

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

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ORLANDO US DISTRICT COURT  
MIDDLE DISTRICT FLORIDA  
ORLANDO, FL

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FEDERAL TRADE COMMISSION, and )  
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STATE OF FLORIDA, OFFICE OF THE )  
ATTORNEY GENERAL, DEPARTMENT OF )  
LEGAL AFFAIRS, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
WORLDWIDE INFO SERVICES, INC., *et al.*, )  
 )  
Defendants. )  
\_\_\_\_\_

Civil No. 6:14-cv-8-oel-28DAB

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

## **I. INTRODUCTION**

We ask that the Court put an immediate end to a scam that is targeting elderly consumers across the country in order to get them to pay for a medical alert device that many do not want or need. Defendants use illegal pre-recorded “robocalls” to make their initial contact with consumers, and those who stay on the line are subjected to a live deceptive sales pitch, all in an attempt to get them to sign up for an alert system consisting mainly of a necklace with a button on it that users can push in an emergency.

This is a large scam, which blasts robocalls throughout the country and is backed by over 100 telemarketers operating out of two boiler rooms in Florida. There are more than 64,000 complaints about Defendants’ violations of the Do Not Call rules alone. In addition, over 3,000 consumers have filed complaints about Defendants’ misrepresentations.

Defendants have been paid at least \$13 million in commissions from the companies that make these devices. The Indiana Attorney General filed suit against Defendants for these activities and the North Dakota Attorney General’s Office issued a cease and desist order against them. Even Life Alert, which sells similar devices on television, filed suit against them. At least one Defendant is under order from the State of Florida for another robocall scam Defendants operated in the past. But these illegal calls continue.

Defendants’ robocalls frequently claim that someone has already ordered and paid for the medical alert system for the consumer and that it is thus “free.” Consumers press “1” to speak to a live operator, who continues with additional deceptive claims. For example, consumers are told that the device is endorsed by the American Heart Association, the American Diabetes Association, and the National Institute on Aging. None of this is true.

No one has already ordered this system for the consumer. The device itself is free – but so are those of other makers of such units. And consumers eventually learn that they will have to pay a monthly monitoring fee of \$34.95, and must provide their credit card information immediately, over the telephone, to receive the device. Consumers are told, though, that their cards will not be charged until they receive the system and decide to activate it. This is also untrue. Consumers are charged immediately. Defendants make it extremely difficult for victims or their family members to cancel these services.

These tactics are especially troubling because Defendants are very clearly targeting the elderly, many of whom do not understand the transaction or how this is all supposed to work. A number of Defendants' victims suffer from dementia or Alzheimer's. Former employees confirm that this is a common situation. Yet Defendants still take their money.

There are also a variety of stark law violations in the calls themselves. It is illegal to make prerecorded "robocalls" to sell products or services. It is illegal to call people on the National Do Not Call list. It is illegal to not transmit an accurate Caller ID number. It is illegal for callers to fail to say what company is really calling.

Defendants have gone to great lengths to hide their actual company names and location. In fact, sales people are flatly prohibited from giving consumers the real name of this company. However, we have gathered and filed overwhelming evidence tying this fraud together. This includes sworn statements from 35 victims or family members of victims; statements of five former employees; and financial and corporate records that demonstrate who is really behind this scam and tie together the various corporate names and bank accounts that are controlled by the individual Defendants.

Needless to say, all of these practices violate the consumer protection laws enforced by joint Plaintiffs the Federal Trade Commission and Florida Attorney General. The FTC and the State of Florida bring this motion *ex parte* to seek an immediate halt to Defendants' operation, freeze its assets, and have a temporary receiver appointed over the corporations. Defendants' law violations, as well as attempts to conceal themselves, suggest a real danger that they would hide or dissipate assets if they received notice of this action. The requested relief is necessary to preserve the Court's ability to provide effective final relief, such as providing refunds to victims.

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

For the past two years, Defendants have blasted consumers with unwanted robocalls offering supposedly free medical alert systems. Defendants' calls begin with illegal prerecorded messages, and go out to consumers who are on the National Do Not Call Registry and to those who have previously asked Defendants to stop contacting them.

Even worse, Defendants are clearly targeting the elderly. In many cases the victims are in assisted living facilities or are being cared for by family members. Some no longer control their own finances. The false claims made in these calls are intended to – and succeed in – getting these vulnerable consumers to give out their credit card or checking account information for a product they often do not want or need.

Defendants make these calls on behalf of Lifewatch, Inc., a medical alert provider that pays Defendants a commission for each new customer Defendants sign up.<sup>1</sup> While the extent to which Lifewatch is aware of Defendants' violative business practices is unclear,

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<sup>1</sup> PX 2 ¶¶ 80-82, Atts. RRR-TTT; PX 4 ¶¶ 21, 30, 35, Atts. L, R, S.

Defendants have certainly brought Lifewatch a lot of business. In less than two years, Lifewatch and related corporations have paid Defendants over \$13 million in commissions.<sup>2</sup>

**A. Defendants Violate the Telemarketing Sales Rule.**

More than 64,000 Do Not Call complaints have been filed against Defendants since they began operating less than two years ago.<sup>3</sup> Consumers complain that Defendants contact them incessantly, regardless of whether they are on the National Do Not Call Registry.<sup>4</sup> This includes a great number of elderly consumers who complain of being harassed by Defendants' calls,<sup>5</sup> many of whom signed up for the Do Not Call list specifically to avoid these types of scams.<sup>6</sup> There is also no way to stop these calls. The recorded messages falsely offer consumers the option to press a number to be taken off Defendants' calling list, but consumers continue receiving the calls after doing so.<sup>7</sup> Consumers who stay on the line and directly ask live operators to stop calling also continue receiving calls.<sup>8</sup>

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<sup>2</sup> PX 2 ¶¶ 75, 94, 106, 135, 139.

<sup>3</sup> PX 2 ¶ 149.

<sup>4</sup> PX 9 ¶¶ 3-5; PX 21 ¶ 3; PX 23 ¶ 3; PX 25 ¶ 4; PX 30 ¶ 10; PX 33 ¶¶ 5, 6; PX 35 ¶¶ 3, 9-12; PX 37 ¶ 4; PX 43 ¶ 3; PX 44 ¶¶ 20-22, Ex. C (told company called repeatedly as "advertising strategy"); PX 45 ¶ 18, Ex. C (50% callers on DNC Registry); PX 46 ¶ 15; PX 47 ¶¶ 23-25, 27.

<sup>5</sup> PX 10 ¶¶ 3-5; PX 11 ¶¶ 3, 9 (elderly wife received multiple calls); PX 12 ¶¶ 3-6 (72 years old, "I am offended by Senior Safe Alert's annoying, repeated calls to my house"); PX 13 ¶¶ 3, 9 ("I am frustrated with these constant telephone calls"); PX 14 ¶¶ 3, 4, 7 (70 years old, received at least 7 calls); PX 15 ¶¶ 3-5 (75 years old, contacted approximately 15 times); PX 16 ¶ 10 (82 years old); PX 17 ¶ 3-6 (elderly mother received multiple calls); PX 20 ¶ 3; PX 26 ¶¶ 3, 4 (64 years old, received multiple calls); PX 27 ¶¶ 3, 9 (60 years old, received same robocall more than 30 times); PX 28 ¶¶ 3, 6 (80 years old, "I am annoyed at the number of these telephone calls I get"); PX 29 ¶ 3; PX 31 ¶¶ 1, 3, 9 (93 years old, received multiple calls); PX 34 ¶ 5; PX 36 ¶¶ 3, 10 (65 years old, "it seems impossible to get this company to stop calling us"); PX 40 ¶¶ 3-5 (elderly mother received multiple calls); PX 41 ¶ 3; PX 42 ¶ 5; PX 44 ¶ 23 (80% of calls to senior citizens); PX 46 ¶ 12 (all callers she spoke with were senior citizens).

