

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,
600 Pennsylvania Ave NW
Washington, DC 20580,

Plaintiff,

v.

ONE OR MORE UNKNOWN PARTIES
DOING BUSINESS AS AMERICAN BILL PAY
ORGANIZATION AND AMERICAN
BENEFITS FOUNDATION

Defendant(s).

Case No.

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF EMERGENCY MOTION FOR
EX PARTE TEMPORARY RESTRAINING ORDER**

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I. INTRODUCTION

Plaintiff, the Federal Trade Commission (“FTC”), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and Section 410(b) of the Credit Repair Organizations Act (“CROA”), 15 U.S.C. §1679h(b), brings this action to halt Defendants’ deceptive practices that take advantage of vulnerable consumers seeking debt relief and credit repair services.

Through websites and other online and print promotional materials, Defendants falsely represent that they are, or are closely affiliated with, the federal government and official federal government debt relief programs. Touting a supposed program that would provide up to \$75,000 in government payments to consumers’ creditors, Defendants misappropriate government agency seals and the President’s image, voice, and signature.¹ Defendants leverage their false government affiliation representations to convince consumers to use their debt relief and credit repair services, and extract hefty advance fees from consumers of approximately \$1,000. Of course, Defendants’ claims are false, and their offer of debt relief and credit repair by way of \$75,000 in government payments to consumers’ creditors is entirely illusory.

To immediately halt Defendants’ illegal practices, and obtain the evidence necessary to locate the responsible parties, the FTC seeks, under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), issuance of a temporary restraining order (“TRO”) with an order to show cause why a preliminary injunction should not issue. The proposed TRO would enjoin Defendants’ illegal conduct, suspend Defendants’ websites and domain registrations, suspend a Blog article on Blogspot.com and two deceptive YouTube videos, and authorize expedited discovery. This relief is necessary to prevent continued harm to consumers, identify responsible parties, and preserve the Court’s ability to provide effective final relief.

¹ The agencies most directly affected by Defendants’ false affiliation claims—the Recovery Accountability and Transparency Board, United States Department of Treasury, and the White House—have all submitted declarations in support of the FTC’s action. (*See generally*, PX03 (Treasury Department), PX04 (White House), and PX05 (Recovery Board).)

II. FACTS

A. The Parties

1. The Federal Trade Commission

The FTC is an independent agency of the United States created by the FTC Act, 15 U.S.C. § 41 et seq. The FTC enforces, among other statutory provisions, Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Sections 404(a)(3) and 404(b) of the CROA, 15 U.S.C. § 1679b(a)(3), and § 1679b(b), which prohibit, respectively, the making or using of any untrue or misleading representation for credit repair services and the collection of fees before credit repair services are fully performed. The FTC is authorized, through its own attorneys, to initiate United States District Court proceedings in proper cases to enjoin violations of the FTC Act and the CROA to secure such equitable relief as may be appropriate in each case, including consumer redress. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, and 1679(h). *See, e.g., FTC v. Gem Merchandising Corp.*, 87 F.3d 466, 468 (11th Cir. 1996); *FTC v. Pharmtech Research, Inc.*, 576 F. Supp. 294, 298 (D.D.C. 1983).

2. The Defendants

Defendants are one or more individuals or entities doing business as American Bill Pay Organization and American Benefits Foundation who since at least January 2010 have misrepresented through websites, online videos, and other communications (a) that consumers can obtain up to \$75,000 by way of a government debt relief program and (b) their supposed affiliation with several federal government agencies. Defendants' identities and addresses are unknown to the Commission at this time.² By conducting business on the Internet, by

² Goldstein Decl. ¶¶ 30-33, PX06 0011-12.

Because the number of Defendants is unknown, the FTC refers to them in this memorandum as "Defendants." The legal basis for proceeding against unknown defendants is discussed in Part III.A, *infra*.

impersonating several federal government agencies, and by listing Washington, D.C. addresses on their websites,³ Defendants transact business in the District of Columbia.

B. The Recovery Act and the Recovery Board

In the past few years, the federal government has introduced and widely publicized a number of federal financial stability programs aimed at reviving the United States economy and saving and creating jobs. Many of those programs were created by the American Recovery and Reinvestment Act of 2009 (the “Recovery Act”) and are overseen by the Recovery Accountability and Transparency Board (the “Recovery Board”). The programs include, among other things, federal tax incentives and direct spending for infrastructure, education, health, and energy projects. *See generally*, American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009). The Recovery Act included a number of social welfare provisions, including the expansion of unemployment benefits, additional funding for food stamps, job training, and employment services programs, and one-time supplemental payments to social security, disability, and other pension recipients. *Id.* The Recovery Act programs are promoted through various government agency websites, which include official federal government seals and other iconic images and language.⁴

C. Defendants’ Deceptive Business Practices

As described below, Defendants, through websites, videos, a blog article on Blogspot.com, and direct communications to consumers, tout the “Bill Payment Government Assistance Program,” purportedly governed by the Recovery Board and offering government checks from the Treasury Department. The program is described in these communications as

³ Goldstein Decl. Att. A, PX06 0035 (www.americanbillpay.org); Att. C, PX06 0056 (www.established.com); Att. E, PX06 0073 (www.benefitsfoundation.org); Att. F, PX06 0086 (www.benefitsfoundation.org (second capture)); Att. G, PX06 0109 (www.benefitsfoundation.org (third capture)).

⁴ *See, e.g.*, www.recovery.gov (displaying official seals of the Recovery Board and Recovery.gov); www.treasury.gov/initiatives/recovery/Pages/recovery-act.aspx (displaying official seals of the Treasury Department and Recovery.gov).

providing up to \$75,000 in government grants to pay consumers' bills. Defendants' representations regarding the debt relief program they offer to consumers and their supposed government affiliation are entirely false.

1. Debt Relief and Credit Repair Services

Defendants' websites, videos, blog, emails, and letters make numerous representations regarding the supposed availability of up to \$75,000 in debt relief via government payments to as many as five of consumers' creditors, including mortgages, credit cards, medical and utility bills, or student or automobile loans. Defendants' representations include the following:

- This program awards \$25,000 paid directly to creditors; apply three times and receive \$75,000, guaranteed.⁵
- Our members are enrolled into the Bill Payment Government Assistance Program [] for a government award of \$25,000 per enrollment that is paid directly on their bills.⁶
- Would you throw away \$25,000? Did you say YES??? So why throw away this opportunity? We pay 5 of your bills!⁷
- Eliminate up to \$25,000 from your debt; REGISTER NOW; The Bill Payment Government Assistance Program is funded and governed by the RECOVERY.GOV⁸
- Members may apply for a second enrollment into the Bill Payment Government Assistance Program for an additional \$25,000 Government Grant Award⁹

Reinforcing the debt relief representations, one of the pages lists more than 100 creditors (easily recognizable credit card, insurance, utility, retail, and financial services companies) for whom payments are "pre-approved."¹⁰ One of the webpages claims that, as of February 2013,

⁵ Goldstein Decl. Att. B (video file at 00:32-43).

⁶ Goldstein Decl. Att. F, PX06 0078 (www.benefitsfoundation.org (second capture)).

