UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

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

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Federal Statutes

State Statutes

Other Authorities

I. INTRODUCTION

The Federal Trade Commission and the People of the State of New York bring this action to stop a debt collection enterprise from victimizing consumers through a host of deceptive, unfair, and abusive practices. Defendants call consumers from boiler rooms in upstate New York and Northeast Florida, and claim a warrant is about to be issued for the consumers' arrest. Defendants then assert that the only way to prevent the warrant from being issued—and thereby stop a sheriff or police officer from coming to the consumer's home or workplace to arrest the consumer—is to make a payment to resolve underlying criminal charges.

Defendants employ several unlawful tactics to make these threats seem legitimate. Defendants routinely claim to be investigators or attorneys, specify consequences consumers will face upon nonpayment such as a mandatory minimum of 120 days in jail, and claim to be affiliated with law enforcement agencies that are local to the consumer. Moreover, Defendants pressure consumers into making hasty decisions, regularly claiming that pending arrest warrants will be issued in a matter of hours—or even minutes—if the consumers do not pay. And Defendants do not limit these practices to putative debtors: Defendants frequently tell putative debtors' friends, relatives, family members, and coworkers that the putative debtors have committed a felony, are facing arrest, or will be imprisoned unless a debt is paid in short order.

Defendants' practices serve to terrorize cash-strapped consumers into making payments on questionable debts. Since 2012 alone, Defendants have reaped over $21 million in revenue, much of which came from consumers who paid because they believed it was the only way to avoid arrest or imprisonment.

Defendants have taken extraordinary measures to avoid scrutiny for their egregious collection practices. Most prominently, in calls to consumers, Defendants use scores of different business names—including names of fictitious law firms and actual government entities—to hide their corporate identities. Defendants reinforce this façade by constantly changing phone numbers—using more than 500 numbers since January 1, 2014—to make their collection calls appear to come from geographically distinct entities. Defendants have even manipulated their outgoing caller-ID to make their calls appear to come from the legitimate phone numbers of law enforcement agencies. Defendants often reveal their true identity only once consumers have agreed to pay, after which the consumers are instructed to transfer funds into one of the Defendants' accounts. As a result, consumers often file complaints naming one of Defendants' many fictitious identities rather than one of the Defendants' actual corporate entities.

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

and the destruction of evidence, thereby preserving this Court's ability to provide effective final relief.

II. THE DEFENDANTS

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

A. Corporate Defendants

Defendants have conducted business mainly through three interrelated companies: Vantage Point Services, LLC, Payment Management Solutions, Inc., and Bonified Payment Solutions, Inc. Together, these companies have taken in over $21.2 million in revenue since 2012, largely in the form of consumer payments. (PX01 ¶ 17 tbl. 2, at 7-9).

Vantage Point Services, LLC was organized on March 6, 2008. (PX01 ¶ 5, Ex. A, at 2 & 41-44). The company employs individuals in New York and Florida, and operates out of both areas. (PX01 ¶ 8 & Ex. K, at 3 & 86). Although Vantage Point Services has held itself out as operating from a series of different locations in Amherst and Buffalo, New York, the company has moved frequently, abandoning former office locations and providing false addresses to consumer victims. (PX01 ¶¶ 77-83 & 95-109, at 29-31; PX03 at 403-05). In-person surveillance indicates that the main New York locations for the company's operation are currently 636 North French Street, Suites 7 and 8, Amherst, New York. (PX03 at ¶¶ 7-10, at 404-05; *see also* PX01 ¶¶ 6, 13, Exs. E & BB, at 2, 4-5, 59-61, 135-36 (associated entity Northwest Capital Solutions holding its business address out as 636 N. French Rd., Suite 8)). The company also has paid rent for at least two Jacksonville addresses since at least November 2013, one of which the company appears to currently maintain as a boiler room. (PX01 ¶¶ 36-37 & Exs. FF-GG, at 17-18 & 143-46; PX31 ¶¶ 2-6, at 687-88).

Up until late 2012 or early 2013, the Defendants' debt collection operation largely operated through Vantage Point Services: employees were on the Vantage Point Services payroll or compensated through checks written on the Vantage Point Services' bank account; consumer payments were deposited directly to Vantage Point Services; rent was paid by Vantage Point Services; and phone lines and other corporate expenses were maintained by Vantage Point Services or one of its employees. (PX01 ¶ 8, Exs. H-I, at 3 & 73-80 (payroll formation documents), ¶ 31 Tbl. 7, at 14-16 (payroll checks), ¶ 17 Tbl. 2, at 7-9 (deposits largely from consumer payments), ¶¶ 35-37, Exs. EE-GG, at 17-18 & 141-46 (rent checks), ¶¶ 43-44, Ex. MM, at 19-20 & 158-60 (phone line payments)). This was also a period of rapid growth for the operation: for example, the company's monthly revenue in May 2012 was $240,298; in May 2013 that number was $1,063,032. (PX01 ¶ 17 Tbl. 2, at 7-9). And as the company's revenue grew, it came under increasing scrutiny. Most notably, following a slew of consumer complaints—including reports that Vantage Point Services was impersonating lawyers and police enforcement in collection calls—money transfer service MoneyGram terminated the company's account in August 2013, cutting off one of the company's main avenues to take in consumer payments. (PX01 ¶¶ 47-51 & Ex. PP-QQ, at 21-22 & 165-72).

But by this time, Vantage Point Services had started to shift parts of its operation to different corporate fronts, in an attempt to evade scrutiny and to maintain back-up accounts at MoneyGram and payment processors. In late 2012 and early 2013, the company started to move some of its operations to **Payment Management Solutions, Inc.**, a New York corporation incorporated on December 12, 2012. (PX01 ¶ 5, Ex. B, at 2 & 45-52). While ostensibly independent, Payment Management Solutions has been merely an extension of the Vantage Point Services enterprise: it was incorporated and controlled by one of the principals of Vantage Point

Services, it has held itself out as operating from several of the properties that Vantage Point Services claimed as a business location or paid rent on, and almost all of its profits flow back to the corporate coffers of Vantage Point Services. (PX01 ¶¶ 73-83, at 28-31; *see also* PX11 ¶ 23, Att. F, at 525 & 549 (letter from Payment Management Solutions listing corporate address as 4248 Ridge Lea Road, Suite 25, Amherst NY 14226)). Perhaps most telling, while Payment Management Solutions obtained a MoneyGram account in April 2013, the account received only one payment before August 30, 2013—the date Vantage Point Services' MoneyGram account was terminated. But after that point, the account had heavy activity, accepting more than 6,300 payments through September 2014. (PX01 ¶¶ 52-54, at 22-23).

The operation also has expanded, establishing an additional boiler room in Niagara Falls, New York. With this additional location, the enterprise has continued to set up new corporate fronts. While Payment Management Solutions has paid for many of the services of the Niagara Falls boiler room, many of the employees who work in the boiler room are paid through **Bonified Payment Solutions, Inc.**, a New York corporation incorporated on June 13, 2014.[1] (PX01 ¶ 5, Ex. F, at 62-65). Bonified's role is largely limited to paying employees: it has not paid for phone lines, property services, collections software, or other normal business expenses. (PX01 ¶¶ 20-22 & 33, at 11 & 17). But Bonified has made at least one business purchase that merits attention: the company's first check was an application fee for MoneyGram, in an apparent attempt to establish a back-up MoneyGram account in case the Payment Management

[1] Prior Bonified's creation, many of the operation's employees appear to have been compensated by Joseph Ciffa, the CEO of Bonified. As discussed below, Vantage Point Services and Payment Management Solutions wrote checks to Ciffa, many of which were earmarked for payroll. This relationship continued after Bonified was established—the main difference is that the checks appear to be run through Bonified's corporate account. (PX01 ¶ 31 tbl. 7, at 14-16).

Solutions' account is terminated. (PX01 ¶ 32, Ex. CC, at 16-17 & 137-38; *see also* PX01 ¶ 55, Exs. SS-TT, at 23 & 182-204 (MoneyGram correspondences regarding complaints against Payment Management Solutions)).

The enterprise has continued its pattern of evading scrutiny through establishing new corporate identities. Indeed, in addition to Bonified, Defendants have created at least two additional corporate entities in the last six months: Solidified Payment Solutions LLC, and Northwest Capital Solutions LLC.

Solidified was established on July 14, 2014, uses the Niagara Falls boiler room as its corporate address, and the sole signatory on its bank accounts is Angela Burdorf, a principal of both Vantage Point Services and Payment Management Solutions. (PX01 ¶¶ 6 & 13, Exs. C, Y-AA, & DD, at 2, 5, 53-55, 129-34 & 139-40). In November and December 2014—the first two months Solidified's bank accounts were active—it received wire transfers of more than $570,000 from Payment Management Solutions, and wired out almost $600,000 to Vantage Point Services and Angela Burdorf. (PX01 ¶ 24 tbls. 4-5, at 11-12). Solidified also has written multiple "bonus" checks to employees of Vantage Point Services and Payment Management Solutions. (PX01 ¶ 34 & Ex. DD, at 17 & 139-40).

