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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

NOV 18 2013

THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MODERN TECHNOLOGY INC., a Wyoming  
corporation, also doing business as ONLINE  
LOCAL YELLOW PAGES, *et al.*,

Defendants.

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) Case No.  
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13cv8257

Judge Virginia M. Kendall  
Magistrate Jeffrey T. Gilbert

**FEDERAL TRADE COMMISSION'S MEMORANDUM IN SUPPORT OF  
ITS *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**

## **I. INTRODUCTION**

Defendants are running a massive scam that has deceived thousands of churches, small businesses, and other offices into paying for worthless online “yellow pages” directory listings. The Federal Trade Commission (“FTC” or “Commission”) now asks this Court to put an immediate end to Defendants’ scheme.

Defendants’ scheme begins with unsolicited calls to the offices of a variety of different organizations. Defendants claim to be calling just to “confirm” or “update” consumers’ contact information for a yellow pages listing that they already have. Defendants use this hook to convince consumers to answer a series of “yes” or “no” questions verifying their contact information. In reality, Defendants have no prior relationship with consumers. Consumers do not know this, and so often agree to answer questions about what they think is an existing listing.

Weeks later, consumers receive Defendants’ invoices, which demand hundreds of dollars for new directory listings. Consumers who call Defendants to protest the charges are played recordings that, Defendants claim, are of consumers’ responses to the “yes” or “no” questions from the initial call. Defendants insist these recordings constitute binding contracts for which consumers owe hundreds of dollars. In truth, consumers have not agreed to purchase the listings and do not owe Defendants any money. Yet, if consumers refuse to pay, Defendants pressure them with collection notices, harassing calls, late fees, and threats of debt collectors and lawsuits. Eventually, many consumers give in and pay Defendants.

Defendants perpetrate this fraud on nearly any organization that has a telephone line. The overwhelming evidence included in this filing includes sworn statements from a preschool, a museum, and three churches. Another declaration from the Catholic Diocese of Rockford describes Defendants’ efforts to swindle 14 churches and schools in that diocese. Taken together, this evidence leaves no doubt the Commission will succeed on the merits in this case.

Although consumers do not realize it, this enterprise is actually located in Canada. Defendants use shell companies and mail drops across the U.S. to hide their true location. In addition, Defendants continually change names to avoid detection. The FTC is aware of at least thirteen names that they have used so far.

This is a very large and well-organized fraud. It has been operating for at least four years, and has taken in a minimum of \$14 million. The FTC has received over 13,000 consumer complaints about Defendants' predatory conduct. In fact, this may be the largest scam of this type our office has ever seen. Courts in this District have enjoined many such scams.<sup>1</sup>

The FTC asks this Court to enter an *ex parte* temporary restraining order enjoining Defendants' deceptive practices and freezing their assets to preserve the Court's ability to provide effective final relief.

## **II. DEFENDANTS' BUSINESS PRACTICES**

### **A. Defendants' Deceptive Telephone Calls**

Defendants' scheme begins with an unsolicited telephone call. Defendants tell consumers they are calling from a yellow pages directory merely to confirm or update an existing listing.<sup>2</sup> To enhance their credibility, Defendants sometimes claim that the owner or manager of the organization authorized the listing.<sup>3</sup> Believing that they have a listing, consumers

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<sup>1</sup> See *FTC v. Construct Data Publishers a.s.*, No. 13-cv-1999 (N.D. Ill. Mar. 15, 2013) (Tharp, J.); *FTC v. Yellow Page Mktg. B.V.*, No. 11-cv-5035 (N.D. Ill. July 26, 2011) (Feinerman, J.); *FTC v. 6555381 Canada Inc.*, No. 09-cv-3158 (N.D. Ill. June 1, 2009) (Gettleman, J.); *FTC v. Integration Media Inc.*, No. 09-cv-3160 (N.D. Ill. May 28, 2009) (Bucklo, J.); *FTC v. 6654916 Canada Inc.*, No. 09-cv-3159 (N.D. Ill. May 27, 2009) (Darrah, J.); *FTC v. Datacom Mktg., Inc.*, No. 06-cv-2574, 2006 WL 1472644 (N.D. Ill. May 24, 2006) (Holderman, J.).

<sup>2</sup> See, e.g., Declaration of Clare Coppel ("Coppel Dec."), Plaintiff's Exhibit ("PX") 5, ¶¶ 3-4, 12; Declaration of Ellen B. Lynch ("Lynch Dec."), PX 12, ¶ 4 (summarizing 14 complaints in diocese).

