

1 WILLARD K. TOM
General Counsel

2 LISA D. ROSENTHAL, Cal. Bar # 179486
3 SARAH SCHROEDER, Cal. Bar # 221528
4 KERRY O'BRIEN, Cal. Bar # 149264
AUSTIN A.B. OWNBEY, Cal. Bar # 272197
Federal Trade Commission
5 901 Market Street, Ste. 570
San Francisco, CA 94103
6 (415) 848-5100 (voice), (415) 848-5184 (fax)
lrosenthal@ftc.gov, sschroeder@ftc.gov
7 kobrien@ftc.gov, aownbey@ftc.gov

8 Attorneys for Plaintiff
9 Federal Trade Commission

10
11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 BROADWAY GLOBAL MASTER INC., a
18 corporation, also d/b/a BGM,

19 IN-ARABIA SOLUTIONS INC., a
20 corporation, and

21 KIRIT PATEL, individually and as an officer
of BROADWAY GLOBAL MASTER INC.,
and IN-ARABIA SOLUTIONS INC.
22

23 Defendants.
24

Case No.

**FEDERAL TRADE
COMMISSION'S EX PARTE
MOTION FOR A TEMPORARY
RESTRAINING ORDER WITH
ASSET FREEZE, OTHER
EQUITABLE RELIEF, AND
ORDER TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE;
SUPPORTING MEMORANDUM
OF POINTS AND AUTHORITIES**

25
26
27
28
TRO Memo

1 Plaintiff Federal Trade Commission (“Commission” or “FTC”), pursuant to Rule 65(b) of
2 the Federal Rules of Civil Procedure and Civil L.R. 231, is respectfully applying to this Court on
3 an expedited basis for a non-noticed Temporary Restraining Order (“TRO”).

4 As grounds for this motion, the Commission states that Defendants are engaging in acts
5 and practices that violate Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15
6 U.S.C. § 45(a), and the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. 1692, *et seq.*,
7 as set forth in the Complaint, Memorandum of Points and Authorities in support of this motion,
8 and the supporting declarations and exhibits.

9 The proposed TRO would temporarily: (1) restrain the Defendants from violating Section
10 5(a) of the FTC Act and Sections 806 and 807 of the FDCPA; (2) freeze the Defendants’ assets;
11 (3) allow immediate access to Defendants’ business premises, order certain expedited discovery,
12 and require the Defendants to retain business and financial records; and (4) require the
13 Defendants to show cause why a preliminary injunction should not issue, extending the
14 foregoing temporary relief until the merits of the Commission’s allegations are adjudicated.

15 The interests of justice require that this motion be heard on an expedited basis, pursuant
16 to Fed. R. Civ. P. 65(b). Hearing this motion on an expedited basis will prevent immediate and
17 irreparable damage to the Commission’s efforts to redress consumer losses that have resulted
18 from Defendants’ violations. This motion is accompanied by a supporting memorandum, and a
19 proposed TRO and Preliminary Injunction.

20
21 Dated: April 3, 2012

Respectfully Submitted,

22 /s/
23 LISA D. ROSENTHAL
24 SARAH SCHROEDER
25 KERRY O’BRIEN
26 AUSTIN A.B. OWNBEY

Attorneys for Plaintiff
Federal Trade Commission

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6 Fair Debt Collection Practices Act
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15 Federal Rule of Civil Procedure 65(b). 25

16 FTC Staff Commentary on the Fair Debt Collection Practices Act,
17 53 Fed. Reg. 50098-50110 (Dec. 13, 1988). 20

18 S. Rep. No. 103-30 (1993)
19 1994 U.S.C.C.A.N 1776, 1790-91. 15

1 **I. INTRODUCTION**

2 Plaintiff, Federal Trade Commission (“FTC”), brings this emergency action to halt a
3 pernicious and massive debt collection scam. Defendants’ collectors prey upon cash-strapped
4 payday loan borrowers. They masquerade as police officers and bombard victims with calls –
5 threatening arrest and other dire consequences – to extort payments for bogus debts. Defendants
6 operate from a home in Tracy, California and an office in Pleasanton, California. They have no
7 affiliation with any law enforcement agency and no authority to collect these debts. They simply
8 pocket the money that they extort from intimidated consumers.

9 Working through call centers in India, Defendants’ scheme has involved at least 2.7
10 million calls and more than 600,000 phone numbers. Since 2010, they have collected and
11 processed more than \$5 million from consumers already in dire financial straits. Defendants’
12 practices violate the Federal Trade Commission Act’s (“FTC Act”) prohibition of “unfair or
13 deceptive acts or practices,” 15 U.S.C. § 45(a), and the Fair Debt Collection Practices Act
14 (“FDCPA”), 15 U.S.C. 1692, *et seq.*

15 We respectfully ask that the Court issue an *ex parte* TRO to: (1) halt the deceptive and
16 abusive practices, to protect consumers from ongoing harm; (2) freeze Defendants’ assets, to
17 preserve the Court’s ability to provide restitution; and (3) grant immediate access to Defendants’
18 Pleasanton office, allow limited expedited discovery, and order document retention, to ensure
19 against the spoliation of evidence. The FTC also seeks an order to show cause why a
20 preliminary injunction should not issue. This equitable relief is necessary and in the public
21 interest.

22 **II. PARTIES**

23 **A. Plaintiff**

24 Plaintiff Federal Trade Commission (“FTC”) is an independent agency of the United
25 States created by the FTC Act. 15 U.S.C. §§ 41, *et seq.* The FTC enforces Section 5(a) of the
26 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts and practices in or affecting
27 commerce. The FTC also enforces the FDCPA, 15 U.S.C. §§ 1692-1692p, which prohibits
28 abusive, deceptive, and unfair collection practices. The FTC Act and the FDCPA authorize the

1 FTC, through its own attorneys, to initiate U.S. district court proceedings to seek permanent
 2 relief to enjoin violations of the FTC Act and the FDCPA, and to secure such other equitable
 3 relief as may be appropriate in each case, including consumer redress. 15 U.S.C. §§ 53(b),
 4 56(a)(2)(A), 56(a)(2)(B), 57b, and 16921(a); *see, e.g., FTC v. H.N. Singer, Inc.*, 668 F.2d 1107,
 5 1110-13 (9th Cir. 1992).

6 **B. Defendants**

7 The bogus debt collection scheme is perpetrated by two closely-held California
 8 corporations, **Broadway Global Master Inc.** (“Broadway Global”)¹ and **In-Arabia Solutions**
 9 **Inc.** (“In-Arabia”)² (“Corporate Defendants”), and the individual who serves as their sole officer
 10 and director, **Kirit Patel**³ (referred to collectively as “BGM”). Both companies use as their
 11 principal address 1570 Eastlake Circle, Tracy, California,⁴ which is Patel’s residence.⁵ They also
 12 use as a second address 4695 Chabot Drive, Pleasanton, California.⁶

13 Broadway Global describes itself variously as an “ecommerce, debt and spiritual
 14 counselling [sic]” enterprise,⁷ a “Payday Loan Company,”⁸ and a “National Commercial Debt
 15 Collection Service Provider based out of the Tracy of California State.”⁹ In-Arabia, which

16
 17 ¹ Sabhi Atts. A (Articles of Incorporation), B (CA Secretary of State Records). (Declarations and exhibits cited in
 18 this memorandum have been filed concurrently with this motion. The content of declarations is referred to by the
 19 declarant’s last name and the declaration paragraph number(s), e.g., Sabhi ¶ 1. Documents attached to declarations
 are referred to by the declarant’s last name and attachment number, e.g., Sabhi Att. A. If there is more than one
 declarant with the same last name, the first initial is included. If there is more than one declaration from a declarant,
 the second one is signified by “II.”).

20 ² *Id.* Atts. C (Articles of Incorporation), D (CA Secretary of State Records).

21 ³ *Id.* Atts. B, D.

22 ⁴ *Id.*, Atts. B, D, M-6 (Bank of America document), N-2-4 (Chase application), P-8 (Chase account summary), P-13
 23 (Trust One Merchant Application), P-17 (IRS documents), P-19 (NDF merchant application), P-25 (CA Franchise
 Tax Board document).

24 ⁵ *Id.* Atts. G (property records), P-3, P-15 (lists as “home address” on merchant applications).

25 ⁶ *Id.* Atts. P-2, P-6-7.

26 ⁷ *Id.* Att. B.

27 ⁸ *Id.* ¶ 45, Att. O.

28 ⁹ *Id.* ¶ 23b, Att. J-3.