Northwest was established on September 12, 2014, and listed as the owner and signatory on its bank accounts is Pamela Lizak, an employee of Vantage Point Services. (PX01 ¶ 5, Ex. E, at 2 & 59-61; *see also* PX01 ¶ 8, Ex. K, at 3 & 85-86 (list of Vantage Point Services employees)). Northwest holds its corporate address out as 636 North French Road, Suite 8, Amherst, New York—a known business location of Vantage Point Services. (PX01 ¶ 6, Ex. E, at 2 & 59-61; PX03 ¶¶ 7-10, at 404-05; PX07 Att. B, at 469 (Defendants' letter to consumer listing 636 N. French Rd. Suite 8 as address)). While Northwest employs individuals who have

not been on the payroll of the Corporate Defendants, it neither directly collects consumer payments nor pays for operational expenses. (PX01 ¶¶ 27-29, at 13-14). Rather, Northwest writes checks to Vantage Point Services for rent, phone services, and skip-tracing services. (PX01 ¶ 41 & Ex. KK, at 19 & 154-55). And all of the identifiable deposits received by Northwest are from Vantage Point Services. (PX01 ¶ 28 & 42, Ex. LL, at 13, 19, & 156-57).

While the corporate structure of the enterprise is complex, the flow of profit is straightforward: almost all of it goes to Vantage Point Services. Payment Management Solutions and Solidified have wired millions of dollars to Vantage Point Services over the past two years. (PX01 ¶¶ 14-15 tbl. 1 & ¶ 24 tbl. 5, at 5-7 & 11-2). And Bonified and Northwest, both of which are capitalized by Vantage Point Services and Payment Management Solutions, do not accept payments directly from consumers or have any other source of substantial revenue. (PX01 ¶¶ 20-22, 27-29, 33, at 11, 13-14, & 17).

B. Individual Defendants

The Individual Defendants running the enterprise are Megan Vandeviver, Greg MacKinnon, Angela Burdorf, and Joseph Ciffa.

Megan Vandeviver has been at the center of Defendants' debt collection operation since its inception. She was the filer on the Articles of Organization for Vantage Point Services, and opened the corporate bank account for Vantage Point Services around the same time. (PX01 ¶¶ 5 & 13, Exs. A & S, at 2, 14-15, 41-44, & 114-18). She also has held herself out as a director and owner of the company. (PX01 ¶ 59, Ex. XX, at 23-24 & 218-19). In addition, Vandeviver has played an integral role in maintaining Vantage Point Services' MoneyGram account, acting as the administrator and manager for the account. (PX01 ¶¶ 47, Ex. OO, at 21 & 163-64).

Greg MacKinnon has been an integral part of Defendants' debt collection operation since at least mid-2011. He has been a signatory on the main corporate account for Vantage Point Services since June 2011. (PX01 ¶ 13 & Ex. S, at 14-15 & 114-18). He also has held himself out as an owner and director of Vantage Point Services. (PX01 ¶¶ 59 & 69, Exs. XX & AAA, at 23-24, 27, 218-19, & 241-45). In addition, MacKinnon has had a significant role in the day-to-day operations of the enterprise, acting as the billing contact or contact person for many of the Defendants' various phone accounts and related service accounts. (PX01 ¶¶ 65 tbl. 8 & 69, Ex. AAA, at 25, 27, & 241-45).

Angela Burdorf is an officer of Vantage Point Services and Payment Management Solutions. She has held herself out as an owner of both companies, as a member and partner of Vantage Point Services, and as the CEO of Payment Management Solutions. (PX01 ¶¶ 52 & 59, Exs. RR & XX, at 22-24, 179-80, & 218-19). Burdorf is also a signatory on the corporate bank account of Payment Management Solutions and associated company Solidified Payment Solutions. (PX01 ¶ 13, Exs. T-V & Y-AA, at 14-15, 119-24, & 129-34).[2] In addition, Burdorf personally has addressed complaints filed against Payment Management Solutions with MoneyGram. (PX01 ¶ 55, Ex. TT, at 23 & 199-204).

---

[2] Defendant Burdorf also has been a principal of Vision Asset Management Group, LLC, which was organized on October 9, 2008, and has held itself out as operating from a common address of Vantage Point Services and Payment Management Solutions: 4248 Ridge Lea Rd., Ste 45. (PX01 ¶ 64, Ex. ZZ, at 24-25 & 229-36). Vision Asset Management Group appears to have largely stopped operating in mid-to-late 2013, at which time over $300,000 was transferred from Vision Asset Management Group to Vantage Point Services. (PX01 ¶ 15 tbl. 1, at 5-7). Despite the apparent wind-down of Vision Asset Management Group, it has maintained accounts with TransUnion in order to obtain skip-tracing services. (PX01 ¶ 64, Ex. ZZ, at 24-25 & 229-36). Bank records indicate that Payment Management Solution makes regular payments to Vision Asset Management Group in order to use these skip-tracing services. (PX01 ¶ 40, Ex. JJ, at 18-19 & 151-52).

Joseph Ciffa is an officer of Bonified Payment Solutions. He has held himself out as the CEO, President, Vice President, Secretary, and Treasurer of Bonified. (PX01 ¶ 57 Exs. UU-VV, at 23 & 205-10). He is also a signatory on the corporate bank accounts of Bonified. (PX01 ¶ 8 Exs. W-X, at 3 & 125-28). In addition to his role as the main principal of Bonified, Ciffa has had an integral role with respect to the other Corporate Defendants. Both before and after the establishment of Bonified, Ciffa received checks—totaling around $250,000—from Vantage Point Services and Payment Management Solutions. (PX01 ¶ 31 tbl. 7, at 14-16).[3] Up until February 2014, many of these checks were earmarked for payroll expenses. (*Id.*). Ciffa also accepted Better Business Bureau complaints on behalf of Vantage Point Services, from approximately September 2013 onwards. (PX04 ¶ 11 at 417).

III. DEFENDANTS' UNLAWFUL COLLECTION PRACTICES

Defendants' debt collection enterprise has employed unlawful practices that violate the FTC Act, the FDCPA, N.Y. Executive Law § 63(12), and N.Y. General Business Law §§ 349 and 601. Specifically, Defendants: (1) use false, deceptive, or misleading representations, including false threats of arrest; (2) make unlawful contacts—often involving false claims that putative debtors committed a crime and will be arrested—with putative debtors' friends, family, or coworkers; (3) fail to provide statutorily-required information to consumers; and (4) charge illegal processing fees. The FTC has received over 250 consumer complaints—almost half of which contain the word "arrest"—about Defendants' practices. (PX01 ¶¶ 85-87 & tbl. 9, at 31-

[3] In October 2014, Vantage Point Services and Payment Management Solutions appear to have stopped directly writing checks to Ciffa. Around the same time, Ciffa started to receive checks from Solidified Payment Solutions, a company run by Angela Burdorf, who is also a principal of both Vantage Point Services and Payment Management Solutions. (PX01 ¶ 31 tbl. 7, at 14-16).

32; *see also* PX04 ¶¶ 8-10 at 416-17 (describing BBB complaints against Vantage Point Services)).[4]

A. Defendants Use False, Deceptive, or Misleading Representations to Collect Payments from Consumers

Section 5 of the FTC Act prohibits "unfair or deceptive practices in or affecting commerce." 15 U.S.C. § 45. An act or practice is deceptive under § 5 if it involves a material representation, omission, or practice that is likely to mislead consumers who are acting reasonably under the circumstances. *FTC v. Verity Int'l, Ltd.* ("*Verity II*"), 443 F.3d 48, 63 (2d Cir. 2006); *FTC v. Navestad*, No. 09-CV-6329T, 2012 WL 1014818 at *4 (W.D.N.Y. Mar. 23, 2012).[5]

The FDCPA similarly prohibits the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. The FDCPA provides a non-exhaustive list of actions that violate this prohibition. *Id.* In applying § 1692e, courts look to whether the "least sophisticated consumer" would be deceived, to ensure that the statute "protects all consumers, the gullible as well as the shrewd." *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993).

---

[4] Consumer complaints generally represent only the "tip of the iceberg" when it comes to consumer harm, *see e.g. United States v. Brien*, 617 F.2d 299, 308 (1st Cir. 1980), *United States v. Offices Known as 50 State Distribution Co.*, 708 F.2d 1371, 1374-75 (9th Cir. 1983). The complaints against the Defendants' operation are likely to represent a particularly small portion of the Defendants' victims. This is because, as detailed below, Defendants have taken extraordinary measures to disperse negative attention among dozens of fictitious entities.