<sup>3</sup> See, e.g., Coppel Dec., PX 5, ¶ 3; Declaration of Elizabeth Miller ("E. Miller Dec."), PX 13, ¶ 4.

often agree to verify the information.<sup>4</sup> Often, the person who takes the call has no authority to make purchases for the organization, and in some cases informs Defendants of this fact.<sup>5</sup>

On some calls, as an alternative approach, Defendants tell consumers that the purpose of the call is to cancel (rather than update) an existing listing. This is simply another way Defendants deceive consumers into staying on the phone and confirming their contact information. Defendants warn these consumers that failing to complete the cancellation process will result in consumers being charged for the un-cancelled listing.<sup>6</sup> Like the “update” pitch described above, this “cancellation” pitch leads consumers to believe that they are merely confirming details related to an existing listing rather than agreeing to purchase a new listing.<sup>7</sup>

Having created a false impression of an existing relationship, Defendants transfer the call to a “verifier,” who asks the consumer a rapid-fire series of “yes” or “no” questions to confirm basic information such as the consumer’s name, address, and telephone number.<sup>8</sup> Defendants record this part of the conversation, ostensibly to verify the consumer’s contact information.<sup>9</sup> Consumers who interrupt the questions, such as by asking their own questions or expressing concerns, are told that they must complete the verification recording without interruption.<sup>10</sup>

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<sup>4</sup> See, e.g., Coppel Dec., PX 5, ¶ 4.

<sup>5</sup> See, e.g., Declaration of Marcie Stover (“Stover Dec.”), PX 16, ¶¶ 2-5; Declaration of Daniel R. Fulton (“Fulton Dec.”), PX 7, ¶¶ 3-4; Declaration of Andrea Roberts (“Roberts Dec.”), PX 15, ¶ 3; see also Coppel Dec., PX 5, ¶¶ 3-4 (informing Defendants that consumer lacked authority to make purchase).

<sup>6</sup> See, e.g., Declaration of Glenn Miller (“G. Miller Dec.”), PX 14, ¶¶ 3-5; E. Miller Dec., PX 13, ¶¶ 4-6.

<sup>7</sup> See, e.g., G. Miller Dec., PX 14, ¶ 5. A telemarketing script obtained from Defendants’ call center outside Montreal reflects both the “update” and “cancellation” pitches. See Declaration of Douglas M. McKenney (“McKenney Dec.”), PX 1, ¶ 84(a)-(b) & Att. V at 2-3.

<sup>8</sup> See, e.g., Coppel Dec., PX 5, ¶ 5; E. Miller Dec., PX 13, ¶¶ 6-7.

<sup>9</sup> See, e.g., Roberts Dec., PX 15, ¶¶ 6-7.

<sup>10</sup> See, e.g., E. Miller Dec., PX 13, ¶¶ 6-7; G. Miller Dec., PX 14, ¶ 4; Roberts Dec., PX 15, ¶¶ 6-7.

## B. Defendants' Harassing Collection Practices

Weeks later, Defendants send consumers an invoice demanding payment of \$499 or more for an online directory listing.<sup>11</sup> Defendants' invoices display one of their directory names, the "walking fingers" logo associated with reputable yellow pages directories,<sup>12</sup> and a U.S. address, giving consumers no inkling of Defendants' location in Canada.<sup>13</sup> The invoices also often list the name of the person who took Defendants' initial call.<sup>14</sup> Many consumers pay the invoice, mistakenly believing that they have an existing relationship with Defendants or that someone in their organization ordered the listing. In many organizations, the employees who pay invoices are not the same employees who take incoming calls, a vulnerability that Defendants exploit.<sup>15</sup>

Other consumers investigate, only to discover that no one in their organization ordered the listing<sup>16</sup> or that the person who took Defendants' initial call remembers agreeing only to confirm basic contact information, not to purchase a new listing.<sup>17</sup> At this point, consumers realize for the first time that Defendants are billing them for an entirely new listing.<sup>18</sup>

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<sup>11</sup> See, e.g., Fulton Dec., PX 7, ¶ 4; Roberts Dec., PX 15, ¶ 5.

<sup>12</sup> Though the "walking fingers" logo and the term "yellow pages" are not protected marks, solicitations using those elements "must not give [consumers] the impression that the product is something other than what it is." *Directory Publ'g Servs., Inc. v. Runyon*, 851 F. Supp. 484, 489 (D.D.C. 1994).

