temporary receiver, and permits immediate access to Defendants' business premises and records. This preliminary relief—commonly awarded by this Court in FTC matters like this¹⁰⁹—is necessary to stop Defendants' unlawful activities and preserve the Court's ability to grant effective final relief.

¹⁰³ *World Wide Factors*, 882 F.2d at 347; *World Travel Vacation Brokers*, 861 F.2d at 1029; *USA Beverages*, 2005 U.S. Dist. LEXIS 39075, at *15.

¹⁰⁴ *Mallett*, 818 F. Supp. 2d at 149 ("The public interest in ensuring the enforcement of federal consumer protection is strong.").

¹⁰⁵ PX 21:1 [Lee] ¶ 3.

¹⁰⁶ See *World Wide Factors*, 882 F.2d at 347 (quoting the lower court, 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.").

¹⁰⁷ See *USA Beverages, Inc.*, 2005 WL 5654219, at *8 (holding that "past misconduct gives rise to the inference that there is a reasonable likelihood of future violations"); *SEC v. R.J. Allen & Assocs., Inc.*, 386 F. Supp. 866, 877 (S.D. Fla. 1974) (same).

¹⁰⁸ See *World Wide Factors, Ltd.*, 882 F.2d at 347 (holding that "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").

¹⁰⁹ See, FN 44.

1. The Relief Should Be Granted *Ex Parte*.

Ex parte TROs are warranted when “immediate and irreparable injury, loss or damage will result” if notice is given¹¹⁰ or “notice to the defendant would render fruitless the further prosecution of the action.”¹¹¹ Congress and the courts have looked favorably on the availability of *ex parte* relief in FTC actions like this one.¹¹²

Here, a substantial risk exists that the Defendants will destroy evidence, dissipate assets, and jeopardize the possibility of effective final relief if given notice.¹¹³ In cases involving deception, “it [is] proper to enter the TRO without notice, for giving notice itself may defeat the very purpose for the TRO.”¹¹⁴ Mindful of this problem, this Court has regularly granted the FTC’s request for *ex parte* TROs in Section 13(b) consumer deception cases to preserve the possibility of full and effective final relief. Indeed, such behavior seems likely in this case given the deceptive nature of Defendants’ business practices and their continuing illegal operations despite numerous complaints from consumers.

In addition to Defendants’ many deceptions to consumers, Defendants also have illegally deceived loan servicers and the Department of Education about consumers’ eligibility for federal student-debt relief by providing inaccurate information about consumers’ income, unemployment status, and family size, to qualify consumers for benefits that they would not otherwise receive.¹¹⁵ Defendants’ clients also report enormous difficulty getting refunds—in plain violation of the TSR, because Defendants should not have requested the advanced fee to begin with.¹¹⁶ Defendant White also failed to disclose his past employment with a dissolved debt-relief company called Cypress Law Group, as required on a consumer-finance-license

¹¹⁰ Fed. R. Civ. P. 65(b)(1)(A).

¹¹¹ *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322 (7th Cir. 1984); see also *Granny Goose Foods, Inc. v. Bd. of Teamsters*, 415 U.S. 423, 439 (1974).

¹¹² “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. 103-130 at 15-16 (1994).

¹¹³ Plaintiffs’ Rule 65(b) Declaration of Counsel, filed contemporaneously herewith, describes the need for *ex parte* relief and cites cases in which defendants who learned of impending FTC actions withdrew funds, destroyed vital documents, and fled the jurisdiction. Declarations of counsel provide an appropriate basis for granting *ex parte* relief. *AT&T Broadband v. Tech Comm’ns, Inc.*, 381 F.3d 1309, 1319-20 (11th Cir. 2004).

¹¹⁴ *Cenergy Corp. v. Bryson Oil & Gas P.L.C.*, 657 F. Supp. 867, 870 (D. Nev. 1987).

¹¹⁵ See FN 31.

¹¹⁶ See FN 35.

application submitted to, and denied by, the Florida Office of Financial Regulation.¹¹⁷ These facts tend to show Defendants' general disrespect for the law and willingness to break it for their own benefit. Thus, immediate and irreparable injury, loss, or damage may likely result if Defendants are given notice—rendering *ex parte* relief appropriate, particularly where at least \$7 million, and probably much more, may be at stake.

2. Conduct Relief

To prevent ongoing consumer injury, the Proposed Order would enjoin Defendants from further violating the law by prohibiting them from engaging in the specific conduct that gave rise to this action, including, but not limited to: (a) misrepresenting any debt relief service; (b) requesting or receiving advance fees for debt relief; (c) misrepresenting consumers' income, unemployment status, and income on debt relief applications.

3. Asset Freeze

This Court is well-justified in freezing Defendants' assets to maintain the status quo in order to make permanent relief possible.¹¹⁸ When a district court determines that the FTC is likely to prevail in a final determination on the merits, it has “a duty to ensure that . . . assets . . . [are] available to make restitution to the injured customers.”¹¹⁹ In the Eleventh Circuit “only a reasonable approximation of a defendant's ill-gotten gains” is necessary to freeze a defendant's assets, as the burden of proof is “relatively light.”¹²⁰ “There does not need to be evidence that assets will likely be dissipated in order to impose an asset freeze.”¹²¹ Following precedent, this Court has frozen defendants' assets in numerous FTC enforcement actions like this one.¹²²

Here, an asset freeze is particularly appropriate because of (1) the deceptive nature of Defendants' scheme; (2) the magnitude of their unjust enrichment (at least \$7 million); and (3) Defendants' misrepresentations to loan servicers about consumers' family size, income, and unemployment status. Courts have held that Defendants who engage in deception are likely to

¹¹⁷ PX 23:1, 25-26 [Porter] (on page 25, omission in § H; on page 26, White certified that the completed form and his disclosures were “correct and complete to the best of my knowledge and belief”); *see also* PX 17:3, 8, 22-30, 174-207 [Liggins] ¶¶ 7, 22. & Exs. D-F, BB-CC.

