United States District Court
for the
Southern District of Florida

| | | |
|---|---|---|
| Federal Trade Commission, Plaintiff, | ) | |
| v. | ) | Civil Action No. 19-25046-Civ-Scola |
| On Point Global LLC and others, Defendants. | ) | |

**Order on Cross Motions for Summary Judgment**

This matter is before the Court upon the FTC's motion for summary judgment (ECF No. 454), as well as the Defendants Robert Zangrillo, Dragon Global LLC, Dragon Global Management LLC, On Point Capital Partners LLC, and Dragon Global Holdings LLC's motion for summary judgment. (ECF No. 410.) The Defendants opposed the FTC's motion (ECF No. 471), and the FTC opposed the Defendants' cross motion for summary judgment (ECF No. 443). The parties both filed replies in support of their respective motions. (ECF Nos. 459, 481). After careful consideration of the parties' briefing, the record, and the relevant legal authorities, the Court **grants in part and denies in part** the FTC's motion (**ECF No. 454**) and **grants in part and denies in part** the Defendants' motion (**ECF No. 410**).

## 1. Procedural History

The FTC brought suit in December 2019, alleging that the Defendants violated 15 U.S.C. § 45(a), which prohibits "unfair or deceptive acts or practices[.]" (ECF No. 1 at ¶¶ 169–173.) The FTC sued several defendants: the "On Point Defendants," the "Individual Defendants," the "Dragon Global Defendants," and the "Corporate Defendants."[1]

In January 2020, the Court entered a preliminary injunction following a two-day evidentiary hearing. (ECF No. 126.) The Court held that the FTC had established a likelihood of success in showing that all Defendants deceived

[1] The "On Point Defendants" shall refer to On Point Global LLC, On Point Employment LLC, and On Point Guides LLC. The "Individual Defendants" are Burton Katz, Brent Levison, Robert Zangrillo, Elisha Rothman, and Christopher Sherman. The FTC filed suit against another individual, Arlene Mahon, but the FTC's suit against Mahon is stayed pending finalization of a settlement. (ECF No. 513). "Dragon Global" or the "Dragon Global Defendants" shall refer to Dragon Global LLC, Dragon Global Management LLC, On Point Capital Partners LLC, and Dragon Global Holdings LLC. "Corporate Defendants" shall refer to the On Point Defendants and all remaining entity Defendants. For the reader's ease, the Court will also refer to the "Corporate Defendants" as "On Point."

consumers through a misrepresentation of the services that they offered and that immediate and irreparable damage would result absent a preliminary injunction. (*Id.* at 1–2, ¶¶ C, E.) Moreover, the Court found good cause to appoint a receiver over the Receivership Entities, as defined in the order, *see id.* at 4, ¶ H, as well as an asset freeze over the Defendants' assets. (*Id.* at 3, ¶ F.)

On August 13, 2021, the Court held that the Defendants were entitled to partial summary judgment as to damages, holding that the FTC cannot obtain equitable monetary relief under Section 13(b). (ECF No. 484.) Moreover, the Court released all but the Contempt Defendants[2] from the asset freeze. (*Id.*)

## 2. Facts

### A. Paid-Guide Business

Consumers looking for information online on how to renew a driver's license may have found their way to "dmv.com" or another of On Point's domains. Once there, consumers saw links to services, such as "Renew your License" or "Renew Car Registration." (ECF No. 455 at ¶ 9; ECF No. 472 at ¶ 9.) However, On Point's websites did not actually renew licenses or car registrations in all states; rather, consumers could purchase a pdf "guide" that attempted to simplify those tasks. (ECF No. 455 at ¶¶ 15, 22–23; ECF No. 472 at ¶¶ 15, 22–23.) Consumers complained—some consumers believed that they were paying to receive the actual service that they sought rather than a pdf guide. (ECF No. 455 at ¶¶ 36–37; ECF No. 472 at ¶¶ 36–37; ECF No. 440-18; ECF No. 489-1.)

The above exemplifies On Point's "paid guide" business, which is one of On Point's four lines of business and On Point's most profitable. (ECF No. 455 at ¶¶ 1–6, 45; ECF No. 472 at ¶¶ 1–6, 45, 292.) This business consisted of, in part, "portal sites"—websites with URLs that often contained the name of a state, a keyword related to a government-related service, and a ".org" top-level domain—for example, "floridadriverslicense.org." (ECF No. 455 at ¶ 4.) On Point had more than twenty portal sites. (ECF No. 455 at ¶ 6; ECF No. 472 at ¶ 6.)

Links from the portal sites led consumers to "transaction sites"—websites where consumers could purchase pdf guides and where On Point gathered consumers' contact and credit card information. (ECF No. 455 at ¶ 11; ECF No. 472 at ¶ 11.) From January 2017 to December 2019, there were

[2] The "Contempt Defendants" are the Defendants who are currently subject to contempt proceedings in the related action *FTC v. Acquinity Interactive LLC*, 14-cv-60166 (S.D. Fla.).

approximately 104 transaction sites—ninety-seven of which sold guides. (ECF No. 455 at ¶¶ 14–15; ECF No. 472 at ¶¶ 14–15.)