<sup>13</sup> See, e.g., Declaration of Shawn Agader ("Agader Dec"), PX 2, Att. A at 1; see also Section III.C. *infra* (describing Defendants' use of U.S. mailboxes and true location in Canada).

<sup>14</sup> See, e.g., Agader Dec., PX 2, ¶ 8; Declaration of Alison Deary ("Deary Dec."), PX 6, ¶ 5 & Att. A.

<sup>15</sup> See, e.g., Deary Dec., PX 6, ¶¶ 4-6; Declaration of Adam Goldsmith ("Goldsmith Dec."), PX 8, ¶¶ 5-7; Declaration of Winfield Scott Heath ("Heath Dec."), PX 9, ¶¶ 3-5; Stover Dec., PX 16, ¶¶ 4-6.

<sup>16</sup> See, e.g., Agader Dec., PX 2, ¶ 8; Stover Dec., PX 16, ¶¶ 6-9; Heath Dec., PX 9, ¶ 10.

<sup>17</sup> See, e.g., Heath Dec., PX 9, ¶ 10; Declaration of Amber Landes ("Landes Dec."), PX 12, ¶ 10.

<sup>18</sup> See, e.g., Lynch Dec., PX 12, ¶ 5; E. Miller Dec., PX 13, ¶¶ 8-9.

Consumers who call Defendants to protest are played the deceptive verification tapes. Defendants insist these recordings prove that consumers agreed to buy the costly listings.<sup>19</sup> However, the recordings only include consumers' responses to the rapid-fire "yes" or "no" questions. The recordings do not include Defendants' false assurances that consumers are just confirming contact information for an existing listing.<sup>20</sup> Some consumers also believe that the recordings are doctored to attach their "yes" answers to questions that Defendants never asked, a trick employed in similar scams.<sup>21</sup>

Consumers who refuse to pay Defendants face relentless collection tactics. Defendants bombard consumers with harassing collection calls and dunning notices.<sup>22</sup> The dunning notices add interest, administrative charges, and legal fees to consumers' invoices, significantly increasing the amount "owed" and ratcheting up the pressure to pay.<sup>23</sup> Defendants also threaten to refer consumers to collection, to damage their personal credit ratings, and to bring lawsuits.<sup>24</sup> Some consumers receive collection letters from supposed third-party debt collectors that are really just part of Defendants' operation.<sup>25</sup>

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<sup>19</sup> See, e.g., Goldsmith Dec., PX 8, ¶ 10; Declaration of Janet Immel ("Immel Dec."), PX 10, ¶ 7, Roberts Dec., PX 15, ¶ 10.

<sup>20</sup> See, e.g., Immel Dec., PX 10, ¶ 7; Roberts Dec., PX 15, ¶¶ 9-10; Stover Dec., PX 16, ¶¶ 8-9.

<sup>21</sup> See, e.g., Heath Dec., PX 9, ¶ 8 (noting that the "Yes" response in the recording "seemed unnaturally consistent each time"); Declaration of Holly Camp ("Camp Dec."), PX 4, ¶ 5. Consumers' experience is consistent with other FTC cases, in which defendants have doctored verification tapes. See *FTC v. 2145183 Ontario Inc.*, 09-cv-7423 (N.D. Ill. filed Nov. 30, 2009) (Grady, J.) (Dkt. # 39-4 at 60) (showing robocallers' instructions on how to "Edit Recording").

<sup>22</sup> See, e.g., Immel Dec., PX 10, ¶ 12 (describing 14 calls in one day); G. Miller Dec., PX 14, ¶ 17.

<sup>23</sup> See, e.g., Deary Dec., PX 6, ¶¶ 16, 18; Goldsmith Dec., PX 8, ¶ 12; Roberts Dec., PX 15, ¶ 12.

<sup>24</sup> See, e.g., E. Miller, PX 13, ¶¶ 11-12; Deary Dec., PX 6, ¶ 12; G. Miller Dec., PX 14, ¶ 17.

<sup>25</sup> See, e.g., McKenney Dec., PX 1, ¶ 68.