⁷ Goldstein Decl. Att. B (video file at 01:41-43).

⁸ Goldstein Decl. Att. F, PX06 0076 (www.benefitsfoundation.org (second capture)).

⁹ Goldstein Decl. Att. F, PX06 0079 (www.benefitsfoundation.org (second capture)).

¹⁰ Goldstein Decl. Att. F, PX06 0082 (www.benefitsfoundation.org (second capture)); Att.

American Bill Pay Organization had successfully processed 9,815 registrations and disbursed more than \$482 million in debt relief payments from the government.¹¹

As a corollary to the debt relief claim, Defendants' websites, videos, blog, emails, and letters inform consumers that by participating in the program they are "guaranteed" to improve their credit ratings, scores, or limits:

- With the Bill Payment Government Assistance Program, you are guaranteed an increased credit score and the experience of financial stability, through the non-repayable government program funded under the American Recovery & Reinvestment Act of 2009.¹²
- Submit all your outstanding bills and enjoy the benefits of an improved credit score¹³
- American Benefits Foundation provides a government program that members can easily submit their bills for payment which increases their credit limit by an average 37%, increases the credit score within 30 days and eliminates up to \$50,000 in debt.¹⁴
- Member Benefits
 - \$25,000 paid directly on your bills
 - Increased Credit Score after 30 days
 - Increased Credit Limit by up to 37%¹⁵
- The Bill Payment Government Assistance Program
 - Free to Register
 - Improved Credit Score
 - Increased Credit Limit
 - Up to \$50,000 Debt Elimination¹⁶

G, PX06 0098-99 (www.benefitsfoundation.org (third capture)). Only one creditor name appears in a printout capture of these pages; when viewed on a computer browser, the pages cycle through numerous "participating" creditors.

¹¹ Goldstein Decl. Att. A, PX06 0035 (www.americanbillpay.org).

¹² Marshall Decl. Att. A, PX 02 00010.

¹³ Goldstein Decl. Att. A, PX06 0016 (www.americanbillpay.org).

¹⁴ Goldstein Decl. Att. G, PX06 0109 (www.benefitsfoundation.org (third capture)).

¹⁵ Goldstein Decl. Att. F PX06 0086 (www.benefitsfoundation.org (second capture)).

¹⁶ Goldstein Decl. Att. G, PX06 0093 (www.benefitsfoundation.org (third capture)).

- ***This is your opportunity to receive \$25,000 with an improved credit rating***¹⁷
- Register today and increase your credit score¹⁸

Despite Defendants' representations, there is in fact no program under the Recovery Act that provides for payments to consumers' creditors to relieve consumers' debts,¹⁹ much less payments totaling \$25,000, \$50,000, or \$75,000. Similarly, Defendants do not arrange any payments to consumers' creditors.²⁰ Therefore, Defendants do not in fact offer any service that improves consumers' credit records, credit histories, or credit ratings.

2. Government Affiliation Claims

Defendants' websites and videos make numerous representations claiming government affiliation. They repeatedly claim that the Bill Payment Government Assistance Program is a government program, stating in numerous webpages that the program is governed and funded by the Recovery Act, Recovery Board, and/or the Treasury Department, and that payments to consumers' creditors will be processed by the Recovery Board or Treasury Department. For example, the webpages contain the following representations:

- The Bill Payment Government Assistance Program is governed by the Recovery Board and funded under the American Recovery & Reinvestment Act of 2009.²¹

¹⁷ Marshall Decl. Att. D, PX02 0019.

¹⁸ Goldstein Decl. Att. B (video file at 1:20-25).

¹⁹ Siemplekamp Decl. ¶ 10, PX05 0004.

²⁰ Marshall Decl. ¶ 15, PX02 0004 (“Although I followed the instructions from American Bill Pay Organization and paid the required service charge, American Bill Pay Organization did not actually make any payments to any of my creditors.”); *id.* at ¶ 18, PX02 0005 (American Bill Pay did not contact consumer's creditors); Goldstein Decl. Att. W, PX 06 0278, 284, 286, 289, 0291, 0294, 0296, 0298, 0302, 0304, 0306, 0308, 0310, 0312, 0314, 0317, 0321, 0322, 0324, 0325, 0327, 0330, 0332, 0333, 0335 (complaints from consumers who paid the service charge but received no payments or other services on their behalf).

²¹ Goldstein Decl. Att. A, PX06 0015 (www.americanbillpay.org).

- American Benefits Foundation’s Bill Payment Government Assistance Program is governed and funded by the Recovery Accountability & Transparency Board and the Financial Management Services Office, a sub-division of the United States Department of Treasury.²²

The videos contain similar statements making government affiliation claims:

- Did you know that there is a housing benefit under the Recovery Act? This housing benefit is the Bill Payment Government Assistance Program provided by American Bill Pay, a pass-through entity.²³
- The Bill Payment Government Assistance Program is funded under the Housing Benefit of the American Recovery & Reinvestment Act of 2009 and funded by the Financial Management Service, a subdivision of the United States Department of Treasury.²⁴

The websites and videos further represent government affiliation by repeatedly using Recovery Board and Treasury Department seals and other iconic insignia (including images of Treasury Department checks), along with “governed and funded” hyperlinks to those two agencies and the U.S. Small Business Administration.²⁵ The websites and the videos also misuse the likeness of the President in the following ways: photographs of the President are displayed on the websites and in the videos (along with a purported quote lauding the Bill Payment Government Assistance Program), audio clips of his remarks about the Recovery Act and unemployment insurance are presented out of context (and appear to have been manipulated) on

²² Goldstein Decl. Att. F, PX06 0080 (www.benefitsfoundation.org (second capture)).

²³ Goldstein Decl. Att. B (video file at 00:16-30).

²⁴ Goldstein Decl. Att. I (video file at 02:14).

²⁵ Goldstein Decl. Att. A, PX06 0025 (www.americanbillpay.org); Att. B (video file at 00:14; 01:11-16; 1:41) (image of Recovery.gov logo; images of Treasury Department checks and Treasury Department seal; Recovery Board seal); Att. C, PX06 0051-53, 55 (www.established.com); Att. E, PX06 0065, 68 (www.benefitsfoundation.org); Att. F, PX06 0076 (www.benefitsfoundation.org (second capture)); Att. G, PX06 0093, 97 (www.benefitsfoundation.org (third capture)); Att. I (video file at 02:01-15 (use of Treasury Department header, Treasury Department seal, Recovery Board seal, and Recovery.gov logo).