[5] The FTC need not prove that the misrepresentations were made with an intent to defraud or deceive, or were made in bad faith. *Verity II*, 443 F.3d at 63; *FTC v. Five-Star Auto Club*, 97 F. Supp. 2d 502, 526 (S.D.N.Y. 2000). Likewise, traditional elements of common law fraud such as reliance, actual deception, knowledge of deception and intent to deceive are not required to establish liability for state statutory fraud. *See State v. Apple Health & Sports Clubs, Ltd.* ("*Apple Health III*"), 206 A.D.2d 266, 267 (N.Y. App. Div. 1st Dept 1994).

N.Y. Executive Law § 63(12) empowers the Attorney General to seek relief whenever a person or business engages in persistent or repeated "fraud or illegality." Section 63(12) defines the words "fraud" or "fraudulent" to include "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions." A violation of state, federal or local law constitutes illegality under § 63(12). *State v. Princess Prestige*, 42 N.Y.2d 104, 105 (N.Y. 1977); *People v. Empyre Inground Pools, Inc.*, 227 A.D.2d 731, 732-33 (N.Y. App. Div. 3d Dept 1996). The test of fraudulent conduct under § 63(12) "is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *State v. Gen. Elect. Co.*, 302 A.D.2d 314, 314 (N.Y. App. Div. 1st Dept 2003).

N.Y. General Business Law § 349 provides that "[d]eceptive acts or practices in the conduct of any business . . . in this state are hereby declared unlawful." Deceptive practices under General Business Law § 349 are construed the same way as "fraud" under Executive Law § 63(12). *State v. Colo. State Christian Coll.*, 76 Misc. 2d 50 (Sup. Ct. N.Y. Co. 1973). Section 601 specifically prohibits certain debt collection practices, including threatening any action which the debt collector in the usual course of its business did not in fact take; and claiming, or attempting or threatening to enforce a right with knowledge or reason to know that the right does not exist.

Defendants' debt collection scheme relies on misrepresentations that violate each of these federal and state laws. Specifically, Defendants: (1) misrepresent their identity and (2) falsely threaten consumers with arrest or other dire consequences.

1. Defendants' Misrepresentations Regarding Their Identity

Defendants routinely begin their collection attempts by falsely claiming to be a law firm, process server, unrelated collection agency, or government-affiliated agency. For example, Defendants have claimed to be calling consumers from:

- the Law Firm of Hamilton, Tate & Associates (PX02 Att. A (audio recording); PX05 ¶¶ 4 & 10, Att. A, at 244, 424, & 435; PX15 ¶ 16, at 569);
- Mediation Consulting and Warrant Services (PX07 ¶ 2, Att. B, at 459 & 469);
- Financial Crimes Division (PX18 ¶¶ 2-3, at 593);
- National Process Servers or Nationwide Processing Services (PX02 Att. G & H (audio recordings); PX07 ¶ 22, Att. C, at 463 & 474; PX08 ¶¶ 4-5 & 21, Att. A, at 476-77, 480 & 486; PX23 ¶ 4 at 633);
- Legal Processing Services (PX28 ¶ 6, at 665);
- Client Affairs and Processing (PX10 ¶ 2, at 508);
- Professional Recovery Services (PX19 ¶¶ 2 & 7, at 602-03);
- the Law Offices of Christian Young and Associates (PX02 Att. I (audio recording); PX09 ¶ 2, Att. A, at 491 & 500); and
- the Internal Fraud Department of Clark Fuller Associates. (PX02 Att. F (audio recording); PX06 ¶ 2, Att. A, at 443 & 453).

(*see also* PX01 ¶ 88 tbl. 9, at 33 (listing fictitious business names reported by consumers who filed complaints related to seven phone numbers owned by Defendants); PX01 ¶¶ 92-94 & Exs. GGG-KKK, at 34-35 & 308-80 (discussing complaints submitted to New York Attorney General in which Defendants claimed to be the Legal Processing Center of Wisconsin, Legal Mediation Services, Fraud Investigator Jones, Maxwell Legal Services; Attorney Joseph Vullo, Northern Mediation Group, and Cohen, Kaplan & Tulowitz)).

In many instances, Defendants also falsely claim to be affiliated with a state or federal government agency. For example, Defendants have represented that they contract with the state

or handle accounts that a state agency has placed with Defendants in an attempt to resolve the account before criminal charges are filed. (PX02 Atts. F, H-I, & Q (audio recordings); PX06 ¶¶ 2 & 6, Att. A at 443-45 & 453 (Defendants claimed to be private investigator working with California District Attorney); PX08 ¶ 4, Att. A, at 476 & 486 (Defendants claimed final charges with Tulare County District Attorney's Office were going to be placed with them); PX09 ¶¶ 2-3, Att. A, at 491 & 500 (Defendants claimed to be calling about charges and a warrant being processed by Missouri's State Attorney); PX26 ¶ 3, at 650 (Defendants claimed they contracted with the state)). And Defendants reinforce their false business names with false titles, frequently identifying themselves as "investigators" or "attorneys." (PX02 Atts. A-B (audio recordings); PX05 ¶¶ 4 & 15, & Att. A at 422, 425, 435-36 (investigator); PX07 ¶¶ 26-27, at 464 (attorney); PX14 ¶ 5, at 557 (attorney); PX15 ¶ 2, at 566 (investigator); PX23 ¶ 5, at 633 (attorney); PX27 ¶ 2, at 660 (investigator); PX30 ¶ 4, at 680 (fraud investigator); *see also* PX08 ¶ 2, at 476 (mediator to the attorney)).

In some instances, Defendants even claim to be calling directly from a state or federal government agency. (PX02 Atts. C-D & J-R (audio recordings); PX05 ¶¶ 18-20 & 31-33, & Att. A, at 426-27, 429, & 437-38, PX06 ¶ 4, 444 at (Defendants identified as investigator with fraud department of the State of California); PX11 ¶ 14 & Att. C, at 536-42 (Defendants identified as process and summons division); PX12 ¶ 2 & 5, at 550 (Defendants identified as Officer Lochart and provided consumer with badge number); PX13 ¶ 4 at 553; PX15 ¶ 14-15, Att. A, at 568-69 & 575 (Defendants claimed to be calling from Bad Check Division of District Attorney's Office); PX27 ¶¶ 2-3, at 660 (Defendants claimed they were the warrant department in Florida); *see also* PX17 ¶¶ 4-7, Att. A, at 579-80 & 586-90 (Defendants identified as U.S. Processor). For example, Defendants told a consumer that the call was coming from a special agent of the FBI.

(PX13 ¶ 4 at 553). In another instance, one consumer living in Franklin County, Ohio, received calls in which Defendants represented that they were prosecutors from Franklin County, told the consumer she would have to "turn" herself "in" regarding felony charges, and provided the address of a Franklin County courthouse . (PX02 Atts. C & D (audio recordings); PX05 ¶¶ 18-19, 20-22, Att. A, at 426, 438). And a review of even a small sample of complaints that list phone lines owned by the Defendants reveals numerous additional false business names indicating a government agency or government affiliation, including: State of California; 9th Judicial District; International Fraud Division; Lucas County Sheriff's Department; Felony Warrant Division; US Government; Financial Crimes Unit in Salt Lake City; Lieutenant Brad Jordan; Stateside Mediation; and Potter County Sheriff's Department. (PX01 ¶ 88 tbl. 9, at 32-33 (reviewing consumer complaints related to seven phone lines owned by Defendants).

Defendants even manipulate the number that their calls appear to be coming from—a practice known as "caller ID spoofing—to make some of their calls appear to come from the legitimate numbers of law enforcement agencies. For example, the consumer who received threatening calls in which Defendants claimed to be calling from Franklin County reported that the number on the caller-ID for those calls was the actual number of the Franklin County courthouse. (PX05 ¶ 31 at 429). Another consumer reported receiving calls from Defendants in which the number that appeared on the caller-ID was for a District Attorney's Office in Texas. (PX15 ¶¶ 14-15 at 568-69). A representative from that District Attorney's Office has corroborated this report, describing similar calls from consumers who claimed they received threatening collection calls from the District Attorney's number. (PX16 at 577-78).

Even when they do not use caller ID spoofing, Defendants mask their identity by using an array of frequently changing phone numbers with different area codes. While phone records

indicate that Defendants utilize around 70 phone numbers at any given time, call logs show that Defendants churn through different numbers on a daily or near-daily basis. (PX01 ¶¶ 65-68, at 25-27). Since January 2014, Defendants have employed over 500 distinct phone numbers, through phone service accounts that list Defendant Greg MacKinnon or another employee of Vantage Point Services as the billing contact. (*Id.*).

In some cases, Defendants explicitly misrepresent that the collection calls are originating from an entity that is geographically distinct from the Corporate Defendants' New York and Florida operations. For instance, Defendants called one consumer using a phone number with an Illinois-based area code and claimed to be a Chicago-based law firm, and Defendants called another consumer using a phone number with a California-based area code and claimed to be an investigator working with the District Attorney of California. (PX02 Att. F & I (audio recordings); PX06 ¶¶ 2-4, 10, 13, & 17, Att. A, at 443-47 & 453; PX09 ¶¶ 2-4, Att. A, at 491 & 500).