Defendants' tactics are effective. Many consumers pay Defendants simply to stop the harassing collection efforts or because they fear damage to their credit rating.<sup>26</sup> Unfortunately, payment does not make Defendants go away. Months or even years later, Defendants demand additional payments for bogus renewal fees.<sup>27</sup> Defendants only back off when consumers complain to their state's Attorney General.<sup>28</sup> In all, Defendants have taken in more than \$14 million.<sup>29</sup>

### **C. The Worthlessness of Defendants' Directory Listings**

Defendants' directory listings are worthless. The listings, which have no relation to listings in legitimate yellow pages directories, can be found only if a consumer goes directly to one of Defendants' websites. Consumers would not do so, because Defendants change business names frequently to avoid detection. Whenever complaints about one of Defendants' business directories mount, Defendants shut down the directory's website and stop using its business name. In its place, Defendants use a new directory name (they have employed at least 13 so far) and a new website with no name recognition. These websites will not appear in the results of a regular Internet search for a specific business or type of business. Thus, the public is extremely unlikely to consult Defendants' directories, or to ever see the listings in those directories of the consumers victimized by Defendants' fraud.

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<sup>26</sup> See, e.g., Camp Dec., PX 4, ¶¶ 5-6; Deary Dec., PX 6, ¶ 19; Fulton Dec., PX 7, ¶ 6; Landes Dec., PX 11, ¶¶ 5-6; G. Miller Dec., PX 14, ¶¶ 8-9.

<sup>27</sup> See Camp Dec., PX 4, ¶¶ 8-18; Deary Dec., PX 6, ¶¶ 9-22; Fulton Dec., PX 7, ¶¶ 8-18; Immel Dec., PX 10, ¶¶ 11-17; Landes Dec., PX 11, ¶¶ 7-12; G. Miller Dec., PX 14, ¶¶ 13-18.

<sup>28</sup> See, e.g., Lynch Dec., PX 12, ¶¶ 16, 18, 27-28, 32-33.

<sup>29</sup> Revised Declaration of Daniel Frazier ("Frazier Dec."), PX 20, ¶¶ 7, 10 (noting that Defendants SEOOnline and SEM Pundits, Inc. processed over \$14 million). This sum is just the amount Defendants have received through one processor, and Defendants may well have used other processors to process additional payments. See Declaration of Melody Lashmar ("Lashmar Dec."), PX 19, ¶¶ 14-22 (describing Defendants' repeated applications for processing services).

For example, Defendants twice victimized Alison Deary, the owner of Noblesville Ace Hardware in Noblesville, Indiana. She was conned into paying Defendants more than \$1000.<sup>30</sup> In return, she received nothing of any value. Google searches for “Noblesville Ace Hardware” or even the more general “Hardware store Noblesville, Indiana” will return the store’s name, address, and telephone number on the search results page along with other links listing the hardware store’s contact information. Yet, these search results do not include any listing from Defendants’ directories. What’s worse, [yellownationaldirectory.com](http://yellownationaldirectory.com), Defendants’ directory where Noblesville Ace was supposed to have a listing, has been shut down barely six months after Ms. Deary paid Defendants \$800 for that listing.<sup>31</sup> Defendants’ directories thus provide no value as advertising or for any other purpose.<sup>32</sup>

### **III. DEFENDANTS**

The 18 Defendants include 12 shell companies that Defendants use for their various directories and debt collection, 3 corporations that Defendants use to funnel payments from victimized consumers to the scam’s nerve center in Quebec, and 3 individuals who control and actively participate in the scheme.

#### **A. Corporate Defendants**

Defendants have used at least 13 business directory names, forming 10 shell corporations for these names. Defendants generate hundreds of consumer complaints for each directory before moving on to a new name. Defendants also have incorporated two debt collection companies, which harass consumers who refuse to pay their invoices. These 12 Defendants are:

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<sup>30</sup> *See generally* Deary Dec., PX 6.

<sup>31</sup> *See* McKenney Dec., PX 1, ¶¶ 86-88.

<sup>32</sup> Declaration of Sharon Anderson, PX 3, ¶ 3; Goldsmith Dec., PX 8, ¶ 3; Heath Dec., PX 9, ¶ 6; Immel Dec., PX 10, ¶ 3; Roberts Dec., PX 15, ¶ 4; Stover Dec., PX 16, ¶ 3.



