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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

2014
RONALD W. GULIAN, JUDGE
UNITED STATES DISTRICT COURT
JUDGE GETTLEMAN

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAPITAL ACQUISITIONS & MANAGEMENT
CORP., a corporation, *et al.*,

Defendants.

MAGISTRATE JUDGE NOLAN

Civil Action No.

040 7781

**MEMORANDUM SUPPORTING PLAINTIFF'S EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER, OTHER EQUITABLE RELIEF, AND ORDER
TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

I. INTRODUCTION

This is a case about a debt collection company gone wild. The defendants are in the business of attempting to collect "time-barred" debts -- debts so old that they are beyond the statute of limitations, cannot appear on credit reports, and which are often purchased from other debt collection agencies which have written them off. The defendants have little documentation regarding the original debts, and very often are collecting from people that never owed a debt in the first place. Efforts to collect universally employ a variety of utterly false claims and abusive practices. This is a large operation collecting millions of dollars from consumers across the country, and the management is fully aware of these pervasively illegal practices.

The collectors for Capital Acquisitions & Management Corp., known as CAMCO, routinely engage in "deceptive acts or practices" in clear violation of the Federal Trade Commission Act ("FTC Act"). Every day, CAMCO's collectors threaten consumers with criminal charges or arrest. They also threaten or claim to have already commenced -- civil actions for injunctions, liens, and garnishment. They often assert that if consumers do not pay, any government benefits the consumers receive will be taken away from them. In addition, the collectors commonly threaten to ruin people's credit -- even though these alleged debts cannot legally appear on credit reports. These false claims are, of course, accompanied by blatant

violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

Such claims are pervasive. Along with this memorandum, the FTC has filed a spreadsheet detailing the various false claims and abusive practices visited on over 2,000 consumers who have filed complaints just since late March 2004. The evidence also includes sworn declarations or statements from 100 consumer victims and sworn declarations from three former employees that amply set out the training, atmosphere, and daily practices at CAMCO.

The scale of this fraud is staggering. CAMCO has several hundred employees. It is headquartered in an eight-story office building in Rockford -- which it owns. In addition, CAMCO has collectors operating from offices in Schaumburg, Illinois; Marietta, Georgia; and Montego Bay, Jamaica. It is collecting millions of dollars each year.

Amazingly, this is transpiring despite the fact that CAMCO agreed to a consent decree, entered on March 24th of this year, prohibiting further FDCPA violations and requiring CAMCO to pay \$300,000 in civil penalties.¹ The consent decree was limited to violations of the FDCPA.²

This case seeks much broader relief, and is limited to activities taking place after the decree was entered. False and deceptive statements are at the heart of this enterprise, and those statements violate Section 5 of the FTC Act. As is typical of FTC cases, consumers would not part with their money absent those false claims. Under these circumstances restitution is appropriate. Because payment of these "debts" is a contract extinguishing liability for these (unenforceable) debts the Court may also consider rescission as a remedy. In either case, illegal practices should end and defrauded victims should get their money back.

We ask that the Court put an immediate stop to defendants' illegal activities and preserve assets for redress. The FTC seeks, under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), the *ex parte* issuance of a temporary restraining order ("TRO") with an order to show cause why a preliminary injunction should not issue. Such relief would enjoin defendants' illegal practices,

¹ That investigation was conducted by the FTC, but since the decree called for civil penalties, it was filed by United States Department of Justice in March 2004. *U.S. v. Capital Acquisitions & Management Corp., et al.*, No. 04-C-50147 (March 24, 2004) (J. Reinhard).

² Because the consent decree was filed by DOJ, any contempt action would have to be brought by DOJ, which is not precluded by this action.

freeze their assets, appoint a temporary receiver for the corporate defendants, and order other related relief. These measures are necessary to prevent continued consumer injury, dissipation of assets, and destruction of evidence, thereby preserving this Court's ability to provide effective final relief to defendants' victims.

II. BACKGROUND

A. Procedural Posture

This is not the first time that the FTC has dealt with CAMCO's practices. As described above, CAMCO recently entered into a consent agreement to resolve issues with its debt collection business. That settlement was the result of a two year investigation by the FTC's Northwest Region, and dealt exclusively with widespread violations of the FDCPA. After extensive negotiations, the consent was filed in the Northern District of Illinois N Western Division, on March 24, 2004.

