

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

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| FEDERAL TRADE COMMISSION, and  | ) |          |
|  | ) |          |
| OFFICE OF THE ATTORNEY GENERAL,<br>STATE OF FLORIDA, DEPARTMENT OF<br>LEGAL AFFAIRS, | ) |          |
|  | ) |          |
| Plaintiffs,  | ) | Case No. |
|  | ) |          |
| v.   | ) |          |
|  | ) |          |
| GDP NETWORK LLC, a Florida limited liability<br>company, et al.,                     | ) |          |
|  | ) |          |
| Defendants.  | ) |          |
|  | ) |          |

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

Plaintiffs, the Federal Trade Commission (“FTC”) and the Office of the Attorney General, State of Florida, Department of Legal Affairs (“Florida Attorney General”), having filed their Complaint seeking a permanent injunction and other relief, including restitution for consumers injured by Defendants’ unlawful practices, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b; the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108; and the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (“FDUTPA”), move this Court on an *ex parte* basis without notice to Defendants for a Temporary Restraining Order with Asset Freeze, Appointment of a

Receiver, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“TRO”).<sup>1</sup>

Plaintiffs seek an Order:

1. Temporarily restraining Defendants from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310; and the FDUTPA, as alleged in the Complaint;
2. Temporarily freezing Defendants’ assets and requiring repatriation of Defendants’ assets and documents;
3. Temporarily restraining and enjoining Defendants from destroying or concealing documents, and from transferring, concealing, or otherwise disposing of assets;
4. Temporarily requiring third parties holding Defendants’ assets to retain within their control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any of Defendants’ assets, funds, documents, or other property held by, or under the control of, third parties;
5. Appointing a temporary equity receiver to take control of Corporate Defendants GDP Network LLC; G & G Success LLC, also doing business as YF Solution LLC, QSC Professionals, and G.C.D. Management LLC; and G & N Squared LLC, also doing business as Dynamic Solution Group, as well as any other business related to

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<sup>1</sup> Plaintiffs have submitted a proposed *Ex Parte* Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue with this Motion.

Defendants' debt relief service that the temporary equity receiver has reason to believe is owned or controlled in whole or in part by any Defendant, and their assets;

6. Granting expedited discovery; and

7. Requiring Defendants to show cause why this Court should not issue a preliminary injunction extending such temporary relief pending an adjudication on the merits.

In support of their Motion, Plaintiffs state as follows:

**I. INTRODUCTION**

Plaintiffs jointly ask this Court to halt a telemarketing operation that over several years has been defrauding consumers with false promises of debt relief. Posing as representatives or affiliates of consumers' banks or credit card companies, Defendants offer to reduce consumers' credit card interest rates, which they claim will enable consumers to pay off their debts three to five times faster and save them thousands of dollars in interest. But, Defendants have no relationship with consumers' banks or credit card companies, misrepresent their actual service, and cannot achieve the results promised. Defendants charge exorbitant and illegal upfront fees for their bogus service (sometimes as much as \$4,995), and since March 2014, they have siphoned over \$6 million from consumers through these practices.

The central promise of Defendants' service is a lie. Defendants do not typically reduce consumers' existing credit card interest rates. Instead, in contrast to their representations, Defendants sometimes open new credit card accounts for consumers with low, introductory or "teaser" rates, and simply transfer consumers' existing credit card

balances to the new cards—often without consumers’ authorization. Far from providing the thousands of dollars in promised savings, this ruse often leaves consumers in worse financial straits, burdened with undisclosed balance transfer fees and new accounts they do not want. To make matters worse, Defendants further violate the law by charging consumers illegal upfront fees for these “services,” and by generating their own “demand drafts” of consumers’ bank accounts, which are prohibited in telemarketing transactions.

Defendants’ ongoing scheme violates the FTC Act, the TSR, and the FDUTPA. Overwhelming evidence supports Plaintiffs’ allegations, including Defendants’ own deceptive telemarketing scripts, sworn statements from multiple consumer victims, and testimony from an expert in the credit card and retail banking industry, an FTC investigator, an FTC forensic accountant, a Senior Financial Investigator with the Florida Department of Agriculture and Consumer Services (“Florida DOACS”), and three credit card associations. And this is not the first time Defendants have faced legal action for the same deceptive practices. Within the past five years, multiple states have investigated and challenged the same illegal conduct, ultimately resulting in agreements requiring Defendants to stop their unlawful conduct. Yet despite having been caught multiple times, Defendants have continued their illegal practices.

Plaintiffs bring their motion for a temporary restraining order *ex parte* to halt Defendants’ illegal practices, freeze their assets, and have a temporary receiver appointed over the business. Defendants’ widespread pattern of deception (even in the face of prior state investigations), their use of multiple companies with changing names to operate the scheme, and other efforts to evade responsibility, all strongly suggest that they would hide or

dissipate assets if they were to receive notice of this action. The requested relief is necessary and appropriate to stop ongoing consumer harm and to prevent the destruction of records and the dissipation of assets, thereby preserving the Court's ability to provide effective final relief, including eventual restitution to victims. This type of *ex parte* relief has consistently been granted in FTC cases challenging similar credit card interest rate reduction claims, as well as other cases challenging misleading and deceptive claims.<sup>2</sup>

## **II. DEFENDANTS' DECEPTIVE AND ILLEGAL BUSINESS PRACTICES**<sup>3</sup>

Defendants' business model is rife with fraud and illegal practices. As set out in telemarketing scripts that each Corporate Defendant submitted to Florida DOACS, Defendants falsely promise to reduce the interest rates on consumers' credit cards, thereby allowing them to pay off their debts more quickly and achieve substantial savings. But Defendants' unanticipated method of attempting to reduce consumers' interest rates—opening new credit cards with low, introductory rates—does not and cannot achieve the promised results. Consumers who already are deeply in debt incur not only the illegal upfront fee of up to \$4,995 for Defendants' services, but also undisclosed fees in connection with the

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<sup>2</sup> See *FTC v. First Choice Horizon LLC*, No. 6:19-cv-01028-PGB-LRH (M.D. Fla., filed June 3, 2019); *FTC v. Higher Goals Marketing LLC*, No. 6:17-cv-02048-CEM-LRH (M.D. Fla., filed Nov. 29, 2017); *FTC v. Life Management Services of Orange County, LLC*, No. 6:16-cv-00982-CEM-GJK (M.D. Fla., filed June 7, 2016). See also *FTC and State of Florida v. Worldwide Info Servs., Inc.*, No. 6:14-cv-8-Orl-28DAB (M.D. Fla. Jan. 7, 2014); *FTC v. Resort Prop. Depot, Inc.*, No. 8:13-cv-1328-T-35-TBM (M.D. Fla. May 21, 2013); *FTC v. Vacation Commc'ns Group, LLC*, No. 6:13-cv-789-Orl-37DAB (M.D. Fla. May 20, 2013); *FTC v. Resort Solution Trust, Inc.*, No. 8:13-cv-1329-T-33TBM (M.D. Fla. May 20, 2013); *FTC v. Innovative Wealth Builders, Inc.*, No. 8:13-cv-123-T-33EAJ (M.D. Fla. Jan 14, 2013); *FTC v. WV Universal Mgmt., LLC*, No. 6:12-cv-01618-ACC-KRS (M.D. Fla. Oct. 30, 2012); *FTC v. The Green Savers, LLC*, Case No. 6:12-cv-01588-JA-DAB (M.D. Fla. Oct. 22, 2012); *FTC v. Info. Mgmt. Forum, Inc.*, No. 6:12-cv-00986-JA-KRS (M.D. Fla. June 28, 2012).