Consumers could reach a transaction site directly or via a portal site. When consumers arrived via a portal site (by clicking on a link), they saw a bold heading at the top of the page reading "Obtain Your . . . Guide," followed by smaller text and a larger headline promoting a service. (ECF No. 455 at ¶ 16; ECF No. 472 at ¶ 16.) For example, the site "license-driver.com" had a headline reading "Obtain Your Road Guide," followed by smaller text promoting the service as a "comprehensive resource for all you[r] driver license-related services" and informing consumers that they "can purchase" a paid guide. (ECF No. 440-1 at 207.) This text is placed against a light gray background. (*Id.*) Centered on the page is a white text box with a larger bold headline reading "Renew Driver[']s License in Your State." (*Id.*) Smaller text follows, reading in part: "[t]o maintain your driver[']s license and your driving privileges, select one of the services above for simple and comprehensive information about driver's licensure in your state[.]" (*Id.*)

Similarly, when a consumer came to a transaction site directly (not via a link on a portal site), they saw a headline reading "Obtain Your . . . Guide," followed by small text set against a gray background. (ECF No. 455 at ¶ 17; ECF No. 472 at ¶ 17.) Consumers were asked to "select a service" and were given a list of options, such as "New Driver's License" or "Renew Driver's License." (ECF No. 440-1 at 123.) These sites advertised, in small print at the bottom of the website, that they were not associated with the government. (ECF No. 455 at ¶ 21; ECF No. 472 at ¶ 21.)

Consumers were not able to complete a transaction on these websites without clicking "accept" on a pop-up window. (ECF No. 472 at ¶ 301; ECF No. 482 at ¶ 301.) This pop-up window informed consumers that

> "[m]otor vehicle services and applications must be processed by an official DMV location/website. The assistance and services on this site simplify the process by providing personalized guides, documents and live support for a fee. This site store[s] cookies, by clicking 'Accept,' you acknowledge the statements above and that this site is privately owned and is not affiliated with nor endorsed by an official agency. To aid in the task, our detailed website has compiled and lists the most important information surrounding your motor vehicle services, so you can ensure the process is handled in a compliant and timely manner[.]" (*Id.*)

None of the portal or transaction sites advised consumers that the sites would not complete the desired service, nor did most of these sites actually provide such services. (ECF No. 455 at ¶¶ 15, 20, 23; ECF No. 473 at ¶¶ 15, 20, 23.) Some of the portal sites gave consumers notice, in small print, that "Driver license charges and applications must be processed at an official DMV location or website. This website provides links to official DMV services which may be free of charge as well as third-party application assistance services and products that charge a fee." (ECF No. 472 at ¶ 20; ECF No. 440-1 at 134–43.) It is not apparent from the portal site which links are to "official DMV services" and which are to "third-party application[s]." (ECF No. 440-1 at 134–43.)

In total, after refunds and chargebacks, On Point's ninety-seven guide sites took in $85,470,480.06 from January 2017 through December 2019. (ECF No. 455 at ¶ 46; ECF No. 472 at ¶ 46.)

**B. "Freemium" Business**

On Point did not only offer consumers paid guides. If a consumer wanted to determine their eligibility for certain public benefits—for example, housing assistance—they could visit "section-8-housing.org" or similar domains, depending on the service. (ECF No. 455 at ¶¶ 47–48; ECF No. 472 at ¶¶ 47–48.) Once consumers reached these websites, they saw paragraphs of text, with headlines towards the top of the pages reading, for example, "Find out if you Qualify . . ." or "Confirm your information to get your Eligibility Guide." (ECF No. 455 at ¶ 53; ECF No. 472 at ¶ 53.) Associated with these headlines were forms (the "PATH") where consumers were asked to provide certain data, such as demographic information, medical information, employment status, household income, health insurance, and credit card debt. (ECF No. 455 at ¶¶ 54, 57–58; ECF No. 472 at ¶¶ 54, 57–58.) After submitting such data, consumers received a free pdf brochure with information pertaining to the selected government service. (ECF No. 455 at ¶¶ 61–62; ECF No. 472 at ¶¶ 61–62.) These websites did not submit benefit applications or verify eligibility. (*Id.*)

While the "freemium" brochures were free, consumers paid through the data that they provided. On Point and their marketing partners sent marketing text messages and e-mails to consumers, who later reported to law enforcement and Better Business Bureaus, as well as to On Point, that they were receiving spam messages. (ECF No. 455 at ¶¶ 63–64; ECF No. 472 at ¶¶ 63–64.) The "freemium" websites earned revenue from the sale and exploitation of this data as well as the displaying of ads. (ECF No. 455 at ¶ 67; ECF No. 472 at ¶ 67.) The "freemium" business received revenue of

$17,297,754.87 from January 2019 to mid-December 2019. (ECF No. 455 at ¶ 68; ECF No. 472 at ¶ 68.)

**C. Efforts to Maintain the Sites**

Operating the websites above did not come without challenges. On Point had advertising accounts with Google and Bing, which On Point used to purchase search-engine advertising through targeted keywords. (ECF No. 455 at ¶¶ 1–3, 24; ECF No. 472 at ¶¶ 1–3, 24.) However, both Google and Bing shut down some of these advertising accounts, stating that the accounts were determined to be a "high risk" to consumers and a "high probability of scam/fraud." (ECF No. 455 at ¶ 24; ECF No. 472 at ¶ 24; ECF No. 440-40 at 50.) On Point's executives worked to restore these accounts. (ECF No. 455 at ¶¶ 160–161; ECF No. 472 at ¶¶ 160–161.)