- **Modern Technology, Inc.**, also d/b/a Online Local Yellow Pages;
- **Strategic Advertisement Ltd.**, also d/b/a Local Business Yellow Pages;
- **Dynamic Ad Corp.**, also d/b/a Yellow National Directory and Yellowpages Local Directory;
- **Wisetak Inc. and Wisetak, Inc.**, also d/b/a Online Public Yellow Pages and US Public Yellow Pages;
- **Internet Solutions, LLC**, also d/b/a Public Yellow Pages;
- **Yellow Pages Express Inc.**, also d/b/a Yellow Pages Express;
- **Yellow Pages Online Inc.**, also d/b/a Yellow Pages Online;
- **Cesstech Inc.**, also d/b/a Yellow US Pages;
- **SEO Online Inc.**, also d/b/a Yellow Local Directory;
- **CC Recovery Corporation**, also d/b/a CC Recovery; and
- **M&A Recovery Inc.**, also d/b/a MA Recovery.<sup>33</sup>

Defendants also use three additional corporate defendants to route victims' payments to Canada. Defendants **SEO Online, LLC, SEOOnline**, and **SEM Pundits, Inc.**<sup>34</sup> operate bank accounts that have received payments totaling over \$14 million from victimized consumers through a payment processor.<sup>35</sup> Defendant SEOOnline also manages processing services on Defendants' behalf and has registered email accounts and websites used in the scheme.<sup>36</sup>

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<sup>33</sup> See McKenney Dec., PX 1, ¶ 5 (showing, for each defendant: (a) corporate records, (b) evidence that defendant does business as directory name or debt collection firm, and (c) evidence of complaints related to that directory or debt collection firm). The Defendants recently have begun using two more business directory names—Public Pages and Business Yellow Pages—beyond those reflected in the caption in the complaint in this matter, bringing the total number of business directory names to 13. Like their predecessors, these new names have generated a substantial number of consumer complaints. See *id.* ¶¶ 67, 70 (summarizing consumer complaints about Business Yellow Pages); see also Immel Dec., PX 10, ¶¶ 11-18 (consumer declaration concerning Public Pages).

<sup>34</sup> SEM Pundits, Inc. also does business as Yellow Pages Online. See McKenney Dec., PX 1, ¶ 5. SEM Pundits, Inc. also has paid for postage services to send out Defendants' ceaseless invoices. See *id.* ¶ 77.

<sup>35</sup> *Id.* ¶¶ 23-24 (summarizing consumer declarations related to Defendants and payment processor Educational Billing Systems ("EBS")); Frazier Dec., PX 3 ¶¶ 6-11 (summarizing defendants SEOOnline's and SEM Pundits, Inc.'s accounts with EBS); *id.*, ¶¶ 7-8, 10-11 (summarizing payments of over \$14 million from EBS into bank accounts maintained by SEOOnline, SEO Online, LLC, and SEM Pundits, Inc.).

<sup>36</sup> Lashmar Dec., PX 18, ¶¶ 14-22 (summarizing SEOOnline's applications for processing services with payment processor L3 Payments); see also McKenney Dec., PX 1, ¶ 46 (registration of [seoexpertsonline.net](http://seoexpertsonline.net) and [publicpages.com](http://publicpages.com)); *id.*, ¶ 23 (use of [seoexpertsonline.net](http://seoexpertsonline.net) email account as "primary" contact with processor EBS); Immel Dec., PX 10, ¶¶ 11-18 (complaint related to business directory Public Pages, which lists the website [publicpages.com](http://publicpages.com)).

## B. Individual Defendants

Three individuals operate Defendants' network of corporate entities. **Mohammad Khaled Kaddoura**, who uses the pseudonym "Kal,"<sup>37</sup> operates Defendants' telemarketing and payment processing operations through Defendant SEOOnline.<sup>38</sup> Through a shell company, Kaddoura has received more than \$6 million of the scam's proceeds.<sup>39</sup> **Derek Cessford** is SEOOnline's president, has applied for processing services on Defendants' behalf, and has opened a bank account that has received millions of dollars in Defendants' ill-gotten gains.<sup>40</sup> **Aaron Kirby** owns Defendant SEO Online, LLC, has opened accounts funded by the scam, and with Kaddoura controls Defendants' telemarketing operation in Canada.<sup>41</sup>

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<sup>37</sup> Kaddoura has used both "Kal" and the email address [kkaddoura@hotmail.com](mailto:kkaddoura@hotmail.com) in registering websites. McKenney Dec., PX1, ¶¶ 64-65; Certification of Records of Regularly Conducted Activity of Linda Shutterly, Network Solutions, LLC, PX 18, Att. at 1, 5, 7; Declaration of Paul Karkas ("Karkas Dec."), PX 17, ¶ 7. Kaddoura also used that Hotmail address as a secondary contact when registering the email address [k2cando@gmail.com](mailto:k2cando@gmail.com). McKenney Dec, PX 1, ¶¶ 62-63. Having registered that Gmail address, Kaddoura then used it to communicate as "Kal" with payment processors regarding a yellow pages service. Lashmar Dec., PX 19, ¶¶ 7-13 (summarizing email from Kal at [k2cando@gmail.com](mailto:k2cando@gmail.com)).