1 operates from the same locations but does not appear to have a separate website or phone
2 number,¹⁰ describes its business activities as “information technology e.commerce.”¹¹

3 Patel runs the operation. He holds himself out as the owner, president, chief executive
4 officer, secretary, agent for service, and chief financial officer of the operation.¹² He controls the
5 operation’s merchant processing and operating bank accounts,¹³ and he has acted as the registrant
6 and administrator for Broadway Global’s website.¹⁴

7 **III. DEFENDANTS’ DECEPTIVE AND ABUSIVE SCHEME**

8 **A. Defendants’ victims.**

9 Increasing numbers of Americans under financial stress have applied for a payday loan (a
10 high interest, short-term loan) to help bridge the gap between paychecks or benefits checks.¹⁵
11 They apply for the loan either online or at a corner store, by providing extensive personal data,
12 including Social Security Numbers, bank account data, and employment information.¹⁶ BGM
13 somehow obtains this application data, and uses the data to prey upon vulnerable, cash-strapped
14 consumers.¹⁷

15 **B. Defendants’ deceptive and abusive calls.**

16 Months and sometimes years after applying for a payday loan, the consumer
17 begins to receive jarring phone calls from someone identifying himself as a law enforcement
18

19
20 ¹⁰ *Id.* ¶ 76.

21 ¹¹ *Id.* ¶ 12, Att. D.

22 ¹² *Id.* ¶¶ 9, 10, 12, 35, 40, 45, 49, Atts. B-1, D-1, P-3, P-5, P-6, P-14, P-15, P-20, P-24, M-3, N-3; Whitney (BBB)
Att. B-9.

23 ¹³ Sabhi Atts. M-3, N-2-4, O-2-3, P-2-8.

24 ¹⁴ Sabhi ¶ 21, Att. I-3-4.

25 ¹⁵ Sabhi ¶ 71, Atts. Y-1, Y-2, Y-8; *see also* Carson-Huff ¶ 2 (“My husband of 42 years passed away in 2010 and I
26 applied for payday loans via the Internet to help me get through a financially difficult period.”).

27 ¹⁶ Sabhi ¶ 71, Atts. Y-1, Y-2, Y-8.

28 ¹⁷ Defendants’ victims have applied for a payday loan. Allen ¶ 4; Barringer ¶ 2; Carson-Huff ¶ 2; Hooks ¶ 2; T.
Johnson ¶ 3; Lee Att. A; Meier Att. 3; McMullen ¶ 2; Whitney (BBB) Att. A-9 (Caviness), Att. A-28 (Valdes).

1 officer with a generic-sounding name, such as “**Officer Mike Johnson.**”¹⁸ Most collectors
 2 claim to be calling from or on behalf of a government agency, such as the “**Federal Crime Unit**
 3 **of the Department of Justice.**”¹⁹ Others assert that they are calling from or on behalf of a law
 4 firm.²⁰ The callers tend to have Indian accents,²¹ but they use multiple phone numbers that
 5 appear to originate in the U.S.²²

6 The callers first berate the consumer for allegedly defaulting on a payday loan.²³ They
 7 then threaten to have the consumer arrested unless he or she immediately makes arrangements to
 8 pay Defendants some arbitrary sum to pay off the loan, typically several hundred dollars.²⁴ In
 9

10 ¹⁸ Carson-Huff ¶¶ 3, 5 (“Officer Mike Johnson” and “Officer Patrick Miller”); Gervais ¶¶ 2, 5, 10 (“Officer Shawn
 11 Philips” and “Officer Mark Markel”); Kowal, ¶ 2 (“Officer Jack Gates” and “Captain Harris”); Kowal II ¶¶ 4, 5
 (“Officer John Marshall,” and “district attorney named Martin”); *see also* Foster ¶ 2 (“law enforcement officer”);
 Lee Att. A (police officers).

12 ¹⁹ Carson-Huff ¶¶ 3, 5 (“Federal Crime Unit of the Fraud Section of the Department of Justice” and “Department of
 13 Justice”); Crandell, ¶ 5 (“Pennsylvania Department of Justice”); Gervais, ¶ 2 (“Crimes Investigations USA”); Grossi
 Att. A (“BCI of NY (Bureau of Criminal Investigations)”); Hooks, ¶ 3 (“Law Enforcement Commission”); Kowal, ¶
 14 2, 3 (“government officials,” “believed they were police officers or FBI agents”); Kowal II, ¶¶ 3-4 (“Federal
 Department of Justice” and “district attorney”); Sabhi Atts. R-39, R-100, R-158, R-168, R-176, R-181, R-183-84, R-
 15 199, R-243, R-256, R-270, R-275.

16 The callers bolster this claim in follow-up communications. For example, two consumers received emails
 17 sent from “federalcrimesdepartment@hotmail.com” that contained letters purportedly from the United States
 Department of Justice. The letters, which featured the DOJ seal, acknowledged the consumer’s payment to
 “B.G.M.” Carson-Huff ¶ 11; Mutchler ¶ 5.

18 ²⁰ Allen ¶ 3 (“a law firm”); McMullen ¶ 3 (“law firm, Adam West and Associates”); Sabhi Atts. R-46-48, R-123-24,
 19 R-193. The callers only occasionally identify themselves as working for Broadway Global Masters. *See, e.g.,* T.
 Johnson ¶ 2; Nelson Att. A.

20 ²¹ Allen ¶ 3; Barringer ¶¶ 5, 8, 13; Broxton Att. A; Carson-Huff ¶¶ 3, 5; Crandell, ¶ 2; Flahaut, ¶ 2; Gervais ¶ 2;
 21 Hooks ¶ 3; T. Johnson, ¶ 2; Kowal, ¶ 2; Mutchler ¶ 4.

22 ²² Gervais ¶¶ 9, 10 (646-918-0991, 347-637-6457, 646-727-4981); T. Johnson ¶ 2 (510-256-0381); Kowal ¶ 2 (914-
 23 721-0566, 409-239-7081, 409-440-4184, 646-571-3306), Kowal II ¶¶ 4, 6 (401-526-3373, 209-205-4002, 409-420-
 2321); Whitney (BBB) Att. A-7 (502-873-3136). In certain cases the origin of the call is obviously faked. Hooks ¶
 24 6 (caller ID indicated the call was from the consumer’s son’s phone number); Kowal ¶ 3 (caller ID indicated that the
 call was from the FBI). In any event, as discussed below, the calls originate in India.

25 ²³ Allen ¶¶ 4; Barringer ¶ 5; Broxton Att. A; Carson-Huff ¶ 3; Crandell ¶ 2; Flahaut ¶ 2; Foster ¶ 2; Gervais ¶ 2; S.
 Johnson Att. A; Kennedy Att. A; Kowal II, ¶ 3; McMullen ¶ 3; Meier Att. 3; Nelson Att. A; Whitney (BBB) Atts. A-
 26 2, A-7.

27 ²⁴ Allen ¶¶ 5, 8; Barringer ¶ 5; Broxton Att. A; Carson-Huff ¶¶ 3, 6; Crandell ¶¶ 2, 5; Foster ¶ 2; Gervais ¶ 3; Hooks
 28 ¶ 4; T. Johnson ¶ 2 (“How will your kids feel when you get arrested?”); Kowal ¶ 3 (was told there were 55 warrants
 out for her arrest); Kowal II ¶¶ 3-5; McMullen, ¶¶ 3, 5, 9; Sabhi Atts. R-34, R-46, R-63, R-65, R-79, R-100, R-115,
 R-158, R-168, R-176, R-181, R-183, R-214, R-243, R-270, R-275.

1 many cases, the callers also threaten to file a lawsuit against the consumer seeking thousands of
2 dollars in legal fees.²⁵ The callers further threaten to inform the consumer’s employer about the
3 phantom debt and warn that the consumer could lose his or her job.²⁶ One consumer reported
4 that the caller went so far as threatening to have her children taken away from her.²⁷ Another
5 was led to believe that Defendants were conducting surveillance of her house and place of
6 employment.²⁸ Consumers also report that the callers use obscene and vulgar language.²⁹

7 The collectors call consumers relentlessly, at home and at work³⁰ and at all hours of the
8 day.³¹ Indeed, one consumer reportedly received 40 back-to-back calls in one morning.³² Call
9 records show that hundreds of consumers each received more than 50 calls from Defendants.³³
10 One consumer declarant received more than 100 calls.³⁴ Simply not answering the phone offers
11 no respite – the callers just bombard the consumers with offensive voicemail messages.³⁵ Some
12 consumers report that the callers threatened to call, or actually did call, the consumers’
13 employer, neighbors, and relatives.³⁶ When the consumer seeks substantiation for the debt, or

14
15 ²⁵ Andrews Att. A; B. Foster ¶ 2; Flahaut ¶ 2; Grossi Att. A; Johnson Att. A; Nelson Att. A; Sabhi Atts. R-20, R-39, R-123, R-256.

16 ²⁶ Allen ¶¶ 5, 8, 10; Crandell ¶ 5; Gervais ¶¶ 2, 6; S. Johnson Att. A; T. Johnson ¶ 2; Kowal ¶ 15; Kowal II, ¶¶ 3, 5, 9.