Other third-party service providers raised alarms related to potential fraud. For example, credit-card processors monitor "chargebacks," which are refunds that credit-card companies issue when a consumer disputes a transaction. (ECF No. 455 at ¶¶ 27–28; ECF No. 472 at ¶¶ 27–28.) Chargebacks are a sign that a merchant may be making unauthorized charges or using deceptive sales tactics. (*Id.*) On Point's chargeback rates breached the applicable chargeback thresholds multiple times, including breaching Visa's threshold sixty-four times in three years. (ECF No. 455 at ¶ 29; ECF No. 472 at ¶ 29.) On Point adopted a practice where a sale would be split into multiple charges—for example, On Point would charge a smaller amount or solicit a small donation on the day of purchase and charge a larger amount a few days later. (ECF No. 455 at ¶¶ 32, 34; ECF No. 472 at ¶¶ 26, 32, 34.) This practice could, in effect, lower chargeback rates. (ECF No. 455 at ¶ 33; ECF No. 472 at ¶ 33.) Moreover, On Point also took to (1) using multiple companies to obtain new merchant accounts with credit-card processing companies and (2) "load balancing" transactions across those multiple merchant accounts, which can also, in effect, reduce chargeback rates. (ECF No. 455 at ¶¶ 26, 35; ECF No. 472 at ¶¶ 26, 35.)

When potential customers raised flags, On Point engaged in "reputation management" and wrote positive reviews online (posing as objective third parties) to mask negative complaints. (ECF No. 455 at ¶¶ 38, 40; ECF No. 472 at ¶¶ 38, 40.) And to engage with direct customer complaints, On Point created call-center scripts to address consumers' confusion that the websites had actually performed a government service. (ECF No. 455 at ¶ 42; ECF No. 472 at ¶ 42.)

**D. Leadership and Operations**

Each of the On Point and Corporate Defendants did business together under the name "On Point," with each entity performing a function related to the business of On Point as a whole. (ECF No. 455 at ¶¶ 71, 73–82, 87, 91, 99–101, 113, 115–116; ECF No. 472 at ¶¶ 71, 73–82, 87, 91, 99–101, 113, 115–116.) Each of the Individual Defendants performed roles and held titles at On Point, and the Court will briefly discuss each.

***1. Burton Katz***

Katz was the Chief Executive Officer and a board member at On Point and an owner, member, officer, and manager of multiple Corporate Defendants. (ECF No. 455 at ¶¶ 143, 146; ECF No. 472 at ¶¶ 143, 146.) In this role, Katz developed business plans, reviewed On Point's domains, met with other executives and officers, received information concerning the design, content, testing, and marketing of On Point's websites, and directed the preparation of reports and budgets. (ECF No. 455 at ¶¶ 21, 141, 148–150, 152; ECF No. 472 at ¶¶ 21, 141, 148–150, 152.) In addition, Katz received information concerning chargebacks across the sites and discussed account issues, including chargebacks, with On Point's payment processing team. (ECF No. 455 at ¶¶ 156–158; ECF No. 472 at ¶¶ 156–158.) Katz received information, on multiple occasions, that chargeback rates were "very high" on some merchant accounts. (ECF No. 440-26 at 57, 70.) He met with third-party advertising services and worked to restore advertising accounts when some of those accounts were suspended. (ECF No. 455 at ¶¶ 160–161; ECF No. 472 at ¶¶ 160–161.)

***2. Brent Levison***

Levison was a founder of On Point, the Chief Administrative Officer and Senior Vice President of Products, as well as the general counsel. (ECF No. 455 at ¶¶ 136, 207; ECF No. 472 at ¶¶ 136, 207.) Levison assisted in providing information to investors and building On Point's team of content writers. (ECF No. 455 at ¶¶ 212–213; ECF No. 472 at ¶¶ 212–213.) Moreover, Levison oversaw On Point's payment processing team and call center. (ECF No. 455 at ¶ 214; ECF No. 472 at ¶ 214.) Levison sought guidance from outside counsel regarding On Point's websites, advertising, and call-center scripts. (ECF No. 455 at ¶ 215; ECF No. 472 at ¶ 215.) Levison was generally aware of customer complaints through the call center, and he received call center data

reports, which in part contained information regarding refund rates, as well as "Media Performance Reports," which provided information about On Point's advertising. (ECF No. 455 at ¶¶ 217, 219; ECF No. 472 at ¶¶ 217, 219.) Levison was aware of the closure of an advertising account with Bing and discussed issues relating to chargebacks with the payment processing team and payment processors. (ECF No. 455 at ¶¶ 219–221; ECF No. 472 at ¶¶ 219–221.) Levison received information, on multiple occasions, that chargeback rates were "very high" and "incredibly high" on some accounts. (ECF No. 455 at ¶ 221; ECF No. 472 at ¶ 221; ECF No. 440-26 at 57, 70.) In addition, Levison directed employees to toggle payment traffic between merchant accounts when informed that those accounts had high chargebacks. (ECF No. 440-38 at 115.) Levison personally guaranteed at least eighteen accounts for On Point's billing companies, and he earned $257,720 in "productivity fees" for the charges his merchant accounts processed. (ECF No. 455 at ¶¶ 225–226; ECF No. 472 at ¶¶ 225–226.)