<sup>6</sup> PX 11 ¶¶ 3, 10; PX 17 ¶¶ 3, 6, 10; PX 29 ¶ 3; PX 41 ¶¶ 3, 11. Certain consumer declarations have been redacted to protect sensitive health information of the victims of Defendants' scheme. Although not required by Fed. R. Civ. P. 5.2 or local rules, Plaintiffs believe that such information should not be on the public record. Plaintiffs will provide unredacted versions of these declarations to the Court and Defendants.

<sup>7</sup> PX 13 ¶ 3; PX 17 ¶ 5; PX 36 ¶ 6; PX 47 ¶¶ 23, 27

<sup>8</sup> PX 2 ¶ 49f, Att. SS (Gassman Dec. ¶ 2); PX 13 ¶¶ 4, 8; PX 15 ¶ 4; PX 28 ¶ 4; PX 36 ¶¶ 6-10; PX 44 ¶ 21 (spoke to consumer who had previously requested not to be called); PX 45 ¶ 19 ("There were times when I would speak to the same customer again after requesting that they not be called.").

Nor can consumers avoid taking these calls by looking at Caller ID. Defendants transmit phony Caller ID information (“spoofing”), misrepresenting the caller and masking the origin of the call.<sup>9</sup> Defendants also never transmit or disclose their company name, instead using a slew of fake names that cannot be traced back to them.<sup>10</sup>

## **B. Defendants Violate the FTC Act and FDUTPA.**

### **1. Defendants’ Deceptive Robocalls are Designed to Make Defendants Seem Credible.**

Defendants’ recorded messages are crafted to appeal to vulnerable consumers.<sup>11</sup>

The most common robocall used by Defendants is recorded to sound like a live person is on the line, complete with the inclusion of “uhs,” pauses, and shuffling of papers.<sup>12</sup> In fact, many consumers never realize they are listening to a recording, or only realize it after getting the same call several times.<sup>13</sup> The caller introduces himself as “John from the Shipping Department of Emergency Medical Alert,” and says he is calling to schedule the delivery of a

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<sup>9</sup> PX 25 ¶ 7 (called number back, notified number not in service); PX 28 ¶ 6 (same); PX 34 ¶ 3 (Caller ID showed “FIA Card Serv”); PX 36 ¶¶ 8, 9 (“Walmart”); PX 43 ¶ 3 (“Bank of America”). The numbers that show up on consumers’ Caller IDs often include in-state area codes, intended to convince consumers the call is coming from a trustworthy source. PX 18 ¶ 7; *see also* PX 9 ¶ 6 (appeared to be local number); PX 13 ¶ 4 (same); PX 15 ¶ 3 (same); PX 23 ¶ 6 (same); PX 36 ¶¶ 4, 8 (same). Some of the numbers that appeared on consumers’ Caller IDs were briefly registered, but not necessarily on the dates that the consumers received the calls. *See, e.g.*, PX 2 ¶ 62d; PX 25 ¶¶ 3, 7. The registration information associated with these numbers lists fake addresses and prepaid telephone numbers. PX 2 ¶¶ 63b, 79e, k, l.

<sup>10</sup> PX 2 ¶ 87, Att. FFF pp. 1, 4 (“Senior Benefits,” “Safeline”); PX 20 ¶ 3 (“Senior Medical Benefits Program”); PX 34 ¶ 4 (“Just for Seniors”); PX 36 ¶¶ 5, 9 (“Emergency Medical Alert,” “National Senior Assistance Program”); PX 44 ¶ 4, Exs. A, B (“Senior Assistance Program,” “Senior Alert Care”); PX 45 ¶ 2 (“Senior Emergency Care”); PX 46 ¶ 3 (“Senior Safe Alert”).

<sup>11</sup> PX 9 ¶¶ 4, 7; PX 12 ¶¶ 3, 6; PX 13 ¶¶ 3, 4; PX 25 ¶¶ 4, 8 (calls target vulnerable elderly consumers); PX 26 ¶ 9 (targeting seniors); PX 28 ¶ 5 (“it is clear to me that the company is targeting elderly consumers who may be suffering from memory loss or confusion”); PX 30 ¶ 10; PX 33 ¶ 6 (targeted vulnerable seniors); PX 40 ¶ 7 (calls try to take advantage of the elderly); PX 44 ¶ 23; PX 46 ¶ 17 (“this company is preying on a group of vulnerable consumers”).

<sup>12</sup> PX 27 ¶ 6, Att. A (transcript); PX 33 ¶ 4; PX 36 ¶¶ 4-5 (transcript).

<sup>13</sup> PX 9 ¶ 3 (“when I asked him to stop calling, he just kept talking”); PX 12 ¶¶ 3, 6; PX 23 ¶ 4; PX 24 ¶ 12 (“it is unclear if John is a real person ... because he did not stop speaking when I repeatedly asked him to remove me from any call list”); PX 25 ¶ 4; PX 27 ¶ 6, Att. A (transcript); PX 31 ¶ 9 (“I kept telling him I did not want the product, but he just spoke over me”); PX 33 ¶ 4; PX 35 ¶¶ 4-7 (only realized recording after receiving same message on her voicemail, transcript); PX 36 ¶¶ 4-5 (transcript); PX 40 ¶ 4.

medical alert system. After rustling some papers, “John” tells the consumers that it “says here that the system has already been paid for” and that they are getting the system because they, “a friend, a family member, or maybe someone [they] know experienced a fall in the past.”<sup>14</sup> After repeating that the system, as well as shipping, have already been paid for and “there’s no cost to you whatsoever,” consumers are instructed to press 1 on their telephone to have the system shipped out to them. “John’s” statements are not true.

Defendants’ other prerecorded messages are also deceptive. One recording, for example, warns consumers about “a significant rise in the number of senior citizens suffering death and serious life-threatening injuries from a delay in response times for medical emergencies, fires, burglaries or even a simply fall,” and claims that the American Heart Association and American “Diabetic” Association are urging senior citizens to get medical alert systems.<sup>15</sup> The recording then states that, “[f]or the first time,” Defendants are “providing senior citizens with this life-saving emergency medical alert equipment at no charge to seniors.”<sup>16</sup> Consumers are then told to press 1 to get more information.

Recently, Defendants have begun using a robocall that lures senior citizens in by promising them free groceries rather than focusing on the medical alert system. The recording sounds like a public service announcement, and claims that a “new national senior assistance program” is now available to consumers over the age of 60 which provides \$3000 in free grocery coupons.<sup>17</sup> The message mentions that the program provides a free medical

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<sup>14</sup> PX 14 ¶ 4; PX 23 ¶ 4; PX 27 ¶ 6, Att. A (transcript); PX 28 ¶ 5; PX 33 ¶ 5; PX 35 ¶ 7 (transcript); PX 36 ¶ 5 (transcript).

<sup>15</sup> PX 2 ¶ 87, Att. FFF p. 1; PX 13 ¶ 3; PX 17 ¶ 4; PX 21 ¶ 3; PX 28 ¶ 4; PX 31 ¶¶ 3, 4; PX 37 ¶ 4.

<sup>16</sup> PX 2 ¶ 87, Att. FFF p. 1; PX 21 ¶ 3; PX 28 ¶ 4.