The references to the Recovery Board, Treasury Department, and President are most pervasive, but one of the websites also uses the seal of the Department of Labor and Federal Trade Commission logo. Goldstein Decl. Att. A, PX06 0027, 0032.

the websites, and his signature and “I approve this message” audio are appended to the end of one of the videos.²⁶ Additionally, the websites provide Washington, D.C. addresses.²⁷

Defendants reiterate their government affiliation representations in emails to consumers that repeat the websites’ representations that the Bill Payment Government Assistance Program is governed and funded by the Recovery Act and administered by the Recovery Board and the Treasury Department.²⁸ In fact, some of Defendants’ emails to consumers appear to emanate directly from the Recovery Board.²⁹ Defendants also send letters via U.S. mail to consumers touting the Bill Payment Government Assistance Program; those letters also appear to emanate from the Recovery Board.³⁰

²⁶ Goldstein Decl. Att. A, PX06 0015-16, 32 (www.americanbillpay.org); Att. B (video file at 00:43; 1:21) (images of President); Att. G, PX06 0093 (www.benefitsfoundation.org (third capture)); Att. H (audio of President found on Defendants’ websites which appears to be manipulated at 00:36); Att. I (video file at 3:05, 3:20-21 (image of President, signature of President, and voice of President); Friedman Decl. ¶¶ 10-11, PX04 0003-4 (quotes and audio attributed to the President are fictitious or manipulated, and use of images, signature, and voice are unauthorized).

Defendants also operate a Facebook page that displays an image of the President and the Recovery.gov logo, and that links to www.benefitsfoundation.org. See <https://www.facebook.com/pages/American-Benefits-Foundation/429242070544258>.

²⁷ Goldstein Decl. Att. A, PX06 0032, 35 (www.americanbillpay.org); Att. C, PX06 0056 (www.established.com); Att. E, PX06 0073 (www.benefitsfoundation.org); Att. F, PX06 0086 (www.benefitsfoundation.org (second capture)); Att. G, PX06 0109 (www.benefitsfoundation.org (third capture)).

²⁸ Marshall Decl. Att. E, PX02 0021 (form using Recovery Board seal); *id.* at Att. H, PX02 0030 (stating that “Financial Management Services of the United States Treasury Department” will issue checks for payments); *id.* at Att. N, PX02 0053 (email to consumer using Recovery Board seal).

²⁹ Marshall Decl. Att. B, PX02 0012 (email that appears to emanate from the Recovery Board, uses the Recovery.gov logo, and is “signed” by “The Recovery Accountability and Transparency Board”).

³⁰ Siemplekamp Decl. Att. A, PX05 0007-08 (envelope lists “The Recovery Board” as the return address, and enclosed letter uses false Recovery Board letterhead feature the Recovery Board seal and a Washington, DC address in the footer).

In addition, Defendants use a blog on blogspot.com purportedly written by a neutral third party to bolster the government affiliation representation.³¹ The blog is purportedly written by a long-time journalist and current professor who claims to be “amazed that the United States government could be assisting families with grant awards exceeding \$200” or a “whopping \$25,000.”³² The purported author claims to have assigned his students the task of evaluating American Bill Pay, American Benefits Foundation, and a program called Citizens Debt Recovery, and reports on the “findings” of his students. The author claims, “All organizations report to the Recovery Board [<http://recovery.gov/>] and all government grants are ultimately awarded as government checks printed by the United States Department of Treasury and shipped by the organization itself.”³³ The blog in fact appears to have been posted by Defendants.³⁴

Notwithstanding Defendants’ numerous representations claiming government status, American Bill Pay Organization and American Benefits Foundation are not government agencies, and are not in any way affiliated with the Recovery Board, the Treasury Department, or any other government agency.³⁵ The “Bill Payment Government Assistance Program” is not governed and funded by or in any way affiliated with the Recovery Board or Treasury Department.³⁶ In fact, there is no program under the Recovery Act *at all* that provides for government payments to consumers’ creditors.³⁷ All use of Recovery Board, Treasury Department, and other government seals, logos, and insignia by American Bill Pay Organization and American Benefits Foundation in their websites, in their videos, and otherwise, is false and

³¹ Goldstein Decl. ¶¶ 27-29, PX06 0009-10; Goldstein Decl. Att. X, PX06 0338-341.

³² Goldstein Decl. Att. X, PX06 0338-39.

³³ Goldstein Decl. Att. X, PX06 0340.

³⁴ Goldstein Decl. ¶ 29, PX06 0010.

³⁵ Siemplekamp Decl. ¶¶ 8-9, PX05 0004; Delmar Decl. ¶ 7, PX03 0002.

³⁶ Siemplekamp Decl. ¶¶ 8-9, PX05 0004; Delmar Decl. ¶ 7, PX03 0002.

³⁷ Siemplekamp Decl. ¶ 10, PX05 0004.

unauthorized.³⁸ Emails and letters sent to consumers purporting to emanate from the Recovery Board touting a link between the Recovery Board and The Bill Payment Government Assistance Program are also false.³⁹

Likewise, the widespread use of the President's likeness (his image, his handwritten signature, and his "I approve this message" audio) in Defendants' websites and videos is unauthorized, and the quotations attributed to him in those promotional materials are likely fictitious and manipulated.⁴⁰

3. Collection of Advance Fees and Failure to Perform

Consumers visiting Defendants' websites and interested in the debt relief program complete an online form inputting basic contact information.⁴¹ Defendants then send to consumers emails instructing them to submit creditor name and account information for up to five outstanding bills.⁴² At this stage, consumers are not yet required to pay anything. When the consumers supply the requested information, Defendants initiate *temporary* payments to the identified creditors.⁴³ Consumers check with their creditors regarding the existence of any

³⁸ Siemplekamp Decl. ¶¶ 8-9, PX05 0004; Delmar Decl. ¶ 7, PX03 0002.

³⁹ Siemplekamp Decl. ¶¶ 5, 7-9, PX05 0002-04.

⁴⁰ Friedman Decl. ¶¶ 10-11, PX04 0003-04.

⁴¹ Goldstein Decl. Att. A, PX06 0015 (www.americanbillpay.org, Registration Page); Att. F, PX06 0096 (www.benefitsfoundation.org (second capture), "How does the Program work"); Att. W, PX06 0315, 35 (complaints from consumers who applied online).

⁴² Goldstein Decl. Att. W, PX06 0291, 302, 315 (complaints from consumers who received an email instructing them to submit their bills on one of Defendants' websites); Marshall Decl. ¶ 8 & Att. E, PX02 0002, 0022-23.

⁴³ Marshall Decl. Att. K, PX02 0042-43; Goldstein Decl. Att. W, PX06 0289 (Defendants made check by phone payment to consumer's creditor, which was later dishonored); *id.* at 0314 (Defendants made initial payments to consumer's creditor via phone call, but with "a bogus account"); 0316 (Defendants made payments to consumer's creditor with checks that were dishonored); 0329 (Defendants made payment to consumer's creditor from fraudulent bank account).

These consumer complaints and the FTC's investigation suggests that Defendants accomplish temporary payments to consumers' creditors by supplying the consumers' creditors with electronic fund transfer (EFT) instructions with fictitious bank account

payments on their behalf, and learn that payments are pending.⁴⁴ Once the temporary payments have been arranged, Defendants direct consumers to promptly pay their service fees, which are approximately (and in some cases exceed) \$1,000.⁴⁵ The consumers, reassured by the appearance of the purported payments and the numerous government affiliation claims, then pay the requested service fees.⁴⁶

Defendants require consumers to pay service charges via money transfer services including Western Union and MoneyGram.⁴⁷ Defendants sometimes direct payment to specific individuals,⁴⁸ and other times instruct consumers to transfer money to prepaid cash cards.⁴⁹ The prepaid cash cards are then used to withdraw cash at ATMs in Jamaica or for Internet purchases.⁵⁰

After paying their fees, consumers discover that the temporary payments have been reversed by the consumers' creditors when the faulty nature of the EFT instructions provided by Defendants is exposed.⁵¹ Defendants never make payments to consumers' creditors (or secure

information. Due to the nature of the EFT system, it may take several days before the payment fails and the creditor is notified that the EFT transaction was not successful. In other cases, it appears that Defendants send letters to consumers' creditors stating that payment is enclosed, but in fact checks are not included in the mailings. *See e.g.*, Goldstein Decl. Att. W, PX06 0298, 0300, 0302, 0306, 0324, 0333.