<sup>3</sup> Plaintiffs have filed Exhibits Supporting their *Ex Parte* Motion for a Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue concurrently with this Motion (Volumes I through III).

unanticipated transfer of their credit card balances to the new cards. These and other illegal practices are described in more detail below.

**A. Defendants’ Deceptive Telemarketing Pitch**

**1. Defendants’ False Affiliation Claims**

From boiler rooms in central Florida, Defendants contact consumers nationwide via unsolicited telemarketing calls offering credit card interest rate reduction services.<sup>4</sup> To promote the fiction that Defendants offer a legitimate service, Defendants claim or imply they are affiliated with consumers’ banks or credit card issuer.<sup>5</sup> For example, Defendants sometimes tell consumers that they work for “card services” or another entity commonly associated with a credit card issuer.<sup>6</sup> They also regularly represent that they are calling from, or are affiliated with, MasterCard, Visa, or Discover, or consumers’ credit card companies or issuing banks.<sup>7</sup> The telemarketers reinforce these misrepresentations by suggesting to consumers that they already possess some important account information, such as credit card names or account numbers, current balances, and current interest rates.<sup>8</sup> And, in some

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<sup>4</sup> Declaration of Roberto C. Menjivar (“Menjivar Dec.”), Plaintiffs’ Exhibit (“PX”) 18, at ¶¶ 8.a., 9.a., 10.a.-c, 18-21, & 52-53, Attachments (“Atts.”) A-C & J-L; Declaration of James W. Brooks, Sr. (“Brooks Dec.”), PX 1, at ¶ 4; Declaration of Danny Egger (“Egger Dec.”), PX 2, at ¶ 3; Declaration of Tamara Figenbaum (“Figenbaum Dec.”), PX 3, at ¶ 2; Declaration of Linda D. Gray (“Gray Dec.”), PX 4, at ¶ 2; Declaration of Robin P. Grover (“Grover Dec.”), PX 5, at ¶ 2; Declaration of Sharon Huffman (“Huffman Dec.”), PX 6, at ¶ 3; Declaration of Charles E. Lyons, Jr. (“Lyons Dec.”), PX 7, at ¶ 2; Declaration of Etta J. Miller (“Miller Dec.”), PX 8, at ¶ 2; Declaration of Mary K. Sluiter (“Sluiter Dec.”), PX 9, at ¶ 2; Declaration of Glenda Smith (“Smith Dec.”), PX 10, at ¶ 4; Declaration of Amber L. Williams (“Williams Dec.”), PX 17, at ¶ 11.

<sup>5</sup> Egger Dec., PX 2, at ¶¶ 3-5; Figenbaum Dec., PX 3, at ¶ 2; Lyons Dec., PX 7, at ¶ 2; Smith Dec., PX 10, at ¶ 4. In at least one instance, Defendants stated they were working with a government “bailout program.” Sluiter Dec., PX 9, at ¶ 4.

<sup>6</sup> Smith Dec., PX 10, at ¶ 4.

<sup>7</sup> Egger Dec., PX 2, at ¶ 3; Figenbaum Dec., PX 3, at ¶ 2; Grover Dec., PX 5, at ¶ 3; Lyons Dec., PX 7, at ¶ 2.

<sup>8</sup> Brooks Dec., PX 1, at ¶ 4; Egger Dec., PX 2, at ¶ 6; Gray Dec., PX 4, at ¶ 4; Grover Dec., PX 5, at ¶ 3;

instances, that they will negotiate directly with the consumer's credit card company.<sup>9</sup>

However, Defendants are not affiliated with MasterCard, Visa, or Discover, or with consumers' banks or credit card issuers.<sup>10</sup>

After gaining consumers' trust with these false affiliation claims, and under the guise of determining consumers' "eligibility" for Defendants' services, Defendants ask consumers to disclose highly sensitive personal information, such as their full credit card numbers with security codes, Social Security number, home address, date of birth, mother's maiden name, and passwords.<sup>11</sup> Once Defendants have extracted this information, they make a series of misrepresentations designed to induce consumers into agreeing to purchase Defendants' service.

## **2. Defendants' False Debt Relief Claims and Illegal Upfront Fee**

Most notably, Defendants claim that they can substantially and permanently reduce consumers' credit card interest rates to as low as zero percent.<sup>12</sup> According to Defendants' scripted telemarketing pitch, the resulting lower interest rates will allow consumers to pay off their credit cards "3-5 times faster" than they could have at the higher rates.<sup>13</sup> Defendants

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Huffman Dec., PX 6, at ¶ 3; Lyons Dec., PX 7, at ¶ 2; Smith Dec., PX 10, at ¶¶ 4-6.

<sup>9</sup> Lyons Dec., PX 7, at ¶ 3; Williams Dec., PX 17, at ¶ 11; Menjivar Dec., PX 18, at ¶¶ 56.a., 58, & 64.c., Att. DD, at p. 14-15, Att. EE, at p. 8, & Att. JJ, at p. 66.

<sup>10</sup> Declaration of Martin Elliott ("Elliott Dec."), PX 14, at ¶¶ 9 & 10; Declaration of Shoshana Rosenfield ("Rosenfield Dec."), PX 15, at ¶¶ 10 & 11; Declaration of Keith Carroll ("Carroll Dec."), PX 16, at ¶¶ 8-10; Declaration of Lisa T. Wilhelm ("Wilhelm Dec."), PX 11, at ¶¶ 54-56.

<sup>11</sup> Egger Dec., PX 2, at ¶ 8; Figenbaum Dec., PX 3, at ¶ 2; Gray Dec., PX 4, at ¶ 5; Sluiter Dec., PX 9, at ¶ 7, Smith Dec., PX 10, at ¶ 6; Wilhelm Dec., PX 11, at ¶¶ 57-58.

<sup>12</sup> Brooks Dec., PX 1, at ¶ 4; Egger Dec., PX 2, at ¶ 7; Figenbaum Dec., PX 3, at ¶ 4; Gray Dec., PX 4, at ¶ 3; Grover Dec., PX 5, at ¶¶ 3, 5, & 7; Huffman Dec., PX 6, at ¶ 3; Lyons Dec., PX 7, at ¶¶ 2 & 3; Miller Dec., PX 8, at ¶¶ 2 & 3; Smith Dec., PX 10, at ¶¶ 5-7; Williams Dec., PX 17, at ¶ 11.

<sup>13</sup> Gray Dec., PX 4, at ¶ 7; Menjivar Dec., PX 18, at ¶¶ 56.a., 58, & 59, Att. DD, at pp. 34, 43, 58, 71, 72, 88, 101, 115, Att. EE, at p. 11, & Att. FF, at p. 9.

promise to save consumers thousands of dollars, claiming that their service “pay[s] for itself from the money we save for you!”<sup>14</sup> Defendants, in fact, guaranteed one consumer that they would save her “a minimum of \$10,000,”<sup>15</sup> told another consumer that they could save her \$15,000,<sup>16</sup> and told yet another consumer that they could save him “at least \$20,000.”<sup>17</sup>

In referencing their fee, which can range from \$995 to as much as \$4,995,<sup>18</sup> Defendants routinely assure consumers that they will not be charged until they realize the promised savings, and that the amount the consumer will save will more than make up for the cost of Defendants’ service.<sup>19</sup> Indeed, Defendants’ scripts for “financial advisors” state consumers will be transferred to a “verification department” that is supposed to ask consumers “to authorize that onetime fee of \$\_\_\_\_\_ to your \_\_\_\_\_ account ONLY AFTER we have met our savings.”<sup>20</sup> In some instances, Defendants tell consumers that the bank will pay the fee.<sup>21</sup> Defendants often tell consumers that they will provide a “full financial analysis” illustrating how the savings will be achieved before beginning any work or charging consumers.<sup>22</sup>

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<sup>14</sup> Menjivar Dec., PX 18, at ¶¶ 56, 58, & 59, Att. DD, at pp. 34, 43, 58, 72, 88, 101, 115, Att. EE, at p. 11, & Att. FF, at p. 9.