Immediately after this order was entered, the Commission began receiving a huge volume of consumer complaints about CAMCO. Although some were about conduct that antedated the order, the vast majority concern recent conduct. Since the order was entered, the FTC has received more than 2,000 complaints about post-consent conduct by CAMCO. These law violations are serious and central to every sales transaction.

B. Time-Barred Debts

CAMCO specializes in an apparently growing niche of the debt collection business. CAMCO purchases very old portfolios of debts, typically credit card debts which are often more than ten years old, and attempts to collect them. These are referred to as "time-barred debts," because the relevant statutes of limitations have expired and thus legal enforcement is ordinarily no longer possible. In many cases, the original debts were sold by the creditor to other debt collectors and may have been sold several times before CAMCO acquires them. CAMCO buys large batches of these debts for pennies on the dollar.

However, there are serious obstacles to trying to collect these debts. In almost all cases, the statute of limitations has expired on the debt. In addition, debts over seven years old can no longer be reported on credit reports. In some cases, the consumer that incurred the debt has filed for bankruptcy and the debt has been discharged.

Because of the age and repeated sale of these debts, there is little or no documentation about the original debt. In many cases, CAMCO does not even have the social security number of the original debtor. Thus CAMCO simply makes efforts to find people with the same name in the same geographic area and then calls trying to collect. In these situations, the collectors have no credible threat of consequences if the consumer does not pay. Because moral persuasion alone is unlikely to produce payment of these debts, there are strong incentives to threaten actions that cannot actually be taken.

Former employees estimate that at least the majority, and perhaps as much as 80%, of the money CAMCO collects comes from consumers who never owed the original debt. CAMCO simply has the wrong person.³ This is corroborated by the fact that hundreds of the consumers who have complained to the FTC about CAMCO report that they simply have a similar name or have the same address as the alleged debtor.⁴ Many of these people pay CAMCO simply to end the unceasing harassment to which they are subjected.⁵

III. DEFENDANTS' ILLEGAL CONDUCT

A. Defendants violate the FTC Act

The defendants consistently employ a variety of misleading statements -- including outright lies -- to convince consumers to pay these alleged debts. Whether falsely threatening criminal or civil action, lying about the legal status of the consumers' debts, or making false claims about the effect on consumers' credit records, the defendants' routinely make false claims and engage in outrageous tactics that are almost breathtaking in their magnitude.

1. False Claims of Criminal Sanctions for Failure to Pay

CAMCO's collectors routinely threaten consumers with criminal action if they do not pay.⁶ Consumers are frequently told that they will be arrested unless they pay CAMCO.⁷ The

³ See Plaintiff's Exhibits ("PX") 32 and 33, filed in support of Plaintiff's Motion and this Memorandum.

⁴ See PX 37, attachment.

⁵ See, e.g., PXs 27-V, 27-Y, 28-L, 28-O, 28-S, 29-I.

⁶ See, e.g., PXs 27-G, 27-R, 27-T, 27-X, 27-Y, 28-M, 29-H, 29-P, 29-Q.

⁷ See, e.g., PXs 25, 36.

collectors state that failure to pay constitutes fraud, is a felony or a "federal offense."⁸ Consumers are told that CAMCO has some special relationship with the government, sometimes claiming that they are working with the police, suggesting that the government will pursue criminal remedies if the supposed debts are not repaid.⁹ Of course, none of these statements by CAMCO collectors is true.