Defendants frequently reveal their actual corporate identifies only once a consumer agress to make a payment, at which point Defendants direct the consumer to make a payment to once of the Corporate Defendants' bank accounts. But Defendants' continue their pattern of deception at this stage, misrepresenting themselves as mere "payment processors" removed from the egregious tactics of their debt collector "clients" who make the collection calls. (PX05 ¶ 13, Att. B, at 424 & 442; PX06 ¶¶ 2-16, Atts. B-C, at 13-14 & 455-58; PX08 ¶¶ 2-12, at 476-78; PX09 ¶ 9, at 493; PX14 ¶¶ 7-9, at 558; PX22 ¶ 9, at 624; PX26 ¶¶ 7-8, at 650). Indeed, Defendants have maintained this façade even in the face of inquiries from the Better Business Bureau and the Attorney General of New York. (PX01 ¶¶ 101-104, at 37-39 (Defendants claimed they were payment processors in response to mediation attempts by the New York

Attorney General, and failed to identify the names or contact information of their "clients" despite requests); PX04 ¶ 9, at 417 (Defendants claimed to be payment processors in response to two Better Business Bureau complaints; did not respond to 69 other complaint inquiries)).

Defendants' use of false identities and wide-ranging attempts to mask their corporate structure violates Section 5 of the FTC Act, multiple provisions of the FDCPA,[6] N.Y. Executive Law § 63(12), and N.Y. General Business Law §§ 349 and 601, as alleged in Counts I, IV, and VII-VIII of the Complaint.

2. Defendants Falsely Threaten Arrest and Other Dire Consequences

Building on this foundation of deception, Defendants employ an array of false threats and misrepresentations to pressure consumers into making payments. Defendants' main tactic is to misrepresent that consumers have committed a felony, and falsely threaten that consumer will be arrested if they do not pay a debt within a number of hours—or even minutes. For example, Defendants:

---

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

(1) subsection one, which prohibits the false representation or implication that a debt collector is affiliated with the United States or any State;

(2) subsection three, which prohibits the false representation or implication that any individual is an attorney or that any communication is from an attorney;

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

(4) subsection eleven, which requires debt collectors to disclose in the initial communication with a consumer that the collector is a debt collector attempting to collect a debt and that any information obtained will be used for that purpose, and in subsequent communications that the communication is from a debt collector; and

(5) subsection fourteen, which prohibits the use of a business, company, or organization name other than the true name of the debt collector's business, company, or organization.

- told a consumer that "two pending felony warrants" would be "invoked against" her at her "home or place of employment" if she didn't pay a debt of $1,188 by 4 p.m. that day (PX02 Atts. A-C (audio recordings); PX05 ¶¶ 4, 7 & 10, Att. A, at 422-424 & 435-38);

- told a consumer there were "two felony warrants" out for his arrest, and that the consumer would be arrested if he did not pay approximately $1,100 by 3 p.m. that day (PX20 ¶¶ 4-5 & 8, at 605-06);

- told a consumer there were "two felony charges" against her, and that a representative was coming to the consumer's house with a sheriff from the consumer's local sheriff's office (PX02 Att. G (audio recording); PX07 ¶¶ 6, 22, & 27, Att. C, at 459, 463-64, & 474)); and

- told a consumer that a warrant was being processed by Missouri's "State Attorney's office," and that if the consumer did not make a payment that day he would be arrested and imprisoned for at least 120 days (PX02 Att. I (audio recording); PX09 ¶¶ 2-5, Att. A, at 491-92 & 500).

Defendants have threatened other consumers with arrest in a strikingly similar manner. (PX01 ¶¶ 91-92 at 34-35; PX02 Atts. F & H (audio recordings); PX04 ¶10 at 417; PX06 ¶¶ 2, 4, 7-9, & 12, Att. A, at 443-45 & 453; PX08 ¶¶ 4-5, & 9-10, & Att. A, at 476-78 & 486; PX10 ¶¶ 2, 4 & 6, at 508-09; PX12 ¶ 3, at 550; PX13 ¶¶ 4 & 8, at 553-54; PX14 ¶¶ 2 & 5, at 557; PX15 ¶¶ 2-14, at 566-68; PX18 ¶¶ 3, 6, & 8-10, at 593-95; PX19 ¶ 12, at 604; PX21 ¶¶ 2-5 & 13-14, at 613-15; PX22 ¶¶ 3, 7, & 12, at 623-25; PX23 ¶¶ 2-8 at 633-34; PX24 ¶ 7, at 636-37; PX25 ¶ 3-6, at 645-46; PX26 ¶¶ 2, 4, & 13, at 650 & 652-53; PX27 ¶¶ 2-3, at 660; PX28 ¶¶ 2-3, at 664; PX30 ¶¶ 5 & 8-9 at 680-81).[7]

Defendants frequently make these threats in substantial detail. In some instances, Defendants described the exact steps that they would take to have the consumer arrested. For example, Defendants left a voicemail—a copy of which has been submitted as part of this filing (PX02 Att. G)—for one consumer living in Whatcom County, Washington, that stated the caller

[7] PX30 contains redline edits to the declaration that were done by the consumer who signed the declaration.

was from the "National Professional Process Servers" and was contacting the consumer "in regards to a two-part phone-in complaint that was faxed into my office this morning." The caller went one to say she would be "filing two felony charges and requesting the Whatcom County Sheriff's Department to accompany me to your residence and/or place of employment for your detainment." The caller then gave specific instructions, directing the consumer to "please make sure that if there are any large dogs or firearms on the premises, they're out of the immediate harm's way of myself and the uniformed officer," and to "have adequate supervision for any minor children in the home." The voicemail ended with the caller saying the consumer had now been "legally notified in accordance to all federal and state laws," and a direction to call back "within 24 hours." (PX07 ¶ 22 & Att. C, at 463 & 474). Other consumers reported receiving similar voicemails with claims of coming to the consumers' home or work with a uniformed officer and directions regarding dogs, firearms, and supervision for children in the home. (PX02 Att. H (audio recording); PX08 ¶¶ 4-5, Att. A, at 476-77; PX18 ¶ 6, at 594; PX19 ¶ 12, at 604)).

Defendants also provide details regarding what will happen to consumers after they are arrested. For instance, Defendants told many consumers that they would serve at least 120 days of imprisonment or would have to post a bond of thousands of dollars to be released. (PX05 ¶ 7 at 423 (bond of $25,000); PX09 ¶ 4 at 492 (minimum jail term of 120 days); PX10 ¶ 6 at 508-09 (minimum jail term of 120 days); PX15 ¶ 7, at 567 (60-90 days in jail for felony charges and one to five years in jail for third degree felony fraud charge); PX20 ¶ 8 at 606 (minimum jail term of 120 days); PX22 ¶ 17, at 626 (bond of $50,000 to $100,000); PX27 ¶ 3 at 660 (jail time of 76 months)). And in some instances, Defendants have made specific threats that consumers would be extradited from their resident state or country to be imprisoned elsewhere. (PX27 ¶¶ 2-3, at 660 (threatening that consumer would be extradited from Florida and jailed in Michigan under

recent bill signed by Florida Governor Rick Scott); PX30 ¶¶ 5-9, at 680-81 (threatening that consumer working in South Korea as a civilian administrator for the Air Force would be arrested and extradited to the United States)).

By contrast, Defendants frequently provide very little detail about the alleged debt. Often, Defendants refuse to provide consumers with the name of the original lender or the time period when the loan was taken out, even in the face of repeated requests. (PX05 ¶ 7, at 423; PX08 ¶¶ 17-18 at 480; PX12 ¶ 5 at 550; PX15 ¶¶ 11-12, at 567-68; PX18 ¶¶ 5 & 10, at 593-95; PX19 ¶¶ 7-12 at 603-04; PX22 ¶¶ 12-21, at 625-27; PX24 ¶¶ 6-7, at 636; PX27 ¶ 6, at 661; PX29 ¶¶ 8-21, Att. B, at 676-79 & 669-71). In some cases, Defendants falsely told consumers that the reason they could not provide such information was that the original lender obtained a restraining order or protective order against the consumer. (PX13 ¶ 6 at 553-54; PX20 ¶¶ 6-8, at 606). And in some instances, instead of responding to consumers' requests for basic information about the debt, Defendants have doubled-down on their threats of arrest and other dire consequences. (PX 15 ¶¶ 11-12, at 567-68; PX18 ¶¶ 10-11, at 595; PX22 ¶¶ 12-21, at 625-27; PX24 ¶¶ 6-7, at 636).