<sup>38</sup> McKenney Dec., PX 1, ¶¶ 78-82 (summarizing complaints by Defendants' former employees, which identify Kal as owner of Defendants' operation); *id.*, ¶ 23 (summarizing SEOOnline's processor application, which lists "Kal Karim" as primary, technical, and accounting contact); *compare id.* (summarizing SEOOnline's processor application, listing Kal's telephone number) *and* Lashmar Dec., PX 19, ¶ 13 & Att. A at 2 (attaching email from Kal listing same telephone number).

<sup>39</sup> McKenney Dec., PX 1, ¶¶ 28, 32, 37 (summarizing transfers to UConnects); Karkas Dec., PX 17, ¶ 7 (showing Kaddoura's registration of [uconnects.com](http://uconnects.com) and email account "[kal@uconnects.com](mailto:kal@uconnects.com)").

<sup>40</sup> McKenney Dec., PX 1, ¶ 20 (showing SEOOnline's corporate records); *id.*, ¶ 30-31, 33, 36 (summarizing SEOOnline bank account, which Cessford controlled and which received funds from processor); Lashmar Dec., PX 19, ¶¶ 19-21 (showing Cessford's application for processing services on behalf of SEOOnline). Cessford also is principal of proposed defendant Cesstech Inc., which did business as Yellow US Pages. McKenney Dec., PX 1, ¶¶ 46, 54 (summarizing domain registration and virtual office records listing Cessford as principal of Cesstech doing business as Yellow US Pages).

<sup>41</sup> *Id.* ¶¶ 26-27 (summarizing SEO Online, LLC's bank account, which Kirby controlled and which received funds from processor); *id.*, ¶ 79 (summarizing complaint by Defendants' former employee, who identified Kirby as representative of Defendants' operation).

### C. Defendants' Common Enterprise

Despite their ever-changing directory names, Defendants are one operation, controlled by the same individuals, with shared offices and commingling of funds. Defendants operate from a call center in the Montreal area, and funnel consumer payments made to their several business directories into just two corporate accounts before transferring those funds to Canada and overseas.<sup>42</sup> From various U.S. mail drops, Defendants forward their mail to one Montreal location.<sup>43</sup> They also set up their business directory websites and access email accounts from the same location in Montreal.<sup>44</sup> Finally, Defendants use the same mail drop operator, website registration company, and telecommunications and fax service for their various business directories.<sup>45</sup> In sum, Defendants operate a common enterprise, and are thus jointly and severally liable for their violations of the FTC Act.<sup>46</sup>

### IV. ARGUMENT

Defendants' business directory scam has tricked consumers out of millions of dollars, in clear violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The Commission seeks an *ex parte* temporary restraining order and a preliminary injunction enjoining Defendants' deceptive

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<sup>42</sup> *Id.*, PX 1, ¶¶ 23-24 (showing consumer payments through EBS processor, also known as ECSI); *id.*, ¶¶ 27, 31, 36, 39 (showing processor's payments into Defendants' bank accounts); *id.*, ¶¶ 28, 32, 37, 40 (showing transfers from Defendants' bank accounts to overseas accounts).

<sup>43</sup> McKenney Dec., PX 1, ¶¶ 51, 61 (showing use of common Montreal addresses).

<sup>44</sup> *Id.*, ¶¶ 45, 62-64 (showing use of common Internet Protocol ("IP") address).

<sup>45</sup> *Id.*, ¶¶ 50-51 (showing use of mail drops); *id.*, ¶ 45 (showing use of GoDaddy domain registrar); *id.*, ¶¶ 41-42 (showing use of Origen telecommunications service and Defendants' payment to Origen); *id.*, ¶¶ 43-44 (showing use of RingCentral fax service and Defendants' payment to RingCentral). A former employee of Defendants' call center informed the FTC that the center was used to make telemarketing calls to consumers on behalf of Defendants' various directory names. McKenney Dec., PX 1, ¶¶ 79-82.

<sup>46</sup> *See FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993, 1011 (N.D. Ind. 2000) (*citing Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973)), *aff'd*, 312 F.3d 259 (7th Cir. 2002); *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746-47 (2nd Cir. 1964).

practices. The FTC also asks the Court to freeze Defendants' assets for eventual restitution to victims, and to have checks and other mail at Defendants' mail drops redirected to the FTC. The Court has full authority to enter the requested relief, which is strongly supported by the evidence.