<sup>15</sup> Menjivar Dec., PX 18, at ¶ 64.b., Att. JJ, at p. 19.

<sup>16</sup> Figenbaum Dec., PX 3, at ¶ 4.

<sup>17</sup> Lyons Dec., PX 7, at ¶ 3.

<sup>18</sup> Brooks Dec., PX 1, at ¶ 5; Egger Dec., PX 2, at ¶ 14; Figenbaum Dec., PX 3, at ¶ 5; Gray Dec., PX 4, at ¶ 18; Grover Dec., PX 5, at ¶ 7; Huffman Dec., PX 6, at ¶ 5; Lyons Dec., PX 6, at ¶ 8.f.; Miller Dec., PX 8, ¶ 8; Sluiter Dec., PX 9, at ¶ 12; Smith Dec., PX 10, at ¶ 8; Williams Dec., PX 17, at ¶ 15.

<sup>19</sup> Brooks Dec., PX 1, at ¶ 5; Figenbaum Dec., PX 3, at ¶ 5; Grover Dec., PX 5, at ¶ 7; Smith Dec., PX 10, at ¶ 8.

<sup>20</sup> Menjivar Dec., PX 18, at ¶¶ 56.g., 58, & 59, Att. DD, at p. 34, 43, 58, 71, 72, 88, 99, 115, & Att. EE, at p. 8, 11, & Att. FF, at p. 9.

<sup>21</sup> Lyons Dec., PX 7, at ¶ 4; Menjivar Dec., PX 18, Att. JJ, at pp. 34-35, 44, 59, 67.

<sup>22</sup> Menjivar Dec., PX 18, at ¶¶ 56.a., 58, & 59; Att. DD, at pp. 34, 43, 58, 71, 72, 88, 101, 115, Att. EE, at p. 11, & Att. FF at, p. 9. Moreover, Defendants lull consumers into a false sense of security by promising them they “can cancel within 7 days upon receipt of goods or services.” *Id.*

Contrary to what consumers are told, Defendants typically charge their fee during, or immediately following, the telemarketing call, which violates the FTC’s Telemarketing Sales Rule.<sup>23</sup> Defendants also violate the TSR by often collecting their fee with remotely created payment orders (or demand drafts) (“RCPOs”)<sup>24</sup> drawn against the consumer’s checking account or existing credit card.<sup>25</sup> RCPOs are expressly prohibited by the TSR in telemarketing transactions.<sup>26</sup>

Instead of “negotiating directly” with their credit card companies, as Defendants promised in the telemarketing calls, consumers report that Defendants instead use the personal information they obtained at the beginning of the call to open new credit card accounts in consumers’ names and transfer the balances from their existing credit cards to the new accounts.<sup>27</sup> This is not what consumers expected from the telemarketing pitch and is something they could have tried themselves for free.<sup>28</sup>

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<sup>23</sup> Brooks Dec., PX 1, at ¶ 15; Egger Dec., PX 2, at ¶ 13-14; Gray Dec., PX 4, at ¶ 18; Grover Dec., PX 5, at ¶ 13; Huffman Dec., PX 6, at ¶ 6; Lyons Dec., PX 7, at ¶ 8.f.; Miller Dec., PX 8, at ¶ 8; Smith Dec., PX 10, at ¶ 10.

<sup>24</sup> 16 C.F.R. § 310.2(cc).

<sup>25</sup> Menjivar Dec., PX 18, at ¶ 34, Att. R.

<sup>26</sup> 16 C.F.R. § 310.4(a)(9). RCPO’s are a prohibited source of payment in telemarketing transactions because unlike Automated Clearinghouse (“ACH”) and debit and credit card transactions, RCPO’s are not subject to centralized and systemic monitoring and, therefore, it is harder to detect patterns of abuse or fraud. *See* Telemarketing Sales Rule Notice of Proposed Rulemaking, 78 FR 41200, at 41206-07 (July 9, 2013).

<sup>27</sup> Brooks Dec., PX 1, at ¶ 17; Gray Dec., PX 4, at ¶ 23.e.; Grover Dec., PX 5, at ¶¶ 12-16; Lyons Dec., PX 7, at ¶ 8; Sluiter Dec., PX 9, at ¶¶ 18-19; Williams Dec., PX 17, at ¶¶ 13 & 19. In rare instances, Defendants do call consumers’ existing credit card issuers and obtain a lower interest rate. However, these lower interest rates are neither substantial nor permanent. At most, consumers may receive a one to three percent reduction. *See, e.g.*, Lyons Dec., PX 7, ¶ 8. And even this modest interest rate reduction is not permanent because nearly all credit cards are variable interest rate, meaning the interest rate fluctuates based on the prime rate and a particular consumer’s creditworthiness. Wilhelm Dec., PX 11, at ¶ 14. Regardless, any interest rate reductions Defendants obtain could not result in the promised savings. *Id.*, at ¶ 155.

<sup>28</sup> Grover Dec., PX 5, at ¶¶ 12-16; Lyons Dec., PX 7, at ¶ 8; Williams Dec., PX 17, at ¶¶ 13 & 19. After charging consumers and taking control of their accounts, Defendants send them a “Welcome Letter” and “Agreement” that repeat Defendants’ claims that consumers using their service will get “out of debt three to five times faster” and save thousands of dollars in interest and finance charges. Brooks Dec., PX 1, at ¶ 10, Att.

Even by using these unexpected tactics, however, Defendants do not and cannot deliver on their promises. Defendants do not secure substantial and permanent reductions of consumers' existing credit card interest rates, as promised in the telemarketing call.<sup>29</sup> The new credit cards Defendants unexpectedly open for some consumers offer only temporary lower interest rates, but those rates return to market rates after the introductory period expires.<sup>30</sup> For example, Defendants opened for one consumer two new credit cards with 0% introductory interest rates, but those rates expired six to eight months after the accounts were opened.<sup>31</sup> In another instance, Defendants opened a credit card in a consumer's name with an introductory 0% interest rate that would skyrocket to 19.74% just twelve months later.<sup>32</sup>

In having their existing credit card debts unexpectedly transferred to new, introductory rate cards, moreover, consumers frequently incur balance transfer fees of three to five percent of the debt amount transferred.<sup>33</sup> Because Defendants typically do not disclose to consumers that they even will be opening new credit cards, they also do not disclose these balance transfer fees, which can add hundreds of dollars to the consumer's debt.<sup>34</sup> Given the fleeting interest rate reduction and considerable fees, it is nearly impossible for consumers who purchase Defendants' service to save any money, much less the promised savings of

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A; Egger Dec., PX 2, at ¶ 18, Att. A; Grover Dec., PX 5, at ¶ 28-29, Att. J.; Lyons Dec., PX 7, at ¶ 7, Att. A; Suiter Dec., PX 9, at ¶ 12, Att. A; Smith Dec., PX 10, at ¶ 11, Att. A; Williams Dec., PX 17, at ¶ 17, Att. C.

<sup>29</sup> Wilhelm Dec., PX 11, at ¶¶ 96-155.

<sup>30</sup> Wilhelm Dec., PX 11, at ¶¶ 24-49.

<sup>31</sup> Lyons Dec., PX 7, at ¶ 12.

<sup>32</sup> Huffman Dec., PX 6, at ¶ 10.