Unsurprisingly, in the face of these alarming misrepresentations, many consumers have paid Defendants out of fear of being arrested and imprisoned, even when they have not believed they owed the purported debt. (PX05 ¶¶ 11-13, at 424-25; PX06 ¶¶ 12-14, at 446-47; PX07 ¶ 7, at 459-60; PX08 ¶ 11, at 478; PX09 ¶ 11, at 494; PX10 ¶ 7 at 509; PX12 ¶¶ 4-6, at 550; PX13 ¶¶ 5-10, at 553-54; PX14 ¶¶ 6-7, at 557-58; PX18 ¶¶ 4-7, at 593-94; PX21 ¶ 9, at 614; PX22 ¶¶ 3-4, at 623; PX24 ¶¶ 9-14, at 637-38; PX25 ¶¶ 3-5, at 645; PX26 ¶¶ 5-6, at 650-51; PX27 ¶¶ 3-5, at 660; PX28 ¶¶ 2-4, at 664; PX30 ¶¶ 11-13, at 681-82; *see also* PX11 ¶ 3-5, at 520-21 (paid out of fear of criminal fraud charges); PX19 ¶¶ 5-6, at 602-03 (paid out of fear Defendants would sue consumer and serve legal papers on her at work)). Some consumers even take drastic action to

come up with the money Defendants demand. For example, one consumer spent money that was needed to cover her rent, with the knowledge that her rent check would end up bouncing. (PX06 ¶ 12, at 446; *see also* PX24 ¶ 15, at 638 (lost home because did not have money to both pay Vantage Point Services and maintain rent on lot for manufactured home)). And another consumer who was subjected to continued threats of arrest agreed to pay the same debt twice, and was refused a refund even after a representative of the consumer's bank explained to Defendants that the consumer had already paid. (PX18 ¶¶ 11-18 at 595-97).

Defendants' threats of arrest and other dire consequences are entirely false. Defendants do not have the ability to impose criminal sanctions against consumers for failure to pay private debts, and Plaintiffs are not aware of any consumers—including those who refused to pay Defendants and those who paid only a portion of the amount demanded—who had any criminal or civil proceedings brought against them for failure to pay the purported debt.

In sum, Defendants' collection scheme is wholly dependent on blatant misrepresentations aimed at using the prospect of criminal charges, arrest, and imprisonment to terrorize consumers into making payments on questionable debts. These misrepresentations violate § 5 of the FTC Act, multiple provisions of the FDCPA, N.Y. Executive Law § 63(12), and N.Y. General Business Law §§ 349 and 601 as alleged in Counts II, IV, and VII-VIII of the Complaint.[8]

---

[8] The relevant provisions of the FDCPA include several subsections of 15 U.S.C. § 1692e:

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

(2) subsection four, which prohibits the false representation or implication that nonpayment of a debt will result in the arrest or imprisonment of a person or the seizure, garnishment, or attachment of a person's property or wages, when such action is not lawful or is not intended;

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

B. Defendants Engage in Prohibited Communications with Third Parties

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

Notwithstanding these prohibitions, Defendants unlawfully contact third parties for impermissible purposes in an attempt to frighten, embarrass, and pressure consumers—or the third parties—into paying purported debts. Echoing the misrepresentations that Defendants make directly to consumers, Defendants have told consumers' friends, family members, and employers that the consumers are facing a lawsuit, criminal charges, arrest, or imprisonment.

---

intended;

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

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

(PX02 Atts. F, R & Q (audio recordings); PX06 ¶¶ 2-3 & Att. A, at 443-44 & 453; PX11 ¶¶ 2 & 7, at 520-21; PX14 ¶ 2, at 557; PX15 ¶¶ 2-3 & 14, Att. A, at 566 & 574; PX17 ¶¶ 2-7, Att. A, at 579-80 & 586-90; PX20 ¶¶ 2-3, at 605; PX22 ¶ 23, at 627; PX23 ¶ 2, at 633; PX25 at 645-47). For example, Defendants told one consumer's mother that if her daughter did not make a payment, Defendants would process a warrant that day and have the daughter picked up, handcuffed, and imprisoned for a minimum of 120 days. (PX10 ¶¶ 2-6 at 508-09). Another consumer's brother received a voicemail—a copy of which has been submitted as part of this filing (PX02 Att. F)—in which the Defendants stated that they were a "legal processing firm retained through the State of California" to locate his sibling regarding "two pending felony fraud charges and a pending felony arrest." Defendants went on to say the sibling had been "ID'ed as a suspect committing fraud," and was at "risk of being criminally prosecuted for two felony fraud charges." (PX06 ¶ 2 & Att. A, at 443 & 453).

These improper contacts with, and misrepresentations to, third parties violate the FTC Act, the FDCPA, N.Y. Executive Law § 63(12), and N.Y. General Business Law §§ 349 and 601(4)-(5), as alleged in Counts II-IV and VII-IX of the Complaint.

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

The FDCPA requires debt collectors to disclose in their initial communication with consumers "that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose," and "to disclose in subsequent communications that the communication is from a debt collector." 15 U.S.C. § 1692e(11).

Yet Defendants routinely fail to make these basic required disclosures. (PX02, Atts. A-E & G-P; PX05 ¶ 34, at 429; PX06 ¶ 20, at 447; PX07 ¶ 31, at 465; PX08 ¶ 22, at 480; PX09 ¶ 17, at 495; PX12 ¶ 11, at 551; PX13 ¶ 16, at 556; PX14 ¶ 14, at 559; PX19 ¶ 14, at 604; PX20 ¶ 18,

at 608; PX21 ¶ 19, at 616; PX23 ¶ 11, at 634; PX26 ¶ 16, at 653; PX28 ¶ 8, at 665; PX30 ¶ 20, at 683). Indeed, as described above, Defendants' often falsely identify themselves as "investigators" or "attorneys" or indicate they are a law office, process server, or government-affiliated agency. *See supra*, Part III(A)(1). Defendants' failure to disclose that they are a debt collector reinforces these misrepresentations, deprives consumers of statutorily-required information that would assist them in avoiding Defendants' fraudulent scheme, and violates the FDCPA and N.Y. Executive Law § 63(12), as alleged in Counts IV and VII.

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

The FDCPA specifically prohibits "[t]he collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law." 15 U.S.C. § 1692f(1). Notwithstanding this prohibition, Defendants have added a fee of ten to thirteen dollars, paid directly to Defendants, onto payments that consumers make on purported debts. (PX05 ¶ 11, at 424; PX06 ¶ 11, at 446; PX09 ¶¶ 6, 9 & 14, Atts. B & C, at 492-93 & 502-05; PX 22 ¶ 9, at 624; PX25 ¶ 4, at 645; *see also* PX07 Att. B, at 469 (Defendants' letter listing fees of $212.95)). In many instances, the processing fee is not expressly authorized by the agreement creating the underlying debt or permitted by law. Hence, Defendants have collected these processing fees in violation of § 808(1) of the FDCPA, 15 U.S.C. § 1692f(1), as alleged in Count V of the Complaint. *See Quinteros v. MBI Assocs.*, No. 12-CV-2517 (WFK)(SMG), 2014 WL 793138 at *3-4 (E.D.N.Y. Feb. 28, 2014) (finding a viable FDCPA claim for charging a $5 credit card processing fee); *Hallmark v. Cohen & Slamowitz, LLP*, 293 F.R.D 410, 414-15 (W.D.N.Y. Sept. 16, 2013) (finding a viable FDCPA claim for seeking to collect a $140 court filing fee from consumers).

E. Defendants Fail To Provide Consumers with Required Validation Notices

The FDCPA also requires that, unless provided in the initial communication with the consumer, a debt collector must, within five days of the initial communication, provide the consumer with a written notice containing the amount of the debt and the name of the creditor. 15 U.S.C. § 1692g. This notice also must contain statements that the collector will assume the debt to be valid unless the consumer disputes the debt within 30 days, and that the debt collector will send a verification of the debt or a copy of the judgment if the consumer disputes the debt in writing within the 30-day period. *Id.* The notice requirement is intended to minimize instances of mistaken identity or mistakes regarding the amount or existence of a debt. *See* S. Rep. No. 382, 9th Cong., 1st Sess. 4, at 4, *reprinted in* 1977 U.S.C.C.A.N. 1695, 1696.

Defendants routinely disregard the FDCPA's notice requirement and fail to provide information about how to dispute a debt to consumers even after repeated requests. (PX05 ¶ 35, at 430; PX06 ¶ 19, at 447; PX08 ¶¶ 17-18 & 23, at 480-81; PX09 ¶ 16 at 495; PX12 ¶ 10, at 551; PX13 ¶ 15 at 555; PX16 ¶15 at 555; PX14 ¶ 13, at 559; PX19 ¶ 13, at 604; PX20 ¶ 19, at 608; PX21 ¶ 18, at 616; PX23 ¶ 10, at 634; PX24 ¶¶ 6-7 & 15-18, at 636 & 638-39; PX26 ¶ 15, at 653; PX27 ¶ 16, at 663; PX28 ¶ 7, at 665; PX30 ¶ 19, at 683). Defendants' failure to send required notices has deprived consumers of statutorily-required information that would allow them to evaluate or dispute purported debts, and violates § 809(a) of the FDCPA, 15 U.S.C. § 1692g(a), and N.Y. Executive Law § 63(12), as alleged in Counts IV and VII of the Complaint.