**A. This Court has the Authority to Grant the Requested Relief.**

The FTC Act provides that “in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction.” 15 U.S.C. § 53(b). Once the Commission invokes the federal court’s equitable powers, the court’s full equitable authority is available. *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997). The Court also may enter a temporary restraining order, a preliminary injunction, and any additional preliminary relief that is necessary to preserve the possibility of providing effective final relief. *FTC v. World Travel Vacation Brokers*, 861 F.2d 1020, 1026 (7th Cir. 1988); *see also FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571 (7th Cir. 1989). Such ancillary relief may include an asset freeze to preserve assets for eventual restitution to victimized consumers. *World Travel*, 861 F.2d at 1031.

**B. The Commission Has Satisfied the Requirements for a Temporary Restraining Order and Preliminary Injunction.**

To grant preliminary injunctive relief in an FTC Act case, the district court must “(1) determine the likelihood that the Commission will ultimately succeed on the merits and (2) balance the equities.” *World Travel*, 861 F.2d at 1029 (quoting *FTC v. Warner Commc’ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)); *FTC v. Datacom Mktg.*, 2006 WL 1472644, at \*3. Under this “public interest” test, “it is not necessary for the FTC to demonstrate irreparable injury.” *World Travel*, 861 F.2d at 1029. Unlike a private litigant, who generally must show a substantial likelihood of success on the merits, the Commission need only make the statutory showing of a likelihood of ultimate success. *Id.* When the court balances the equities, the public interest “must receive far greater weight” than any private concerns. *Id.*

**1. Defendants Have Violated Section 5(a) of the FTC Act.**

Defendants' activities are blatantly deceptive acts or practices under Section 5(a) of the FTC Act. An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances. *FTC v. Bay Area Bus. Council*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. World Media Brokers*, 415 F.3d 758, 763 (7th Cir. 2005). A misrepresentation or omission is material if it is likely to affect a consumer's choice of, or conduct regarding, a product or service. *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992); *Datacom Mktg.*, 2006 WL 1472644, at \*4.

In deceptively inducing consumers to purchase unwanted directory listings, Defendants violate the FTC Act in three ways. First, Defendants falsely represent to consumers that they have a preexisting relationship. As a result, consumers believe that they are merely confirming information for an existing yellow pages listing, when in fact Defendants have no relationship with consumers. Second, as part of their ceaseless collection efforts, Defendants tell consumers that they agreed to purchase Defendants' business directory listings. In fact, consumers have merely confirmed their contact information by responding a series of "yes" or "no" questions and have not agreed to purchase new listings. Finally, Defendants insist that consumers owe hundreds of dollars for listings that consumers do not want and did not order. This claim also is bogus: consumers owe Defendants nothing.

In *Datacom*, under similar circumstances, Judge Holderman found that the defendants violated the FTC Act by misleading consumers into believing that they had a previous business relationship with defendants, when none existed, and that consumers had agreed to buy listings in defendants' directories, when they had not. *Datacom Mktg.*, 2006 WL 1472644, at \*4. As in *Datacom*, the Commission has shown that the defendants are violating the FTC Act.

## **2. The Equities Tip Decidedly in the Commission's Favor.**

Once the Commission has shown a likelihood of success on the merits, the Court must balance the equities, assigning greater weight to the public interest than to defendants' private concerns. *World Travel*, 861 F.2d at 1029. Here, the public has a strong interest in halting a scheme that has defrauded consumers out of \$14 million and in preserving assets necessary to provide final relief to victims. *See FTC v. Sabal*, 32 F. Supp. 2d 1004, 1009 (N.D. Ill. 1998); *Datacom Mktg.*, 2006 WL 1472644, at \*5. By contrast, Defendants have no legitimate interest in continuing to deceive consumers. *See Sabal*, 32 F. Supp. 2d at 1009; *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (upholding finding of “no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment.”). An injunction is required to ensure that Defendants' scheme does not continue while the case is pending.

## **3. Defendants Kaddoura, Cessford, and Kirby are Individually Liable under the FTC Act.**

The individual Defendants in this case participate in and control Defendant's scam, and thus should be subject to the temporary restraining order and an asset freeze. An individual defendant is subject to injunctive relief and liable for monetary restitution under the FTC Act when he (1) participated directly in, or had some control over, a corporation's deceptive practices and (2) knew or should have known of the practices. *World Media Brokers*, 415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 573-74. The Commission does not need to show intent to defraud. *Amy Travel*, 875 F.2d at 573.