17
18 ²⁷ T. Johnson ¶ 2.

19 ²⁸ Kowal ¶ 3.

20 ²⁹ Allen ¶ 17; Hooks ¶ 5; T. Johnson ¶ 5.

21 ³⁰ Gervais ¶ 2 (“calls to my place of employment were relentless”); Hooks ¶ 5 (“calls back to back for up to two hours”); S. Johnson Att. A (“same man call [sic] me for the last three days”); T. Johnson ¶ 2 (“12-15 phone calls per day”).

22
23 ³¹ Hooks ¶ 5 (“calls began in the morning and continued until approximately 8 or 9pm”); T. Johnson, ¶ 2 (“late at night”); Kowal II ¶ 7 (“midnight”); Flahaut ¶ 6 (“early in the morning, from 8-10am”).

24 ³² Allen ¶ 2.

25 ³³ Sabhi ¶¶ 30, 31.

26 ³⁴ Sabhi ¶¶ 30, 31.

27 ³⁵ Kowal ¶ 14, Att. D; Sabhi ¶¶ 14, 16, Atts. E-F; B. Foster ¶ 6, Att. A; Andrews Att. A; Barringer ¶ 13; Hooks ¶ 5.

28 ³⁶ Allen ¶ 10; Flahaut ¶ 4; Gervais ¶ 6; S. Johnson Att. A; Kowal, ¶ 3; Kowal II ¶ 9.

1 insists that he or she does not owe a debt, the callers become belligerent and refuse to provide
 2 any documentation.³⁷

3 Consumers are understandably alarmed by these calls. Many think that they are dealing
 4 with a law enforcement officer and are facing a real possibility of arrest.³⁸ Indeed, many
 5 consumers were shocked and confused to learn later that it was Defendants, and not a
 6 government agency, who had withdrawn money from their bank account.³⁹ Many believe that
 7 the call is a legitimate debt collection effort because the caller cites detailed personal information
 8 about the consumer, including their home address, Social Security Number, and place of
 9 employment.⁴⁰ Many consumers agree to pay the callers because they are frightened.⁴¹ Others
 10 succumb to Defendants' demands because they simply want the calls to stop.⁴² Unfortunately,
 11 consumers' payments to BGM do not end the harassment, but appear instead to result in more
 12 abusive calls.⁴³

13 **C. Defendants' processing of the payments.**

14 Once a victim succumbs to making a payment, the collector typically urges him or her to
 15 use a pre-paid debt card, such as a WalMart MoneyCard.⁴⁴ If the victim does not have a pre-paid
 16 card, the collector requests payment via a debit card, a credit card, or Western Union.⁴⁵ In some
 17

18
 19 ³⁷ Allen ¶¶ 6, 9; Crandell ¶ 2; B. Foster ¶¶ 3-4; Gervais ¶¶ 2, 5; T. Johnson ¶¶ 3, 5; Kennedy Att. A; Kowal ¶ 4;
 Kowal II ¶ 5; Lee Att. A.

20 ³⁸ Carson-Huff ¶¶ 3, 5; B. Foster ¶ 2; Gervais ¶¶ 2-3; Sabhi Atts. R-34, R-46, R-63, R-65, R-79, R-100, R-115, R-
 21 158, R-168, R-176, R-181, R-183-84, R-199, R-214, R-243, R-270, R-275.

22 ³⁹ Carson-Huff ¶ 5; Gervais ¶ 11; Kowal ¶ 6; McMullen ¶ 5.

23 ⁴⁰ Allen ¶ 7; Crandell ¶ 6; Barringer ¶ 5; Gervais ¶ 3; Kowal ¶ 3.

24 ⁴¹ Carson-Huff ¶ 4; B. Foster ¶ 4; Gervais ¶¶ 3-4; McMullen ¶ 5.

25 ⁴² Allen ¶ 11; T. Johnson ¶ 4; Kowal ¶ 5.

26 ⁴³ Allen ¶ 14; Barringer ¶ 13; Broxton Att. A; Carson-Huff, ¶¶ 5-6, 17, 27; Crandell ¶¶ 4, 8; B. Foster ¶ 6; Gervais
 ¶¶ 4-7; T. Johnson ¶ 5; Kennedy Att. A; Kowal II ¶¶ 5-7.

27 ⁴⁴ Carson-Huff ¶ 5; Crandell ¶¶ 3, 6; Lee Att. A; McMullen ¶ 5; Whitney (BBB) Att. A-19.

28 ⁴⁵ Barringer ¶ 5; Carson-Huff ¶ 4; Flahaut ¶ 3; Gervais ¶ 3; Hooks ¶ 4; Meier Att. A.

1 instances, the collector demands that the victim fax back an authorization form.⁴⁶

2 Consumers' payments are deposited into one of BGM's merchant processing accounts,⁴⁷
3 which were set up and are maintained by Patel.⁴⁸ The payments appear on consumers'
4 statements with the billing descriptor "BGM," "Broadway Global Master," "Broadway Global,"
5 or a similar name, typically along with BGM's toll-free number.⁴⁹ Payments processed through
6 those accounts are then transferred into BGM's operating bank accounts,⁵⁰ which are also
7 controlled by Patel.⁵¹

8 Thus, Defendants do not just collect the bogus debts, but they also process the payments
9 made to pay off the bogus debts. This role is acknowledged both by Defendants' callers and on
10 Defendants' correspondence to consumers.⁵²

11 **D. Complaints, refund attempts, and chargebacks.**

12 Many victims do not realize that they have been scammed until they get a balance due
13 notice from their payday lender or otherwise learn that their payment to BGM was not applied to
14 an outstanding loan.⁵³ Other victims become suspicious of BGM's legitimacy when, after
15 making their first payment, they begin to get additional calls from BGM, demanding even more
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19 ⁴⁶ Barringer ¶ 6; Carson-Huff ¶ 4; Meier Att. A; Whitney (BBB) Att. A-24.

20 ⁴⁷ Sabhi Att. Q.

21 ⁴⁸ *Id.* Att. P.

22 ⁴⁹ Allen ¶ 13; Andrews ¶ 2; Barringer ¶ 9, Att. D; Broxton ¶¶ 2-3, Att. A; Carson-Huff ¶ 5, Att. B-1; Crandell ¶ 7;
23 B. Foster ¶ 5; W. Foster ¶¶ 3, 8, Att. F; Gervais ¶ 11; Housel ¶ 2, Att. A; S. Johnson ¶ 2, Att. A; T. Johnson ¶ 4;
24 Kowal ¶ 6; Lee Att. A; McMullen ¶ 5; Mutchler ¶ 9, Att. B; Nelson ¶ 2, Att. A.

25 ⁵⁰ Sabhi, Atts. M-N.

26 ⁵¹ *Id.*

27 ⁵² Carson-Huff ¶¶ 11, 17, Att. G; Kowal ¶ 6; McMullen ¶ 5; Mutchler ¶ 6, Att. A.

28 ⁵³ Andrews Att. A; Barringer ¶ 9-10; W. Foster ¶ 4; Gatewood Att. A; S. Johnson Att. A; Kennedy Att. A; Kowal ¶
9; McMullen ¶ 7; Meier Att. A; Nelson Att. A; Whitney (BBB), Att. A-2.

1 money.⁵⁴ When consumers realize that they have been scammed, many seek a refund or
 2 otherwise file a complaint against BGM with a government agency⁵⁵ or the BBB.⁵⁶

3 Many consumers seek to obtain a refund by calling the phone number associated with
 4 BGM on the billing descriptor.⁵⁷ But to no avail. In many instances, when consumers have
 5 called this number, no one answers the phone, they are disconnected, or, after notifying the
 6 person who answers the phone about the nature of the call, they are put on hold indefinitely.⁵⁸

7 Consumers do not necessarily have better luck when working through the BBB.⁵⁹ Kirit
 8 Patel receives these complaints at his Tracy home⁶⁰ and personally responds.⁶¹ Rather than
 9 providing refunds, however, he fabricates reasons why he is not able to issue the refund or
 10 falsely claims a refund has been made.⁶²

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 12 ⁵⁴ Allen ¶ 14; Broxton Att. A; Carson-Huff ¶ 6; Crandell ¶ 8; B. Foster ¶ 6; Gervais ¶¶ 5-7; T. Johnson ¶¶ 5-6;
 Kennedy Att. A; Whitney (BBB), Atts. A-10, A-28.

13 ⁵⁵ Allen ¶ 15; Andrews ¶ 3, Att. A; Barringer Att. H; Broxton ¶ 4, Att. A; Carson-Huff ¶ 22; Gatewood ¶ 3, Att. A;
 14 Grossi ¶ 3, Att. A; Housel ¶ 3, Att. A; S. Johnson ¶ 3, Att. A; Kennedy ¶ 3, Att. A; Kowal ¶ 10, Att. A; Lee ¶ 3, Att.
 A; Meier ¶ 3, Att. A; Mutchler ¶¶ 9-10, Atts. C-D; Nelson ¶ 3, Att. A; Whitney (BBB) Att. A; Sabhi Att. S.