⁴⁴ Goldstein Decl. Att. W, PX06 0291 (consumer waited until his creditor reported a temporary payment before paying the service charge); *id.* 0321 (same).

⁴⁵ Marshall Decl. ¶ 12, PX02 0003.

⁴⁶ Marshall Decl. ¶ 12, PX02 0003.

⁴⁷ Goldstein Decl. ¶¶ 21, 24, PX06 0008; Att. A, PX06 0019 (www.americanbillpay.org); Att. E, PX06 0091 (www.benefitsfoundation.org); Att. W, PX06 0278-336; Marshall Decl. ¶¶ 11-12, PX02 0003.

⁴⁸ Marshall Decl. ¶ 11, PX02 0003.

⁴⁹ Goldstein Decl. ¶ 21, PX06 0008.

⁵⁰ Goldstein Decl. ¶ 24, PX06 0008.

⁵¹ Marshall Decl. ¶ 16, PX02 0004 (American Bill Pay purported to pay consumer's creditors, but payments were returned as unpaid); *id.* at Att. K, PX02 0044 (notice from creditor that payment was dishonored); Goldstein Decl. Att. W, PX06 0289 (Defendants

any type of debt relief for consumers) and consumers, therefore, never receive any debt relief or credit repair services in exchange for the \$1,000 (or more) in service fees paid to Defendants.⁵²

III. LEGAL ARGUMENT

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

This Court has the authority to grant preliminary and permanent relief pursuant to the second proviso of Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), which states that “in proper cases the FTC 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).⁵³ A case involving deceptive representations, such as this one, qualifies as a “proper case” under Section 13(b). *See, e.g., FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1028 (7th Cir. 1988); *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982).⁵⁴

made check by phone payment to consumer’s creditor, which was later dishonored); *id.* at 0321 (Defendants’ payment to consumer’s creditor reversed after consumer paid Defendants’ service charge); 0335 (Defendant’s payment to consumer’s creditor reversed).

⁵² Marshall Decl. ¶ 15, PX02 0004 (“Although I followed the instructions from American Bill Pay Organization and paid the required service charge, American Bill Pay Organization did not actually make any payments to any of my creditors.”); *id.* at ¶ 18, PX02 0005 (American Bill Pay did not contact consumer’s creditors); Goldstein Decl. Att. W, PX06 0278, 284, 286, 289, 0291, 0294, 0296, 0298, 0302, 0304, 0306, 0308, 0310, 0312, 0314, 0317, 0321, 0322, 0324, 0325, 0327, 0330, 0332, 0333, 0335 (complaints from consumers who paid the service charge but received no payments or other services on their behalf).

⁵³ 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. *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); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982) (holding that routine fraud cases may be brought under second proviso, without being conditioned on first proviso requirement that the FTC institute an administrative proceeding).

Section 13(b) confers full equitable powers on this Court. In addition to entering a permanent injunction, the Court may order the rescission of contracts, restitution, and/or disgorgement of ill-gotten gains. *Gem Merchandising*, 87 F.3d at 468-70; *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1314-15 (8th Cir. 1991); *Amy Travel*, 875 F.2d at 571-72. All preliminary equitable remedies are also available to the Court, including a preliminary injunction with an asset freeze and other ancillary relief. *Gem Merchandising*, 87 F.3d at 469; *U.S. Oil & Gas*, 748 F.2d at 1434; *see also FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346-47 (9th Cir. 1989); *Singer*, 668 F.2d at 1111-13; *FTC v. R.A. Walker & Associates, Inc.*, 37 B.R. 608, 609 n.2 (D.D.C. 1983) (denying motion of debtor-defendants to modify previously issued TRO imposing asset freeze). When, as here, the public interest is implicated, this Court's equitable powers "assume an even broader and more flexible character than when only a private controversy is at stake." *Gem Merchandising*, 87 F.3d at 469 (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)). Courts in the District of Columbia have repeatedly exercised their authority to grant TROs with ancillary equitable relief in FTC deception cases, and as demonstrated below, the relief requested by the FTC is warranted in this case.⁵⁵

On at least three prior occasions, this Court has entered temporary restraining orders at the FTC's request against unknown persons. *See FTC v. One or More Unknown Parties*

⁵⁴ A "proper case" includes any matter involving a violation of a law that the FTC enforces. *E.g.*, *Singer*, 668 F.2d at 1113; *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, 571-72 (7th Cir.), *cert. denied*, 493 U.S. 954 (1989). In fact, Congress observed that Section 13 "authorizes the FTC to file suit to enjoin any violations of the FTC [sic]. 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.

⁵⁵ *See, e.g.*, *FTC v. Cantkier, et al.*, Case No. 1:09-cv-00894-CKK (D.D.C. June 25, 2009); *FTC v. Ryan*, Case No. 1:09-cv-00535-HHK (D.D.C. Mar. 20, 2009); *FTC v. Global Web Solutions, Inc.*, Case No. 1:03-cv-2031-HHK (D.D.C. Oct. 3, 2003); *FTC v. Mountain View Systems, Ltd., et al.*, Case No. 1:03-cv-00021-RMC (D.D.C. Jan. 7, 2003); *FTC v. One or More Unknown Parties Falsely and Deceptively Advertising the Weight-Loss Product Known as Maxiline*, Case No. 1:00-cv-03035-ESH (D.D.C. Dec. 20, 2000).

Misrepresenting their Affiliation with the Making Home Affordable Program (docket later amended to FTC v. Cantkier), Civil Action No. 1:09-cv-00894 (CKK) (D.D.C. May 15, 2009) (temporary restraining order, including expedited discovery and order to third parties to disable defendants' paid hyperlink advertisements); *FTC v. One or More Unknown Parties Deceiving Consumers Into Seeking Home Loan Modification Through <http://bailout.hud-gov.us> and <http://bailout.dohgov.us>* (docket later amended to *FTC v. Ryan*), Civil Action No. 1:09-535-HHK (D.D.C. Mar. 20, 2009) (temporary restraining order, including expedited discovery and order to third parties to temporarily disable defendant's web sites and suspend defendant's Internet domain name registrations); *FTC v. One or More Unknown Parties Doing Business as the Institute for International Licensing (docket later amended to FTC v. Mountain View Systems)*, Civil Action No. 03-0021-RMC (D.D.C. Jan. 9, 2003) (*ex parte* temporary restraining order, including expedited discovery and restrictions on website registrations).