The evidence shows that Kaddoura, Cessford and Kirby actively participate in, control and share in the proceeds of Defendants' scam. Kaddoura and Cessford control the processing of consumer payments through Defendant SEOOnline, of which Cessford is President. Kaddoura

and Kirby manage the call center in the Montreal area. Through the web of shell companies and bank accounts they control, Kaddoura, Cessford and Kirby have received millions in ill-gotten gains. Thus, these individuals are liable under the FTC Act and subject to injunctive relief.

**C. An Asset Freeze is Necessary and Appropriate.**

The Commission seeks to freeze Defendants' assets to preserve the possibility that victims of their fraud can eventually receive restitution. In addition to an asset freeze, an immediate accounting will prevent concealment or dissipation of assets. Once the Court determines that the Commission is likely to prevail on the merits and that restitution would be an appropriate final remedy, an asset freeze is appropriate. *See World Travel*, 861 F.2d at 1031 & n.9. The Seventh Circuit has recognized that the district court at that juncture has "a duty to ensure that the assets of the corporate defendants [are] available to make restitution to injured consumers." *Id.* at 1031. In a case such as this, where the Commission is likely to show that an individual is liable for the payment of restitution, the freeze should extend to individual assets as well. *Id.*; *see also Datacom Mktg.*, 2006 WL 1472644, at \*5.<sup>47</sup>

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

To prevent Defendants from dissipating or concealing their assets, the TRO should be issued *ex parte*.<sup>48</sup> An *ex parte* TRO should issue when the facts show that immediate and irreparable injury, loss, or damage will occur before the defendants can be heard in opposition. *See* Fed. R. Civ. P. 65(b). Defendants run an utterly fraudulent scheme, hiding behind a series of

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<sup>47</sup> This Court's jurisdiction over foreign assets is well established. A Court with jurisdiction over a party "has the authority to order it to 'freeze' property under its control, whether the property is within or without the United States." *United States v. First Nat'l City Bank*, 379 U.S. 378, 384 (1965).

<sup>48</sup> *See* Declaration and Certification of Plaintiff Federal Trade Commission's Counsel Pursuant to Fed. R. Civ. P. 65(b) and Local Rule 5.5(d) in Support of *Ex Parte* Motion for Temporary Restraining Order and Motion to Temporarily Seal File (describing need for *ex parte* relief).

directory names, corporate shells, and mail drops. These disguises indicate that Defendants likely would conceal or dissipate assets if notified of the Commission's motion. Moreover, the evidence shows that Defendants have assets in the United States in their bank accounts and at their mail drops, all of which they could transfer out of this country quickly if they were to receive prior notice of this motion. In past FTC cases, Courts in this District consistently have granted *ex parte* restraining orders, including asset freeze and mail forwarding provisions.<sup>49</sup>

## V. CONCLUSION

Defendants have caused and will continue to cause substantial public injury through their violations of the FTC Act. The FTC respectfully requests that the Court issue the proposed TRO to protect the public from further harm and to help ensure the possibility of effective final relief.

Respectfully submitted,

JONATHAN E. NUECHTERLEIN  
General Counsel

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GUY G. WARD  
MATTHEW H. WERNZ  
Federal Trade Commission  
55 West Monroe Street, Suite 1825  
Chicago, Illinois 60603  
(312) 960-5634 [telephone]  
(312) 960-5600 [facsimile]  
gward@ftc.gov  
mwernz@ftc.gov

Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION

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<sup>49</sup> See *FTC v. Construct Data Publishers a.s.*, No. 13-cv-1999 (N.D. Ill. Mar. 15, 2013) (Tharp, J.); *FTC v. Freedom Companies Marketing, Inc.*, No. 12-cv-5743 (N.D. Ill. July 23, 2012) (Shadur, J.); *FTC v. Yellow Page Marketing B.V.*, No. 11-cv-5035 (N.D. Ill. July 26, 2011) (Feinerman, J.); *FTC v. Integration Media Inc.*, No. 09-cv-3160 (N.D. Ill. May 28, 2009) (Bucklo, J.); *FTC v. Data Bus. Solutions Inc.*, 08-cv-2783 (N.D. Ill. May 14, 2008) (Dow, J.); *FTC v. Datacom Marketing Inc.*, No. 06-cv-2574 (N.D. Ill. May 9, 2006) (Holderman, J.).