<sup>17</sup> PX 9 ¶ 4; PX 26 ¶¶ 3, 4; PX 36 ¶ 9.

alert device, but makes it sound like an added bonus rather than the focus of the call.<sup>18</sup>

Consumers are instructed to press 1 to “speak to a representative and have your \$3000 saving certificate mailed directly to you and learn more about the risk-free offer.”<sup>19</sup> Needless to say, we are not aware of anyone who has received \$3000 in free groceries.<sup>20</sup>

## 2. Defendants’ Live Operators Expand on the Deceptive Claims.

Consumers who press 1 are transferred to live operators. After introducing themselves, Defendants’ operators immediately tell consumers they will receive “a FREE medical alert system package that has a value of over \$400.”<sup>21</sup> The consumers are often told the system is free because a friend, family member, or acquaintance purchased it for them,<sup>22</sup> or because someone referred them to Defendants.<sup>23</sup>

The operators then launch into a long description of the medical alert system. They tell consumers they have probably seen the system on television and refer to Life Alert Emergency Response, Inc.’s trademark phrase “I’ve fallen and I can’t get up.”<sup>24</sup> They also explain how easy the system is to use, and assure consumers that, with the system, they “will never have to feel helpless, worried or by yourself in an emergency situation.”<sup>25</sup>

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<sup>18</sup> PX 9 ¶ 4; PX 26 ¶ 4; PX 36 ¶ 9.

<sup>19</sup> PX 9 ¶ 4; PX 36 ¶ 9.

<sup>20</sup> PX 2 ¶¶ 54, 149b, Atts. XX, CCCCC (former employee reported coupons link to a “sham website”); PX 26 ¶ 5 (told he must pay monthly fee to get coupons).

<sup>21</sup> PX 2 ¶¶ 49e, 87, Atts. RR (Levine Dec. ¶¶ 4-6, Exs. B-D, pp. 6, 15, 24), FFFF p. 2; PX 4 ¶¶ 11, 15 Atts. C, G (scripts); PX 21 ¶ 4 (told shipping and equipment was free); PX 44 ¶ 4, Ex. A; PX 45 ¶ 12, Ex. A; PX 46 ¶ 5, Att. A.

<sup>22</sup> PX 13 ¶ 4; PX 15 ¶ 4; PX 16 ¶ 3; PX 18 ¶¶ 5-7; PX 19 ¶ 3 (thought it was a Mother’s Day gift); PX 22 ¶ 4 (assumed her daughter had signed her up); PX 30 ¶ 3; PX 38 ¶ 3 (mother recently returned home post-hospice; assumed hospice purchased it); PX 39 ¶ 3 (dad assumed kids signed him up); PX 40 ¶ 5.

<sup>23</sup> PX 23 ¶ 5; PX 41 ¶ 8 (claimed doctor referral); PX 42 ¶ 4 (same); PX 45 ¶ 25, Ex. F; PX 46 ¶ 9, Att. E; PX 47 ¶ 32, Ex. C.

<sup>24</sup> PX 2 ¶¶ 49a, 49e, 87, Atts. NN (Gates Dec. ¶ 6), RR (Levine Dec. ¶¶ 4-6, Exs. B-D, pp. 6, 15, 24), FFFF p. 2; PX 4 ¶¶ 11, 15 Atts. C, G (scripts); PX 44 ¶ 4, Ex. A; PX 45 ¶ 12, Ex. A; PX 46 ¶ 5, Att. A.

<sup>25</sup> PX 2 ¶¶ 49e, 87, Atts. RR (Levine Dec. ¶¶ 4-6, Exs. B-D, pp. 7, 16, 24), FFFF p. 2; PX 4 ¶¶ 11, 15 Atts. C, G (scripts); PX 44 ¶ 4, Ex. A; PX 45 ¶ 12, Ex. A; PX 46 ¶ 5, Att. A.



In a clear effort to bolster their legitimacy, Defendants' operators tout that the system has "been recommended by the American Heart Association, the American Diabetes Association, [and] the National Institute of Aging..."<sup>26</sup> In reality, these organizations have all submitted declarations in this matter indicating that they do not endorse any specific products, including medical alert systems.<sup>27</sup> Both the American Heart Association and National Institute on Aging have also tried to identify Defendants to demand that they stop using the organizations' names.<sup>28</sup>

Eventually, the operators tell the consumers – for the first time – that they will be responsible for paying a monthly monitoring fee of \$34.95.<sup>29</sup> But consumers are assured that even that fee will not be charged immediately because "the billing cycle doesn't start until you receive the system and activate it."<sup>30</sup> Or, as one operator put it during a call, "we just send out the system to you right now and then when you are financially ready to pay for it, ma'am, you can plug it in and that's when the activation fee starts to do [sic]."<sup>31</sup> Consumers are then asked for their address and credit card information.<sup>32</sup>

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<sup>26</sup> PX 2 ¶¶ 49e, 87, Atts. RR (Levine Dec. ¶¶ 4-6, Exs. B-D, pp. 7, 16, 24), FFFF p. 2; PX 4 ¶¶ 11, 15 Atts. C, G (scripts); PX 21 ¶ 5; PX 30 ¶ 8; PX 37 ¶ 5; PX 44 ¶ 4, Att. A; PX 45 ¶ 12, Ex. A; PX 46 ¶ 5, Att. A.

<sup>27</sup> PX 5 ¶ 3 ("The ADA does not endorse products or services."); PX 6 ¶ 3 ("The AHA does not endorse products."); PX 7 ¶ 3 ("Because the NIA is the name of a government agency, it cannot be used for endorsement purposes."). *See also* PX 37 ¶¶ 3, 7, Att. A (AHA continues getting complaints).

<sup>28</sup> PX 6 ¶¶ 4, 5, Att. A (AHA received over 550 complaints, attempted to identify company, contacted suspect company, and posted fraud warning on website); PX 7 ¶¶ 4-5 (NIA received many complaints and inquiries, sent cease and desist letter to registrant of violative website but letter returned undeliverable).

<sup>29</sup> PX 2 ¶¶ 49e, 87, Atts. RR (Levine Dec. ¶¶ 4-6, Exs. B-D, pp. 7, 16, 25), FFFF p. 3; PX 4 ¶¶ 11, 15 Atts. C, G (scripts); PX 22 ¶ 4; PX 23 ¶ 5; PX 39 ¶ 3; PX 40 ¶ 5 (had to ask multiple times before operator admitted to monthly fee); PX 46 ¶¶ 5, 13, Att. A (found fee disclosure misleading).

<sup>30</sup> PX 2 ¶¶ 49e, 87, Atts. RR (Levine Dec. ¶¶ 4-6, Exs. B-D, pp. 7, 16, 27-28), FFFF p. 3; PX 4 ¶¶ 11, 15 Atts. C, G (scripts); PX 31 ¶ 5 (thought only charged after activation); PX 34 ¶ 4 (told he would not be charged until receive and activate device); PX 44 ¶ 4, Att. A; PX 45 ¶ 12, Ex. A; PX 46 ¶¶ 5, 13 Att. A (found script's description of billing confusing).

<sup>31</sup> PX 2 ¶ 49e, Att. RR (Levine Dec. ¶ 6, Ex. D, p. 27).

<sup>32</sup> PX 2 ¶¶ 49e, 87, Atts. RR (Levine Dec. ¶¶ 4-6, Exs. B-D, pp. 11, 18-19, 28-30), FFFF p. 3; PX 4 ¶¶ 11, 15 Atts. C, G (scripts); PX 44 ¶ 4, Att. A; PX 45 ¶ 12, Ex. A; PX 46 ¶¶ 5, 13 Att. A.