15 ⁵⁶ Whitney (BBB) *passim*.

16 ⁵⁷ Carson-Huff ¶ 22; Housel Att. A; Whitney (BBB) Att. A-28.

17 ⁵⁸ Flahaut ¶ 5 (“went to the voice mail”); W. Foster Att. B (“contact number that only have a voice mail box that
 18 most of the time is filled”); Housel Att. A (“on hold for long periods of time”); S. Johnson Att. A (consumer
 attempted to call “the number that was left on [her] phone” but was unable to reach anyone); Whitney (BBB) Att. A-
 19 9 (“disconnected and when I called back was put on hold for 30 minutes and disconnected again”), A-28
 (“disconnected”); *see also* Carson-Huff Att. M (email to BGM about the unfulfilled promise of a refund).

20 ⁵⁹ Barringer ¶ 11, Att. G; T. Johnson ¶ 6, Att. B; Kowal ¶ 11, Att. B; Whitney (BBB) ¶ 4, Att. A.

21 ⁶⁰ Whitney (BBB) ¶ 5.

22 ⁶¹ Whitney (BBB) ¶ 6, Att. B (Although the BBB letters bear the signature block “Broadway Global Masters Inc. -
 23 Team” (*id.*), a facial comparison of the signature on those documents to Kirit Patel’s signatures on other official
 documents (*e.g.*, Sabhi Atts. B-1, D-1, M-3, N-2) indicates that it was Patel who signed the letters.).

24 ⁶² Carson-Huff ¶¶ 8 (“We are unable to find your records”), 12 (“We are sorry but your provided information’s [sic]
 25 are not matching with our records.”), Atts. D, G (“Paid In Full” letter), H; Housel Att. A (one excuse for not
 providing refund was confusion regarding brand of credit card used to pay); Kowal ¶ 13 (From Patel, “she had
 26 misunderstanding between Broadway Global Master (BGM) and some company called ‘BMG’. . . she does not have
 any issue with our company on said complaint.”); Whitney (BBB), Atts. A-22 (“supervisor name John Hudson
 27 inform[ed the consumer] that they will credit [his] account and it has not been done yet.”), A-26 (“offering to refund
 money into an account that is not mine.”), A-28 (asked for “the last 4 digits of the card” then told “can’t” and then
 28 told call “before 4:30” but never given refund), B-1 (“outsourced our call centre to sum [sic] East Asian Countries
 six month back . . . put immediate stop on our outsource partner . . . from now on our company cannot get any

1 Numerous victims also challenge the charges with their banks or credit card companies to
2 obtain a reversal of the transaction or chargeback.⁶³ Chargeback requests by consumers who
3 paid Defendants using a MasterCard triggered a “Special Merchant Audit” related to fraudulent
4 transactions.⁶⁴ By the end of December 2011, consumers’ chargeback requests had resulted in
5 more than \$950,000 being returned or charged back to consumers.⁶⁵

6 BGM’s merchant processor forwarded **at least 544 of these chargeback requests** to
7 Patel at his home address.⁶⁶ These requests catalogue all of the elements of Defendants’ scam,
8 including that

- 9 • The victim’s actual payday lenders did not receive money collected by Defendants⁶⁷ and
10 had not authorized Defendants to collect any debt.⁶⁸
- 11 • The transaction was not authorized by the account holder.⁶⁹
- 12 • Defendants’ collectors claimed to be law enforcement officers⁷⁰ and lawyers,⁷¹ and

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17 complaints like this.”), B-4 (false claim from Patel, “We have already contacted Ms Webrand and resolved the issue
18 to her satisfaction, by refunding the charged amount.”), B-6 (false claim from Patel, “resolved the issue to her
19 satisfaction, by refunding the full amount that was charged.”), B-7 (false claim from Patel, “resolved the issue to his
20 satisfaction, by refunding the full amount.”).

21 ⁶³ Allen ¶ 15; Andrews ¶ 3, Att. A; Barringer Att. H; Broxton ¶ 4, Att. A; Gatewood ¶ 3, Att. A; Grossi ¶ 3, Att. A;
22 Housel ¶ 3, Att. A; S. Johnson ¶ 3, Att. A; Kennedy ¶ 3, Att. A; Kowal ¶ 10, Att. A; Lee ¶ 3, Att. A; Meier ¶ 3, Att.
23 A; Mutchler ¶¶ 9-10, Atts. C-D; Nelson ¶ 3, Att. A; Whitney (BBB) Att. A-2.

24 ⁶⁴ Sabhi ¶¶ 62-63, Att. S-5-9.

25 ⁶⁵ *Id.* ¶ 57.

26 ⁶⁶ *Id.* ¶ 59.

27 ⁶⁷ Sabhi ¶ 61, Atts. R-14, R-39, R-49, R-79, R-99, R-100, R-106, R-125, R-132.

28 ⁶⁸ *Id.* at Atts. R-14, R-27, R-49, R-79, R-106, R-132, R-158, R-193, R-243.

⁶⁹ *Id.* at Atts. R-6, R-73, R-141, R-176, R-193, R-256, R-264.

⁷⁰ *Id.* at Atts. R-39, R-100, R-158, R-168, R-176, R-181, R-183-84, R-199, R-243, R-256, R-270, R-275.

⁷¹ *Id.* at Atts. R-46-48, R-123-24, R-193.

1 threatened victims with arrest⁷² and lawsuits.⁷³

- 2 • Defendants' collectors contacted consumers' workplaces.⁷⁴
- 3 • Victims had filed police reports⁷⁵ or otherwise had contacted Consumer Affairs, the BBB,
- 4 an Attorney General's office, the FBI, the Secret Service, or the FTC to complain.⁷⁶
- 5 Finally, many of the requests report that bank officials and other third parties characterized
- 6 BGM's enterprise as "fraudulent" or a scam.⁷⁷ In the face of these voluminous and detailed
- 7 complaints, Patel continues to perpetrate BGM's fraud, unabated.

8 **E. Defendants' lack of authority to collect payments from victims.**

9 If consumers do owe money, it is not to the Defendants. Notwithstanding the description

10 on BGM's website purporting to offer debt collection services,⁷⁸ there is absolutely no indication

11 that the Defendants collect any legitimate debts. BGM has failed to provide any documentation

12 whatsoever demonstrating that the consumers it contacts have a debt or that BGM is authorized

13 to collect it, despite numerous requests from consumers.⁷⁹ Payments that consumers make to

14 Defendants are not applied to actual debts owed to their payday lenders.⁸⁰ Consumers who

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17 ⁷² *Id.* at Atts. R-34, R-47, R-63, R-65, R-79, R-115, R-158, R-168, R-176, R-181, R-183, R-214, R-243, R-270, R-

18 275.

19 ⁷³ *Id.* at Atts. R-21, R-39, R-123, R-256.

20 ⁷⁴ *Id.* at Atts. R-47-50, R-66, R-79.

21 ⁷⁵ *Id.* at Atts. R-124, R-132-133, R-141, R-148-49, R-158, R-168, R-193, R-214.

22 ⁷⁶ *Id.* at Atts. R-39, R-50, R-57, R-86, R-91, R-169, R-270, R-275.

23 ⁷⁷ *Id.* at Atts. R-27, R-39-40, R-48-50, R-57, R-63, R-66, R-79, R-100, R-158, R-168-69, R-193, R-214, R-243, R-

24 270.

24 ⁷⁸ *Id.* ¶ 23.

25 ⁷⁹ Carson-Huff ¶¶ 7, 9, Atts. C, E; Kennedy Att. A (Consumer "was told [BGM] could only fax [him] the

26 documentation [on the outstanding loan] or send [him] the information in the mail. [BGM] could not email anything

27 for security purposes." Consumer "setup [his] fax machine" but never received anything from BGM via fax or

28 mail.); Kowal ¶ 4.

⁸⁰ Andrews Att. A; Barringer ¶ 9; W. Foster ¶ 4; Gatewood Att. A; S. Johnson Att. A; Kennedy Att. A; Kowal ¶ 9;

McMullen ¶ 7; Meier Att. A; Nelson Att. A; Whitney (BBB), Atts. A-2, A-10.