2. False Claims of Civil Court Remedies

CAMCO's most frequent tactic seems to be having its collectors threaten consumers with phony lawsuits. Consumers are told that CAMCO will sue them, garnish their wages, obtain an injunction, attach their assets and/or put liens on their home, automobiles, or other property.¹⁰ CAMCO's collectors often claim to be government authorities calling from the local courthouse, or claim to be attorneys or working for attorneys.¹¹ Consumers are told of other consumers who were supposedly sued by CAMCO under similar circumstances.¹²

Not surprisingly, CAMCO rarely, if ever, sues consumers.¹³ Because most or all of the debts they are seeking to recover are either beyond the statute of limitations,¹⁴ were discharged in bankruptcy,¹⁵ or were never incurred by the consumers,¹⁶ such lawsuits undoubtedly would be unsuccessful. Further, since CAMCO has little or no documentation to support the contention that any of its supposed debts were ever incurred in the first place,¹⁷ it is unlikely CAMCO would even be able to meet its *prima facie* burden in the rare cases for which its debts are valid.¹⁸

When consumers raise these issues with CAMCO's collectors, the collectors simply lie

⁸ See, e.g., PXs 5, 12.

⁹ See, e.g., PXs 27-G, 29-H.

¹⁰ See, e.g., PXs 1, 3, 6, 11-13, 16, 18, 20-26, 30, 31, 35, 36.

¹¹ See, e.g., PXs 18, 22, 32.

¹² See, e.g., PXs 27-E, 28-O.

¹³ For example, while there are 16 suits brought by consumers against CAMCO listed on the RACER database for this district, none have been brought by CAMCO.

¹⁴ See, e.g., PXs 33, 35.

¹⁵ See, e.g., PXs 13, 14, 15.

¹⁶ See, e.g., PXs 10, 16.

¹⁷ See, e.g., PXs 1, 3.

¹⁸ The statute of limitations for such debts is typically 4 years and between 3 and 6 years in most states. See, e.g., Cal. Code Cir. Proc. § 337 (4 years); 810 ILCS 5/2-725(i) (4 years); Tex. Civ. Prac. & Rem. Code § 16.004(a)(3) (4 years); Va. Code Ann. § 8.01-725 (4 years).

about the legal remedies available. Consumers are told that statutes of limitation never run or do not apply to these debts.¹⁹ Some collectors told consumers that it was irrelevant if the consumer had repaid or otherwise satisfied the original creditor, that the debt was somehow revived when CAMCO purchased it.²⁰ Similarly, CAMCO's collectors tell consumers that their credit card debts were not, or could not be, discharged in bankruptcy.²¹

3. Credit Reports and Credit Rating

In addition to threatening consumers falsely with draconian legal action, CAMCO's collectors also attempt to coerce consumers into paying CAMCO by falsely warning consumers that their credit will be ruined if the debt is not paid.²² The collectors tell consumers that CAMCO will accomplish this by making repeated inquiries on the consumers' credit report, or that CAMCO's purchase of the debt means it will go back on the consumers' credit report.²³ As with their threats of criminal and civil lawsuits, CAMCO's collectors often tell consumers that CAMCO's supposed special relationship with the federal government or credit reporting agencies gives CAMCO a special ability to destroy the consumers' credit, or misrepresents its purpose, sometimes claiming that CAMCO is a "pro-consumer acquisition company" which is only interested in helping to improve the consumers' credit.²⁴

In fact, CAMCO rarely, if ever, reports anything to credit reporting agencies.²⁵ The underlying debts are almost always too old to be reported on the consumers' credit reports or have been discharged in bankruptcy. Section 605(a) of the Fair Credit Reporting Act ("FCRA") prohibits consumer reporting agencies to report debts that were discharged in bankruptcy or are more than seven years old. 15 U.S.C. §1681d(a)(1) and (4).

¹⁹ See, e.g., PXs 27-J, 27-Y, 30.

²⁰ See, e.g., PXs 5, 7.

²¹ See, e.g., PXs 8, 22.

²² See, e.g., PXs 1-5, 7, 9, 10, 12, 13, 15-17, 21-25, 31, 33-35.

²³ See, e.g., PXs 4, 7, 16.

²⁴ See, e.g., PXs 28-X, 33, 34.

²⁵ See, e.g., PXs 27-F, 27-M, 29-I.