Consumers who are reluctant to hand over their credit card or banking information are aggressively pressured to agree to the fee. Those who want to think about the purchase, or speak to their family first, are told they will lose out on the special offer unless they sign up that day.<sup>33</sup> Consumers who say that they are not interested are barraged with up to 40 scripted responses, many of which are designed to prey on the fears of seniors or reassure them that their purchase is risk-free.<sup>34</sup> Defendants also make it impossible for telemarketers to end the call, so consumers must literally hang up on the operator – something that, in one telemarketer’s experience, elderly consumers dislike doing because they find it rude.<sup>35</sup>

The operators continue to stress that a friend or family member felt the consumer needed the product. One consumer was even told that the purchaser would not get his or her money back if the consumer declined to pay the monthly fee.<sup>36</sup> Of course, when consumers ask for that person’s identity, they are told they can only get that information after they have agreed to pay the monthly fee, or they cannot get it at all because of vague privacy reasons.<sup>37</sup>

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<sup>33</sup> PX 2 ¶ 49e, Att. RR (Levine Dec. ¶¶ 4, 6, Exs. B, D, pp. 8, 26); PX 23 ¶ 5; PX 31 ¶ 5 (“telemarketer said there was a special deal being offered just for the day”); PX 42 ¶ 4 (asked to put phone down to speak to daughter and told “no” by operator); PX 44 ¶ 17 (“Hilgar and Martin would tell us to make the offer seem urgent... But the offer was always available.”); PX 46 ¶ 13; PX 47 ¶ 30 (offered “free” system to everyone, not a special one-day deal). Not only do Defendants offer this deal daily, but medical alert device providers actually routinely provide the equipment and shipping for free. PX 2 ¶¶ 88-90, Atts. GGGG-III; PX 28 ¶ 6; PX 36 ¶ 10.

<sup>34</sup> PX 2 ¶¶ 49e, 87, Atts. RR (Levine Dec. ¶ 6, Ex. D, pp. 26-28), FFFF p. 3-4; PX 4 ¶ 11, Atts. C (rebuttal script); PX 17 ¶ 6; PX 23 ¶ 8; PX 33 ¶ 5; PX 37 ¶ 5 (operator promised she would not lie); PX 42 ¶ 4; PX 44 ¶¶ 18-19, Ex. B; PX 45 ¶ 12, Ex. B; PX 46 ¶¶ 5, 9 Att. B; PX 47 ¶¶ 19, 21, 25, 28-33, Ex. C (told to repeat rebuttals until customer agrees to give credit card number).

<sup>35</sup> PX 46 ¶ 14. *See also* PX 4 ¶ 26, Att. P (former employee complaint: “They make us stay on the line arguing with elderly people until they hang up or give out their credit card or checking info.”); PX 16 ¶ 3; PX 17 ¶ 6 (mother “is very polite and does not like to hang up on people”); PX 23 ¶ 8 (had to hang up to get off phone); PX 31 ¶ 9 (“I found the call to be extremely frustrating because it was nearly impossible to tell the representatives that I was not interested.”); PX 45 ¶ 22; PX 47 ¶ 33 (“Even if a customer was yelling at us, we could not hang up the phone until we get a deal or the customer hung up.”).

<sup>36</sup> PX 16 ¶ 3; PX 44 ¶ 19.

<sup>37</sup> PX 13 ¶ 4; PX 16 ¶ 3; PX 18 ¶ 6; PX 33 ¶ 5; PX 38 ¶ 3; PX 39 ¶ 3; PX 41 ¶ 8; PX 42 ¶ 5.

Defendants refuse to tell consumers the real company name, location, or telephone number during the sales calls.<sup>38</sup> In fact, one former employee was even told by a manager that providing information on the company would result in disciplinary action.<sup>39</sup> Consumers are given fake company names, including Senior Safe Alert and Senior Emergency Care.<sup>40</sup> People who ask for the company's address are told it is located in Florida, New York, or the state in which the consumer resides, but never given an address.<sup>41</sup> If consumers ask, they are told the company does not have a telephone number, or that they will only get that information after they provide their credit card or bank account information.<sup>42</sup> The only information the operators are allowed to provide to consumers during the sales portion of the call is a referral to a website, which provide very little additional information.<sup>43</sup>

Many consumers agree to pay the monthly fees because they believe Defendants' lies.<sup>44</sup> But Defendants also routinely take advantage of vulnerable consumers who lack the

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<sup>38</sup> PX 44 ¶ 13; PX 47 ¶ 28. The scripts that Defendants submitted to the Florida Department of Agriculture and Consumer Services ("FDACS") state that they are calling for Lifewatch. The scripts Defendants actually use, however, omit this information. PX 2 ¶ 49e, Att. RR (Levine Dec. ¶ 6, Ex. D, p. 26); PX 4 ¶¶ 30, 35, Atts. R, S (FDACS-submitted scripts); *compare* PX 44 ¶ 4, Ex. A; PX 45 ¶ 12, Ex. A; PX 47 ¶ 15, Ex. B.

<sup>39</sup> PX 44 ¶¶ 13, 15.

<sup>40</sup> *See, supra*, footnote 10.

<sup>41</sup> PX 12 ¶ 4 (New York City); PX 13 ¶ 4 (Ohio); PX 23 ¶ 6 (New York); PX 44 ¶ 24, Ex. B (instructed to say company in New York); PX 45 ¶ 23 (same); PX 47 ¶ 28 (same).

<sup>42</sup> PX 9 ¶ 5 (told company did not have number); PX 12 ¶ 4 (refused to provide number); PX 23 ¶ 6 (same); PX 25 ¶ 5 (told she'd receive number after providing payment information); PX 36 ¶ 7 (refused to provide telephone number); PX 44 ¶ 24; PX 45 ¶ 23; PX 46 ¶ 13; PX 47 ¶ 28.

<sup>43</sup> PX 2 ¶¶ 49e, 51-53, Atts. RR (Levine Dec. ¶ 6, Ex. D, p. 26), UU-WW; PX 9 ¶ 5; PX 23 ¶ 6; PX 37 ¶ 5; PX 42 ¶ 5; PX 45 ¶¶ 12, 24, Ex. B (website not always active, and phone number did not work); PX 46 ¶¶ 13, 16 (found it strange that only provide website, "few elderly people were very internet savvy, yet those people were the target market for this campaign."). Furthermore, the websites' registration information contains fake information, making it impossible to trace the sites to Defendants. PX 2 ¶¶ 55-57, 60, 63a, 65-66.

<sup>44</sup> PX 2 ¶ 49e, Att. RR (Levine Dec. ¶ 6, Ex. D, p. 27-28 (agreed to fee because told no charge until activated)); PX 18 ¶ 5; PX 19 ¶ 2 ("Because I believed that somebody I knew was concerned about me and had paid for the device, I gave the caller my banking information and agreed to pay" the monthly fee); PX 22 ¶¶ 4, 9 (thought it was related to daughter's purchase of system); PX 30 ¶ 3 (thought mom bought it); PX 31 ¶ 5 ("Based on what the telemarketer told me, I decided to purchase the product"); PX 34 ¶¶ 4-6 (thought he would only be charged if he activated the device); PX 38 ¶¶ 4, 6 ("Because the device had been purchased for my mother, presumably by hospice, I believed that the system was important to have, so I agreed, on my mother's behalf, to the monthly

mental capacity to agree to the purchase.<sup>45</sup> These consumers simply provide their credit card or banking information because they are instructed to by Defendants' predatory operators. One former employee said that "[s]ome senior citizens were so confused that when I asked for their credit card number, they would read the numbers on their insurance card."<sup>46</sup>

Once consumers agree to pay the monthly fees, they are transferred to "verifiers" who confirm the purchase.<sup>47</sup> Like the initial operators, the verifiers do not clearly inform consumers of when the first monthly charge will be assessed. According to the verification scripts, consumers who ask about billing are not given a straightforward answer, but are told the billing cycle does not start until they activate the system.<sup>48</sup> Notably, the verifiers are instructed to avoid focusing on this point, and to quickly move on with the verification.<sup>49</sup> Only after consumers provide their payment information are they finally given a customer service telephone number.<sup>50</sup>

### **3. Consumers Find It Difficult to Cancel Service or Receive Refunds.**

Soon after receiving the telemarketing calls, many consumers realize they have been scammed. Some learn that nobody they know purchased the device for them or referred

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fee."); PX 39 ¶¶ 3, 7 (gave information because thought children purchased device); PX 42 ¶ 4 (mother gave credit card information because of referral by health care professional).