In addition, this Court has personal jurisdiction over Defendants, and venue is proper in the District of Columbia. Through their websites, Defendants transact business throughout the United States, including in the District of Columbia. Courts have found venue proper where the defendant solicited business over the internet. *Gorman v. Ameritrade Holding Corp.*, 239 F.3d 506, 512-513 (D.C. Cir. 2002) (general personal jurisdiction could exist over defendant that conducts business with District residents over the internet, but affirming dismissal on different grounds); *Gary Scott Int'l v. Baroudi*, 981 F. Supp. 714, 718 (D. Mass. 1997) (finding venue to be proper where a defendant solicited business from district residents through its internet website). Defendants on their websites list addresses in Washington, D.C., and include choice of law provisions in their consumer agreements identifying District of Columbia law.

In short, Defendants, as demonstrated in Part II.C.2, *supra*, hold themselves out as being located in the District of Columbia and misrepresent affiliation with the United States government headquartered in the District of Columbia. In general, a court will find that the exercise of personal jurisdiction over a nonresident defendant comports with due process when the defendant has purposefully established minimum contacts with the forum and the exercise of

jurisdiction will not offend traditional notions of fair play and substantial justice. *International Shoe Corp. v. Washington*, 326 U.S. 310 (1945).

Where, as here, a federal statute authorizes nationwide or worldwide service of process,⁵⁶ a court's exercise of jurisdiction over non-resident defendants depends on the existence of minimum contacts with the United States as a whole, and not the defendant's contacts with the specific forum. *SEC v. Bilzerian*, 378 F.3d 1100, 1106 n. 8 (D.C. Cir. 2004) ("This circuit has held that the requirement of 'minimum contacts' with a forum state is inapplicable where the court exercises personal jurisdiction by virtue of a federal statute authorizing nationwide service of process. . . . minimum contacts with the United States suffices"); *Boland v. Fortis Constr. Co.*, 796 F. Supp. 2d 80, 89 (D.D.C. 2011); *FTC v. Mallett*, No. 11-cv-01664, 2011 WL 4852228, at *4 (D.D.C. Oct. 13, 2011) (exercising personal jurisdiction where defendant resided in the United States and actively solicited business around the country). Further, venue is appropriate in actions brought pursuant to Section 13(b) of the FTC Act in any district where a defendant "transacts business" or "wherever venue is proper under section 1391 of title 28." 15 U.S.C. § 53(b).⁵⁷

⁵⁶ Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), states: "In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found."

⁵⁷ The D.C. Circuit's ruling is *GTE New Media Serv., Inc. v. Bellsouth Corp.*, 199 F.3d 1343, 1350-51 (D.C. Cir. 2000), does not limit this analysis. In *GTE*, the D.C. Circuit held that Section 12 of the Clayton Act, 15 U.S.C. § 22, which contains a provision authorizing worldwide service of process, could only be used in cases in which the Clayton Act's venue provision was satisfied. The Court reasoned "invocation of the nationwide service clause [of Section 12] rests on satisfying the [Act's] venue provision." *GTE*, 199 F.3d at 1350. Here, the venue provision of the FTC Act is broader than that in the Clayton Act. Section 12 of the Clayton Act provides that "Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business. . . ." 15 U.S.C. § 22. By contrast, the FTC Act states that "Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 391 of Title 28." 15 U.S.C. 53(b). Also, Defendants engage in practices that directly target the District of Columbia, "unabashedly malignant actions directed at or felt in this forum," that were not present in

Venue is proper under 28 U.S.C. § 1391(b)(2) where “a substantial part of the events or omissions giving rise to the claim occurred.” 28 U.S.C. § 1391(b)(2). Here, the FTC’s claim is premised on Defendants’ representations that they are, or are affiliated with, the United States government. Accordingly, a substantial part of the events pertaining to the FTC’s claim occurred in the District of Columbia, where the United States government, and, in particular, the Recovery Board, are headquartered.

B. The FTC Meets the Standard for Granting a Government Agency’s Request for a Temporary Restraining Order and Preliminary Injunction

Because the FTC acts as “a statutory guardian charged with safeguarding the public interest,” the standard for preliminary injunctive relief under Section 13(b) differs from that typically applied to private litigants. *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975). Although courts in this circuit ordinarily follow a four-part test in considering the propriety of preliminary injunctive relief, *see Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977), the standard for a government agency seeking an injunction pursuant to a statute that provides for such relief “is quite different from the common law equity basis for an injunction and no showing of irreparable injury is required.” *SEC v. General Refractories Co.*, 400 F. Supp. 1248, 1254 (D.D.C. 1975); *see also FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999) (FTC need not show irreparable harm); *SEC v. Stratton Oakmont, Inc.*, 878 F. Supp. 250, 255 (D.D.C. 1995) (noting that government agency may obtain injunction without showing irreparable harm or inadequacy of other remedies). Specifically, in Section 13(b) actions, courts consider two factors: (1) the likelihood that the FTC ultimately will succeed on the merits; and (2) the balance of the equities at stake. *Affordable Media*, 179 F.3d at 1233; *World Wide Factors*, 882 F.2d at 346; *World Travel Vacation Brokers*, 861 F.2d at 1029. Generally, the FTC “meets its burden on the likelihood of success issue if it shows preliminarily, by affidavit or other proof, that it has a

GTE, 199 F.3d at 1349.

fair and tenable chance of ultimate success on the merits.” *FTC v. Beatrice Foods Co.*, 587 F.2d 1225, 1229 (D.C. Cir. 1978). As set forth in this memorandum, the FTC has amply demonstrated that it will ultimately succeed on the merits of its claims and that the balance of equities favors injunctive relief.⁵⁸

1. The FTC Has Demonstrated its Likelihood to Succeed on the Merits of the FTC Act Deception Claims

As described above and evidenced in the exhibits and declaration to this memorandum, the FTC is likely to succeed in establishing that Defendants are violating Section 5 of the FTC Act.

Section 5 of the FTC Act prohibits misrepresentations or omissions of material facts made to induce the purchase of goods or services. *See, e.g., Amy Travel*, 875 F.2d at 573; *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999). An act or practice is deceptive under Section 5(a) if it involves a material representation or omission that is likely to mislead consumers, acting reasonably under the circumstances, to their detriment. *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994), *cert. denied* 514 U.S. 1083 (1995); *Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992), *cert. denied* 507 U.S. 909 (1993); *Southwest Sunsites v. FTC*, 785 F.2d 1431, 1435 (9th Cir. 1986). A claim is considered material if it “involves information that is important to consumers and, hence, [is] likely to affect their choice of, or conduct regarding a product.” *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006). Express claims and implied claims used to induce the purchase of a product are presumed to be material. *In re Thompson Med. Co.*, 104 F.T.C. 648, 816 (1984), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987); *see also Pantron I*, 33 F.3d at 1095-96; *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 604 (9th Cir. 1993); *American Home Prods. Corp. v. FTC*, 695 F.2d

⁵⁸ Although not required to do so, the FTC also meets the D.C. Circuit’s four-part test for private litigants to obtain injunctive relief. Without the requested relief, the public and the FTC will suffer irreparable harm from the continuation of Defendants’ unlawful scheme and the possible destruction of evidence and dissipation of assets.