1 contact their payday lenders are told that the collection calls from Defendants are fraudulent.⁸¹
 2 These types of practices have grown so prevalent that the Online Lenders Alliance, a trade
 3 organization for these lenders, has posted a consumer alert on its website to warn consumers
 4 about this very issue, as have several individual payday lenders.⁸²

5 **F. Defendants' responsibility for the collection calls.**

6 The telephone calls to consumers originate from a boiler room in India, and the
 7 Defendants provide the means for those calls to be placed. Defendants' bank records reflect
 8 more than \$1 million in payments to a "Voice Over IP" ("VoIP") service provider.⁸³ A sampling
 9 of records from the Defendants' account with the VoIP provider shows that, over the course of
 10 just seven months, Defendants's scheme involved more than **2.7 million calls** and more than
 11 **600,000 phone numbers** in the U.S.⁸⁴ The records provide specific information about each call,
 12 including the telephone number to which it was made, the date, time and duration of the call, and
 13 the IP address of the computer where the call originated.⁸⁵ Included on these records are calls to
 14 consumers who filed complaints against BGM, including six consumers whose declarations are
 15 filed in support of this motion.⁸⁶

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 18 ⁸¹ Andrews Att. A; W. Foster ¶ 4; Gatewood Att. A; S. Johnson Att. A; Kennedy Att. A; Kowal ¶ 9; McMullen ¶ 7;
 19 Meier Att. A; Nelson Att. A; Whitney (BBB), Att. A-2; Sabhi ¶ 61, Atts. R-27, R-39-40, R-49, R-79, R-158, R-168,
 R-193.

20 ⁸² Sabhi ¶¶ 67, 69, Att. V (various industry consumer alerts). Additionally, the FTC, many state attorneys general,
 21 the FDIC, and the FBI's Internet Crime Complaint Center have also issued alerts to warn consumers about this type
 of fraudulent payday loan collection calls. *Id.* ¶ 68, Att. W (various government agency consumer alerts); *see also id.*
 ¶ 66, Att. U (article about this type of fraud from *Sacramento Bee.*).

22 ⁸³ Sabhi ¶ 26 (Bank records show that Defendants paid Allianz Infonet \$1.07 million from July 2010 through
 23 December 2011).

24 ⁸⁴ Sabhi ¶ 28.

25 ⁸⁵ *Id.* Although the IP addresses indicate that the calls originate in India, consumers' caller ID does not reveal that
 26 location. Consumers report their caller ID displaying domestic phone numbers. *See, e.g.,* Gervais ¶¶ 9, 10 (number
 27 shown on caller ID was 646-918-0991 but told to call back 347-637-6457 and 646-727-4981); T. Johnson ¶ 2
 (consumer was told to call 510-256-0381); Kowal ¶ 2 (was provided the following phone numbers: 914-721-0566,
 409-239-7081, 409-440-4184, 646-571-3306), Kowal II ¶¶ 4, 6 (caller ID indicated that the calls came from 401-
 526-3373, 209-205-4002, 409-420-2321.).

28 ⁸⁶ Sabhi ¶ 30.

1 Moreover, Defendants have asserted that these collectors are their agents. First, in a
 2 letter to the BBB, Patel states that BGM “outsourced [its] call centre [sic] to sum [sic] East
 3 Asian Countries.”⁸⁷ Second, in a “Business Plan” submitted as part of his application for a
 4 merchant processing account, Patel explains: “Basically we outsource our calling process to call
 5 centres offshore, they conduct calling and approach to our so called customers”⁸⁸ Thus, it is
 6 not surprising that the call records also include a 39-minute call from the call center to Patel
 7 himself.⁸⁹

8 **G. The substantial injury caused by Defendants.**

9 Defendants collected and processed at least **\$5,275,116** from cash-strapped consumers in
 10 less than 2 years.⁹⁰ Of this amount, their merchant processor has returned or charged back
 11 approximately **\$956,478**, yielding a total consumer injury amount of **\$4,318,637** for that time
 12 period.⁹¹

13 The injury that Defendants have wrought on American families has resulted in far more
 14 than financial harm – it also has impaired the quality of life for many victims. Defendants prey
 15 on vulnerable consumers who are already in a tenuous financial situation.⁹² For consumers who
 16 are struggling to make ends meet, being strong-armed into making these bogus payments means
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 18

19 ⁸⁷ Whitney (BBB) Att. B-1.

20 ⁸⁸ Sabhi ¶ 50b, Att. P-1.

21 ⁸⁹ Sabhi ¶ 32.

22 ⁹⁰ Sabhi ¶ 56.

23 ⁹¹ Sabhi ¶ 58.

24 ⁹² Carson-Huff ¶ 2 (“My husband of 42 years passed away in 2010 and I applied for payday loans via the Internet to
 25 help me get through a financially difficult period.”); Kennedy Att. A (“When I asked them the name of the company
 26 I was told they represent multiple companies and I had a couple of Pay Day loans at the time that made sense.”);
 27 Kowal ¶ 15 (“I lived in fear that I would lose my job.”); Lee Att. A (“trying to pay back 2 cash loans that I
 28 borrowed earlier this year. Since that time, my job was terminated and I wasn’t able to pay them back.”); McMullen
 ¶ 2 (“In early 2011, I took out a payday loan from Cashnet USA. I defaulted on the loan, but was able to work out a
 payment schedule directly with Cashnet USA.”); Nelson Att. A (“I was under the impression that they were
 representing the company that I actually worked with which is Cash Yes.”); Whitney (BBB) Att. A-14 (“I can lose
 my job over this.”).

1 that they have nothing left over to cover legitimate expenses.⁹³ For example, Defendants’
 2 scheme prevented at least two mothers from buying Christmas presents for their families.⁹⁴
 3 Moreover, Defendants have significantly inconvenienced consumers, including forcing one
 4 consumer to change her phone number in effort to make the calls stop,⁹⁵ and others to close their
 5 credit cards, debit cards, and bank accounts.⁹⁶ Finally, their harassment and abuse have taken a
 6 significant emotional toll, leaving consumers shaken and upset.⁹⁷ As one consumer declarant
 7 explains, “I lived in fear that the police were going to come knocking on my door. I lived in fear
 8 that I would lose my job. I lived in fear that I was being watched. Even now, my blood pressure
 9 rises every time the phone rings.”⁹⁸

13 ⁹³ Barringer ¶ 10 (“Because of the amount withdrawn from my account, I no longer had enough money in the
 14 account to pay my bills”); Housel Att. A (“ I tried to purchase gas at Sheetz and my card was declined for
 15 insufficient funds.”); McMullen ¶ 6 (“My debit card company denied payment to Cashnet [a legitimate debt]
 because there was not enough money in my account.”); Whitney (BBB) Att. A-7 (“I was at walmart at the time of
 the call. I go to check out and my card declines.”).

16 ⁹⁴ Whitney (BBB) Atts. A-3 (“my family will have no Christmas, because this company ruined my life”), A-7 (“I
 17 was trying to buy my children Christmas presents and wasn't able to
 because of this matter.”); *see also* Barringer ¶ 7 (harassment calls ruined birthday celebration).

18 ⁹⁵ Barringer ¶ 16.

19 ⁹⁶ Barringer ¶ 10 (“I cancelled my credit card, closed my bank account, and had all of my checks destroyed.”);
 20 Gatewood Att. A-4 (“due to my situation of fraud I can not [sic] use my account”); Gervais ¶ 7 (“I was concerned
 21 that Officer Philips might have been able to drain all the funds in my bank account through my debit card, so I
 cancelled my debit card.”); McMullen ¶ 8 (“I immediately closed down my prepaid debit card account so that
 American Payday, Inc. could not take any more money from me.”); Mutchler ¶ 9 (“I requested that Citibank close
 my account so that no further charges could be made by Broadway Global Master.”).

22 ⁹⁷ Barringer ¶ 10 (“I was very upset and started crying.”); Carson-Huff ¶¶ 5 (“I was scared”), 27 (“This whole
 23 experience has been stressful, time-consuming, and very upsetting.”); Foster ¶ (I was confused and scared”); Gervais
 24 ¶ 3 (“He threatened me with arrest, so I was seriously concerned . . . I was scared”); T. Johnson ¶¶ 2 (“Other callers
 also threatened me and said they would arrest me and take away my children. I specifically recall one of the callers
 25 saying, ‘How will your kids feel when you get arrested?’”), 5 (“One of my employees answered my business phone
 and later told me that the caller had cursed at her because she wouldn't transfer the call to me.”); Kowal ¶ 3 (“The
 26 calls scared me and I was often shaking when I hung up the phone.”); Kowal II ¶ 9 (“I am extremely upset that I
 continue to receive calls from individuals claiming to be law enforcement officers.”); Whitney (BBB) Atts. A-5
 (“she got scared”), A-14 (“I was scared), A-24 (“I was scared . . . I felt threatened”), A-28 (“I became scared”); *see*
 27 *also* B. Foster ¶ 4 (“I was recovering from oral surgery and felt groggy from pain medication. When the debt
 collector called, I was lying on the couch resting.”).

28 ⁹⁸ Kowal ¶ 15.