<sup>45</sup> PX 44 ¶ 23 (oftentimes, callers seemed confused); PX 46 ¶ 12 (same).

<sup>46</sup> PX 44 ¶ 23.

<sup>47</sup> PX 2 ¶¶ 49e, 87, 149b, Atts. RR (Levine Dec. ¶¶ 4-6, Exs. B-D, pp. 13, 22, 31), FFFF pp. 5-7, CCCCC; PX 34 ¶ 6; PX 44 ¶ 26; PX 45 ¶ 15.

<sup>48</sup> PX 4 ¶ 21 Att. K (rebuttal script: "you don't actually pay for monitoring until your system is activated and you are protected"); PX 31 ¶ 5 (thought would not be charged until device was activated); PX 34 ¶ 4 (told he would not be charged until received and activated the device).

<sup>49</sup> PX 4 ¶ 21, Att. K (rebuttal script: "DON'T wait for customer to respond\*\*\*, continue with the confirmation.").

<sup>50</sup> PX 4 ¶ 21, Att. K (confirmation script). *See also* PX 16 ¶ 3 (given customer service number 800-717-9295); PX 20 ¶ 4 (same); PX 21 ¶ 7 (same); PX 22 ¶ 5 (same); PX 30 ¶ 3 (same); PX 34 ¶ 6 (same); PX 39 ¶ 3 (same); PX 41 ¶ 3 (same); PX 42 ¶ 4 (same). Michael Hilgar registered the number 800-717-9295. PX 2 ¶ 61a, Att. EE.

them to the company.<sup>51</sup> Others discover that they were charged the first monthly monitoring fee right away, rather than only after they received the device and decided to activate it.<sup>52</sup>

Consumers who contact the organizations that supposedly recommended the device learn that those endorsements are fake.<sup>53</sup>

When upset consumers call Defendants' customer service number, operators are unsympathetic and make it extremely difficult to cancel the service. Those demanding more information on the company only get vague answers.<sup>54</sup> Often, family members who call to cancel on behalf of elderly customers are told that the customers themselves must cancel.<sup>55</sup> When customers call, the representatives aggressively re-pitch the service.<sup>56</sup> Consumers sometimes are charged even after being told the account will be cancelled.<sup>57</sup>

Consumers who do not, or cannot, cancel their accounts after the sales calls receive medical alert devices in the mail.<sup>58</sup> The arrival of this package is often the first time family

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<sup>51</sup> PX 19 ¶ 4; PX 22 ¶¶ 4-5; PX 30 ¶ 3; PX 38 ¶ 6; PX 39 ¶¶ 3-4; PX 42 ¶ 6.

<sup>52</sup> PX 2 ¶ 50, Att. SS (Holley Dec. ¶ 7 (billed before received equipment)); PX 16 ¶ 5; PX 19 ¶ 4 (charged before received system and never opened box once received); PX 20 ¶ 6, Att. A (charged same day); PX 21 ¶ 9 (charged before activated); PX 30 ¶ 7 (charged same day as call, despite immediate cancellation request); PX 34 ¶ 7 (charged immediately despite being assured he would not be charged until received and activated device); PX 39 ¶ 5 (charged immediately).

<sup>53</sup> PX 5 ¶ 4 (ADA received complaints); PX 6 ¶¶ 4, 5, Att. A (AHA received over 550 complaints and inquiries, posted fraud warning); PX 7 ¶ 4 (NIA received many complaints and inquiries).

<sup>54</sup> PX 4 ¶ 21, Att. K ("If the customer asks for the company name immediately: 'we have several companies we use depending on your area, do you have a confirmation number so I can look you up?' Do not just give out our information without knowing if they are our customer."); PX 16 ¶¶ 7-8; PX 22 ¶¶ 5-6 (told they "service many companies"); PX 30 ¶¶ 4-6 (refused to give company name); PX 39 ¶ 4 (refused to give daughter information because her name was not on the account); PX 42 ¶ 5 (representative would only give website).

<sup>55</sup> PX 39 ¶ 4; PX 41 ¶ 4.

<sup>56</sup> PX 4 ¶ 21 Att. K ("When a customer calls to cancel, you must always first try to find out the reason.... No matter what their reasons is [sic] they're [sic] always rebuttal's[sic].") Representatives also instructed to offer lower fee, grocery coupon, or free month to keep the account); PX 20 ¶ 7 (had to speak to two representatives before able to cancel account); PX 21 ¶ 13; PX 39 ¶ 6 (representative did not give customer chance to talk for ten minutes); PX 41 ¶ 7; PX 42 ¶ 5.

<sup>57</sup> PX 2 ¶ 149b, Att. CCCC; PX 24 ¶¶ 4, 5; PX 33 ¶ 15.

<sup>58</sup> PX 2 ¶¶ 49a, c, d, f, Atts. NN (Gates Dec. ¶ 11), PP (Eberhard Dec. ¶ 3), QQ (Oliver Dec. ¶ 3), SS (Gassman Dec. ¶ 5); PX 21 ¶ 10; PX 24 ¶ 7 (received device despite earlier cancellation); PX 31 ¶ 6. Some consumers received devices from Connect America because, for a period of time, Lifewatch sold its contracts to Connect

members learn that their vulnerable elderly parents even received Defendants' telemarketing calls.<sup>59</sup> While the product seems to work, and the pricing is competitive with similar products, many consumers who were misled into agreeing to receive the product simply do not want or need it.<sup>60</sup> They also continue being charged even if they never activated the device.<sup>61</sup> Consumers who try to cancel after receiving the device deal directly with the provider; even then it often takes several months and a great deal of perseverance to cancel an account, yet until the consumers do so, they continue being charged the recurring monthly fees.<sup>62</sup>

### III. ARGUMENT

Defendants' business practices violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), multiple provisions of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and Section 501.204 of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Chapter 501, Part II, Florida Statutes (2012). To prevent any further injury to innocent consumers, the FTC and State of Florida ask that the Court issue *ex parte* their proposed TRO. That order would enjoin Defendants' ongoing law violations and would provide for

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America for servicing. PX 2 ¶ 49b, Att. OO (Shepher Dec. ¶ 3); PX 29 ¶ 6 (told by Connect America employee that mother likely called by Lifewatch).

<sup>59</sup> PX 29 ¶ 5 (mother received device that was identical to the one she already had); PX 33 ¶ 6 ("I became aware of my father's purchase when I noticed a box inside my father's house.").

<sup>60</sup> PX 2 ¶ 49f, Att. SS (Gassman Dec. ¶ 6, Ex. C); PX 16 ¶ 11 (only agreed because thought someone purchased it for her); PX 19 ¶ 6 (UPS employee said many of the boxes being returned to sender); PX 29 ¶ 5 (already had identical device); PX 31 ¶¶ 4-7 (telemarketer said easier to use, but it was same as current device).

<sup>61</sup> PX 11 ¶¶ 4-6; PX 21 ¶¶ 9, 12-14; PX 31 ¶¶ 5, 8.

<sup>62</sup> PX 11 ¶¶ 7, 10 ("it is alarming how many times I had to contact the company to cancel the service and how many company representatives denied having knowledge of the cancellation process," only got help after filing BBB complaint); PX 16 ¶ 11; PX 19 ¶ 7 (closed account because could not cancel with company); PX 21 ¶¶ 11-15; PX 24 ¶¶ 7-11 (only able to cancel after multiple calls, filing BBB complaint, and waiting several weeks); PX 29 ¶¶ 8-11 (charged even after cancelling and returning device); PX 31 ¶¶ 7-8; PX 33 ¶¶ 7-15 (spoke with many people before able to cancel, paid return shipping costs, and then continued being charged post-cancellation); PX 38 ¶ 7; PX 48 ¶¶ 9-15 (former Lifewatch employee, believed Lifewatch "had a practice of delaying and failing to provide refunds to customers").

other equitable relief designed to preserve the Court's ability to provide restitution to victims at the conclusion of the proceeding.