<sup>33</sup> Wilhelm Dec., PX 11, at ¶¶ 39-40.

<sup>34</sup> Brooks Dec., PX 1, at ¶ 15; Gray Dec., PX 4, at ¶ 22; Grover Dec., PX 5, at ¶ 15; Huffman Dec., PX 6, at ¶ 10; Miller Dec., PX 8, at ¶ 8.

thousands of dollars.<sup>35</sup> Not surprisingly, they also are not able to pay off their credit card debt three to five times faster, as promised.<sup>36</sup>

**B. Dissatisfied Consumers Complain and Seek Refunds**

Although consumers were expecting from the telemarketing pitch that Defendants would negotiate lower interest rates with their existing credit card companies, they subsequently learn when new credit cards arrive in the mail or when their existing balances have been transferred that Defendants have opened new credit cards in their name, without their consent.<sup>37</sup> Upon realizing this, many consumers contact Defendants to complain, or they dispute Defendants' charges by initiating chargebacks with their credit card companies.<sup>38</sup> Defendants attempt to fend off these complaints and chargebacks by referencing a recording of the consumer purportedly consenting to the service provided and the fee.<sup>39</sup> But the recordings do not authorize Defendants to open new accounts in the consumer's name or to transfer existing balances, nor do they authorize Defendants to immediately charge an illegal advance fee. As evidenced by the telemarketing scripts Defendants' filed with the Florida DOACS, the recorded "consent" is simply agreement to the following:

Dynamic Solution Group guarantees to save you a minimum of \$\_\_\_\_\_ in interest and finance charges overall, and ONLY after we have saved you a minimum of \$\_\_\_\_\_ in interest and finance charges, we will apply our onetime fee of \$\_\_\_\_\_. Is that correct? (if they don't

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<sup>35</sup> Wilhelm Dec., PX 11, at ¶¶ 96-155.

<sup>36</sup> *Id.*

<sup>37</sup> Brooks Dec., PX 1, at ¶¶ 7 & 17; Grover Dec., PX 5, at ¶¶ 12-16; Lyons Dec., PX 7, at ¶ 8; Miller Dec., PX 8, at ¶ 8; Sluiter Dec., PX 9, at ¶¶ 12-14; Williams Dec., PX 17, at ¶ 19.

<sup>38</sup> Brooks Dec., PX 1, at ¶ 11; Eggers Dec., PX 2, at ¶ 16; Grover Dec., PX 5, at ¶ 30; Huffman Dec., PX 6, at ¶ 12; Lyons Dec., PX 7, at ¶ 15; Miller Dec., PX 8, at ¶¶ 6-7; Sluiter Dec., PX 9, at ¶ 15; Smith Dec., PX 10, at ¶ 13.

<sup>39</sup> Grover Dec., PX 5, at ¶ 33, Att. N; Sluiter Dec., PX 9, at ¶ 15; Williams Dec., PX 17, at ¶ 26, Att. G.

give a clear YES or OK then say, “Do you understand and Agree upon it?”<sup>40</sup>

Many dissatisfied consumers attempt to cancel Defendants’ services and to obtain a refund from Defendants directly, but Defendants routinely deny refund requests. Only consumers who threaten to or do complain to a government agency or to the Better Business Bureau are sometimes able to get a refund.<sup>41</sup> Those consumers who are successful in blocking or charging back Defendants’ fee often then receive harassing telephone calls and letters from Defendants demanding that those consumers pay Defendants’ fee.<sup>42</sup> In some instances, Defendants threaten to, and do, send consumers to collections.<sup>43</sup> In one case, a consumer’s credit card company sued her for the amount of Defendants’ fee that was charged to her credit card despite the fact that she had cancelled Defendants’ service within days of her telephone call with Defendants.<sup>44</sup> In another instance, Defendants’ threatened legal action to intimidate and coerce a consumer into making monthly payments of \$200 to pay off Defendants’ \$4,995 fee.<sup>45</sup>

### **C. Defendants are Repeat Law Violators**

This is not the first time that Defendants have been in the crosshairs of consumer protection authorities over their marketing and sale of debt relief services. Over the last several years, Defendants have resolved claims advanced by at least three state agencies

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<sup>40</sup> Menjivar Dec., PX 18, at ¶¶ 56.a., 58, & 64, Att. DD, at p. 99, Att. EE, at p. 8, & Att. JJ, at pp. 5, 19, 34-35, 51, 66, & 84.

<sup>41</sup> Sluiter Dec., PX 9, at ¶ 16; Smith Dec., PX 10, at ¶ 19.

<sup>42</sup> Brooks Dec., PX 1, at ¶ 14; Huffman Dec., PX 6, at ¶ 13.

<sup>43</sup> Egger Dec., PX 2, at ¶ 19, Att. B; Huffman Dec., PX 6, at ¶ 12, Att. C.

<sup>44</sup> Miller Dec., PX 8, at ¶¶ 11-18.

<sup>45</sup> Williams Dec., PX 17, at ¶¶ 16 & 20, Atts. B & D.

similar to those alleged here. In October 2015, for example, Defendants entered into a Voluntary Assurance of Compliance with the Wisconsin Department of Agriculture, Trade and Consumer Protection to settle allegations that it misrepresented the terms of its interest rate reduction service.<sup>46</sup> Almost two years later, Defendants entered into a consent order with the State of Oregon Department of Consumer and Business Services Division of Financial Regulation for, among other things, charging an advance fee for debt management services.<sup>47</sup> And finally, in July 2017, Defendants entered into an Assurance of Voluntary Compliance with the District of Columbia Attorney General's Office to settle allegations that it made misrepresentations and material omissions of fact related to the sale of debt relief services.<sup>48</sup> Unfortunately, these settlements have not deterred Defendants from continuing their lucrative scheme.

### **III. DEFENDANTS**

Defendants are a common enterprise of three companies controlled by three individuals who own, operate, and manage the Corporate Defendants. The Corporate Defendants through which the scheme is operated are under common control,<sup>49</sup> share office space,<sup>50</sup> and have common employees.<sup>51</sup> Indeed, the scripts they use to execute their scheme are identical, except for their different business names.<sup>52</sup> The companies are financially

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<sup>46</sup> Menjivar Dec., PX 18, at ¶ 19, Att. J.

<sup>47</sup> Menjivar Dec., PX 18, at ¶ 20, Att. K.

<sup>48</sup> Menjivar Dec., PX 18, at ¶ 21, Att. L.

<sup>49</sup> Menjivar Dec., PX 18, at ¶¶ 8-10 & 56-59, Atts. A-C & DD-FF.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Menjivar Dec., PX 18, at ¶¶ 56-59, Atts. DD-FF.

integrated, sharing major expenses such as payroll,<sup>53</sup> rent,<sup>54</sup> and telephone service.<sup>55</sup>

Revenue, in the form of consumer payments, is commingled amongst the Corporate Defendants.<sup>56</sup> Because the Defendants operate as a common enterprise, they are all jointly and severally liable for the scheme's conduct.<sup>57</sup>

Individual Defendants Gino de Paz and Grace de Paz (husband and wife) and Shabana Khublal operate their deceptive scheme through three Florida limited liability companies based in the metro Orlando area that they own, operate, and control. The Individual Defendants have worked together since early 2009 as part of a previous credit card interest rate reduction scheme. The three Corporate Defendants (GDP Network LLC, G & G Success LLC, and G & N Squared LLC) operate as a common enterprise.

**A. Individual Defendants**

Each Individual Defendant has owned, operated, or managed one or more of the Corporate Defendants, and each shares in the proceeds from Defendants' credit card interest rate reduction scheme.