1 **IV. ARGUMENT**

2 Defendants employ false claims and abusive tactics that have bilked consumers out of
 3 millions of dollars. These practices violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and
 4 the FDCPA, 15 U.S.C. §§ 1692, *et seq.* The FTC seeks an *ex parte* temporary restraining order
 5 that stops the wrongful practices, freezes Defendants' assets, grants immediate access to
 6 Defendants' business premises, orders an accounting, grants limited expedited discovery,
 7 requires the retention of business records, and orders Defendants to show cause why a
 8 preliminary injunction should not issue. The Court has full authority to enter the requested
 9 relief, which is strongly supported by the evidence. Districts courts in the Ninth Circuit have
 10 routinely granted similar TROs in FTC actions.⁹⁹ The Ninth Circuit has affirmed numerous
 11 cases where courts granted the type of injunctive relief requested here.¹⁰⁰

12 **A. This Court has the authority to grant the requested relief.**

13 Section 13(b) of the FTC Act provides that “in proper cases the FTC may seek, and after
 14 proper proof, the court may issue, a permanent injunction.” 15 U.S.C. § 53(b); *see Singer*, 668
 15 F.2d at 1111. Once the FTC invokes the federal court's equitable powers, the full breadth of the
 16 court's authority is available, including the power to grant restitution. *FTC v. Network Servs.*
 17 *Depot, Inc.*, 617 F.3d 1127, 1141 (9th Cir. 2010). Incident to its authority to issue permanent
 18 injunctive relief, this Court has the inherent equitable power to grant all temporary and
 19 preliminary relief necessary to effectuate final relief, including an *ex parte* TRO, an asset freeze
 20 (including a freeze on individual assets), expedited discovery, a preliminary injunction, and other
 21 necessary remedies. *FTC v. Stefanich*, 559 F.3d 924, 931 (9th Cir. 2009) (“The district court
 22

23 ⁹⁹ *See, e.g., FTC v. Corzine*, 2:94-cv-1446 (E.D. Cal. filed Sept. 12, 1994) (credit repair scam); *FTC v. Shared*
 24 *Network Services Servs.*, 2:99-cv-1099 (E.D. Cal. filed June 2, 1999) (internet cramming); *see also FTC v. American*
 25 *Credit Crunchers, Inc.*, 12-cv-1028 (C.D. Cal. filed Feb. 14, 2012) (bogus debt collection scam, analogous to the
 26 practices alleged herein) (copy of TRO attached as Sabhi Att. X); *FTC v. Rincon Management Services Mgmt. Servs.,*
LLC, 5:11-cv-01623 (C.D. Cal. filed Oct. 11, 2011) (deceptive and abusive debt collection practices); *FTC v.*
Forensic Case Management Services Mgmt. Servs., 2:11-cv-7484 (C.D. Cal. Sept. 12, 2011) (same).

27 ¹⁰⁰ *See, e.g., FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1232 (9th Cir. 1999) (*ex parte* TRO, preliminary
 28 injunction, asset freeze); *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997) (*ex parte* TRO,
 preliminary injunction); *FTC v. World Wide Factors*, 882 F.2d 344, 347 (9th Cir. 1989) (TRO, preliminary
 injunction, asset freeze); *Singer*, 668 F.2d at 1109 (preliminary injunction, asset freeze).

1 has broad authority under the FTC Act to ‘grant ancillary relief necessary to accomplish
2 complete justice’”) (quoting *FTC v. Pantron I*, 33 F.3d 1088, 1102 (9th Cir. 1994)); *Singer*,
3 668 F.2d at 1113 (“We hold that Congress, when it gave the district court authority to grant a
4 permanent injunction against violations of any provisions of law enforced by the Commission,
5 also gave the district court authority to grant any ancillary relief necessary to accomplish
6 complete justice”). In fact, Congress observed that Section 13(b) “authorizes the FTC to
7 file suit to enjoin any violations of the FTC Act. The FTC can go into court *ex parte* to obtain an
8 order freezing assets, and is also able to obtain consumer redress.” S. Rep. No. 103-30, at 15-16
9 (1993), reprinted in 1994 U.S.C.C.A.N 1776, 1790-91.

10 **B. The FTC meets the applicable legal standard for issuance of**
11 **a temporary restraining order and preliminary injunction.**

12 The evidence submitted by the FTC meets the standard for issuing a TRO and a
13 preliminary injunction. To grant the Commission a temporary restraining order or preliminary
14 injunction to enforce the FTC Act, the Court must only “(1) determine the likelihood that the
15 Commission will ultimately succeed on the merits and (2) balance the equities.” *FTC v.*
16 *Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999) (quoting *FTC v. Warner*
17 *Commc’ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)); *see also FTC v. World Wide Factors*, 882
18 F.2d 344, 346 (9th Cir. 1989) (holding same). The FTC has a lighter burden than private
19 litigants and “need not show irreparable harm.” *Affordable Media*, 179 F.3d at 1233 (quoting
20 *Warner Commc’ns*, 742 F.2d at 1159); *United States v. Odessa Union Warehouse Co-op*, 833
21 F.2d 172, 174-75 (9th Cir. 1987).

22 As to the first prong, the FTC need show only “some chance of probable success on the
23 merits.” *World Wide Factors*, 882 F.2d at 347 (“Because irreparable injury must be presumed in
24 a statutory enforcement action, the district court need only to find some chance of probable
25 success on the merits.”) (quoting *Odessa Union*, 833 F.2d at 176). The FTC can prove its claims
26 through a small number of injured consumers, from which a court can infer a pattern or practice
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28

1 of deceptive behavior. *FTC v. Sec. Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir.
2 1991); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989).

3 As to the second prong, in balancing the equities, the “public interest should receive
4 greater weight” than private interests. *World Wide Factors*, 882 F.2d at 347. This principle is
5 particularly true where a defendant’s business is rooted in deception, for “[a] court of equity is
6 under no duty ‘to protect illegitimate profits or advance business which is conducted
7 [illegally].’” *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977),
8 *cert. denied*, 438 U.S. 905 (1978) (quoting *FTC v. Thomsen-King & Co.*, 109 F.2d 516, 519 (7th
9 Cir. 1940).

10 **1. The FTC is likely to succeed on the merits.**

11 **a. Defendants’ deceptive practices violate the FTC Act (Count I).**

12 The FTC is likely to show that Defendants are violating Section 5(a) of the FTC Act.
13 Section 5(a) prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15
14 U.S.C. § 45(a). An act or practice is deceptive under Section 5(a) if it involves a material
15 representation, omission, or practice that is likely to mislead consumers, acting reasonably under
16 the circumstances, to their detriment. *Stefanchik*, 559 F.3d at 928. The FTC need not prove
17 reliance by each consumer misled by Defendants. *See FTC v. Figgie Int’l, Inc.*, 994 F.2d 595,
18 605 (9th Cir. 1993); *FTC v. Gill*, 183 F. Supp. 2d 1171, 1185 (C.D. Cal. 2001). A representation
19 or omission is material if it is likely to affect a consumer’s decision. *FTC v. Cyberspace.com,*
20 *LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006). Express claims, or deliberately made implied claims,
21 used to induce a consumer’s action, are presumed to be material. *Pantron I*, 33 F.3d at 1095-96;
22 *FTC v. Dinamica Financiera LLC*, 2010 U.S. Dist. LEXIS 88000, at *35 (C.D. Cal. Aug. 19,
23 2010). Moreover, consumer reliance on express claims is presumptively reasonable. *FTC v.*
24 *Data Med. Capital, Inc.*, 2010 U.S. Dist. LEXIS 3344, at *76-77 (C.D. Cal. Jan. 15, 2010)
25 (citations omitted). To establish a claim under Section 5(a) of the FTC Act, the FTC need not
26 prove that Defendants’ misrepresentations were made with an intent to defraud or deceive. *FTC*
27 *v. Publ’g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997).

1 As discussed in Section III.B.-E., *supra*, Defendants misrepresent the following to
2 consumers: (1) that the consumer is delinquent on a payday loan that Defendants have the
3 authority to collect; (2) that Defendants are a law enforcement authority or that they are
4 otherwise affiliated with a government agency; (3) that the consumer will be arrested or
5 imprisoned for failing to pay the Defendants; and (4) that the Defendants can or will take formal
6 legal action against a consumer who fails to pay, such as filing suit.

7 These representations are presumed to be material because Defendants make them
8 expressly. Moreover, they are likely to affect – and in fact have affected – consumers’ conduct.
9 The FTC has shown a likelihood of success on its claim that Defendants are engaging in
10 deceptive practices in violation of the FTC Act.

11 **b. Defendants’ practices violate the FDCPA.**

12 The FTC is likely to show that Defendants are debt collectors engaging in deceptive and
13 abusive practices that violate the FDCPA. In 1977, the “FDCPA was enacted as a broad
14 remedial statute designed to ‘eliminate abusive debt collection practices by debt collectors, to
15 insure that those debt collectors who refrain from using abusive debt collection practices are not
16 competitively disadvantaged.’” *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1060 (9th
17 Cir. 2011) (quoting 15 U.S.C. § 1692(e)); *see Schwarm v. Craighead*, 552 F. Supp. 2d 1056,
18 1069 (E.D. Cal. 2008).