B. Defendants violate the FDCPA

The illegal practices do not end with false statements.²⁶ CAMCO's collectors also engage in a series of statutorily prohibited tactics that are meant to scare or convince consumers that they have no choice but to pay CAMCO. In particular, CAMCO engages in 1) grossly abusive behavior,²⁷ 2) ignores restrictions on who and when it can call,²⁸ and 3) fails to provide statutorily required verification of debts when it is requested.²⁹

CAMCO's collectors annoy, abuse, or harass consumers. Consumers are told that if they do not pay, CAMCO will compromise the consumer's personal information and that there is nothing the consumer can do to stop these practices short of paying CAMCO.³⁰ In just the last few months, CAMCO's collectors have told consumers:

❖ We're ~going to hound you 'til the day you die" (PX 27(O))

²⁶ In addition to violating the FTC Act, false statements violate Section 807(10) of the FDCPA, which prohibits the use of false or deceptive means to collect a debt. 15 U.S.C. § 1692e(10). Falsely representing the character, amount, or legal status of a debt, the identity of the debt collector, and threatening legal action or falsely threatening to report information to credit agencies are specifically forbidden by §§ 807(2)(A), (3), (4), (5), and (8). 15 U.S.C. §§ 1692e(2)(A), (3), (4), (5), and (8).

²⁷ Section 806 of the FDCPA prohibits debt collectors from engaging in conduct that has the natural consequence of harassing, oppressing, or abusing the listener. Section 806(2) prohibits the use of obscene or profane language. Section 806(5) prohibits causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass the listener.

²⁸ Section 804 of the FDCPA prohibits collectors from asking wide-ranging questions about a debtor and from contacting a particular third party more than once. Section 805(a)(1) prohibits debt collectors from contacting consumers at times or places that the debt collector knew or should have known are inconvenient to the consumer, including the consumer's place of employment. Section 805(c) prohibits debt collectors from communicating with a consumer after the consumer has notified the debt collector in writing that he or she refuses to pay the debt or that he or she wishes the debt collector to cease further communication with the consumer. Section 805(b) prohibits debt collectors from contacting third parties except to acquire location information on the consumer, unless the collector has received direct prior consent from the consumer or the express permission of a court.

²⁹ Section 809 of the FDCPA provides that if within thirty days after the debt collector's initial communication with the consumer, the consumer sends the collector written notice that the consumer disputes the debt or wants verification of it, the debt collector must cease further collection efforts until the verification is mailed to the consumer.

³⁰ See, e.g., PXs 1, 10, 16.

- ❖ We will "continue to hunt you" (PX 29(H))
- ❖ "We will get the money -- we can do anything we want" (PX 29(M))
- ❖ "Don't you play smart with me because your life is in my hands" (PX 36)
- ❖ "We'll get you one way or another" (PX 27(M))
- ❖ "We're going to f--- you" (PX 27(K))

Shouting and profanity are two of the major weapons used by CAMCO's collectors in their dealings with consumers.³¹

Moreover, CAMCO's collectors call consumers and third parties at times and places the collectors know are improper. Collectors call consumers at work, even if they are told it is inconvenient for the consumer or that the consumer's employer forbids such calls.³² CAMCO's collectors often are extremely rude and abusive to consumers' coworkers, friends and family, using a variety of tactics to put pressure on consumers to pay.³³ Sometimes CAMCO's collectors threaten to report consumers to government agencies, like the Veteran's Administration, the Social Security Administration or the unemployment office, suggesting that they will prevent the consumers from receiving current or future benefits.³⁴ Further, the collectors regularly ignore consumers' written requests to cease communication.³⁵

CAMCO similarly ignores requests by consumers to verify the alleged debts.³⁶ Consumers are often told that CAMCO has no procedure for verification or that they can only get verification after they pay the debt.³⁷ Even when they send purported verifications, the verifications merely confirm that CAMCO purchased a debt, often from another collection agency, and never provide any information supporting the existence of an underlying debt.³⁸

³¹ See, e.g., PXs 2, 4, 5, 9, 11, 21, 27-G, 27-J, 27-K, 27-Q, 28-B, 28-E, 29-D, 29-O, 29-Q, 30, 33, 34, 35, 36.

³² See, e.g., PXs 26, 27-E, 27-AA, 28-R.

³³ See, e.g., PXs 5, 6, 23, 26, 27-Q, 27-U, 27-AA, 28-R, 28-T.

³⁴ See, e.g., PXs 10, 28-F, 28-N.