**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). The practice of defrauding consumers by misrepresenting or omitting material facts in violation of Section 5(a) of the FTC Act presents a “proper case” for injunctive relief under 15 U.S.C. § 53(b). *See FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996). Once the Commission invokes the federal court's equitable powers, moreover, the full breadth of the court's authority is available, including the power to grant such ancillary final relief as rescission of contracts and restitution. *Id.* The court may also enter a TRO, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief. *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432 (11th Cir. 1984). Such ancillary relief may include an asset freeze to preserve assets for eventual restitution to victimized consumers, and the appointment of a receiver. *Id.* at 1432-34.<sup>63</sup>

**B. Plaintiffs Meet the Applicable Standard for Injunctive Relief.**

Section 13(b) of the FTC Act authorizes a TRO and a preliminary injunction “[u]pon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest.” 15 U.S.C. § 53(b). In the Eleventh Circuit, courts consider two factors in determining whether to grant a preliminary

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<sup>63</sup> The court's expansive equitable powers also are available under the TSR. *See* 15 U.S.C. § 6105(b). Courts may enter any relief necessary to redress injury to consumers caused by the TSR violation, including “rescission or reformation of contracts [and] the refund of money or return of property.” 15 U.S.C. §§ 57b(a)(1) & (b).

injunction under Section 13(b): 1) the likelihood that the FTC will succeed on the merits; and 2) the balance of equities. *See FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1217 (11th Cir. 1991). Unlike private litigants, the FTC “need not prove irreparable harm.” *See id.* at 1218.

**C. Plaintiffs Have Demonstrated a Likelihood of Success on the Merits.**

Defendants’ false and deceptive claims squarely violate federal and state consumer protection laws. Defendants’ telemarketing practices, including their use of robocalls and spoofed Caller ID information, also violate numerous TSR provisions. In fact, these practices have continued despite other lawsuits aimed at ending them. In October 2012, the Indiana Attorney General’s office sued Michael Hilgar, Worldwide Info Services, Inc. (“Worldwide”), Elite Information Solutions Inc. (“Elite”) and Absolute Solutions Group Inc. (“Absolute”) for illegal robocalls and Do Not Call violations.<sup>64</sup> Medical alert device provider Life Alert Emergency Response, Inc. sued this enterprise for trademark infringement and unfair competition in May 2013, because it was using Life Alert’s “I’ve fallen and I can’t get up” trademark.<sup>65</sup> The state of North Dakota also issued a Cease and Desist Order against Hilgar, Worldwide, and Elite for violations of its consumer fraud and do-not-call laws.<sup>66</sup>

Defendants have gone to great lengths to hide their involvement. They have set up a tangled web of interrelated corporations principally designed to evade law enforcement. Despite these efforts, the reality is that Defendants operate two call centers, using exactly the same tactics, and each of the Corporate Defendants has furthered the scheme in meaningful ways. Worldwide entered into the telemarketing contract with Lifewatch, received millions

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<sup>64</sup> PX 2 ¶¶ 44-46, Atts. KK, LL.

<sup>65</sup> PX 2 ¶ 48.

<sup>66</sup> PX 2 ¶ 47, Att. MM.



of dollars in commissions in connection with Defendants' scam, registered the customer service number given to consumers, and leases one of Defendants' two call centers.<sup>67</sup> Arcagen, Inc. ("Arcagen") leases Defendants' second call center, and holds the telemarketing license under which Defendants are currently working.<sup>68</sup> Elite leased Defendants' original call center, and is one of the companies under which Defendants have officially operated.<sup>69</sup> Global Service Providers, Inc. ("Global Service Providers") registered telephone numbers used in furtherance of the scam, has paid the rent on a call center, and has received millions of dollars in proceeds from Defendants' scam.<sup>70</sup> Absolute filed telemarketing papers with the Florida Department of Agriculture and Consumer Services ("FDACS"), paid telemarketers, and has also received millions of dollars in proceeds from the scam.<sup>71</sup> Global Interactive Technologies, Inc. ("Global Interactive Technologies") has paid telemarketers and received over two million dollars in commission from Lifewatch.<sup>72</sup> The Credit Voice, Inc. ("The Credit Voice") and Live Agent Response 1 LLC ("Live Agent Response") provided the telemarketing licenses under which Defendants operated for different periods of time.<sup>73</sup> American Innovative Concepts, Inc. ("American Innovative Concepts") has received millions of dollars in commissions from Lifewatch, a portion of which were subsequently transferred to other corporate Defendants.<sup>74</sup> Unique Information Services Inc. ("Unique") delivers the

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<sup>67</sup> PX 2 ¶¶ 61a, 80,85, 94, 116, 118c, 139, Atts. EEE, RRR, YYY-DDDD; PX 3 ¶¶ 11-12; PX 8 ¶ 3.

<sup>68</sup> PX 2 ¶ 86, Att. EEE; PX 3 ¶ 11; PX 4 ¶¶ 35-37, Att. S; PX 44 ¶ 30, Ex. E (paid by Arcagen); PX 47 ¶ 9, Ex. J (paid by Arcagen).

<sup>69</sup> PX 2 ¶ 83, Atts. UUU, WWW; PX 4 ¶¶ 10-13, Att. E.

<sup>70</sup> PX 2 ¶¶ 61b, 83d, 95d, 97, 106i, 118, 129, 135b-d, Atts. FFF, XXX.

<sup>71</sup> PX 2 ¶¶ 95a, 97d, 98b, 100, 118b, 123, 124; PX 4 ¶¶ 12, 15, 17-21, Atts. F, G, I-L.

<sup>72</sup> PX 2 ¶¶ 95c, 103b, d, 106, 110, 111, 139b.

<sup>73</sup> PX 4 ¶¶ 16, 18, 22-26, 29-32, Atts. H, J, M-R; PX 46 ¶ 18, Att. F (paid by Life Agent Response).

<sup>74</sup> PX 2 ¶¶ 116c, 118g, 129b, 135, 139c; PX 4 ¶ 42.

robocalls used to initiate Defendants' telemarketing calls, and has received millions of dollars in proceeds from the scam.<sup>75</sup>

Based on these facts, it is clear that Worldwide, Elite, Absolute, Global Interactive Technologies, Global Service Providers, The Credit Voice, Live Agent Response, Arcagen, and American Innovative Concepts operate as a common enterprise and are not really separate businesses. *FTC v. Wash. Data Res.*, 856 F. Supp. 2d 1247, 1271 (M.D. Fla. 2012); *FTC v. Direct Benefits Group, LLC*, 6:11-cv-1186-Orl-28TBS, 2013 WL 3771322, at \*18 (M.D. Fla. July 18, 2013). They are all commonly managed and directed by Hilgar and Gary Martin.<sup>76</sup> They operate out of the same two call centers, share business practices and employees, operate a common scheme, and routinely transfer funds between the various corporations' bank accounts.<sup>77</sup> *See Del. Watch v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964); *accord J.K. Publ'ns.*, 99 F. Supp. 2d at 1202 (finding common enterprise where corporate defendants were under common control; shared office space, employees, and officers; and conducted their businesses through a "maze of interrelated companies").<sup>78</sup>

### **1. Defendants Violate the FTC Act, the TSR and the FDUTPA.**

Defendants' activities are deceptive acts or practices under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). A deceptive act or practice involves a material misrepresentation that is likely to mislead consumers acting reasonably under the circumstances. *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *see also FTC v. World Media Brokers*, 415 F.3d 758,

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<sup>75</sup> PX 2 ¶¶ 95b, 97e, 98c, 113, 118f, 119b, 126, 129c, 132; PX 3 ¶ 13.