### *3. Christopher Sherman*

Christopher Sherman was a Director of Data Processing at On Point. (ECF No. 455 at ¶ 265; ECF No. 472 at ¶ 265.) Sherman was involved in On Point's freemium business, reviewing websites, providing wording for On Point's text message marketing campaigns, and reviewing metrics regarding On Point's advertising on its websites. (ECF No. 455 at ¶¶ 265, 268–269, 272; ECF No. 472 at ¶¶ 265, 268–269, 272.) Sherman was aware of, and at times personally received, customer complaints. (ECF No. 455 at ¶ 270; ECF No. 472 at ¶ 270.) Moreover, Sherman was notified when certain advertising accounts were shut down for violation of Google's policies, and Sherman worked with Katz to appeal at least one shutdown. (ECF No. 455 at ¶¶ 273–274; ECF No. 472 at ¶¶ 273–274.) Sherman also reviewed the "PATH" survey on certain freemium websites and received metrics concerning the "PATH." (ECF No. 455 at ¶¶ 263–264; ECF No. 472 at ¶¶ 263–264.) Sherman personally guaranteed at least eight merchant accounts, from which he earned $74,822.66 in productivity fees for charges that these merchant accounts processed. (ECF No. 455 at ¶¶ 278–279; ECF No. 472 at ¶¶ 278–279.) Sherman was notified when these merchant accounts were terminated because of high chargebacks and return rates. (ECF No. 455 at ¶ 280; ECF No. 472 at ¶ 280.)

#### *4. Elisha Rothman*

Elisha Rothman was a Director of Data Processing, worked to purchase new domains, and worked with the On Point accounting and finance team. (ECF No. 455 at ¶ 248; ECF No. 472 at ¶ 248.) Rothman received financial and advertising reports, and he was aware that chargebacks were high on certain accounts. (ECF No. 455 at ¶¶ 252–253; ECF No. 472 at ¶¶ 252–253.) Rothman negotiated with third parties that operated text message advertising. (ECF No. 455 at ¶ 257; ECF No. 472 at ¶ 257.) Rothman personally guaranteed at least seven merchant accounts, earning $114,226 in productivity fees for the charges that these merchant accounts processed. (ECF No. 455 at ¶¶ 260–261; ECF No. 472 at ¶¶ 260–261.) Rothman also reviewed the "PATH" survey on certain freemium websites and received metrics concerning the "PATH." (ECF No. 455 at ¶¶ 263–264; ECF No. 472 at ¶¶ 263–264.)

### E. Robert Zangrillo

Robert Zangrillo was the founder, Chief Executive Officer, and chairperson of Dragon Global. (ECF No. 455 at ¶ 162; ECF No. 472 at ¶ 162.) Through his role at Dragon Global, Zangrillo had a relationship with On Point. Specifically, in 2014, Zangrillo and Burton Katz created DG DMV, LLC, which Zangrillo funded in 2015, to the tune of approximately $3.2 million through On Point Capital Partners LLC ("OPCP"). (ECF No. 411 at ¶ 21; ECF No. 446 at ¶¶ 21, 105–106; ECF No. 458 at ¶¶ 105–106.) However, Zangrillo's involvement in the operation of DG DMV was limited to the purchase of dmv.com. (ECF No. 411 at ¶¶ 24–25; ECF No. 446 at ¶¶ 24–25.) Through Dragon Global, Zangrillo has an ownership interest in On Point of approximately 20%, although including Zangrillo's personal assets, Zangrillo owns approximately 27% of On Point Global LLC. (ECF No. 411 at ¶ 31; ECF No. 446 at ¶ 31.) Moreover, through OPCP, Zangrillo held "special approval rights" as an investor—these approval rights extended to twenty-three listed actions, including capital expenditures, strategic direction, and approval of On Point's budget. (ECF No. 411 at ¶¶ 52–53; ECF No. 446 at ¶¶ 52–53.) These rights were customary features of an operating agreement of a venture-funded company. (ECF No. 411 at ¶ 58; ECF No. 446 at ¶ 58.)

Zangrillo also had a relationship to On Point separate from Dragon Global. Zangrillo served as a consultant to On Point, for which he received health insurance and business-related reimbursement from On Point, and Zangrillo was the chairperson of On Point's Board of Managers for fourteen

months from January 2018 to March 2019. (ECF No. 411 at ¶¶ 46–47; ECF No. 446 at ¶¶ 46–47.) As chairperson, Zangrillo worked to attract investment to On Point, provided advice on strategy and executive recruitment, and approved decisions brought to the Board, such as those involving equity and debt transactions. (ECF No. 411 at ¶¶ 48, 50; ECF No. 446 at ¶¶ 48, 50.) The parties dispute the extent of Zangrillo's day-to-day involvement in the operations of On Point as chairperson. (ECF No. 411 at ¶¶ 49, 60; ECF No. 446 at ¶¶ 49, 60.) Moreover, the parties dispute the extent of Zangrillo's authority as chairperson and consultant. (ECF No. 411 at ¶ 67; ECF No. 446 at ¶ 67.)

It is undisputed that Zangrillo had limited interactions with On Point's executive team and at most only saw On Point's websites in documents that discussed those websites. (ECF No. 411 at ¶¶ 61–64, 66, 68; ECF No. 446 at ¶¶ 61–64, 66, 68.) Moreover, the parties agree that Zangrillo did not approve advertising related to the websites at issue or that he was involved in the design of the websites. (ECF No. 411 at ¶¶ 69–71; ECF No. 446 at ¶¶ 69–71.)

**F. Dragon Global**

Dragon Global is a venture capital, private equity, and real estate investment firm that oversees numerous portfolio companies. (ECF No. 411 at ¶¶ 2–7; ECF No. 446 at ¶¶ 2–7.) Its portfolio includes investments across industries and in companies at various stages. (ECF No. 411 at ¶¶ 4, 6; ECF No. 446 at ¶¶ 4, 6.) One of those portfolio companies was On Point Global LLC. (ECF No. 411 at ¶ 8; ECF No. 446 at ¶ 8.) Dragon Global created On Point Capital Partners LLC as a special purpose vehicle for investing in On Point. (ECF No. 411 at ¶ 8; ECF No. 446 at ¶ 8.) Through investments, Dragon Global and Zangrillo own approximately 27% of On Point Global LLC. (ECF No. 411 at ¶¶ 9, 30; ECF No. 446 at ¶¶ 9, 30.)