³⁵ See, e.g., PXs 5, 6, 9, 11, 15, 25, 28-A, 28-H, 28-L, 28-M, 28-X, 29-E, 29-P, 30.

³⁶ See, e.g., PXs 6, 12, 27-J, 27-M, 27-U, 28-H, 28-N, 29-D.

³⁷ See, e.g., PXs 27-J, 27-L, 27-M, 27-S, 27-U.

³⁸ See, e.g., PXs 3, 10, 15, 23, 27-L, 27-O, 27-Z, 29-F.

IV. DEFENDANTS

The Defendants in this case include CAMCO, three related corporations, and five officers and managers.³⁹ The individual defendants are all officers and/or owners of the corporations.

CAMCO is a Delaware corporation, with offices in Illinois, Georgia, and Jamaica. It is headquartered in Rockford, Illinois, where it operates out of an eight-story office building. CAMCO was formerly an Illinois corporation, before reincorporating in Delaware in 2003. CAMCO also has several wholly owned subsidiaries, including RM Financial Services, Inc. ("RM"), a Georgia corporation, which was purchased by CAMCO in 2001 and had or has its principal place of business in Georgia; Capital Properties Holdings, Inc. ("CAP"), which was incorporated in Illinois in 2002, has its principal place of business in Rockford, and owns the building housing CAMCO; and Caribbean Asset Management, Ltd. ("CAM"), a wholly owned subsidiary of RM, and which was incorporated in the British Virgin Islands in 2002 with its principal place of business in Montego Bay, Jamaica. Collectively, CAMCO has several hundred employees, with collectors working in at least four offices. Until recently, it had offices in Georgia and Fort Lauderdale, Florida.

Reese Waugh is the Executive Vice President and Chief Operating Officer and a director of CAMCO and of RM. He is heavily involved in the daily management and operation of CAMCO and the other entities and was one of the three members of XYZ Venture Partners LLC ("XYZ"), a holding corporation which owned 78 per cent of CAMCO prior to its reincorporation. Jerome Kuebler is CAMCO's Vice President of Operations, and is principally responsible for determining CAMCO's debt collection procedures and policies. Eric Woldoff is the President of CAMCO, is responsible for purchasing the portfolios of debts CAMCO tries to collect, and was also one of the three members of XYZ. George Othon is the President of CAP and the third member of XYZ. Jeffrey Garrington is CAMCO's registered agent, is actively involved in the management of the enterprise, and holds himself out as CAMCO's president.⁴⁰

³⁹ See generally, PX 38, for corporate records.

⁴⁰ See PX 18.

V. LEGAL ARGUMENT

The FTC asks the Court to bring this illegal conduct to an immediate end. Injunctive relief is needed to prevent further illegal conduct. This case is also seeking restitution for victims, and other related relief is necessary to ensure that the Court will have the ability to provide that remedy at the conclusion of this matter. Thus the FTC also seeks an asset freeze to preserve funds, repatriation of money held in foreign countries, particularly Jamaica, and appointment of a Receiver to preserve assets and manage the affairs of this enterprise. The Court has full authority to enter the relief sought by the FTC, and the facts strongly support such relief.

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

A district court may issue injunctions to enjoin violations of the FTC Act. *See* 15 U.S.C. 53(b); *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1028 (7th Cir. 1988). Implicit in the Court's authority to grant injunctions is the power to grant "any ancillary equitable relief necessary to effectuate the exercise of the granted powers." *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989). Such ancillary relief includes, *inter alia*, rescission of contracts, restitution, disgorgement, freezing of assets, repatriation, and the appointment of a receiver. *See, e.g., Febre*, 128 F.3d at 534 ("[P]ower to grant ancillary relief includes the power to order repayment of money for consumer redress as restitution or rescission"); *World Travel*, 861 F.2d at 1026, 1031 (asset freeze of both corporate and individual defendants appropriate); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102-03 (9th Cir. 1994) (restitution and disgorgement appropriate under § 13(b)); *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432 (11th Cir. 1984) (asset freeze and receiver); *FTC v. Skybiz.com, Inc.*, No. 01-5166, 2003 U.S. App. LEXIS 1653, at *9-11 (10th Cir. Jan. 30, 2003) (affirming order for repatriation). Courts have routinely entered such relief pursuant to Section 13(b) in cases such as this where there is evidence of fraud. *World Travel*, 861 F.2d at 1024-28.⁴¹