19 The FDCPA applies where the collection is regarding an “*alleged* obligation of a
20 consumer to pay money.” 15 U.S.C. § 1692a(5) (emphasis added). Thus, it applies here where
21 Defendants are attempting to collect a debt that is not actually owed.

22 The FDCPA sets forth a nonexclusive list of unlawful debt collection practices and
23 provides for public enforcement by the FTC. Although Defendants violate several provisions of
24 the FDCPA, a single violation is sufficient to establish civil liability. *Del Campo v. Am.*
25 *Corrective Counseling Servs.*, 718 F. Supp. 2d 1116, 1132 (N.D. Cal. 2010); *Schwarm*, 552 F.
26 Supp. 2d at 1074. Violations of the FDCPA also violate the FTC Act for purposes of the FTC’s
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1 enforcement of the FDCPA. 15 U.S.C. § 1692l(a); *Jerman v. Carlisle, McNellie, Rini, Kramer*
2 *& Ulrich LPA*, 130 S. Ct. 1605, 1609 (2010).¹⁰¹

3 **i. Deceptive practices in violation of Section 807 of the**
4 **FDCPA (Count II).**

5 As described above, Defendants routinely and flagrantly violate the FDCPA through their
6 deceptive statements. Section 807 of the FDCPA prohibits the use of “any false, deceptive, or
7 misleading representation or means in connection with the collection of any debt.” 15 U.S.C. §
8 1692e. Section 807 lists examples of activities that violate its strictures, but provides that the
9 prohibited actions are not limited to these examples. *Id.* In determining whether a statement or
10 practice is deceptive, courts use the “least sophisticated consumer” standard to ensure that the
11 FDCPA protects “consumers of below average sophistication or intelligence,” or those who are
12 “uninformed or naive.” *Arrow Fin. Servs.*, 660 F.3d at 1061-62 (quoting *Duffy v. Landberg*, 215
13 F.3d 871, 874-75 (8th Cir. 2000)).

14 Defendants violate Section 807(2)(A) of the FDCPA by falsely representing the
15 character, amount, or legal status of any debt. 15 U.S.C. § 1692e(2)(A). As set forth above,
16 Defendants’ entire scheme relies on the false assertion that the consumers are delinquent on a
17 payday loan that Defendants have the authority to collect. To the extent the consumer has any
18 debt at all, Defendants have no authority to collect it. (*See* Section III.E., *supra*.)

19 Defendants violate Section 807(1) by falsely representing or implying that Defendants
20 are affiliated with the United States or a State. 15 U.S.C. § 1692e(1). Defendants’ callers
21 routinely assert that they are, or are calling on behalf of, federal and state agencies. (*See supra*
22 notes 16-17.) In truth, they have no affiliation with any official government body.

23 Defendants violate Section 807(4) by falsely representing or implying that nonpayment
24 of a debt will result in the arrest or imprisonment of a person, when such action is not lawful or
25 when the Defendants have no intention of taking such action. 15 U.S.C. § 1692e(4). As shown
26 in Section III, Defendants routinely tell consumers that they will be arrested and /or put in jail if

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28 ¹⁰¹ In the face of Defendants’ flagrant violations of the FDCPA, it is noteworthy that BGM’s website specifically
boasts that they have been trained with respect to the Act. *See* Sabhi Atts. J-K.

1 they fail to pay Defendants the demanded sum. In fact, Defendants are not authorized to, and do
2 not intend to, have consumers arrested or imprisoned.

3 Defendants violate Section 807(5) by threatening to take action that is not lawful or that
4 the Defendants do not intend to take, such as filing suit. 15 U.S.C. § 1692e(5). As set forth in
5 Section III.E. *supra*, Defendants have no legitimate relationship to any debt owed by the
6 victimized consumers. As such, Defendants can not, and do not intend to, file suit or take any
7 other legal action against consumers.

8 Finally, Section 807(10) of the FDCPA prohibits using false representations or deceptive
9 means to collect or attempt to collect a debt or to obtain information concerning a consumer, in
10 violation of the FDCPA, 15 U.S.C. § 1692e(10). The FTC Staff Commentary on the Fair Debt
11 Collection Practices Act, 53 Fed. Reg. 50098-50110 (Dec. 13, 1988), Section 807 (2) explains
12 that “violation of any part of [S]ection 807 will usually also violate subsection (10).” In addition
13 to the other Section 807 violations discussed herein, Defendants also violate Section 807(10)
14 with their various and miscellaneous false threats, as set out in Section III.B., *supra*.

15 **ii. Abusive practices in violations of Section 806 of the**
16 **FDCPA (Count III).**

17 Defendants are also engaging in abusive practices that violate the FDCPA. Section 806
18 of the FDCPA bars debt collectors from engaging in “any conduct the natural consequence of
19 which is to harass, oppress, or abuse any person in connection with the collection of a debt.” 15
20 U.S.C. § 1692d. Section 806(2) specifically prohibits the use of obscene or profane language or
21 language the natural consequence of which is to abuse the hearer. 15 U.S.C. § 1692d(2).
22 Section 806(5) moreover prohibits causing a telephone to ring or engaging a person in telephone
23 conversation repeatedly or continuously with intent to annoy, abuse, or harass a person at the
24 called number. 15 U.S.C. § 1692d(5). As set forth above in Section III.B., Defendants routinely
25 engage in such tactics to force consumers to make a payment.

26 As described above, Defendants have made various false statements to consumers and
27 engaged in abusive practices in direct contravention of the FDCPA. Thus, the FTC has shown a
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1 likelihood of success on its claim that Defendants are engaging in deceptive and abusive
2 practices in violation of the FDCPA.

3 **2. The balance of equities favors issuance of a TRO.**

4 The equities support the issuance of a temporary restraining order in this case. Once the
5 FTC has shown a likelihood of success on the merits, the Court must balance the equities,
6 assigning greater weight to the public interest than to any of defendants' private concerns.
7 *Affordable Media*, 179 F.3d at 1236. The public equities in this case are compelling, as the
8 public has a strong interest in stopping the deceptive and abusive scheme, and in preserving the
9 assets necessary to provide effective final relief to victims. *See id.* at 1236; *FTC v. John Beck*
10 *Amazing Profits, LLC*, 2009 U.S. Dist. LEXIS 130923, at *50-51 (C.D. Cal. Nov. 17, 2009).
11 Defendants, by contrast, have no legitimate interest in continuing to deceive consumers and
12 persisting with conduct that violates federal law. *See World Wide Factors*, 882 F.2d at 347
13 (upholding district court finding of "no oppressive hardship to defendants in requiring them to
14 comply with the FTC Act, refrain from fraudulent representation or preserve their assets from
15 dissipation or concealment."). An injunction is required to ensure that Defendants' scheme does
16 not continue while the case is pending.

17 **C. Kirit Patel is individually liable.**

18 Patel is responsible for the deceptive and abusive practices of the corporations he
19 controls, and he therefore should be subject to the temporary restraining order and an asset
20 freeze. *Stefanchik*, 559 F.3d at 931; *Cyberspace.com*, 453 F.3d at 1202 (individuals can be liable
21 for corporate violations of the FTC Act). Individual liability for injunctive relief is appropriate
22 where the individual directly participated in or had the authority to control corporate acts and
23 practices. *Stefanchik*, 559 F.3d at 931; *FTC v. Medlab, Inc.*, 615 F. Supp. 2d 1068, 1081 (N.D.
24 Cal 2009). Authority to control can arise from assuming the duties of a corporate officer,
25 particularly when the corporate defendant is a small, closely-held corporation. *Amy Travel*, 875
26 F.2d at 573.

27 Individuals may also be liable for monetary relief if they had knowledge of the practices
28 at issue. *Publ'g Clearing House*, 104 F.3d at 1171. "The extent of an individual's involvement

1 in a fraudulent scheme alone is sufficient to establish the requisite knowledge for personal
2 restitutionary liability.” *Affordable Media*, 179 F.3d at 1235. Subjective intent to deceive or
3 actual knowledge of the deception is not necessary; reckless indifference to the truth or falsity of
4 a misrepresentation or an awareness of a high probability of fraud coupled with intentional
5 avoidance of the truth will suffice. *Cyberspace.com*, 453 F.3d at 1202; *Amy Travel*, 875 F.2d at
6 573-74. An individual’s awareness of a high volume of consumer complaints can also
7 demonstrate knowledge of a company’s deceptive practices. *Cyberspace.com*, 453 F.3d at 1202;
8 *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 995-96, 1005-06 (N.D. Cal. 2010).