But before it invested in On Point, Dragon Global created an investment vehicle called DG DMV in 2014 to purchase automobile-related domains and invest in the online automotive space with Burton Katz. (ECF No. 411 at ¶¶ 18–20; ECF No. 446 at ¶¶ 18–20.) DG DMV acquired the URL "dmv.com" in 2015, at which time that website did not sell paid guides. (ECF No. 411 at ¶¶ 21–23; ECF No. 446 at ¶¶ 21–23.) Katz was primarily responsible for managing the operations of DG DMV. (ECF No. 411 at ¶ 24; ECF No. 446 at ¶ 24.) DG DMV was consolidated with other entities into On Point Global LLC in January 2018. (ECF No. 411 at ¶¶ 26–27; ECF No. 446 at ¶¶ 26–27.)

Following the roll-up of DG DMV into On Point, Dragon Global continued to have an investor relationship with On Point. Dragon Global introduced On

Point to various advisors, sub-leased unused office space to On Point at market rates, and assisted On Point in cultivating third-party investors. (ECF No. 411 at ¶¶ 73, 76–77, 79–82; ECF No. 446 at ¶¶ 73, 76–77, 79–82.) Dragon Global's Chief of Staff Megan Black assisted On Point with certain investor-related tasks, and in exchange On Point paid a portion of her salary. (ECF No. 411 at ¶ 86; ECF No. 446 at ¶¶ 86, 149.)

Dragon Global maintained bank accounts separate from On Point and never paid On Point's payroll. (ECF No. 411 at ¶¶ 91–92; ECF No. 446 at ¶¶ 91–92.) Dragon Global and On Point had separate employees, although the parties dispute the extent to which at most five employees performed services for the other entity. (ECF No. 411 at ¶ 93; ECF No. 446 at ¶¶ 93, 157.) While the nature of those employee relationships is disputed, it is undisputed that On Point only paid some of one Dragon Global employee's salary. (ECF No. 411 at ¶ 94; ECF No. 446 at ¶ 94.)

Dragon Global was based in Miami, Florida, with a listed address at 350 NE 60th St., Miami. (ECF No. 455 at ¶¶ 118–119; ECF No. 472 at ¶¶ 118–119.) That address was also On Point's headquarters. (ECF No. 446 at ¶ 150; ECF No. 458 at ¶ 150.) The FTC did not provide evidence that On Point and Dragon Global shared this office space. Dragon Global subleased office space in Los Angeles to On Point, which in turn leased the space to another tenant that sometimes paid rent to On Point and sometimes to Dragon Global. (ECF No. 446 at ¶ 153; ECF No. 458 at ¶ 153.) Two Dragon Global employees and four On Point employees had keycard access to this office in Los Angeles. (ECF No. 446 at ¶ 154; ECF No. 458 at ¶ 154.) Dragon Global and On Point considered moving into new, separate office space in the same building in Miami, but neither party alleges that this move occurred. (ECF No. 446 at ¶¶ 158–159; ECF No. 458 at ¶¶ 158–159.)

### 3. Legal Standard

"Summary judgment is such a lethal weapon, depriving a litigant of a trial on the issue, caution must be used to ensure only those cases devoid of any need for factual determinations are disposed of by summary judgment." *Tippens v. Celotex Corp.*, 805 F.2d 949, 952–53 (11th Cir. 1986); *see also Brunswick Corp. v. Vineberg,* 370 F.2d 605, 612 (5th Cir. 1967) ("[C]ourts must be mindful of [the] aims and targets [of summary judgment] and beware of overkill in its use."). Thus, summary judgment is only proper if following discovery, the pleadings, depositions, answers to interrogatories, affidavits, and admissions on file show that there is no genuine issue as to any material fact

and that the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56. An issue of fact is "material" if it "might affect the outcome of the suit under the governing law." *Furcron v. Mail Centers Plus, LLC*, 843 F.3d 1295, 1303 (11th Cir. 2016) (internal citation omitted). "A material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* (internal citation and quotations omitted).

The moving party bears the burden of proof to demonstrate the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 323. All the evidence and factual inferences reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Jackson v. BellSouth Telecomms.*, 372 F.3d 1250, 1280 (11th Cir. 2004). "If more than one inference could be construed from the facts by a reasonable fact finder, and that inference introduces a genuine issue of material fact, then the district court should not grant summary judgment." *Bannum, Inc. v. City of Fort Lauderdale*, 901 F.2d 989, 996 (11th Cir. 1990); *see also Tippens*, 805 F.2d at 952 ("The District Court . . . can only grant summary judgment if *everything* in the record demonstrates that no genuine issue of material fact exists.") (cleaned up). The Court will not weigh the evidence or make findings of fact. *Id.* at 249; *Morrison v. Amway Corp.*, 323 F.3d 920, 924 (11th Cir. 2003). Rather, the Court's role is limited to deciding whether there is sufficient evidence upon which a reasonable juror could find for the nonmoving party. *Id.*