⁴¹ Courts in this district regularly enter such relief in FTC fraud cases. *See, e.g., FTC v. 3R Bancorp, et al.*, No. 04-7177 (Nov. 17, 2004) (TRO, asset freeze, receiver); *FTC v. AVS Marketing, Inc., et al.*, No. 04-6915 (Oct. 28, 2004) (TRO, asset freeze); *FTC v. STF Group, Inc., et al.*, 03 C 977 (Feb. 12, 2003) (TRO, asset freeze); *FTC v. World Media Brokers, Inc., et al.*, No. 02-6985 (Sept. 30, 2002) (TRO, asset freeze); *FTC v. Bay Area Bus. Council, Inc., et al.*, No. 02 C 5762 (Aug. 15, 2002) (TRO, asset freeze, receiver); *FTC v. Growth Plus Int'l Mktg., Inc., et al.*, No. 00 C 7886 (Jan. 9, 2001) (TRO, asset freeze); *FTC v. Windermere Big Win Int'l, Inc., et*

The FTC is empowered to enforce the FDCPA with the same functions and powers as enforcing the FTC Act. 15 U.S.C. §1692l(a). *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322, 1327 n. 8 (7th Cir. 1997).

B. The Court Should Enter the Requested Relief

Unlike in litigation between private parties, the traditional four pronged injunctive relief test is inapplicable to § 13(b) actions. *See World Travel*, 861 F.2d at 1028-29. Instead, irreparable injury is presumed in a statutory enforcement action, *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 903 (7th Cir. 1989), and the Court need only "1) determine the likelihood that the Commission will ultimately succeed on the merits and 2) balance the equities." *World Travel*, 861 F.2d at 1029. Although the relief that the Commission seeks only requires evidence that the Commission is likely to prevail on the merits, the evidence here far surpasses this standard. Under this two-pronged test, once the FTC establishes the likelihood of ultimate success, *i.e.*, a "better than negligible" chance of succeeding on the merits, "it is appropriate to issue an injunction upon a determination that the balance of equities favors the requested relief. *See FTC v. Windermere*, No. 98 C 8066, 1999 U.S. Dist. LEXIS 12259, at *17 (N.D. Ill. Aug. 5 1999) In this balancing, "private concerns may certainly be considered, [but] public equities must receive far greater weight." *World Travel*, 861 F.2d at 1029.

The evidence submitted in support of the FTC's motion, including more than 2,000 complaints received by the FTC since late March 2004, establishes an overwhelming likelihood that the FTC can prove that the defendants' have violated both the FTC Act and the FDCPA.

Section 5 of the FTC Act prohibits deceptive acts or practices. A deceptive act or practice is established if it is shown that the defendants made a material representation or omission that was likely to mislead consumers acting reasonably under the circumstances. *Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992); *World Travel*, 861 F.2d at 1029. A statement or practice is material if it is likely to affect the consumer's decision. *FTC v. Slimamerica, Inc.*, 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999). Moreover, in deciding whether particular statements are deceptive, courts must look to the "overall net impression" of consumers. *See FTC v. Gill*,

al., No. 98 C 8066 (Dec. 16, 1998)(TRO, asset freeze, receiver).

265 F.3d 944, 956 (9th Cir. 2001); *Kraft, Inc. v. FTC*, 970 F.2d at 322; *FTC v. U.S. Sales Corp.*, 785 F. Supp. 737, 785 (N.D. Ill. 1992). As demonstrated by the voluminous evidence already filed this action, the defendants routinely lie to consumers to scare them into paying the defendants.