9 Here, Patel both actively participates in the acts or practices of the Corporate Defendants
10 and has the authority to control them. As the sole officer and director of the closely-held
11 Corporate Defendants, he is able to control their acts and practices. *See, e.g., FTC v. World*
12 *Media Brokers*, 415 F.3d 758, 764-65 (7th Cir. 2005) (corporate officer “hard-pressed to
13 establish that he lacked authority or control” over corporate entity); *Publ’g Clearing House*, 104
14 F.3d at 1168, 1170-71. As set forth in Section II.G. *supra*, Patel also has complete control over
15 this operation’s finances. Likewise, as set forth in Section III.F. *supra*, he has asserted that he
16 has authority to control the callers.

17 Further, Patel also directly participates in the challenged practices. He collects and
18 processes payments that were procured by fraud. (*See* Section III.C. *supra*.) He paid for the
19 VoIP service provider used to place the deceptive calls. (*See* Section III.F. *supra*.) He set up the
20 merchant accounts that are needed to process credit or debit card payments from victims. (*See*
21 Section III.C. *supra*.) Finally, Patel personally responds to, and makes it difficult for, victims to
22 obtain refunds. (*See* Section III.D. *supra*.)

23 The evidence also shows that Patel has full knowledge of the false claims that are being
24 made. He received and responded to complaints lodged with the BBB. (*See* Section III.D.
25 *supra*.) He received hundreds of chargeback requests made by consumers, many of which detail
26 the tactics his company used. (*See id.*) This correspondence makes plain that Patel was fully
27 aware of the fraud perpetrated by the callers. Finally, as the only corporate officer and bank
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1 account signatory for BGM (*see* Sections II.A. and III.C. *supra*), Patel must know that his
2 companies are not making loans or purchasing actual debt from payday lenders.

3 Accordingly, Patel, having authority to control the challenges practices, participating in
4 them, and having full knowledge of them, should be held liable for the violations alleged in the
5 FTC's complaint.

6 **D. Defendants operate as a “common enterprise.”**

7 Defendants operate their scheme as a common enterprise. Factors for determining the
8 existence of a common enterprise include: (i) common control; (ii) sharing office space; (iii)
9 transacting business through interrelated companies; and (iv) commingling of funds.

10 *See FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993, 1011 (N.D. Ind. 2000) (citing
11 *Sunshine Art Studios v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973)), *aff'd*, 312 F.3d 259 (7th Cir.
12 2002); *see also FTC v. J.K. Publications*, 99 F. Supp. 2d 1176, 1201-02 (C.D. Cal. 2000);
13 *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746-47 (2nd Cir. 1964); *CFTC v. Wall Street*
14 *Underground, Inc.*, 281 F. Supp. 2d 1260, 1271 (D. Kan. 2003). Several of the factors are
15 present here. Kirit Patel acts as the sole officer and director for both companies and they operate
16 from the same business locations. Moreover, Broadway Global paid for certain of In-Arabia's
17 business expenses, such as for rent for the Pleasanton office.¹⁰² In short, there does not appear to
18 be any meaningful separation among Patel, Broadway Global, and In-Arabia, and they should all
19 be held liable for the actions of the common enterprise.

20 **E. The requested relief is necessary to effectuate final relief.**

21 **1. Asset freeze.**

22 The FTC will seek a final order that includes monetary restitution. To preserve the
23 availability of funds for injured consumers, the FTC requests that the Court issue an order
24 requiring the preservation of assets and evidence. Such an order is well within the Court's
25 authority. *World Wide Factors*, 882 F.2d at 347 (9th Cir. 1989) (“Since the FTC has shown a
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27 ¹⁰² Sabhi ¶ 46. The financial relationship between Broadway Global and In-Arabia is tangled. Bank records show
28 transfers to and from Broadway Global and various entities with the name In-Arabia. *Id.* ¶¶ 35, 37, 42, 73-74, Atts.
M-N.

1 probability of success on the merits, the district court did not abuse its discretion in granting the
2 injunction to freeze World Wide’s assets.”); *Singer*, 668 F.2d at 1113 (“13(b) provides a basis
3 for an order freezing assets.”).

4 “A party seeking an asset freeze must show a likelihood of dissipation of the claimed
5 assets, or other inability to recover monetary damages, if relief is not granted.” *Johnson v.*
6 *Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009). A defendant’s prior attempt to hide assets
7 establishes the likelihood that, without an asset freeze, the plaintiff will be unable to recover any
8 funds. *Affordable Media*, 179 F.3d at 1236 (likelihood of dissipation existed “[g]iven the
9 [defendants’] history of spiriting their commissions away to a Cook Islands trust”).

10 An asset freeze is appropriate here, given the magnitude of financial injury, the fact that
11 Defendants’ business is permeated by fraud, and Defendants’ history of suspicious financial
12 transactions. Specifically, Defendants, over the course of just 19 months, have transferred **\$4.8**
13 **million** – the lion’s share of its income – to various accounts, in this country and abroad.¹⁰³ Of
14 these transfers, Defendants have spirited away at least **\$3.8 million** via international wire
15 transfers to offshore accounts in the names of various business entities and individuals.¹⁰⁴

16 If Defendants’ potential liability exceeds the amount of assets in their possession, any
17 expenditure by Defendants will dissipate the already insufficient pool of assets that is likely
18 available to redress the consumer injury they have caused. A TRO that freezes Defendants’
19 assets would preserve the possibility of full and effective relief for defrauded consumers by
20 preserving the status quo pending a hearing on the preliminary injunction.

21 **2. Immediate access, preservation, and expedited discovery.**

22 In addition, immediate access to Defendants’ business premises is warranted to allow the
23 FTC to locate, copy, and preserve relevant evidence. Expedited discovery is also needed so that
24 FTC counsel can locate all of Defendants’ assets and business records. Likewise, requiring
25 Defendants to retain their business and financial records and provide a full accounting is

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27 ¹⁰³ Sabhi ¶¶ 36, 41, 55.

28 ¹⁰⁴ *Id.*

1 necessary for the same reasons. As the Declaration of FTC Counsel shows, when Defendants
2 learn of an FTC action to enjoin their unlawful behavior and to seek monetary relief for injured
3 consumers, they often dissipate assets and destroy documents.¹⁰⁵

4 **F. The TRO should be issued *ex parte*.**

5 To prevent Defendants from dissipating or concealing their assets, the requested TRO
6 should be issued *ex parte*. An *ex parte* TRO is warranted where the facts show that immediate
7 and irreparable injury, loss, or damage will occur before the defendants can be heard in
8 opposition. *See* Fed. R. Civ. P. 65(b). Here, as in similar FTC actions in the Ninth Circuit where
9 district courts have granted an *ex parte* TRO, there is a serious risk that assets and evidence
10 stemming from the illegal activity will disappear if Defendants receive prior notice.¹⁰⁶ In this
11 case, the blatantly deceptive nature of Defendants' scheme and the frequent and transfer of
12 substantial assets to overseas accounts point to a serious risk that Defendants will destroy
13 documents and dissipate assets if given advance notice of the Commission's motion.

14 **V. CONCLUSION**

15 Defendants have caused and are likely to continue to cause substantial injury to
16 consumers as a result of their violations of the FTC Act and FDCPA. Again, as summarized in
17 the words and sentiment of one consumer declarant, "I lived in fear that the police were going to
18 come knocking on my door. I lived in fear that I would lose my job. I lived in fear that I was
19 being watched. Even now, my blood pressure rises every time the phone rings."¹⁰⁷ The FTC
20 respectfully requests that the Court issue the requested TRO to prevent ongoing harm and to help
21 ensure the possibility of effective final relief, including monetary restitution, for consumer
22 victims like this one.

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25 ¹⁰⁵ *See* Declaration and Certification of FTC counsel Sarah Schroeder ¶¶ 4-7, filed concurrently herewith.

26 ¹⁰⁶ *See* Declaration and Certification of Plaintiff's Counsel Pursuant to Fed. R. Civ. P. 65(b) in Support of Plaintiff's
27 *Ex Parte* Motion for Temporary Restraining Order and Motion to Temporarily Seal File (describing need for *ex*
28 *parte* relief and citing cases in which defendants who learned of impending FTC action withdrew funds, destroyed
vital documents, and fled the jurisdiction).

¹⁰⁷ Kowal ¶ 15.

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Respectfully submitted,

2 WILLARD K. TOM
3 General Counsel

4 /s/

5 LISA D. ROSENTHAL, Cal. Bar # 179486
6 SARAH SCHROEDER, Cal. Bar # 221528
7 KERRY O'BRIEN, Cal. Bar # 149264
8 AUSTIN A.B. OWNBEY, Cal. Bar # 272197
9 Federal Trade Commission
10 901 Market Street, Ste. 570
11 San Francisco, CA 94103
12 (415) 848-5100 (voice), (415) 848-5184 (fax)
13 lrosenthal@ftc.gov, sschroeder@ftc.gov
14 kobrien@ftc.gov, aownbey@ftc.gov
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