"[O]nce the moving party has met its burden of showing a basis for the motion, the nonmoving party is required to 'go beyond the pleadings' and present competent evidence designating 'specific facts showing that there is a genuine issue for trial.'" *United States v. $183,791.00*, 391 F. App'x. 791, 794 (11th Cir. 2010) (quoting *Catrett*, 477 U.S. at 324). Thus, the nonmoving party "may not rest upon the mere allegations or denials of his pleadings, but [instead] must set forth specific facts showing that there is a genuine issue for trial." *See Anderson*, 477 U.S. at 248 (citation omitted). "Likewise, a [nonmovant] cannot defeat summary judgment by relying upon conclusory assertions." *Maddox–Jones v. Bd. of Regents of Univ. of Ga.*, 448 F. App'x. 17, 19 (11th Cir. 2011). Mere "metaphysical doubt as to the material facts" will not suffice. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

**4. Discussion – Deceptive Acts or Practices**

The sections above set out the relevant facts and parties. So what of the relevant law? The FTC brought two counts under Section 5(a) of the FTC Act, which prohibits the use of "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a). The only issue here is whether the Defendants' practices were "deceptive." (ECF No. 454 at 15.) To establish whether an act or practice is deceptive, the FTC must show that:

(1) there was a representation or omission;
(2) the representation or omission was likely to mislead consumers acting reasonably under the circumstances; and
(3) the representation or omission was material.

*See FTC v. Lalonde*, 545 F. App'x 825, 837 (11th Cir. 2013).

The first prong is not difficult to decipher; there must be a representation or omission. As to the second prong, looking to the "net impression created," a representation is likely to mislead consumers where a fact finder could determine that a reasonably prudent consumer could be misled. *See FTC v. RCA Credit Servs., LLC*, 727 F. Supp. 2d 1320, 1329 (M.D. Fla. 2010). Regarding the third prong, a representation is material if it is "of a kind usually relied upon by a reasonably prudent person." *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1266 (S.D. Fla. 2007) (Marra, J.).

When evaluating Section 5(a), courts should bear in mind that the 1938 amendment to the FTC Act, which added the "deceptive acts or practices" clause, was significant for its extension of the FTC's broad mandate to protect consumers. *See FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 384–85 (1965). Therefore, the term "deceptive" is meant to be "flexible," and courts must look to the "overall, net impression rather than the literal truth or falsity of the words." *See id.*; *FTC v. Nat'l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1189 (N.D. Ga. 2008). For that reason, simple disclaimers "do not automatically exonerate deceptive behavior"; rather, courts must look to whether the act or practice was deceptive as a whole. *FTC v. Connelly*, No. SA CV 06-701, 2006 WL 6267337, at *10 (C.D. Cal. Dec. 20, 2006); *see also FTC v. Wash. Data Res.*, 856 F. Supp. 2d 1247, 1274–75 (M.D. Fla. 2012) (holding that disclaimers fail when they do not "sufficiently change the deceptive 'net impression'").

The FTC contends that two of On Point's practices—the "paid-guide" business and the "freemium" business—are deceptive. The Court will address each in that order.

**A. Paid-Guide Business**

"Renew your License." "Renew Car Registration." On Point made these statements and others like them on their paid-guide-related websites. Taken alone, these representations could lead a reasonably prudent consumer to believe that they were going to renew their license or car registration on these websites. But consumers did not receive these services. Rather, for nearly $30 each, consumers received a pdf guide with information that could otherwise be accessed for free from the government. Moreover, the guide websites contained notable omissions—the sites omitted any disclosures that informed consumers that they were *not* receiving the services above. These representations and omissions satisfy the ***first prong*** under the deceptive test.

Moreover, these representations and omissions are also material under the ***third prong***—reasonably prudent consumers would rely on a statement reading "renew your license" or the like. Indeed, such a statement (referred to as a "call to action" on a website) is in the imperative and directs the reader to take an action. It would be no surprise if a reasonably prudent consumer relied on a statement to "renew your license," as the statement directs the consumer to . . . renew their license. *See FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999) (holding that "[e]xpress claims or deliberately-made implied claims used to induce the purchase of a particular product or service are presumed to be material"). Moreover, the FTC has produced evidence that consumers did rely on these statements. Consumers complained, sought refunds, and wrote negative reviews. (*See* ECF No. 489-1; ECF No. 440-18; ECF No. 440-48 at 237–239, 244; ECF No. 440-39 at 9.) Third parties took notice. Third parties suspended On Point's search-engine advertising accounts and contacted On Point about breaches of chargeback thresholds, leaving On Point to engage in "reputation management." On Point's employees also began to complain. (ECF No. 455 at ¶ 151.) In all, the FTC's substantial evidence shows that the representations and omissions were material.

The primary dispute is whether these representations and omissions violate the ***second prong***: were the representations and omissions likely to mislead consumers in context? *See FTC v. World Patent Mktg., Inc.*, No. 17-cv-20848, 2017 WL 3508639, at *12 (S.D. Fla. Aug. 16, 2017) (Gayles, J.) ("[T]he FTC need not present . . . proof of actual deception to establish a violation of Section 5, [although] such proof is highly probative to show that a practice is likely to mislead consumers acting reasonably under the circumstances."). The Court need not, as a matter of law, depend on a consumer survey to prove that the websites tended to deceive. *See FTC v. Brown & Williamson Tobacco Corp.*,

778 F.2d 35, 40–41 (D.C. Cir. 1985) ("Evidence of consumer reaction usually takes the form of market research or consumer surveys, but a trial court may accord other forms of evidence substantial weight if that evidence appears reliable.").