<sup>76</sup> PX 2 ¶¶ 61, 83, 85, 86, 93-108, 115-124, 128-130, 142; PX 3 ¶¶ 4-6; PX 4 ¶¶ 10, 17-18, 22, 35, Atts. I, J, M, S; PX 44 ¶¶ 11, 12-18, 28; PX 45 ¶¶ 2230-32 (Martin was in charge).

<sup>77</sup> PX 2 ¶¶ 93-108, 115-124, 128-130, 142; PX 4 ¶¶ 11, 15, 18, 20, 22, 25, 29, 32, 35, Atts. C, G; PX 44 ¶ 4, Exs. A, B; PX 45 ¶ 12, Exs. A, B; PX 46 ¶ 5, Atts. A, B; PX 47 ¶ 15, Exs. B, C.

<sup>78</sup> Although Plaintiffs do not allege that Defendant Unique is part of the common enterprise, it is located in the same office complex as one of the call centers and its lease is paid by Worldwide. PX 3 ¶ 13; PX 8 ¶¶ 4, 8-9.

763 (7th Cir. 2005). Express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service are presumed to be material. *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1096 (9th Cir. 1994); *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999). Courts evaluate the overall net impression created by the acts or practices. *Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1154 (9th Cir. 1984); *FTC v. Peoples Credit First, LLC*, No. 8:03-CV-2353-T, 2005 WL 3468588, at \*6 (M.D. Fla. Dec. 18, 2005).

The same conduct that violates the FTC Act violates the TSR and FDUTPA. The TSR prohibits sellers and telemarketers from (1) misrepresenting a seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity, and (2) making a false or misleading statement to induce any person to pay for goods or services. 16 C.F.R. §§ 310.3(a)(2)(vii) and (a)(4).<sup>79</sup> The FDUTPA declares unlawful "unfair or deceptive acts or practices in the conduct of any trade or commerce." Chapter 501, Part II, Florida Statutes (2012). In construing this Section, the Florida Legislature has declared that "due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) as of July 1, 2006." *Id.*

There are several false claims made to get consumers to part with their credit card or bank account information. First, Defendants falsely represent that somebody the consumers know has already purchased the medical alert system for them. Second, Defendants falsely claim that the American Heart Association, the American Diabetes Association, and the

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<sup>79</sup> Defendants qualify as "sellers" or "telemarketers" as defined by the TSR, and are engaged in "telemarketing" as defined by the TSR. 16 C.F.R. §§310.2(b), (aa), (cc), and (dd).

National Institute on Aging recommend their medical alert system. Third, they claim that consumers will not be charged until they receive and choose to activate the system.<sup>80</sup>

These claims are material because they are the reason consumers pay money to Defendants. There is no question that Defendants' false representations are likely to mislead consumers acting reasonably under the circumstances because, in fact, they do.<sup>81</sup> Further, consumers have no obligation to doubt the veracity of Defendants' express claims, and false claims are "inherently likely to mislead." *FTC v. Direct Mktg. Concepts, Inc.*, No. 04-11136-GAO, 2004 WL 1399185, at \*5 (D. Mass. June 23, 2004).

## **2. Defendants' Telemarketing Practices Violate the TSR.**

Defendants' conduct also violates a series of specific provisions in the TSR. In addition to prohibiting misrepresentations and material omissions, the TSR imposes requirements that apply to specified practices:

**TSR Sections 310.4(b)(1)(iii)(A) & (B)** prohibit telemarketers from initiating outbound telephone calls to: 1) a consumer who previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered; and 2) a consumer's telephone number on the National Do Not

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<sup>80</sup> Because the billing misrepresentations are only made by the live operators, Plaintiffs' Complaint does not include Unique Information Services or Settecase on that Count.

<sup>81</sup> See, e.g., PX 2 ¶ 49e, Att. RR (Levine Dec. ¶ 6, Ex. D, pp. 27-28 (only agreed to fee after told no charge until activation)); PX 18 ¶ 5; PX 19 ¶ 2 ("Because I believed that somebody I knew was concerned about me and had paid for the device, I gave the caller my banking information and agreed to pay" the monthly fee); PX 22 ¶¶ 4, 9 (only gave out information because thought it was related to daughter's purchase of system); PX 30 ¶ 3 (son provided payment information because thought mom bought it); PX 31 ¶ 5 ("Based on what the telemarketer told me, I decided to purchase the product"); PX 38 ¶¶ 4, 6 ("Because the device had been purchased for my mother, presumably by hospice, I believed that the system was important to have, so I agreed, on my mother's behalf, to the monthly fee."); PX 39 ¶¶ 3, 7 (gave information because thought children purchased device); PX 42 ¶ 4 (mother eventually agreed to give credit card information because of referral by health care professional and representative's pressure). See also PX 5 ¶ 4 (ADA received many complaints); PX 6 ¶ 4 (AHA received over 550 complaints and inquiries); PX 7 ¶ 4 (NIA received many complaints and inquiries).

Call Registry. 16 C.F.R. § 310.4(b)(1)(iii)(A) & (B). Defendants' telephone calls are responsible for tens of thousands of Do Not Call complaints received by the FTC. By indiscriminately dialing countless consumers, Defendants pay no attention to the Registry, or to consumers' removal requests conveyed to Defendants.

**TSR Section 310.4(a)(8)** requires telemarketers to transmit the telephone number and name of the telemarketer or seller to any caller identification service in use by a recipient of a telemarketing call. 16 C.F.R. § 310.4(a)(8). Defendants transmit fake telephone numbers and names to consumers' Caller ID services, in clear violation of the TSR.

**TSR Section 310.4(b)(1)(v)(A)** bans robocalls unless the seller or marketer has consumers' express agreement, in writing, to receive such calls. 16 C.F.R. § 310.4(b)(1)(v)(A). Defendants have no such permission and their robocalls are flatly prohibited.

**TSR Sections 310.4(b)(1)(v)(B)(ii) & (d)** mandate that calls delivering prerecorded messages disclose "truthfully, promptly, and in a clear and conspicuous manner" the identity of the seller, that the purpose of the call is to sell goods or services, and the nature of the goods or services. 16 C.F.R. §§ 310.4(b)(1)(v)(B)(ii) & (d). Defendants' robocalls use fake company names and do not disclose that they are selling a medical alert system.

**D. The Individual Defendants are Personally Liable.**

The individual Defendants – Michael Hilgar, Gary Martin and Joseph Settecase – are responsible for the deceptive and unfair practices of the companies they control or participate in and thus should be subject to the TRO and asset freeze. Individual owners and officers may be held liable for injunctive relief and restitution if they: (1) either participated directly in or had some measure of control over the challenged practices; and (2) had or should have

had some knowledge or awareness of those practices. *See Gem Merch.*, 87 F.3d at 470; *World Media Brokers*, 415 F.3d at 764. The Commission is not required to prove subjective intent. *World Media Brokers*, 415 F.3d at 764. Authority to control may be evidenced by “active involvement in the corporate affairs, including assuming the duties of a corporate officer.” *Id.* (citing *Amy Travel*, 875 F.2d at 573). The knowledge requirement is satisfied with “evidence that the individuals had actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth.” *Id.* (citations and internal quotation marks omitted). An individual’s “degree of participation in business affairs is probative of knowledge.” *Amy Travel*, 875 F.2d at 573.

Plaintiffs are likely to succeed in showing that Hilgar, Martin, and Settecase are liable under these standards. As owners of Corporate Defendants, Hilgar, Martin, and Settecase have authority positions which establish their ability to control corporate acts and practices.<sup>82</sup> *See, e.g., World Media Brokers*, 415 F.3d at 764-65 (corporate officer “hard-pressed to establish that he lacked authority or control” over corporate entity). Hilgar and Martin also control corporate bank accounts and manage the call centers used to make the violative telemarketing calls.<sup>83</sup> Martin submitted the telemarketing license under which Defendants operate.<sup>84</sup> Settecase operates the robodialer Defendants use to make their illegal robocalls.<sup>85</sup>

This is not the first time Hilgar, Martin and Settecase have worked together on a telemarketing scam. All three of these individuals were previously involved in a Florida

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<sup>82</sup> PX 2 ¶¶ 7-16, 31-35, 37.