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<sup>53</sup> Menjivar Dec., PX 18, at ¶¶ 30-31, 35-36, & 39, Atts. M-R.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*; Declaration of Roshni C. Agarwal ("Agarwal Dec."), PX 13, at ¶ 13.

<sup>57</sup> *FTC v. Life Mgmt. Servs. of Orange County, LLC*, 350 F. Supp. 3d 1246, 1257-60 (M.D. Fla. December 7, 2018); *see also FTC v. HES Merch. Servs. Co.*, 6:12-cv-1618-Orl-22, 2014 WL 6863506, at \*5-6 (M.D. Fla. Nov. 18, 2014), *aff'd*, 652 F. App'x 837 (11th Cir. 2016); *FTC v. Direct Benefits Grp., LLC*, 6:11-cv-1186-Orl-28, 2013 WL 3771322, at \*18-19 (M.D. Fla. July 18, 2013) (quotation omitted) (collecting cases); *FTC v. Gem Merch. Corp.*, 87 F. 3d 466, 470 (11th Cir. 1996) (quoting *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989)); *KC Leisure, Inc. v. Haber*, 972 So. 2d 1069, 1074 (Fla. 5th DCA 2008); *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1270 (S.D. Fla. 2007) (quoting *FTC v. Windward Mktg., Inc.*, CIV. A. 1:96-CV-615F, 1997 WL 33642380, at \*13 (N.D. Ga. Sept. 30, 1997)).

**Gino de Paz** is the sole member, manager, or owner of **GDP Network LLC** and is its registered agent.<sup>58</sup> Bank records show that Gino de Paz opened, and is the sole signatory on, GDP Network's bank account.<sup>59</sup>

**Grace de Paz**, Gino's wife, is a member, manager, or owner of both **G & G Success** and **G & N Squared**,<sup>60</sup> and controls both companies' bank accounts.<sup>61</sup> A confidential informant reported to the Florida DOACS that Grace de Paz is a regular presence at G & G Success' primary business location.<sup>62</sup> Additionally, Grace de Paz routinely responds to customer complaints filed against the enterprise,<sup>63</sup> and she is the sole signatory on the three state settlements.<sup>64</sup>

**Shabana Khublal** is a member, manager, or owner of **G & N Squared**.<sup>65</sup> Khublal is the registered agent for G & N Squared<sup>66</sup> and, along with Grace de Paz, controls its bank accounts.<sup>67</sup> At least one consumer has reported dealing directly with Khublal.<sup>68</sup> Khublal previously ran a credit card interest rate reduction scam under the name Premiere Debt Solutions, where she also worked with Gino and Grace de Paz.<sup>69</sup>

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<sup>58</sup> Menjivar Dec., PX 18, at ¶ 8, Att. A.

<sup>59</sup> Menjivar Dec., PX 18, at ¶¶ 33 & 40, Atts. T & V.

<sup>60</sup> Menjivar Dec., PX 18, at ¶¶ 9-10, Atts. B-C.

<sup>61</sup> Menjivar Dec., PX 18, at ¶¶ 24-28, 32, 37, & 42, Atts. M-Q, S, U, & X.

<sup>62</sup> Declaration of Mirisasha Velez ("Velez Dec."), PX 12, at ¶¶ 20-21.

<sup>63</sup> Menjivar Dec., PX 18, at ¶ 49, Att. Z, at pp. 14, 18, 22, 24, 27, 30, 34, 37, 42, 44, 46, & 49.

<sup>64</sup> Menjivar Dec., PX 18, at ¶¶ 19-21, Atts. J-L.

<sup>65</sup> Menjivar Dec., PX 18, at ¶ 10, Att. C.

<sup>66</sup> *Id.*

<sup>67</sup> Menjivar Dec., PX 18, at ¶ 27, Att. P.

<sup>68</sup> Williams Dec., PX 17, at ¶ 15.

<sup>69</sup> Menjivar Dec., PX 18, at ¶ 62.g., Att. CC, at pp. 3-7 & 16-20.

**B. Corporate Defendants**

The three Corporate Defendants have held commercial telephone seller business licenses issued by the Florida Department of Agriculture and Consumer Services, housed the call centers, and employed the telemarketers who sell Defendants' bogus credit card interest rate reduction services.

**GDP Network LLC** is a Florida limited liability company organized in July 2015.<sup>70</sup> Corporate filings show Gino de Paz as the sole manager.<sup>71</sup> It is located at 7616 Southland Boulevard, Suite 118, Orlando, Florida 32809, the location of Defendants' boiler room.<sup>72</sup> GDP Network has received hundreds of thousands of dollars in consumer fee payments.<sup>73</sup> The bulk of these payments have been transferred to a bank account held by G & G Success LLC.<sup>74</sup>

**G & G Success LLC**, also doing business as YF Solution LLC, QSC Professionals, and GCD Management, is a Florida limited liability company organized in March 2012.<sup>75</sup> Corporate filings show Grace de Paz as the sole manager.<sup>76</sup> It also is located at 7616 Southland Boulevard, Suite 118, Orlando, Florida 32809, the same address as GDP Network LLC.<sup>77</sup> G & G Success has opened at least ten bank accounts since its inception, where it has received millions of dollars in consumer fee payments.<sup>78</sup>

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<sup>70</sup> Menjivar Dec., PX 18, at ¶ 8, Att. A.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Agarwal Dec., PX 13, at ¶¶ 10-11; Menjivar Dec., PX 18, at ¶¶ 36 & 44.

<sup>74</sup> *Id.*

<sup>75</sup> Menjivar Dec., PX 18, at ¶ 9, Att. B.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Agarwal Dec., PX 13, at ¶¶ 10-11; Menjivar Dec., PX 18, at ¶¶ 30, 35, 39, & 44.

**G & N Squared LLC**, also doing business as Dynamic Solution Group, is a Florida limited liability company organized in August 2018.<sup>79</sup> The corporate filings show Shabana Khublal and Grace de Paz as managers.<sup>80</sup> In corporate filings and other records, G & N Squared LLC has listed its address as 7800 Southland Boulevard, Suite 210, Orlando, Florida 32809, or 7649 W. Colonial Drive, Suite 120, Orlando, Florida 32818.<sup>81</sup> G & N Squared has received hundreds of thousands of dollars in consumer fee payments.<sup>82</sup>

#### **IV. ARGUMENT**

Defendants' telemarketing scheme violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the TSR, and the FDUTPA. To stop Defendants' ongoing deceptive practices, prevent further injury to consumers, and preserve the possibility of effective final relief, Plaintiffs request that the Court issue an *ex parte* TRO with an asset freeze, the appointment of a receiver, immediate access to Corporate Defendants' business premises and records, and an order to show cause why a preliminary injunction should not issue. The Court has full authority to enter the requested relief, which is strongly supported by the evidence.<sup>83</sup>

##### **A. This Court is Authorized to Grant the Requested Relief**

Section 13(b) of the FTC Act authorizes district courts to grant preliminary and permanent injunctions against practices that violate laws the FTC enforces.<sup>84</sup> Once the Commission invokes a federal court's equitable powers, the full breadth of the court's

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<sup>79</sup> Menjivar Dec., PX 18, at ¶ 10, Att. C.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Agarwal Dec., PX 13, at ¶¶ 10-11; Menjivar Dec., PX 18, at ¶¶ 31 & 44.