Here, the FTC provided probative proof that On Point's practices actually misled consumers. ***First***, consumers sought refunds in such high numbers that On Point's merchant accounts breached payment processors' chargeback thresholds at least sixty-four times. (ECF No. 455 at ¶¶ 26–29; ECF No. 472 at ¶¶ 26–29.) To control these chargeback thresholds, On Point (1) split charges into two payments (which would in effect create a larger denominator when calculating chargeback ratios), (2) balanced charges across hundreds of merchant accounts (in effect spreading chargebacks across accounts), and (3) used multiple billing companies to purchase new merchant accounts (with no history of breaches of chargeback thresholds). (*See* ECF No. 455 at ¶¶ 26, 32–35; *see* ECF No. 472 at ¶¶ 26, 32–35.); *see also FTC v. Grant Connect, LLC*, No. 2:09-CV-01349-PMP-RJ, 2009 WL 3074346, at *9 (D. Nev. Sept. 22, 2009) (holding that a "high rate of consumer complaints, chargebacks, refunds, and cancellations suggest consumers actually were deceived, and thus constitutes probative evidence" that the websites were likely to mislead).

***Second***, consumers complained through calls to On Point's call center and through postings online. (ECF No. 455 at ¶¶ 42, 218, 240; ECF No. 472 at ¶¶ 42, 218, 240.) On Point worked to mask these issues by creating a call-center script to address unhappy customers and by writing reviews online while posing as objective third parties. (ECF No. 455 at ¶¶ 38, 42, 215; ECF No. 472 at ¶¶ 38, 42, 215.)

***Third***, the FTC filed four consumer affidavits and submitted hundreds of consumer complaints, in which consumers described their frustration. (ECF No. 440-18 at 1–39; ECF No. 489-1.); *see also FTC v. Direct Benefits Grp., LLC*, No. 6:11-cv-1186-Orl-28TBS, 2013 WL 3771322, at *15 (M.D. Fla. July 18, 2013) (holding that evidence of actual consumer complaints is "highly probative of the websites' tendency to mislead").

***Fourth***, while not evidence of consumer complaints, the shutdowns of search-engine advertising accounts are probative of the red flags that On Point's operations raised. Both Google and Bing shut down these advertising accounts at times, stating that the accounts were determined to be a "high risk" to consumers and a "high probability of scam/fraud." (ECF No. 455 at ¶ 24; ECF No. 472 at ¶ 24; ECF No. 440-40 at 50.) In all, this proof of actual consumer deception is "highly probative" that On Point's practices were likely

to mislead a reasonably prudent consumer. *See World Patent Mktg., Inc.*, 2017 WL 3508639, at *12.

If the FTC's probative proof of actual deception is not enough, the Court can still find that an act or practice is likely to mislead by looking to the "net impression." *See RCA Credit*, 727 F. Supp. 2d at 1329. Considering the mosaic described above, the layout of the website is likely to mislead. The bold, centered headlines read, or read similar to, "Renew Driver[']s License." (ECF No. 440-1 at 27.) Stated in the imperative, it directs consumers to take action, namely, to renew their license. It can be no accident that a reasonably prudent consumer in this context would understand "renew driver's license" to mean "you can renew your driver's license here." Indeed, On Point purchased search-engine advertising that would direct consumers searching for that service to their websites.[3] Moreover, underneath this headline was small text telling consumers that "to maintain your driver[']s license and your driving privileges, select one of the services above for simple and comprehensive information." (*Id.*) Not until a consumer read an additional one-and-a-half clauses would they learn, but not necessarily understand, that they were only receiving "information." (*Id.*); *see Wash. Data Res.*, 856 F. Supp. 2d at 1274 (looking to the size and color of font when discussing the "net impression" of a website). And if a consumer reached a transaction site directly (rather than from a portal site), they were asked to "select a service"—available services listed were, in part, "New Driver's License" or "Renew Driver's License." (ECF No. 440-1 at 123.) Consumers were not asked to "select a guide," but a service, which a reasonably prudent consumer would then expect to receive.

The Defendants point to various disclaimers on the sites and the positioning of text on the sites. (ECF No. 471 at 7.) However, disclaimers "do not automatically exonerate deceptive behavior." *Connelly*, 2006 WL 6267377, at *10. Taking the disclaimers in context with the site, the disclaimers were not sufficient to prevent the sites from being deceptive. ***First***, the webpage design. The choice of centering, bold type, and white background made the deceptive text jump out at a consumer, whereas the disclaimers were in smaller text and set against a grey background that nearly matched the color of the text, rendering such text more difficult to read. (ECF No. 440-1 at 207); *see FTC v.*

[3] The purchase of targeted search-engine advertising alone is not deceptive. (ECF No. 481 at 2.) However, On Point utilized such advertising to attract consumers to their websites, and it is part of the mosaic to be considered when looking to the "net impression." Targeted search-engine advertising helped condition consumers to expect the service for which they had searched when they subsequently entered On Point's websites.

*Johnson*, 10-cv-02203-MMD-GWF, 2017 WL 3503720, at *19 (D. Nev. Aug. 16, 2017) (looking to "representations, graphics, font size, [and] placement of the disclosures" when looking at deceptiveness). ***Second***, the language of the disclaimers. The disclaimers were confusing at best. The disclaimers told consumers that the website was a "comprehensive resource for all you[r] driver license-related services." (*See* ECF No. 440-1 at 207.) A "comprehensive resource" for driver's-license needs could include a service that actually submitted driver's license applications. Moreover, consumers were told that they "can purchase" a guide, not that they *could only* purchase a guide. (*Id.*) The pop-up windows fare no better. These disclaimers, which were added later in 2019, told consumers that the sites were not affiliated with a government and that the site would "simplify the process by providing personalized guides, documents, and live support for a fee." (ECF No. 482 at ¶ 301.) Such a belated disclaimer cannot overcome the deceptive impression described above. ***Third***, the omissions. Omissions are actionable under Section 5(a), *see Lalonde*, 545 F. App'x at 837, and the websites did not contain a disclaimer telling consumers that the websites would *not* complete licensing or registration transactions. (ECF No. 455 at ¶ 20; ECF No. 472 at ¶ 20.)