To determine whether communications violate the FDCPA, courts ~ examine them from the standpoint of an unsophisticated consumer," *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562, 564 (7th Cir. 2004) (citing *Veach v. Sheeks*, 316 F.3d 690, 692 (7th Cir. 2003); *Bartlett v. Heibl*, 128 F.3d 497, 500 (7th Cir. 1997)), which ~ 'assumes that the debtor is uninformed, naïve, or trusting,' " *Id.* (quoting *Veach*, 316 F.3d at 693, but ~ possesses 'rudimentary knowledge about the financial world' and is 'capable of making basic logical deductions and inferences.'" *Id.* (quoting *Pettit v. Retrieval Masters Creditors Bureau, Inc.*, 211 F.3d 1057, 1060 (7th Cir. 2000)). In general, the collector's intent is not relevant. See, e.g., *Randolph v. IMBS, Inc.*, 368 F.3d 726, 730 (7th Cir. 2004); *Horkey v. JVDB & Assoc., Inc.*, 333 F.3d 769, 774 (7th Cir. 2003); *Drennan v. Van Ru Credit Corp.*, 950 F. Supp. 858, 860 (N.D. Ill. 1996).⁴² As described above, there is no doubt that the defendants routinely violate at least a dozen separate provisions of the FDCPA.

C. Individual Liability

Defendants Waugh, Kuebler, Woldoff, Othon and Garrington are individually liable for the violations of the FTC Act and the FDCPA described above.

An individual may be held liable under the FTC Act if the Court finds that the individual: (1) actively participated in, or had authority to control, the corporation's deceptive practices; and (2) knew or should have known or been aware of the misrepresentations. *Amy Travel*, 875 F.2d

⁴² While courts are split as to whether the mere attempt to collect a time-barred debt is, by itself, illegal, see *Klewer v. Cavalry Investments, LLC*, No. 01-C-541-S, 2002 U.S. Dist. LEXIS 1778, at *7-8 (W.D. Wis. Jan. 30, 2002) (illegal); *Stepney v. Outsourcing Solutions, Inc.*, No. 97 C 5288, 1997 U.S. Dist. LEXIS 18264, at *13-14 (N.D. Ill. Nov. 13, 1997)(illegal), *Walker v. Cash Flow Consultants, Inc.*, 200 F.R.D. 613, 615-16 (N.D. Ill. 2001) (not *per se* illegal), there is no question that any threat of litigation to collect time-barred debts violates the FDCPA, *Freyermuth v. Credit Bureau Services, Inc.*, 248 F.3d 767, 771 (8th Cir. 2001), as was held in a recent case brought by a private party against CAMCO. *Perretta v. Capital Acquisitions & Management Co.*, No. C-02-05561 RMW, 2003 U.S. Dist. LEXIS 10070, at *14-16 (N.D. Calif. May 5, 2003)

at 573-4. Authority to control can be shown by "active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer." *Id.* at 573. The knowledge requirement does not require a subjective intent to defraud consumers and is satisfied "by showing that the individual has 'actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth.'" *Id.* at 574 (quoting *FTC v. Kitco of Nev., Inc.*, 612 F. Supp. 1282, 1292 (D. Minn. 1985)). "[D]egree of participation in business affairs is probative of knowledge." *Id.* An individual defendant with authority to control the practices of the company is required to "do 'everything in his power' to assure compliance with the law" and is individually liable if he "did not correct the deceptive practices entirely." *World Travel*, 861 F.2d at 1031 (quoting *US v. Johnson*, 541 F.2d 710, 712-3 (8th Cir. 1976)).⁴³

The individual defendants in this case all meet these standards. All are officers or owners of the corporate defendants. It is undeniable that all of the individual defendants knew or should have been aware of CAMCO's history of lying to and harassing consumers. N Waugh and Kuebler were named defendants in the earlier consent decree with the FTC, and all of the individual defendants were actively involved in the business both before and after entry of the consent decree. Therefore, they are liable under the FTC Act.