<sup>83</sup> Courts in this district have routinely granted such relief. *See n.2, supra.*

<sup>84</sup> *See* 15 U.S.C. § 53(b); *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996).

authority is available, including the power to enter a TRO, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief.<sup>85</sup> Such ancillary relief may include an asset freeze to preserve assets for eventual restitution to victimized consumers as well as the appointment of a receiver.<sup>86</sup> The court's expansive equitable powers also are available under the TSR.<sup>87</sup> Courts may enter any relief necessary to redress injury to consumers caused by TSR violations, including "rescission or reformation of contracts [and] the refund of money or return of property."<sup>88</sup>

**B. Plaintiffs Meet the Applicable Standard for Injunctive Relief**

In the Eleventh Circuit, two factors determine the appropriateness of a temporary restraining order and preliminary injunction under Section 13(b): (1) the likelihood of success on the merits, and (2) the balance of equities.<sup>89</sup> Irreparable injury need not be shown, because it is presumed in a statutory enforcement action.<sup>90</sup> As set forth below, both factors favor entry of the requested relief.

**1. Plaintiffs are Likely to Succeed on the Merits**

**a) Plaintiffs Are Likely to Show that Defendants' Sales Practices Violate the FTC Act and FDUTPA**

There is no doubt Defendants' activities qualify as deceptive acts or practices under Section 5(a) of the FTC Act. An act or practice is deceptive under the FTC Act if it involves

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<sup>85</sup> *Gem Merch. Corp.*, 87 F.3d at 468; *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432 (11th Cir. 1984).

<sup>86</sup> *U.S. Oil & Gas Corp.*, 748 F.2d at 1432-34.

<sup>87</sup> See 15 U.S.C. § 6105(b).

<sup>88</sup> 15 U.S.C. §§ 57b(a)(1) & (b).

<sup>89</sup> *FTC v. Univ. Health*, 938 F.2d 1206, 1217 (11th Cir. 1991).

<sup>90</sup> *Id.* at 1218.

a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances.<sup>91</sup> Express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service are presumed to be material.<sup>92</sup> The FTC is not required to prove an intent to deceive to establish liability under the FTC Act.<sup>93</sup>

As described above, Defendants have violated the FTC Act by repeatedly making false and misleading claims in selling their credit card interest rate reduction services. Specifically, Defendants falsely claim that they are affiliated with consumers' credit card companies,<sup>94</sup> that they will permanently and substantially reduce consumers' credit card interest rates,<sup>95</sup> save consumers thousands of dollars,<sup>96</sup> and enable consumers to pay off their debt much faster.<sup>97</sup> These representations are express and therefore presumed material.<sup>98</sup> They also are demonstrably material, since they are likely to induce consumers into disclosing their credit card account information, agreeing to enroll in Defendants' fraudulent service, and paying thousands of dollars.<sup>99</sup>

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<sup>91</sup> *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *see also FTC v. Inbound Call Experts*, 14-81395-CIV-MARA, 2014 U.S. Dist. LEXIS 182857, at \*6-7 (S.D. Fla. Dec. 22, 2014).

<sup>92</sup> *FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 631 (6th Cir. 2014).

<sup>93</sup> *FTC v. Publ'g Clearing House*, 104 F.3d 1168, 1171 (9th Cir. 1997).

<sup>94</sup> Smith Dec., PX 10, at ¶ 4.

<sup>95</sup> Brooks Dec., PX 1, at ¶ 4; Egger Dec., PX 2, at ¶ 7; Figenbaum Dec., PX 3, at ¶ 4; Gray Dec., PX 4, at ¶ 7; Grover Dec., PX 5, at ¶¶ 3, 5, & 7; Huffman Dec., PX 6, at ¶ 3; Lyons Dec., PX 7, at ¶¶ 2 & 3; Miller Dec., PX 8, at ¶¶ 2 & 3; Smith Dec., PX 10, at ¶¶ 5-7; Williams Dec., PX 17, at ¶ 11.

<sup>96</sup> Figenbaum Dec., PX 3, at ¶ 4; Lyons Dec., PX 7, at ¶ 3; Menjivar Dec., PX 18, at ¶¶ 56, 58-59, & 64, Att. DD, at pp. 34, 43, 58, 72, 88, 101, 115, Att. EE, at p. 11, Att. FF, at p. 9, & Att. JJ, at p. 19.

<sup>97</sup> Gray Dec., PX 4, at ¶ 7; Menjivar Dec., PX 18, ¶¶ 56, 58-59, Att. D, at pp. 34, 43, 58, 72, 88, 101, 115, Att. EE, at p. 11, Att. FF, at p. 9.

<sup>98</sup> *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1096 (9th Cir. 1994).

<sup>99</sup> *See generally* Brooks Dec., PX 1; Egger Dec., PX 2; Figenbaum Dec., PX 3; Gray Dec., PX 4; Grover Dec., PX 5; Huffman Dec., PX 6; Lyons Dec., PX 7; Miller Dec., PX 8; Sluiter Dec., PX 9; Smith Dec., PX 10; Williams Dec., PX 17; and Menjivar Dec., PX 18, ¶¶ 22-50 & 63-66.

Defendants further violate the FTC Act by deceptively failing to disclose the full cost of their service. The only cost Defendants identify is their service fee, but they fail to disclose that their unexpected tactic of transferring consumers' existing credit card balances to a new zero percent promotional-rate card typically results in the consumer having to pay hundreds of dollars in bank or transaction fees. Defendants' omissions relate directly to the price of their service and are, therefore, presumed material as a matter of law.<sup>100</sup> Indeed, consumer complaints about undisclosed balance transfer fees also show that Defendants' omissions are material.<sup>101</sup>

The same misrepresentations and omissions that violate the FTC Act also violate the FDUTPA. The FDUTPA makes unlawful "unfair or deceptive acts or practices in the conduct of any trade or commerce." Chapter 501, Part II, Florida Statutes. In construing this Section, the Florida Legislature has declared that "due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) as of July 1, 2006."

b) **Plaintiffs Are Likely to Show that Defendants Violated the TSR**

The same deceptive conduct that violates the FTC Act also violates the TSR. The TSR prohibits sellers and telemarketers<sup>102</sup> from (1) misrepresenting any material aspect of a

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<sup>100</sup> *In re Removatron Int'l Corp.*, 111 F.T.C. 206, 309 (1988), *aff'd* 884 F.2d 1489 (1st Cir. 1989); *see also FTC v. Windward Mktg.*, 1:96-CV-615-FMH, 1997 U.S. Dist. LEXIS 17114, at \*28 (N.D. Ga. Sep. 30, 1997).

<sup>101</sup> Brooks Dec., PX 1, at ¶ 15; Gray Dec., PX 4, at ¶ 22; Grover Dec., PX 5, at ¶ 15; Huffman Dec., PX 6, at ¶ 10; Miller Dec., PX 8, at ¶ 8.

<sup>102</sup> Defendants qualify as "sellers" or "telemarketers" and are engaged in "telemarketing" as defined by

debt relief service,<sup>103</sup> (2) misrepresenting an affiliation with banks, credit card issuers, or credit card associations, and (3) failing to disclose the total cost of the debt relief service.<sup>104</sup> The TSR further prohibits sellers and telemarketers of debt relief services from charging or receiving a fee in advance of providing debt relief services, and using remotely created payment orders in telemarketing sales, which Defendants routinely do.<sup>105</sup> Defendants' credit card interest rate reduction scheme violates all of these TSR provisions.

## 2. **The Balance of Equities Strongly Favors Injunctive Relief**

There also is a strong public interest in halting Defendants' unlawful conduct and in preserving assets for consumer redress. The need for injunctive relief is especially urgent given the vast quantity of sensitive consumer data in Defendants' possession that they are currently using to run their scheme. These concerns far outweigh any interest Defendants may have in continuing to operate their fraudulent business.<sup>106</sup> Indeed, "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."<sup>107</sup>

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the TSR. 16 C.F.R. §§ 310.2(dd), (ff), and (gg).