IV. A TEMPORARY RESTRAINING ORDER SHOULD ISSUE AGAINST THE DEFENDANTS

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

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to seek, and the Court to issue, temporary, preliminary, and permanent injunctions.[9] Incident to its authority to issue permanent injunctive relief, this Court has the "broad equitable authority to 'grant any ancillary relief necessary to accomplish complete justice.'" *Five-Star Auto Club, Inc.*, 97 F. Supp. 2d at 533 (quoting *FTC v. H.N. Singer, Inc.*, 668 F.2d 1108 (9th Cir. 1982)). This ancillary relief can include a temporary restraining order, an asset freeze, expedited discovery, and other appropriate remedies. *See, e.g.*, *Five-Star Auto Club, Inc.*, 97 F. Supp. 2d at 533; *FTC v. Strano*, 528 Fed. Appx. 47, 49 (2d Cir. June 20, 2013) (holding that an asset freeze was appropriate ancillary relief); *FTC v. Nat'l Check Registry*, 14-CV-0490A (W.D.N.Y. June 23, 2014) (granting TRO, asset freeze, and temporary receiver); *FTC v. Fed. Check Processing, Inc.*, 14-CV-0122S (W.D.N.Y. Feb. 24, 2014) (granting *ex parte* TRO, asset freeze, and temporary receiver); *FTC v. Navestad*, No. 09-CV-6329T (W.D.N.Y. July 1, 2009) (granting *ex parte* TRO, asset freeze, and temporary receiver). Similarly, N.Y. Executive Law § 63(12) and N.Y. General Business Law §§ 349(b) and 602(2) authorize the Office of the New York Attorney General to obtain equitable relief—including a permanent injunction—against persons and businesses who engage in illegal, fraudulent and/or deceptive business practices.[10]

---

[9] The second proviso of Section 13(b), under which the FTC brings this action, provides that "the Commission may seek, and after proper proof, the court may issue, a permanent injunction" against violations of "any provision of law enforced by the Federal Trade Commission." 15 U.S.C. § 53(b).

[10] Pursuant to Executive Law § 63(12), courts are empowered to grant wide-ranging equitable relief to redress the kind of illegal and deceptive conduct engaged in by the Defendants. Such (continued . . .)

B. Plaintiffs Meet the Standard for Granting a Government Agency's Request for a Temporary Restraining Order and Preliminary Injunction

The FTC may obtain a preliminary injunction "[u]pon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest." *FTC v. Cuban Exch., Inc.*, No. 12 CV 5890(NGG)(RML), 2012 WL 6800794 at *1 (E.D.N.Y. Dec. 19, 2012); *see also* 15 U.S.C. § 53(b).[11] Pursuant to N.Y. Civil Practice Law and Rules § 6301, N.Y. Executive Law § 63(12), and N.Y. General Business Law §§ 349(b) and 602(2), the Attorney General may obtain a preliminary injunction upon a similar showing. Unlike private litigants, Plaintiffs need not prove irreparable injury because this injury is presumed in a statutory enforcement action.[12] *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1218

---

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

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

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

(11th Cir. 1991); *FTC v. Verity Int'l* ("*Verity I*"), 124 F. Supp. 2d 193, 199 (S.D.N.Y. 2000); *People v. P.U. Travel, Inc.* 2003 N.Y. Misc. LEXIS 2010 at *7-8, (Sup. Ct. N.Y. Cnty 2003).

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

1. Plaintiffs Are Likely to Succeed on the Merits

The FTC meets its burden to show likelihood of ultimate success if "it shows preliminarily, by affidavits or other proof, that it has a fair and tenable chance of ultimate success on the merits." *FTC v. Lancaster Colony Corp., Inc.*, 434 F. Supp. 1088, 1090 (S.D.N.Y. 1977); *see also Verity I*, 124 F. Supp. 2d 193, 199 (S.D.N.Y. 2000). The standard for granting injunctive relief pursuant to N.Y. Executive Law § 63(12) is similar: a "likelihood of success on the merits, and a balancing of the equities in petitioner's favor." *Apple Health I*, 174 A.D.2d at 438. In considering an application for a TRO or preliminary injunction, the Court has the discretion to consider hearsay evidence. *Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010) (finding that hearsay may be considered by a district court in determining whether to issue a preliminary injunction). As set forth in Part III above, Plaintiffs have presented ample evidence that they are likely to succeed on the merits of their claims that Defendants violated Section 5 of the FTC Act, multiple provisions of the FDCPA, and New York state law. In addition to the more than 250 complaints against Defendants that have been received by the FTC, this evidence includes 25 consumer declarations, 17 recordings of voicemail messages and calls Defendants made to consumers, and at least eight private lawsuits filed by consumers against Defendants, the majority of which involved entries of default against one or more Defendants. (PX01 ¶ 87 tbl. 9, at 31-32 (summary of complaints); PX02, Att. A-R (voicemail

recordings); PX05-15 & PX17-30 (23 consumer declarations); PX01 ¶¶ 71-72 Ex. DDD, at 27 & 250-87 (private lawsuits, with six out of seven closed lawsuits ending in default)).

2. The Equities Weigh in Favor of Granting Injunctive Relief

Once Plaintiffs establish the likelihood of ultimate success on the merits, preliminary injunctive relief is warranted if the Court, weighing the equities, finds that relief is in the public interest.

The evidence demonstrates that the public equities—protection of consumers from Defendants' deceptive and abusive debt collection practices, effective enforcement of the law, and the preservation of Defendants' assets for final relief—are significant. Granting this relief is also necessary because Defendants' conduct indicates that they will likely continue to deceive the public. *Five-Star Auto Club*, 97 F. Supp. 2d at 536 ("[P]ast illegal conduct is highly suggestive of the likelihood of future violations."). Indeed, the need for injunctive relief is particularly acute here given the Defendants' repeated and far-reaching measures to avoid scrutiny and cover up their corporate identities. By contrast, any private equities in this case are not compelling. Compliance with the law is not an unreasonable burden, *see Cuban Exch., Inc.*, 2012 WL 6800794, at *2 ("A preliminary injunction would not work any undue hardship on the defendants, as they do not have the right to persist in conduct that violates federal law."), and as discussed below each form of relief Plaintiffs' seek is warranted in light of Defendants' conduct.

In balancing the equities between the parties, public equities must be given far greater weight. *See, e.g.*, *Lancaster Colony Corp.*, 434 F. Supp. at 1096 ("The equities to be weighed . . . are not the usual equities of private litigation but public equities."); *Univ. Health, Inc.*, 938 F.2d at 1225 ("While it is proper to consider private equities in deciding whether to enjoin a particular transaction, we must afford such concerns little weight, lest we undermine section 13(b)'s

purpose of protecting the 'public-at-large, rather than individual private competitors.'"). Here, because Defendants "can have no vested interest in business activity found to be illegal," the balance of equities tips decidedly toward granting the relief. *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972).

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

The Corporate Defendants operate as a common enterprise and are jointly and severally liable for their conduct. When determining whether a common enterprise exists, the Second Circuit considers whether "the same individuals were transacting an integrated business through a maze of interrelated companies." *Del. Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964). Factors that indicate a common enterprise include whether the nominally distinct entities "(1) maintain officers and employees in common, (2) operate under common control, (3) share offices, (4) commingle funds, and (5) share advertising and marketing." *FTC v. Tax Club, Inc.*, 994 F. Supp. 2d 461, 469 (S.D.N.Y. 2014); *FTC v. Consumer Health Benefits Ass'n*, No. 10 Civ. 3551(ILG)(RLM), 2012 WL 1890242, at *5 (E.D.N.Y. May 23, 2012) (citations omitted). Defendants found to be in a common enterprise are jointly and severally liable for the injury caused by their violations of the FTC Act. *Id.*

The Corporate Defendants are significantly intertwined. Vantage Point Services and Payment Management Solutions share an officer, operate under common control, share offices, and the funds of the companies are deeply intermingled. The primary officer of Payment Management Solutions—Angela Burdorf—is also a principal and owner of Vantage Point Services. (PX01 ¶¶ 52 & 59, Exs. RR & XX, at 22-24, 179-80, & 218-19). The companies have also shared addresses—including the operation's former main address of 4248 Ridge Lea Road, Suite 45, Amherst, New York—and share a P.O. Box, with both companies listed on an

application Megan Vandeviver submitted to the United States Post Office. (PX01 ¶¶ 70, 75 & 79, Ex. BBB, at 27, 29-30, 46-47). And the two companies commingle funds, with the vast majority of Payment Management Solution's profits—over $2.1 million between April and November 2014—going to the corporate bank account of Vantage Point Services via wire transfers. (PX01 ¶¶ 14-15 & tbl. 1, at 5-7).[13]

The evidence suggests that Bonified performs human resources functions for the other Corporate Defendants. Payment Management Solutions and associated entity Solidified Payment Solutions have written checks to Bonified principal Joseph Ciffa, Ciffa has deposited the funds into the Bonified account, and Bonified has made payroll payments. (PX01 ¶¶ 20-22, 31 tbl. 7, & 33, at 11, 14-17). These payroll payments constitute almost all of the withdrawals from the Bonified accounts, with no identifiable payments for operating expenses such as rent, phone services, collections software licenses, or skip-tracing licenses. (*Id.*). Bonified shares its only address—10325 Lockport Road in Niagara Falls—with Payment Management Solutions and Solidified Payment Solutions. (PX01 ¶¶ 5, 10, & 13, Exs. C, F, P, N, & DD, at 2-5, 53-55, 62-65, 96-97, & 139-40). And registered vehicles belonging to individuals employed by Payment Management Solutions have been spotted at this address. (PX03 ¶ 13, at 405).[14]

---

[13] Associated entity Solidified Payment Solutions has similar connections to the other Corporate Defendants: its main principal and bank account signatory is Angela Burdorf; it shares the address of 10325 Lockport Road in Niagara Falls with both Payment Management Solutions and Bonified; and most of the money that has flowed through Solidified's accounts was wired into the accounts by Payment Management Solutions and wired out of the accounts to Vantage Point Services or Burdorf. (PX01 ¶¶ 9, 13 & 24 tbls. 4 & 5, Exs. L & Y-AA, at 3-5, 11-12, 87-89, 127-34).