D. An Asset Freeze and Other Equitable Relief is Necessary to Preserve Assets for Effective Consumer Redress

Part of the relief sought by the FTC in this case is restitution to consumers who were defrauded by Defendants' misrepresentations. Thus, the Court should order an immediate freeze of the Defendants' assets to preserve the possibility of such relief, order an immediate accounting

⁴³ Individual liability under the FTC Act is all that the FTC needs to establish to justify the relief sought at this stage in the case, but the individual defendants are also liable under the FDCPA. Even in the absence of calling consumers themselves, individuals are liable under the FDCPA for "indirect" collection activities, such as being aware of and approving collection activities, *Beasley v. Collectors Training Institute*, No. 98 C 8113, 1999 U.S. Dist. LEXIS 2575, at *2 (N.D. Ill. Feb. 25, 1999), "devising and implementing the procedures." *Egli v. Bass*, No. 98 C 2001, 1998 U.S. Dist. LEXIS 13506, at *4 (N.D. Ill. Aug. 26, 1998). See also *Pope v. Vogel*, No. 97 C 1835, 1998 U.S. Dist. LEXIS 2868 (March 25, 1998).

and appoint a temporary equity receiver to prevent concealment or any dissipation of assets pending final resolution of this litigation. Such measures simply permit the Court to supervise the finances, maintain the status quo, and prevent money from leaving the U.S.

When, as in this case, business operations are permeated by fraud, the likelihood that assets may be dissipated during the pendency of the legal proceedings is strong. *See, e.g., International Controls Corp. v. Vesco*, 490 F.2d 1334, 1347 (2d Cir. 1974), *cert. denied*, 417 U.S. 932 (1974); *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972). Mindful of this, courts have ordered the freezing and repatriation of assets, ordered an accounting and appointed an equity receiver solely on the basis of pervasive fraudulent activities such as those found in this case. *See, e.g., FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984).

Absent such relief there is a real risk money will disappear or be dissipated, depriving the Court of the ability to return funds to victims. In fact, the Seventh Circuit has stated that district courts have a "duty" to ensure that assets are available for restitution where it is "probable that the FTC [will] prevail in a final determination of the merits." *World Travel*, 861 F.2d at 1031; *see also FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (upholding finding of "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"). This Court has authority to order a party to "freeze" property under its control, whether the property is within or outside the United States. *U.S. v. First Nat'l City Bank*, 379 U.S. 378, 384 (1965).

The freeze should extend to the individual defendants' assets. Such relief is warranted because the FTC is likely to prevail in showing that the individual defendants are liable for consumer redress for the companies' practices. Their knowledge of and participation in the practices that violated the FTC Act and the FDCPA and their failure to act within their authority to control those practices makes them individually liable for monetary damages. *See World Travel*, 861 F.2d at 1031 (district court properly ordered freeze of individual defendants' assets).

E. Appointment of a Receiver is Necessary to Ensure Effective Relief

The appointment of a receiver over the corporate defendants is also necessary to preserve the potential for a complete remedy. The individual defendants who have overseen the creation

and operation of CAMCO's deceptive practices cannot be left in control of the corporate defendants pending resolution of this case -- particularly given their obvious failure to abide by the terms of the earlier consent decree. Absent a receivership, the defendants may continue to abuse their control over the corporate defendants and funds that have been defrauded from consumers. By taking custody of the business, a neutral receiver would prevent such further harm to consumers and prevent destruction or concealment of assets and records, including vital computerized records that could be destroyed with the touch of a button.

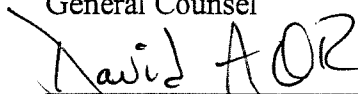
F. The TRO Should Be Issued *Ex Parte*

This is an appropriate case for the issuance of an *ex parte* TRO. Absent *ex parte* relief, there exists the serious risk that defendants may dissipate or conceal assets. As discussed above, defendants' business operations are permeated by, and reliant upon, deceptive practices. Issuing the Temporary Restraining Order with other equitable relief, without notice, will help preserve the possibility of full and effective relief. The issuance of an *ex parte* order is appropriate when the evidence demonstrates the likelihood that providing notice to defendants would render the issuance of the order fruitless. *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 323 (7th Cir. 1984); *see also* Fed. R. Civ. P. 65(b). The fraudulent nature of defendants' scheme and the likelihood that defendants would conceal or dissipate assets absent *ex parte* relief, justify dispensing with notice to defendants until the Court has had the opportunity to ensure that effective preliminary relief will be available. See attached Declaration in Support of *Ex Parte* Motion Pursuant to Fed. R. Civ. P. 65. As noted above, courts within this district and in other districts consistently have granted *ex parte* restraining orders in similar cases.

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Respectfully submitted,

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