<sup>103</sup> "Debt relief service" is defined to include a program or service represented (directly or by implication) to reduce a person's interest rate. 16 C.F.R. § 310.2(o). Fees for such services may not be requested or received until and unless the seller or telemarketer has renegotiated or otherwise altered the terms of at least one debt for a customer and the customer has made at least one payment to the creditor on the newly altered debt. 16 C.F.R. § 310.4(a)(5)(i).

<sup>104</sup> 16 C.F.R. §§ 310.3(a)(1)(i), (a)(2)(vii), and (a)(2)(x).

<sup>105</sup> 16 C.F.R. §§ 310.4(a)(5)(i) and (a)(9).

<sup>106</sup> See *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (in balancing equities, "the public interest should receive greater weight" than any private interest); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988).

<sup>107</sup> *World Wide Factors*, 882 F.2d at 347. See also *FTC v. Affordable Media*, 179 F.3d 1228, 1236 (9th Cir. 1999).

### C. The Individual Defendants are Personally Liable

The Individual Defendants are responsible for the illegal activity of the corporations they control.<sup>108</sup> An individual is liable for injunctive relief under the FTC Act if the individual participated directly in or had authority to control the practices, and is liable for monetary relief if the individual also had some knowledge of the practices.<sup>109</sup> Authority to control may be evidenced by “active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer.”<sup>110</sup> Having signing authority on corporate accounts or acquiring services on behalf of the corporation also evidences authority to control.<sup>111</sup> Participation in corporate affairs is probative of knowledge.<sup>112</sup> The FTC need not show an individual’s intent to defraud.<sup>113</sup>

Here, as detailed in Section III.A., above, each Individual Defendant is an officer or manager of one or more of the Corporate Defendants, all of which are small, closely held

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<sup>108</sup> As noted above in Section III.B., *supra*, the Corporate Defendants do not function as independent legal entities, but interchangeable shells that exist solely as conduits of Defendants’ scam. They are therefore jointly and severally liable for Defendants’ conduct because they have operated as a common enterprise. *See Del. Watch v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964); *accord FTC v. J.K. Publ’ns., Inc.*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000) (finding common enterprise where corporate defendants were under common control; shared office space, employees, and officers; and conducted their businesses through a “maze of interrelated companies”); *FTC v. Wash. Data Res.*, 856 F. Supp. 2d 1247, 1271 (M.D. Fla. 2012); *FTC v. Direct Benefits Group, LLC*, 6:11-cv-1186-Orl-28TBS, 2013 WL 3771322, at \*18 (M.D. Fla. July 18, 2013).

<sup>109</sup> *See Gem Merch. Corp.*, 87 F.3d at 470; *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989). The knowledge requirement is satisfied by showing that the defendant (1) had actual knowledge of the deceptive acts or practices, (2) was recklessly indifferent to the truth or falsity of the representations, or (3) had an awareness of a high probability of fraud coupled with an intentional avoidance of the truth. *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1270 (S.D. Fla. 2007); *Amy Travel Service*, 875 F.2d at 574.

<sup>110</sup> *FTC v. Wilcox*, 926 F. Supp. 1091, 1104 (S.D. Fla. 1995) (quoting *Amy Travel*, 875 F.2d at 573); *see also Transnet Wireless*, 506 F. Supp. 2d at 1270 (“An individual’s status as a corporate officer gives rise to a presumption of ability to control a small closely-held corporation.”) (citations omitted).

<sup>111</sup> *FTC v. USA Fin., LLC*, 4415 Fed. Appx. 970, 974-75 (11th Cir. 2011); *Transnet Wireless*, 506 F. Supp. 2d at 1271.

<sup>112</sup> *Transnet Wireless*, 506 F. Supp. 2d at 1270; *Wilcox*, 926 F. Supp. at 1104.

<sup>113</sup> *Transnet Wireless*, 506 F. Supp. 2d at 1270.

companies, giving rise to a presumption of control.<sup>114</sup> Bank records, communications, and other documents show the Individual Defendants' direct involvement with obtaining telemarketing licenses, managing call centers, training employees, and procuring merchant processing. The Individual Defendants are each signatories on bank accounts into which millions of dollars in scam proceeds have been transferred. Their efforts to evade detection by using a multitude of different business names, bank accounts, and other ruses are probative of their knowledge.<sup>115</sup> Given their control over and active participation in this scheme, the Individual Defendants are undoubtedly aware of the deceptive practices, and should therefore be held individually liable.

**D. The Corporate Defendants are Subject to Joint and Several Liability as a Common Enterprise**

The Corporate Defendants are jointly and severally liable for violations of the FTC Act because they operate as a common enterprise.<sup>116</sup> A common enterprise may be demonstrated by the existence of interrelated companies, the commingling of funds, unified advertising, and sharing of resources and staff.<sup>117</sup> Here, as discussed in Section III.B., above, the Corporate Defendants commingle funds, share personnel, share addresses, are commonly controlled, and engage in a common scheme. As a result, they are jointly and severally liable for the conduct of the enterprise.

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<sup>114</sup> *Life Mgmt. Servs.*, 350 F. Supp. 3d at 1260.

<sup>115</sup> *See J.K. Publ'ns, Inc.*, 99 F. Supp. 2d at 1202.

<sup>116</sup> *Life Mgmt. Servs.*, 350 F. Supp. 3d at 1257-60; *HES Merch. Servs. Co.*, 2014 WL 6863506, at \*5-6; *Direct Benefits Grp., LLC*, 2013 WL 3771322, at \*18-19; *Gem Merch. Corp.*, 87 F.3d at 470; *Haber*, 972 So. 2d at 1074.

<sup>117</sup> *Wash. Data. Res.*, 856 F. Supp. 2d at 1271.

**E. The Scope of the Proposed TRO is Necessary and Appropriate**

An *ex parte* TRO is necessary and legally appropriate to prevent Defendants from dissipating assets and destroying evidence. Plaintiffs request entry of a TRO that would: (a) freeze Defendants' assets; (b) appoint a temporary receiver over the Corporate Defendants; and (c) grant Plaintiffs immediate access to Defendants' records and information. Defendants are likely to dissipate assets or destroy evidence if given advance notice of the Plaintiffs' action.<sup>118</sup> Courts in this district have frozen defendants' assets, appointed receivers, and granted the FTC immediate access to defendants' business premises in numerous, similar enforcement actions.<sup>119</sup>

**1. Asset Freeze**

When a district court determines that the FTC is likely to prevail on the merits, it has “a duty to ensure that ... assets ... [are] available to make restitution to the injured customers.”<sup>120</sup> The Eleventh Circuit has repeatedly upheld the authority of district courts to order an asset freeze to preserve the possibility of consumer redress.<sup>121</sup> To help ensure the availability of assets, preserve the status quo, and guard against the dissipation and diversion of assets, the Court should impose an asset freeze.

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<sup>118</sup> See Declaration and Certification of Plaintiff Federal Trade Commission's Counsel Pursuant to Fed. R. Civ. P. 65(b) in Support of Plaintiffs' *Ex Parte* Motion for Temporary Restraining Order and *Ex Parte* Motion to Temporarily Seal File (describing need for *ex parte* relief and citing cases in which defendants who learned of impending FTC action withdrew funds, destroyed vital documents, and fled the jurisdiction).