[14] Associated entity Northwest Capital Solutions has similar connections to the Corporate Defendants: its main source of funds is wire payments from Vantage Point Services; its activity is almost exclusively limited to payroll payments; its principal is an employee of Vantage Point Services; and its address is a business premises of Vantage Point Services. (PX01 ¶¶ 27-29 & (continued . . .)

D. The Individual Defendants Are Liable

In addition to the Corporate Defendants, Individual Defendants Vandeviver, MacKinnon, Burdorf, and Ciffa are each liable for injunctive and monetary relief for law violations committed by the Corporate Defendants. Under the FTC Act, individual defendants "may be liable for corporate acts or practices if they (1) participated in the acts or had authority to control the corporate defendant and (2) know of the acts or practices." *Med. Billers Network, Inc.*, 543 F. Supp. 2d. at 320. "Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer." *Id.* (quoting *FTC v. Amy Travel*, 875 F.2d 564, 575 (7th Cir. 1989)); *Five-Star Auto Club, Inc.*, 97 F. Supp. 2d at 535 ("Assuming the duties of a corporate officer establishes authority to control."). Even when an individual is not officially designated as a corporate officer, courts consider "the control that a person actually exercises over given activities." *FTC v. Windward Mktg., Inc.*, No. Civ. A 1:96-CV-615F, 1997 WL 33642380 at *5 (N.D. Ga. Sept. 30, 1997) (holding that defendant did not need to be an officer or even an employee to control corporate activities).[15] In particular, bank signatory authority or acquiring services on behalf of a corporation evidences authority to control. *FTC v. USA Fin., LLC*, 415 Fed. Appx. 970, 974-75 (11th Cir. Feb. 25, 2011).

Ex. BB, at 13-14 & 135-36; PX03 ¶ 10, at 405).

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

An individual does not need to "*intend*[ ] to defraud consumers in order to hold that individual personally liable." *Med. Billers Network*, 543 F. Supp. 2d at 283 (quoting *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997)). Instead, Plaintiffs need only demonstrate that the individual "had actual knowledge of material representations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth." *Id.* (quoting *Amy Travel*, 875 F.2d at 574); *Consumer Health Benefits*, 2012 WL 1890242, at *5. The extent to which an individual participated in business affairs is probative of knowledge. *Med. Billers Network*, 543 F. Supp. 2d at 283; *Consumer Health Benefits*, 2012 WL 1890242, at *5.

In light of their roles in the defendant debt collection enterprise, the Individual Defendants meet both prongs of the two-part test for individual liability. As discussed above in Part II(B), the four Individual Defendants are officers of the Corporate Defendants. Each individual has signatory authority over the Corporate Defendants' bank accounts and has acted as a principal or owner of one or more of the Corporate Defendants. Moreover, each individual has a long association with the corporate defendants that has extended through numerous location changes; the creation of Payment Management Solutions, Bonified, and associated entities Solidified and Northwest; the termination of Vantage Point Services' MoneyGram account due to unlawful collection tactics; and dozens of inquiries from the Better Business Bureau and the New York Attorney General. Accordingly, each Individual Defendant had actual knowledge of the corporate defendants' unlawful practices, reckless indifference to the truth or falsity of the corporate defendants' misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth.

Accordingly, each individual defendant should be enjoined from violating the FTC Act.

the FDCPA, N.Y. Executive Law § 63(12), and N.Y. General Business Law Articles 22-A and 29-H, and held liable for consumer redress or other monetary relief in connection with Defendants' activities.

V. DEFENDANTS' CONDUCT WARRANTS THE REQUESTED RELIEF

The evidence demonstrates that Plaintiffs are likely to succeed in proving that Defendants are engaging in deceptive and unfair practices in violation of the FTC Act, the FDCPA, and New York State law and that the balance of equities strongly favors the public. Thus, preliminary injunctive relief is justified. Each of the principal components of the attached temporary restraining order ("Proposed Order")—conduct relief, asset freeze, appointment of receiver, record preservation, and expedited discovery—are discussed below.

A. Conduct Relief

To prevent ongoing consumer injury, the proposed TRO prohibits Defendants from making future misrepresentations concerning the collection of debts. Like in previous FTC actions, the proposed order also prohibits Defendants from engaging in conduct related to the particular violations alleged in the complaint: misrepresenting the Defendants' identity; making false or unsubstantiated threats, including false threats that consumers will be arrested or imprisoned; improperly communicating with third parties regarding consumers' debts; failing to disclose that the caller is a debt collector attempting to collect a debt; failing to provide validation notices regarding consumers' debts; and engaging in other conduct that violates the FDCPA. *See* Proposed Order, § I.

B. Asset Preservation, Appointment of a Receiver, and Immediate Access

As part of the permanent relief in this case, Plaintiffs will seek equitable monetary relief, including consumer redress and/or disgorgement of ill-gotten gains. To preserve the availability

of funds for such equitable relief, Plaintiffs requests that the Court issue an order requiring the preservation of assets and evidence. *See* Proposed Order, §§ II-III & XVIII. The Court also should appoint a receiver over the Corporate Defendants to effectuate asset protection and compliance with the requested injunction, and allow Plaintiffs access to the Corporate Defendants' business premises to inspect and preserve evidence. *See* Proposed Order, §§ III(B) & VIII-XV. Plaintiffs have identified two receiver candidates in the pleading entitled "Plaintiffs' Recommendation for Temporary Receiver," filed simultaneously with this memorandum. Such an order is well within this Court's authority, *see, e.g., U.S. Oil & Gas Corp.*, 748 F.2d at 1432 (finding that under section 13(b) a "district court has the inherent power of a court of equity to grant ancillary relief, including freezing assets and appointing a Receiver"), and similar to equitable relief granted in prior FTC cases in this district. *See, e.g., FTC v. Nat'l Check Registry LLC*, No. 1:14-cv-00490-RJA (W.D.N.Y. June 24, 2014) (granting TRO, asset freeze, temporary receiver, and immediate access); *FTC v. Fed. Check Processing, Inc.*, No. 14-CV-0122S (W.D.N.Y. Feb. 24, 2014) (granting *ex parte* TRO, asset freeze, temporary receiver, and immediate access).

Where, as here, a company's business operations are permeated by fraud, courts have found a strong likelihood that assets may be dissipated during litigation. *Int'l Controls Corp. v. Vesco*, 490 F.2d 1334, 1347 (2d Cir. 1974), cert. denied, 417 U.S. 932 (1974); *S.E.C. v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972).[16] In determining whether to appoint

[16] Similarly, New York state courts have regularly used their equitable powers under N.Y. Executive Law § 63(12) to impose such financial restrictions or requirements as they deem necessary to protect consumers. *See, e.g., Apple Health II*, 80 N.Y.2d 803 (upholding trial court's grant of a temporary restraining order freezing respondents' bank accounts); *People v. 21st Century Leisure Spa, Int'l*, 153 Misc.2d 938 (Sup. Ct. N.Y. Co. 1991) (enjoining respondent (continued . . .)

a receiver, courts consider the defendant's fraudulent conduct, the danger that property will be lost or squandered, the interests of the plaintiff and the parties opposing the appointment, and the plaintiff's probability of success on the merits. *U.S. Bank Nat'l Ass'n v. Nesbitt Bellevue Prop. LLC*, 866 F. Supp.2d 247, 249-50 (S.D.N.Y. 2012). The district court has broad discretion in appointing a receiver. *See FTC v. Pricewert, LLC*, No. C-09-2407 RMW, 2009 WL 1689598, at *1-2 (N.D. Cal. Jun. 15, 2009); *FTC v. Equinox Int'l Corp.*, No. CV-S-990969HBR (RLH), 1999 WL 1425373, at *5 (D. Nev. Sep. 14, 1999). In particular, where Plaintiffs are likely to show that an operation is permeated with deception, a receivership may be necessary because "[t]o allow Defendants to control their frozen assets and to operate their deceptive scheme would create an unreasonable risk that effective relief would be frustrated." *FTC v. Skybiz.com, Inc.*, No. 01-CV-396-K(E), 2001 WL 1673645, at *12 (N.D. Okla. Aug. 31, 2001); *see also FTC v. Millennium Telecard, Inc.*, Civil Action No. 11-2479 (JLL), 2011 WL 2745963, at *12 (D.N.J. July 12, 2011) ("[T]he appointment of a Receiver is a well-established equitable remedy in instances in which the corporate defendant, through its management, has defrauded members of the public.").