681, 688 n.11 (3d Cir. 1982) (“Once the Commission finds deception, it is normally allowed to infer materiality.”).

The FTC need not prove that Defendants’ misrepresentations were made with an intent to defraud or deceive, or were made in bad faith. *See, e.g., World Travel Vacation Brokers*, 861 F.2d at 1029; *Removatron Int’l Corp. v. FTC*, 884 F.2d 1489, 1495 (1st Cir. 1989). The FTC need not prove reliance by each purchaser misled by Defendants. *FTC v. Freecom Commc’ns*, 401 F.3d 1192, 1204 (10th Cir. 2005) (“the FTC need not prove scienter, reliance, or injury to establish a § 5 violation”); *Security Rare Coin*, 931 F.2d at 1316; *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976) (“the FTC has been sustained in finding that advertising is misleading even absent evidence of that actual effect on customers; the likelihood ... of deception is the criterion by which advertising is measured”); *SlimAmerica*, 77 F. Supp. 2d at 1275. “Requiring proof of subjective reliance by each individual consumer would thwart effective prosecutions of large consumer redress actions and frustrate the statutory goals of [Section 13(b)].” *Figgie Int’l.*, 994 F.2d at 605 (citations omitted). Rather, a “presumption of actual reliance arises once the FTC has proved that the defendant made material misrepresentations, that they were widely disseminated, and that consumers purchased the defendant’s product.” *Id.* at 605-06; *see also SlimAmerica*, 77 F. Supp. 2d at 1275.

a) Defendants Have Misrepresented Their Debt Relief Program

Defendants have violated Section 5 of the FTC Act by expressly representing, as set forth in Part II.C.1 *supra*, that consumers can obtain up to \$75,000 in debt relief payments to up to five of their creditors by participating in Defendants’ program and paying services charges to them.

Contrary to Defendants’ explicit representations to consumers, there is no program under the Recovery Act that provides \$25,000, \$50,000, or \$75,000 in payments to consumers’ creditors. In addition, numerous consumer complaints confirm that Defendants’ debt relief services representations are false: consumers who participate in Defendants’ program and pay the requested service charge do not receive any payments to their creditors.

Defendants' claims regarding debt relief services are material and likely to mislead consumers acting reasonably. As a matter of law, consumers are entitled to rely on express claims and are therefore under no obligation to doubt the veracity of the Defendants' express claims that payments of up to \$75,000 are available and will be made to their creditors. *See FTC v. Standard Educ. Soc'y*, 302 U.S. 112, 116 (1937); *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) ("Consumer reliance on express claims is presumptively reasonable. It is reasonable to interpret express statements as intending to say exactly what they say."). Thus, Defendants violated Section 5 of the FTC Act by explicitly representing to consumers that up to \$75,000 in payments to their creditors were available to them by participating in their Bill Payment Government Assistance program, when in fact no such program exists and no such payments were made.

b) Defendants Have Misrepresented Government Affiliation

Defendants have also violated Section 5 of the FTC Act by falsely representing that they are, or are affiliated with, the federal government in general and the Recovery Board and Treasury Department in particular, and that their debt relief service is a government program created by the Recovery Act and governed by the Recovery Board.

Courts and the FTC (in its administrative decisions) have long held that false representations of government affiliation or association violate Section 5 of the FTC Act. *See, e.g., Slough v. FTC*, 396 F.2d 870, 872 (5th Cir.), *cert denied*, 393 U.S. 980 (1968) (use of name "State Credit Control Board" is implied representation that business has some official government status); *United States Ass'n of Credit Bureaus, Inc. v. FTC*, 299 F.2d 220 (7th Cir. 1962) (use of "United States" in connection with insignia is direct or implied representations that business is connected with or an agency of the U. S. government); *United States Navy Weekly, Inc. v. FTC*, 207 F.2d 17 (D.C. Cir. 1953) (use of apparently official name for unofficial publication that is privately owned and operated is misleading); *Bennett v. FTC*, 200 F.2d 362, 363 (D.C. Cir. 1952) (use of the combined words "National," "Service," and "Bureau" in conjunction with a Washington, DC address is a representation that the business is connected

with the United States government); *Fleet v. United States Consumer Counsel, Inc.*, 95 B.R. 319, 334 (Bankr. E.D.Pa. 1988) (the use of the name “United States Consumer Counsel,” together with an American eagle emblem implied an association with a government agency); *see also* *FTC v. Army-Navy Trading Co.*, 88 F.2d 776 (D.C. Cir. 1937); *In re The Capitol Service, Inc. et al.*, 51 F.T.C. 198 (1954); *In re American Extension School*, 50 F.T.C. 102 (1953); *In re Federal Coaching Institute, Inc.*, 49 F.T.C. 1138 (1953); *In re Federal Military Equipment Corp.*, 43 F.T.C. 357 (1943); *In re Federal Organization, Inc.*, 29 F.T.C. 504 (1939); *In re Federal Civil Service Training Bureau*, 25 F.T.C. 444 (1937); *In re Federal Institute of Meats & Marketing*, 24 F.T.C. 199 (1936); *In re Federal Bond & Mortgage Co.*, 8 F.T.C. 194 (1924).

Defendants’ representations regarding government affiliation as described in Section II.C.2 are direct and explicit, and similar to (if not more egregious than) the violative conduct in the above-referenced cases. In addition to the express representations, Defendants’ use of official government seals and logos, links to official federal government websites, misuse of the President’s likeness, and other iconic images or language strongly contribute to the false impression that the Defendants are, or are affiliated with, the federal government. *See e.g.*, *Kraft*, 970 F.2d at 319 (“implied claims fall on a continuum, ranging from the obvious to the barely discernible.”). In determining whether a particular claim is made, established law directs courts to consider the “overall net impression” of the advertisement. *See American Home Prods.*, 695 F.2d at 687 (citing *Beneficial Corp.*, 542 F.2d at 617).

Defendants’ deceptive representations regarding government affiliation are material because they are expressly made and would affect a consumer’s decision whether to pay Defendants considerable sums for debt relief services. *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006) (material statements are ones that include important information that affect the consumers’ choice to purchase); *see also In re Thompson Med. Co.*, 104 F.T.C. 648, 816 (1984), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986) (express claims to induce purchase are presumed to be material). Specifically, consumers who would be otherwise skeptical of debt relief programs would find Defendants’ explicit government affiliation claims (along with their

use of official government seals, other official insignia, and the President's likeness) important in connection with their decision whether to pay \$1,000 or more for the service. *See* Casebier Decl. ¶¶ 3-4, PX01 0001 (consumer testifying that Defendants' use of government imagery, including *inter alia* the likeness of the President, attracted him to Defendants' program); Marshall Decl. ¶¶ 3, 8, 10, PX02 0001-03 (same).⁵⁹

Likewise, consumers' reliance on Defendants' express representations regarding government affiliation is presumed to be reasonable. *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) ("Consumer reliance on express claims is presumptively reasonable. It is reasonable to interpret express statements as intending to say exactly what they say.").