¹¹⁸ *See, e.g., USA Fin.*, 415 F. App'x at 469; *U.S. Oil & Gas*, 748 F.2d at 1433-34.

¹¹⁹ *World Travel*, 861 F.2d at 1031.

¹²⁰ *IAB Mktg.*, 746 F.3d at 1234 (citing *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005)); *Gem Merch. Corp.*, 87 F.3d at 469.

¹²¹ *FTC v. IAB Mktg. Assocs., LP*, 972 F. Supp. 2d 1307, 1313 n.3 (S.D. Fla. 2013).

¹²² *See* FN 44.

waste assets before resolution of an action.¹²³ The possibility of a large monetary judgment incentivizes Defendants to conceal or dissipate otherwise recoverable assets. Defendants' deceptions led loan servicers to use false consumers' data to illegitimately qualify borrowers for governmental benefits.

The Proposed Order also would require an immediate accounting of Defendants' assets. Specifically, it would require Defendants to complete financial statements for the FTC on the forms attached to the Proposed Order. This accounting, combined with an asset freeze, will increase the likelihood of preserving existing assets for redress pending final determination of this matter.¹²⁴

4. Appointment of a Temporary Receiver Over the Corporate Defendant

The Court should also appoint a temporary receiver pursuant to the Court's equitable powers under Section 13(b) of the FTC Act.¹²⁵ Appointment of a temporary receiver is appropriate where, as here, there is "imminent danger of property being lost, injured, diminished in value or squandered, and where legal remedies are inadequate."¹²⁶ When corporate defendants and their officers have engaged in deception, "it is likely that in the absence of the appointment of a receiver to maintain the *status quo*, the corporate assets will be subject to diversion and waste," to the detriment of the victims.¹²⁷ A temporary receiver will help prevent Defendants from disposing of ill-gotten funds by identifying and safeguarding the assets wherever located (including, possibly, Puerto Rico)¹²⁸ and in whatever form constituted, in addition to marshalling and preserving evidence and other critical records. The temporary receiver will also assess the extent of Defendants' deception (including determining whether any of White's other companies

¹²³ See *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972).

¹²⁴ See, e.g., *FTC v. Diversified Educ. Res., LLC*, No. 14-62116-CIV-COHN, Doc. No. 14 at 10 (S.D. Fla. Sept. 16, 2014) (ordering an accounting and financial statements).

¹²⁵ *U.S. Oil & Gas*, 748 F.2d at 1432.

¹²⁶ *Leone Indus. v. Assoc. Packaging, Inc.*, 795 F. Supp. 117, 120 (D.N.J. 1992).

¹²⁷ *SEC v. First Fin. Grp.*, 645 F.2d 429, 438 (5th Cir. 1981); see also *U.S. Oil Gas Corp.*, 748 F.2d at 1432 (affirming preliminary injunction that imposed an asset freeze and appointment of a receiver); *USA Beverages*, No. 05-61682, 2005 U.S. Dist. LEXIS 39075, at *22-23 (appointing a receiver is "essential" to ensnare compliance and "to prevent the destruction of evidence and the concealment or dissipation of assets."); see also *SEC v. R.J. Allen & Assoc.*, 386 F. Supp. 866, 878 (S.D. Fla. 1974).

¹²⁸ PX 18:2, 11-13 [Jackson] ¶ 7, Ex. B (SDD is authorized to do business in Puerto Rico).

are involved in an illicit common enterprise with SDD),¹²⁹ follow and return the proceeds of the deception, and independently report Defendants' activities to the Court.

5. Immediate Access Is Also Warranted.

Immediate access to the corporate defendant's physical business premises and records is needed to locate and secure assets,¹³⁰ to protect evidence against destruction, and to ensure that the Court can ultimately determine (a) the full scope of Defendants' law violations; (b) the identities of injured consumers; (c) the total amount of consumer injury; and (d) the nature, extent, and location of Defendants' assets. Given the deceptive nature of Defendants' scheme and their past attempts to conceal their illegal behavior, without this relief, there is a strong likelihood that the Defendants will destroy evidence and dissipate assets.

V. CONCLUSION

For the foregoing reasons, the FTC requests that the Court enter the Proposed Order.

Respectfully submitted,

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¹²⁹ Defendant White's other known companies are documented in PX 17:4, 31-45 [Liggins] ¶¶ 8-10 & Exs. G-L; Defendants have marketed the services of White's other companies through SDD. See PX 7:2 [Hanson] ¶ 6 (pitching private loan consolidation, not IDRs); PX 19:2, 18 [Weber] ¶ 5 & Ex. A (at 14:17-15:3) (SDD's "sister company ... deals with private loans"); PX 11:1 [McTaggart] ¶ 3 (pitching credit repair, not IDRs); PX 17:6, 139-142 [Liggins] ¶ 14 & Ex. N (White's company Fidelity Debt Reserve pitching credit repair).

¹³⁰ See FN 44.