Defendants' conduct warrants an asset freeze and receivership over the Corporate Defendants. First, there is ample evidence of the Defendants' extraordinarily egregious conduct: systematic threats of arresting and imprisoning consumers; misrepresentations that Defendants are a law firm or government agency; using caller-ID spoofing to make calls appear to originate

---

owner of company from transferring, withdrawing or otherwise disposing of funds in any bank account in New York State except for ordinary living expenses); *State v. Abortion Info. Agency*, 69 Misc. 2d 825, 830 (Sup. Ct. N.Y. Co. 1971), *aff'd*, 37 A.D.2d 142 (1st Dept 1972) (enjoining respondents "from transferring or otherwise disposing of corporate assets or property" and appointing receiver to preserve assets).

from the legitimate phone numbers of law enforcement agencies; and making high-pressure threats to consumers' friends, relatives, and coworkers.[17] Given the nature of the Defendants' conduct, and the serious consumer injury it causes, there is a particularly strong basis for preliminary relief that will take control of the Defendants' operation—and its unlawful proceeds—out of the hands of the Defendants. *See Skybiz.com*, 2001 WL 1673645, at *12.

Second, in addition to the fraudulent nature of the Defendants' collection practices, Defendants have engaged in a slew of conduct—including ignoring private lawsuits, circumventing the compliance review of MoneyGram, and falsely claiming to be payment processors in response to complaint inquiries by the Better Business Bureau and New York Attorney General—indicating a substantial likelihood that evidence will be destroyed or spoiled if the Defendants maintain control of the operation. Similarly, Defendants frequently have changed locations, misrepresentated the addresses of the Corporate Defendants to consumers and third parties, and omitted mention of the actual offices the Corporate Defendants use, in an apparent effort to evade detection and scrutiny. (PX01 ¶¶ 73-83, at 28-31).

Third, Defendants have attempted to mask the flow of money into the enterprise by creating multiple corporate fronts, thus creating a circuitous route for much of the money that has been extracted from consumer victims. (PX01 ¶¶ 14-29, at 5-14 (describing bank account activity of Corporate Defendants and associated entities)). And even though the vast majority of these payments has eventually made its way to Vantage Point Services' bank account, it has not stayed there for long. Bank records show that for each month since January 2013, Vantage Point

[17] In the absence of an effectuated asset freeze in prior FTC cases against defendants engaged in similarly unlawful practices, defendants have secreted assets and destroyed documents upon learning of an impending law enforcement action. (Cert. & Decl. of Colin Hector ¶¶ 13-14).

Services accepted deposits of between $478,218 and $1,063,032, and had monthly withdrawals of between $487,182 and $1,077,715. (PX01 ¶ 17 tbl. 2, at 7-9). As a result, the end-of-the-month balance for the account has typically been under $150,000, and as low as $9,040. (*Id.*). In total, of the $21 million that has flowed into the Vantage Point Services' account between January 2012 and October 2014, over $19 million has been dissipated in the form of non-check debits. (*Id.*). The bulk of these debits have been wire transfers to scores of different entities and individuals. (PX01 ¶ 17, at 7). The circuitous route of Defendants' unlawful proceeds, and the rapid dissipation of funds from the Corporate Defendants' accounts, reinforces the need for an asset freeze to preserve the ability for the Court to craft appropriate final monetary relief, and the need for a Receiver to maintain the status quo, analyze wire transfers, and marshal funds that belong in the receivership estate.

Defendants' systemic fraudulent conduct, wide-ranging attempts to mask their identities, frequent changes in corporate addresses, use of multiple corporate fronts, and dissipation of the bulk of its unlawful proceeds in the form of wire transfers sufficiently demonstrates that an asset freeze and receiver are necessary to ensure that the corporation does not continue its unlawful practices under a different or new guise and to preserve the Court's ability to craft appropriate final monetary relief.

C. Preservation of Records and Limited Expedited Discovery

The proposed order contains a provision directing Defendants to preserve records, including electronically stored records, and evidence. *See* Proposed Order, § XVIII. The Second Circuit has held that it is appropriate to enjoin defendants charged with deception from destroying evidence and doing so imposes no significant burden. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990) (characterizing such orders as "innocuous").

Plaintiffs also seek leave of Court for limited discovery to locate and identify documents and assets. *See* Proposed Order, §§ XIX. District courts are authorized to fashion discovery to meet the needs of particular cases. Federal Rules of Civil Procedure 26(d), 33(a), and 34(b) authorize the Court to alter default provisions, including applicable time frames, that govern depositions and production of documents. A narrow, expedited discovery order reflects the Court's broad and flexible authority in equity to grant preliminary emergency relief in cases involving the public interest. *Fed. Express Corp. v. Fed. Expresso, Inc.*, No. Civ.A. 97CV1219RSPGJD, 1997 WL 736530 (N.D.N.Y. Nov. 24, 1997) (noting that expedited discovery "will be appropriate in some cases, such as those involving requests for a preliminary injunction") (quoting commentary to Fed. R. Civ. P. 26(d)).

Here, along with providing Plaintiffs immediate access to Defendants' business premises, expedited discovery is warranted to locate assets, locate documents, and ensure compliance with an order of this Court. The request for expedited discovery is limited to this purpose, and is necessary to prevent irreparable harm in the form of the dissipation or concealment of assets or documents.

D. The Temporary Restraining Order Should Be Issued *Ex Parte* to Preserve the Court's Ability to Fashion Meaningful Relief

The substantial risk of asset dissipation and document destruction in this case, coupled with Defendants' ongoing and deliberate statutory violations and efforts to evade detection, justifies *ex parte* relief without notice. Federal Rule of Civil Procedure 65(b) permits this Court to enter *ex parte* orders upon a clear showing that "immediate and irreparable injury, loss, or damage will result" if notice is given. *Ex parte* orders are proper in cases where "notice to the defendant would render fruitless further prosecution of the action." *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322 (7th Cir. 1984); *see also Granny Goose Foods, Inc. v. Bd. of Teamsters*, 415

U.S. 423, 439 (1974); *In re Vuitton et Fils, S.A.*, 606 F.2d 1, 4-5 (2d Cir. 1979). Mindful of this problem, courts, including courts in this district, have granted the FTC's request for *ex parte* temporary restraining orders in Section 13(b) cases.[18] As discussed above, Defendants' business operations are permeated by, and reliant upon, unlawful practices. Defendants' conduct—including a fraudulent debt collection scheme, an array of tactics to conceal their identity and location, and moving large sums of money out of their corporate accounts—demonstrates that it is likely that Defendants would conceal or dissipate assets absent *ex parte* relief. And as detailed in the attached certification (Cert. of Colin Hector ¶¶ 13-14) both Defendants' conduct and prior FTC cases involving fraudulent practices support *ex parte* relief here. *In re Vuitton et Fils, S.A.*, 606 F.2d at 4-5; *Mansukhani*, 742 F.2d at 222 (noting that in *Vuitton* the Second Circuit found *ex parte* relief warranted in light of the petitioner's showing of "its experience in other similar cases in which the actions became futile."). Because *ex parte* relief is necessary to enable full and effective final relief, it is in the interest of justice to waive the notice requirement of Local Rule 65(b).

VI. CONCLUSION

For the foregoing reasons, the FTC respectfully requests that this Court issue *ex parte* the attached proposed TRO with asset freeze, appointment of receiver, and other equitable relief as set forth in the accompanying proposed order, and require Defendants to show why a preliminary injunction should not issue.

---

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

Dated: January 5, 2015

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York

COLIN HECTOR
JASON ADLER
PETER LAMBERTON
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Telephone: (202) 326-3376 (Hector)
Telephone: (202) 326-3231 (Adler)
Telephone: (202) 326-3274 (Lamberton)
Facsimile: 202-326-3768
Email: chector@ftc.gov; jadler@ftc.gov;
plamberton@ftc.gov

Attorneys for Plaintiff Federal Trade
Commission

JAMES M. MORRISSEY
Assistant Attorney General
350 Main Street, Suite 300A
Buffalo, NY 14202
Telephone: (716) 853-8471
Email: james.morrissey@ny.ag.gov

Attorneys for Plaintiff the People of the State
of New York