2. The FTC Has Demonstrated its Likelihood to Succeed on the Merits of the CROA Claims

As described above and evidenced in the exhibits and declaration to this memorandum, the FTC is likely to succeed in establishing that Defendants are violating Sections 404(a)(3) and 404(b) of the CROA.

Section 404(a)(3) of the CROA prohibits any person from making or using "any untrue or misleading representation of the services of the credit repair organization." 15 U.S.C. § 1679b(a)(3). A "credit repair organization" is defined by the CROA to mean any person who uses any instrumentality of interstate commerce or the mails to offer to provide services, in return for a fee, to improve a consumer's credit record, credit history, or credit rating. 15 U.S.C. § 1679a(3). Under Section 404(a)(3), all that is required is any untrue or misleading statement regarding a credit repair organization service; the subject misrepresentation need not be designed to induce the consumer's purchase. "[L]iability attaches even if the representation made by the credit repair organization is not made for the purpose of inducing consumers to purchase a

⁵⁹ *See also* Goldstein Decl. Att. W, PX06 0291, 0296, 0298, 302, 310, 312, 0314, 0317, 0321 (consumers reporting that Defendants' references to the President, the Recovery Board, and other government affiliation claims were material to decision to pay).

particular service or good.” *FTC v. Gill*, 265 F.3d 944, 955 (9th Cir. 2001) (internal quotations omitted); *see also FTC v. RCA Credit Services, LLC*, 727 F. Supp.2d 1320, 1334 (M.D. Fla. 2010) (citing *Gill*). Here, Defendants operate as a credit repair organization pursuant to the CROA because they use the internet and the U.S. mail to offer to improve consumer’s credit records, credit histories, and credit ratings. And as demonstrated in Part II.C.1 and Part II.C.2, *supra*, Defendants, in connection with offering credit repair services, make untrue and misleading representations regarding the availability of up to \$75,000 in government payments to consumers’ creditors and Defendants’ purported government affiliation. Because Defendants misrepresent the existence of a debt relief and credit repair program and in fact do not provide any services, they also do not improve consumers’ credit ratings, scores, or limits.

Section 404(b) of the CROA prohibits any credit repair organization from charging or receiving any payment for agreed services it is to perform “before such service is fully performed.” 15 U.S.C. § 1679b(b). As noted directly above, Defendants operate as a credit repair organization pursuant to the CROA because they use the internet and the U.S. mail to offer to improve consumer’s credit records, credit histories, or credit ratings. And, as demonstrated in Part II.C.3, *supra*, Defendants receive fees from consumers for such services before their services are fully performed, because Defendants receive fees from consumers and then fail to perform as agreed. *See Gill*, 265 F.3d at 956 (“The CRO Act prohibits acceptance of *any* payment before fully performing all services”) (emphasis in original); *see also FTC v. 1st Guar. Mortg. Corp.*, No. 09-cv-61840, 2011 WL 1233207, at *11 (S.D. Fla. Mar. 30, 2011) (“The CROA also prohibits charging or receiving any money or other valuable consideration for the performance of credit repair services before they are fully performed.”). Specifically, Defendants fail to make any payments to creditors on behalf of the consumers from whom they have received those fees, and therefore do not improve consumers’ credit records, credit histories, or credit ratings.

3. The Equities Weigh in Favor of Granting Injunctive Relief

The public interest in halting Defendants' misrepresentations and deceptive claims far outweighs any interest Defendants may have in continuing to deceptively market their services. In balancing the equities between the parties, the public equities must be given far greater weight. *Affordable Media*, 179 F.3d at 1236 (“Obviously, the public interest in preserving illicit proceeds . . . for restitution to the victims is great”); *World Travel Vacation Brokers*, 861 F.2d at 1030. Because Defendants “can have no vested interest in a business activity found to be illegal,” *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972) (internal quotations and citations omitted), a balance of equities tips decidedly toward granting the requested relief. *See also CFTC v. British American Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977) (quoting *FTC v. Thomsen-King & Co.*, 109 F.2d 516, 519 (7th Cir. 1940)) (“[a] court of equity is under no duty ‘to protect illegitimate profits or advance business which is conducted illegally’”).⁶⁰

The temporary and preliminary relief sought here would enjoin Defendants' deceptive misrepresentations of government affiliation and illusory debt relief grants and their practice of charging advance fees for credit repair services. First and foremost, immediate relief will benefit consumers by disabling the websites and videos that lure them into Defendants' deceptive scheme. Immediate relief is also in the public's interest of protecting the federal government agencies impugned by Defendants' misrepresentations. The Recovery Board and Treasury Department have stated that Defendants' operation may adversely affect their missions and integrity. (Siemplekamp Decl. ¶ 12, PX 05 0005; Delmar Decl. ¶ 8, PX 03 0003). Indeed, both

⁶⁰ Indeed, immediate injunctive relief is particularly appropriate here because Defendants' misuse of government seals is so egregious that it constitutes *criminal* misconduct. *See* 18 U.S.C. § 506 (criminal liability for falsely made or facsimile seals of any department or agency of the United States); 18 U.S.C. § 1017 (criminal liability for fraudulent use of government seals); 31 U.S.C. § 333(a), (d) (criminal liability for the use of the Treasury Department name or symbols (or those of any of its subdivisions) in a manner that suggests false association with the Treasury Department); 4 C.F.R. § 202.3 (providing that misuse of Recovery Board seal is subject to 18 U.S.C. § 506 and § 1017).

agencies engaged in substantial public education campaigns to publicize legitimate programs under the Recovery Act and Defendants' practices dilute and undercut those efforts. And the Recovery Board in particular fields complaints and inquiries on a regular basis from consumers victimized by Defendants, in part because Defendants actively redirect consumer complaints to the Recovery Board.⁶¹

Granting such 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.”); *SEC v. R.J. Allen & Assoc., Inc.*, 386 F. Supp. 866, 877 (S.D. Fla. 1974) (past misconduct suggests likelihood of future violations); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir.), *cert. denied*, 442 U.S. 921 (1979). For example, Defendants have registered at least two Internet websites containing the deceptive representations discussed above. Absent the relief sought here, Defendants' illegal conduct will continue unabated, with foreseeable ongoing consumer injury. In contrast, the private equities in this case are not compelling. Compliance with the law is hardly an unreasonable burden. *See World Wide Factors*, 882 F.2d at 347 (stating “there is no oppressive hardship to Defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment”). Because the injunction will preclude only harmful, illegal behavior, the public equities supporting the proposed injunctive relief outweigh any burden imposed by such relief on Defendants. *See, e.g., National Soc'y of Prof. Eng'rs. v. United States*, 435 U.S. 679, 697 (1978).

⁶¹ Siemplekamp Decl. ¶¶ 11-12, PX05 0004-05; Casebier Decl. Att. B., PX01 0009 (Defendants' invoice to consumer) (“In the event that your inquiry goes unaddressed ... please contact the Recovery Board. The Recovery Board ... serves as liaison with us to resolve your concerns.”).