<sup>119</sup> See, e.g., *FTC v. First Choice Horizon LLC*, No. 6:19-cv-01028-PGB-LRH (M.D. Fla. Jun. 4, 2019); *FTC v. MOBE Ltd.*, No. 6:18-cv-862-Orl-37DCI (M.D. Fla. Jun. 5, 2018); *FTC v. Life Mgmt. Servs. of Orange County, LLC*, 6:16-cv-982-Orl-41TBS (M.D. Fla. Jun. 8, 2016); *FTC v. All US Mktg. LLC*, No. 6:15-cv-1016-Orl-28KRS (M.D. Fla. Jun. 29, 2015).

<sup>120</sup> *World Travel Vacations Brokers*, 861 F.2d at 1031.

<sup>121</sup> See, e.g., *Gem Merch. Corp.*, 87 F. 3d at 469; *U.S. Oil & Gas*, 748 F.2d at 1433-34.

If Defendants receive notice of Plaintiffs action, there is a tangible risk that their records and assets will disappear. Historically, funds deposited into Defendants' corporate accounts are regularly and quickly dissipated. If Defendants receive advance notice of this matter, they will likely dissipate funds even further.

## **2. Temporary Receiver**

Plaintiffs seek the appointment of a temporary receiver pursuant to the Court's equitable powers under Section 13(b) of the FTC Act.<sup>122</sup> Such an appointment is particularly appropriate when, as here, Defendants' pervasive fraud presents a strong likelihood of continued misconduct. Even though Defendants have entered into at least three agreements with state agencies relating to the conduct at issue in this case, they have continued their scheme unabated. A temporary receiver would prevent further harm to consumers and prevent destruction or concealment of assets and records without disrupting any legitimate business activity. A receiver could also assist the Court in assessing the extent of Defendants' fraud, locate the proceeds of that fraud, and make an independent report of Defendants' current and past activities to the Court.

## **3. Immediate Access and Limited Expedited Discovery**

The proposed TRO would grant the temporary receiver and Plaintiffs immediate access to the Corporate Defendants' physical business premises to locate and to secure

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<sup>122</sup> See *U.S. Oil & Gas*, 748 F.2d at 1434.

Defendants' assets and documents pertaining to their business practices.<sup>123</sup> For the same purposes, Plaintiffs seek limited expedited discovery into the nature, location, and extent of those assets and documents.

**F. The Temporary Restraining Order Should Be Issued *Ex Parte***

To prevent Defendants from dissipating or concealing assets or from destroying business records that document their fraud, the requested TRO should be issued *ex parte*. An *ex parte* TRO is warranted when the facts show that immediate and irreparable injury, loss, or damage will occur before the defendants can be heard in opposition.<sup>124</sup> As in other cases in this district where courts have granted similar relief on an *ex parte* basis,<sup>125</sup> there is a serious risk that assets and evidence stemming from Defendants' illegal activity will disappear if they receive prior notice. In the Plaintiffs' experience, the blatantly deceptive nature of Defendants' scheme as well as the steps they have taken to disguise their activities and to

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<sup>123</sup> Because of the uncertainties caused by the current COVID-19 pandemic, the proposed order would allow the FTC and receiver to delay executing the immediate access provisions if they determined it unsafe to do so, or to implement immediate access after business hours if the receiver determined it safe to do so. In addition, the proposed order would allow the receiver to delay exercising any of his or her duties if the receiver determined it unsafe to do so.

<sup>124</sup> See Fed. R. Civ. P. 65(b).

<sup>125</sup> See *FTC v. First Choice Horizon LLC*, No. 6:19-cv-01028-PGB-LRH (M.D. Fla., filed June 3, 2019); *FTC v. Higher Goals Marketing LLC*, No. 6:17-cv-02048-CEM-LRH (M.D. Fla., filed Nov. 29, 2017); *FTC v. Life Management Services of Orange County, LLC*, No. 6:16-cv-00982-CEM-GJK (M.D. Fla., filed June 7, 2016). See also *FTC and State of Florida v. Worldwide Info Servs., Inc.*, No. 6:14-cv-8-Orl-28DAB (M.D. Fla. Jan. 7, 2014); *FTC v. Resort Prop. Depot, Inc.*, No. 8:13-cv-1328-T-35-TBM (M.D. Fla. May 21, 2013); *FTC v. Vacation Commc'ns Group, LLC*, No. 6:13-cv-789-Orl-37DAB (M.D. Fla. May 20, 2013); *FTC v. Resort Solution Trust, Inc.*, No. 8:13-cv-1329-T-33TBM (M.D. Fla. May 20, 2013); *FTC v. Innovative Wealth Builders, Inc.*, No. 8:13-cv-123-T-33EAJ (M.D. Fla. Jan 14, 2013); *FTC v. WV Universal Mgmt., LLC*, No. 6:12-cv-01618-ACC-KRS (M.D. Fla. Oct. 30, 2012); *FTC v. The Green Savers, LLC*, Case No. 6:12-cv-01588-JA-DAB (M.D. Fla. Oct. 22, 2012); *FTC v. Info. Mgmt. Forum, Inc.*, No. 6:12-cv-00986-JA-KRS (M.D. Fla. June 28, 2012).

avoid detection by law enforcement all indicate there is a serious risk that they will destroy documents and dissipate assets if given advance notice of Plaintiffs' motion.<sup>126</sup>

**V. CONCLUSION**

For the reasons set forth above, Plaintiffs respectfully request that the Court enter the proposed *ex parte* TRO to halt Defendants' violations of the FTC Act, the TSR, and the FDUTPA and to help ensure the possibility of effective final relief for consumers.<sup>127</sup>

Respectfully submitted,

ALDEN F. ABBOTT  
General Counsel, Federal Trade Commission

Dated: July 6, 2020

/s/Samantha Gordon  
SAMANTHA GORDON, Trial Counsel  
AUDREY AUSTIN  
WILLIAM J. HODOR  
Federal Trade Commission  
Midwest Region  
230 South Dearborn Street, Room 3030  
Chicago, Illinois 60604  
(312) 960-5634 [telephone]  
(312) 960-5600 [facsimile]  
[sgordon@ftc.gov](mailto:sgordon@ftc.gov) [Gordon]  
[aaustin2@ftc.gov](mailto:aaustin2@ftc.gov) [Austin]  
[whodor@ftc.gov](mailto:whodor@ftc.gov) [Hodor]  
Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION

ASHLEY MOODY  
Attorney General, State of Florida

PAUL ERIC COURTRIGHT, FL Bar 507741

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<sup>126</sup> See Declaration and Certification of Plaintiff Federal Trade Commission's Counsel Pursuant to Fed. R. Civ. P. 65(b) in Support of Plaintiffs' *Ex Parte* Motion for Temporary Restraining Order and *Ex Parte* Motion to Temporarily Seal File, filed concurrently with this Motion.

<sup>127</sup> Along with this Motion, Plaintiffs have submitted a proposed *Ex Parte* Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief and Order to Show Cause Why Preliminary Injunction Should Not Issue.

PATRICK CHRISTOPHER CROTTY, FL Bar 108541  
DONNA CECILIA VALIN, FL Bar 96687  
Office of the Attorney General  
Consumer Protection Division  
135 W. Central Boulevard, Suite 1000  
Orlando, Florida 32801  
(407) 316-4840 [telephone]  
(407) 245-0365 [facsimile]  
[Paul.Courtright@myfloridalegal.com](mailto:Paul.Courtright@myfloridalegal.com) [Courtright]  
[Patrick.Crotty@myfloridalegal.com](mailto:Patrick.Crotty@myfloridalegal.com) [Crotty]  
[Donna.Valin@myfloridalegal.com](mailto:Donna.Valin@myfloridalegal.com) [Valin]

Attorneys for Plaintiff  
OFFICE OF THE ATTORNEY GENERAL  
STATE OF FLORIDA  
DEPARTMENT OF LEGAL AFFAIRS