<sup>83</sup> PX 2 ¶¶ 93-108, 115-124, 128-130, 142; PX 3 ¶¶ 4-6; PX 4 ¶¶ 10, 12, 17-18, 22, 35-37, Atts. E, F, M, S; PX 44 ¶¶ 5, 11-14, 18, 22, 27-28; PX 45 ¶¶ 22, 30-32.

<sup>84</sup> PX 3 ¶ 11; PX 4 ¶¶ 35-37, Att. S.

<sup>85</sup> PX 3 ¶ 13; PX 4 ¶¶ 8-9, Atts. A-B; PX 8 ¶ 8.

telemarketing operation that used illegal robocalls and pretended to be Florida Power and Light in order to sell solar power panel rebates.<sup>86</sup> The scam was ultimately shut down in 2011 after FDACS filed a complaint against the enterprise for its use of illegal robocalls.

**E. The Balance of Equities Decidedly Favors Injunctive Relief.**

Not only are Plaintiffs likely to succeed on the merits, but the balance of the equities also tips decidedly in Plaintiffs' favor. In balancing the equities, the Court must assign greater weight to the public interest than to any of Defendants' private concerns. *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988); *see also FTC v. Weyerhaeuser Co.*, 665 F.2d 1072, 1083 (D.C. Cir. 1981) (private equities alone insufficient to justify denial of injunction).

The public equities in this case are compelling, as the public has a strong interest in immediately halting a deceptive scheme targeting vulnerable consumers, which has resulted in thousands of complaints. The public also has a strong interest in preserving sufficient assets to provide effective final relief to victims. Defendants, in contrast, have no legitimate interest in continuing to violate the law by operating a business permeated with fraud. *See FTC v. Para-Link Int'l, Inc.*, No. 8:00-CV-2114-T-17TBM, 2001 WL 1701537, at \*6 (M.D. Fla. Feb. 28, 2001); *FTC v. World Wide Factors*, 882 F.2d 344, 347 (9th Cir. 1989).

**F. A TRO Should be Issued *Ex Parte* and Should Include an Asset Freeze, a Temporary Receivership, and Other Ancillary Relief.**

Plaintiffs are concerned that in light of the scope of their fraud, Defendants are likely to dissipate assets and destroy records if given notice of the relief being sought. The FTC Act authorizes a district court to use its inherent equitable authority to "grant any ancillary

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<sup>86</sup> PX 4 ¶¶ 8-9, Atts. A-B.

relief necessary to accomplish complete justice.” *U.S. Oil & Gas*, 748 F.2d at 1434.

Plaintiffs ask that the Court employ that authority here to issue a TRO that includes a freeze of Defendants’ assets, the appointment of a temporary receiver, and other ancillary relief necessary to immediately halt Defendants’ scheme and to preserve the possibility of providing meaningful relief to victims. Courts in this district have repeatedly issued TROs *ex parte* that contain precisely this type of relief.<sup>87</sup>

An *ex parte* TRO is warranted when the facts show that irreparable injury, loss, or damage will result before the defendants can be heard in opposition. *See* Fed. R. Civ. P. 65(b); Local Rule 4.05, Middle District of Florida. Part of the relief sought by Plaintiffs here is restitution for consumers victimized by Defendants’ scheme. Plaintiffs seek to freeze Defendants’ assets and to appoint a temporary receiver over the corporate Defendants to preserve the possibility for such relief. The FTC’s extensive experience with others engaged in similar deceptive schemes demonstrates that Defendants may withdraw funds from bank accounts and destroy pertinent records if given notice of Plaintiffs’ action.<sup>88</sup>

Here there is a tangible risk that assets and evidence stemming from the illegal activity will disappear if Defendants receive prior notice. Not only have the three individual Defendants been involved in a previous telemarketing scam, but Defendants have continued

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<sup>87</sup> *See, e.g., FTC v. Resort Prop. Depot, Inc.*, No. 8:13-cv-1328-T-35-TBM (M.D. Fla. May 21, 2013); *FTC v. Vacation Communications Group, LLC*, No. 6:13-cv-789-Orl-37DAB (M.D. Fla. May 20, 2013); *FTC v. Resort Solution Trust, Inc.*, No. 8:13-cv-1329-T-33TBM (M.D. Fla. May 20, 2013); *FTC v. Innovative Wealth Builders, Inc.*, No. 8:13-cv-123-T-33EAJ (M.D. Fla. Jan 14, 2013); *FTC v. WV Universal Mgmt., LLC*, No. 6:12-cv-01618-ACC-KRS (M.D. Fla. Oct. 30, 2012); *FTC v. The Green Savers, LLC*, Case No. 6:12-cv-01588-JA-DAB (M.D. Fla. Oct. 22, 2012). *See* footnote 2 of Plaintiffs’ *Ex Parte* Motion for a Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief and Order to Show Cause Why a Preliminary Injunction Should Not Issue for additional matters in this district in which courts have issued *ex parte* TROs containing the relief sought here.

<sup>88</sup> *See* Declaration and Certification of Plaintiff FTC’s Counsel Pursuant to Fed. R. Civ. P. 65(b) in Support of Plaintiffs’ *Ex Parte* Motion for a Temporary Restraining Order and *Ex Parte* Motion to Temporarily Seal File, filed herewith.



this operation despite having been sued twice and served with at least one cease and desist notice. They have taken many steps to hide their identities, including spoofing telephone numbers, using fake company names, working under a series of different telemarketing licenses, and even using aliases to register their web sites and certain telephone numbers. They have also opened and closed a series of corporate bank accounts. Furthermore, when FDACS conducted unplanned onsite inspections of Defendants' two locations in 2012, the inspectors were refused immediate entry to both locations. Additionally, employees at the second location were tipped off about the inspection, and many left before FDACS arrived. In sum, *ex parte* relief is necessary to preserve the status quo and ensure that Defendants cannot destroy records and dissipate assets.

Similarly, the Court should freeze Defendants' assets and appoint a receiver over the corporate Defendants. An asset freeze should be imposed if the Court determines that Plaintiffs are likely to prevail on the merits and that restitution would be an appropriate remedy at the conclusion of the proceeding. *See World Travel*, 861 F.2d at 1031 & n.9 (district court "had a duty to ensure that" defendants' assets were available for restitution). The freeze also should extend to the individuals' assets because Plaintiffs are likely to succeed in showing that the individual Defendants are liable for restitution. *See id.* at 1031.

The appointment of a temporary receiver also would serve to prevent the destruction of documents and the dissipation of assets while the case is pending. Such an appointment is particularly appropriate where Defendants' pervasive fraud presents the likelihood of continued misconduct. If Defendants are allowed to remain in control of their business, it is likely that evidence will be destroyed and the fruits of their fraud will be dissipated. A

temporary receiver would eliminate those risks without disrupting any legitimate business activity. At the same time, a temporary receiver would be helpful to the Court in assessing the extent of Defendants' fraud, tracing the proceeds of that fraud, preparing an accounting, and making an independent report of Defendants' activities to the Court.

#### IV. CONCLUSION

Defendants have caused and are likely to continue to cause substantial injury to the public through their violations of the FTC Act, the TSR, and the FDUTPA. Plaintiffs respectfully request that the Court issue the proposed TRO to protect the public from further harm and to help ensure the possibility of effective final relief.<sup>89</sup>

Respectfully Submitted,

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<sup>89</sup> Along with the Memorandum, Plaintiffs have submitted a proposed *Ex Parte* Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief and Order to Show Cause Why a Preliminary Injunction Should Not Issue.