IV. THE SCOPE OF THE PROPOSED PRELIMINARY RELIEF IS APPROPRIATE IN LIGHT OF DEFENDANTS' CONDUCT

A. Conduct Relief

To prevent ongoing consumer injury, the proposed temporary restraining order prohibits Defendants from making future misrepresentations concerning government affiliation and the provision of debt relief and credit repair services. As discussed above, this Court has broad equitable authority under Section 13(b) of the FTC Act to grant ancillary relief necessary to accomplish complete justice. *Amy Travel*, 875 F.2d at 571-72; *Singer*, 668 F.2d at 1113; *Five-Star Auto Club*, 97 F. Supp. 2d at 532-39. The prohibition against making material misrepresentations or omissions of fact in promoting any debt relief or credit repair service does no more than order that Defendants comply with the FTC Act and the CROA.

B. Temporary Disabling of Websites and Removal of Blog, Facebook Page, and YouTube Videos

An order provision temporarily disabling Defendants' websites and suspending their domain name registrations is necessary to prevent further consumer injury. As discussed above, Defendants have operated at least two Internet websites containing deceptive representations. Suspending these domain name registrations will ensure that Defendants cannot evade compliance with any preliminary relief entered by this Court pending final determination of this matter. Similarly, the Court should order the removal of the two YouTube videos, the Facebook page, and Blog post that exacerbate Defendants' false claims regarding debt relief and credit repair, and that falsely suggest association or endorsement by the Recovery Board, Treasury Department, and President.

This Court has the authority to direct third parties to effectuate the purpose of the TRO. *Cf. Deckert v. Independence Shares Corp.*, 311 U.S. 282, 290 (1940) (holding that courts have authority to direct third parties to preserve assets); *United States v. First National City Bank*, 379 U.S. 378, 385 (1965); *Reebok Int'l, Ltd. v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995); *Waffenschmidt v. Mackay*, 763 F.2d 711, 714 (5th Cir. 1985). Other courts have granted similar

relief against other defendants who have utilized Internet websites to promote deception.⁶²

C. Expedited Discovery

At the time of the filing of this action, the FTC has not been able to determine the identity of the parties responsible for the deceptive websites. As detailed in the Goldstein declaration, most of the accounts used by Defendants for website hosting, communications, and payment processing appear to be established using stolen, fictitious, or foreign identities. Expedited discovery will permit the FTC to identify potential defendants as expeditiously as possible and further determine the extent to which Defendants have used misrepresentations of government affiliation and consumer eligibility to promote their business. These types of discovery orders reflect the Court's broad and flexible authority in equity to grant preliminary emergency relief in cases involving the public interest. *See Porter*, 328 U.S. at 398; *FSLIC v. Dixon*, 835 F.2d 554, 562 (5th Cir. 1987); *Federal Express Corp. v. Federal Expresso, Inc.*, 1997 U.S. Dist. LEXIS 19144, at * 6 (N.D.N.Y. Nov. 24, 1997) (early 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)); *Benham Jewelry Corp. v. Aron Basha Corp.*, 1997 U.S. Dist. LEXIS 15957, at *58 (S.D.N.Y. July 18, 1997) (courts have broad powers to grant expedited discovery).

D. Preservation of Records

The proposed order contains a provision directing Defendants to preserve records, including electronic records, and evidence. It is appropriate to enjoin Defendants

⁶² See, e.g., *FTC v. Mountain View Systems, Ltd., et al.*, Case No. 1:03-cv-0021-RMC (D.D.C. Jan. 9, 2003) (order viewable at <http://www.ftc.gov/os/2003/01/aladdintro.pdf>); *FTC v. Stuffingforcash.com Corp.*, Case No. 1:02-cv-05022-CRN (N.D. Ill. July 16, 2002) (order viewable at <http://www.ftc.gov/os/2002/07/stuffingtro.pdf>); *FTC v. TLD Network Ltd.*, Case No. 1:02-cv-01475-JFH (N.D. Ill. Feb. 28, 2002) (order viewable at <http://www.ftc.gov/os/2002/03/tldtro.pdf>); *FTC v. 1268957 Ontario Inc.*, Case No. 1:01-cv-00423-JEC (N.D. Ga. Feb. 13, 2001) (order viewable at <http://www.ftc.gov/os/2001/02/domannametro.pdf>); *FTC v. Pereira*, Case No. 1:99-cv-01367-AVB (E.D. Va. Sep. 14, 1999) (order viewable at <http://www.ftc.gov/os/1999/9909/atariztro.htm>).

charged with deception from destroying evidence and doing so would place no significant burden on them. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990) (characterizing such orders as “innocuous”). Because Defendants’ operation appears to be mostly Internet based, absent such a provision, Defendants could easily delete relevant evidence.

E. *Ex Parte* Relief Is Appropriate

Rule 65(b) authorizes the Court to issue a temporary restraining order without notice upon a showing of immediate and irreparable injury, loss, or damage before the adverse party can be heard in opposition. Fed. R. Civ. Pro. 65(b).⁶³ This Court has granted the FTC and other civil federal law enforcement agencies *ex parte* relief under similar circumstances involving brazen violations of law, particularly where the defendants are unknown and likely operating overseas. *FTC v. One or More Unknown Parties*, No. 03-0021, 2003 WL 26121557, at *1 (D.D.C. Jan. 9, 2003); *see also SEC v. One or More Unknown Traders in the Common Stock of Certain Issuers*, 530 F. Supp.2d 192, 192 (D.D.C. 2008) (court granted SEC’s *ex parte* request for TRO); *SEC v. Bankers Alliance Corp.*, 881 F. Supp. 673 (D.D.C. 1995) (same).⁶⁴

Although an *ex parte* temporary restraining order constitutes extraordinary relief, it is warranted here as in the above-cited examples. Defendants’ violations of law are plain, as their websites and communications make explicitly false promises to consumers that they will pay \$25,000, \$50,000, or \$75,000 to consumers’ creditors in exchange for a \$1,000 (or more costly) fee. Apart from the direct harm caused by Defendants to their victimized consumers, Defendants’ explicitly false claims of government affiliation and misappropriation of

⁶³ The FTC’s application for a temporary restraining order without notice is supported by the accompanying declaration of Nikhil Singhvi, as required by Rule 65(b)(1) and Local Rule 65.1(a).

⁶⁴ 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.

government seals and other insignia – conduct which is likely criminal (*see* note 60, *supra*) – also have the harmful effect of disrupting the legitimate operations of the Recovery Board and the Treasury Department. In light of those two significant harms (which are continuing at present), the offending websites, videos, blog, and Facebook page should be disabled and removed immediately. In light of difficulties surrounding service of unknown Defendants who are likely overseas (*see* Plaintiff's *Ex Parte* Motion to Allow Alternative Service of Process on Defendants), advance notice of the FTC's application for a temporary restraining order would cause inordinate delay. It could also lead to Defendants moving their deceptive content to another website (as they have already done once before), the destruction of evidence by Defendants or their associates, or other measures designed to thwart the FTC's attempt to protect consumers from Defendants' wrongdoing.

V. CONCLUSION

For the reasons set forth above, the FTC respectfully requests that this Court enter a Temporary Restraining Order and then a Preliminary Injunction to halt Defendants' violations of the FTC Act.

Respectfully submitted,

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