In total, the net impression of the paid-guide websites show that On Point's representations and omissions were likely to mislead consumers. Therefore, all three prongs are met, and the Court finds that the paid-guide websites violated Section 5(a).

**B. "Freemium" Business**

As above, the first prong of the deceptive test is met here—On Point's "freemium" websites contained representations such as "Find out if you Qualify [for public benefit]." (ECF No. 455 at ¶ 53; ECF No. 472 at ¶ 53.) There was also an omission—there was no language informing consumers that the sites would not provide eligibility determinations. (ECF No. 455 at ¶ 56; ECF No. 472 at ¶ 56.) Moreover, the third prong is met. These representations and omissions are material for the same reasons as laid out above; consumers were explicitly instructed that they could "Find out" if they qualified for a public benefit. (ECF No. 455 at ¶ 53; ECF No. 472 at ¶ 53.) Therefore, these representations are "of a kind usually relied upon by a reasonably prudent person." *Transnet Wireless*, 506 F. Supp. 2d at 1266.

Again, the parties largely contest whether these representations and omissions were likely to mislead a reasonably prudent consumer. As evidence of actual deception is not necessary, the Court will look to the "net impression."

*See RCA Credit Servs.*, 727 F. Supp. 2d at 1329. Like the paid-guide websites, the "freemium" websites contained a "call to action," where consumers were told to, among others, "Find out if you Qualify" for certain public benefits and "Confirm Your Address to Verify Eligibility." (ECF No. 455 at ¶ 53; ECF No. 472 at ¶ 53; ECF No. 440-1 at 289.) Consumers were told affirmatively, and in the imperative, that they could "find out" and "verify eligibility," but On Point did not actually verify consumers' eligibility for public benefits. (ECF No. 455 at ¶ 61; ECF No. 472 at ¶ 61.) These prompts were located just above web forms which led to a series of screens (the "PATH") where consumers were asked to input personal information. (ECF No. 455 at ¶¶ 54, 57–58; ECF No. 472 at ¶¶ 54, 57–58.) While On Point had run into trouble with their Google and Bing advertising accounts, On Point would sometimes remove the "PATH" from their websites when they submitted these sites to Google prior to public publication, and then input the PATH once the websites were approved. (ECF No. 455 at ¶ 60; ECF No. 472 at ¶ 60.) Consumers complained to the On Point and Better Business Bureaus about the spam that they received after inputting their personal information onto the websites. (ECF No. 455 at ¶¶ 63–64; ECF No. 472 at ¶¶ 63–64.) Moreover, On Point's employees even noticed the deceptive nature of the websites. (ECF No. 455 at ¶ 66; ECF No. 472 at ¶ 66.)

Contrary to the Defendants' arguments, any disclaimers were not sufficient. At the bottom of the websites, in small text, was a disclaimer that the website was privately owned and not affiliated with any government agency. (ECF No. 455 at ¶ 55; ECF No. 472 at ¶ 55.) Such a disclaimer is hardly prominent or sufficient. *See Johnson*, 2017 WL 3503720, at *10 (holding that consumers "were likely to disregard" a disclaimer printed in small font outside the primary text boxes). The Defendants also point to websites in the PATH where consumers were told that they could "Confirm your information to get your Eligibility Guide." (ECF No. 472 at ¶ 53.) References to an "Eligibility Guide" do not overcome the net impression that consumers believed they were providing information in order to apply for public benefits or receive an eligibility determination. This is particularly true where the reference to which the Defendants point did not appear until after consumers had already begun completing the PATH in response to a prompt telling consumers to "Find Out if You Are Eligible[.]" (ECF No. 440-1 at 285–315.) Moreover, the freemium websites did not contain a disclaimer telling consumers that the websites would *not* complete public benefits applications or verify eligibility for such benefits. (ECF No. 455 at ¶ 56; ECF No. 472 at ¶ 56.)

In total, the net impression of the freemium websites show that On Point's representations and omissions were likely to mislead consumers. Therefore, all three prongs are met, and the Court finds that On Point's freemium websites violated Section 5(a).

**5. Discussion - Liability**

As set out above, the Court finds that the On Point websites at issue violated Section 5(a). The Court now discusses to what extent the Corporate Defendants, Individual Defendants, and Global Dragon Defendants are liable for those deceptive practices.

**A. Corporate Defendants**

The parties largely do not contest that the Corporate Defendants and the On Point Defendants operated as a "common enterprise." Under Section 5(a), a corporate entity can be held liable for the conduct of other entities where "the structure, organization, and pattern of a business venture reveal a common enterprise or a maze of integrated business entities." *FTC v. Lanier Law, LLC*, 715 F. App'x 970, 979 (11th Cir. 2017). Courts look to whether the businesses "share office space and employees, commingle funds, coordinate advertising efforts, and operate under common control." *Id.* at 979–80.

It is undisputed that the Corporate Defendants did business together, shared employees, including in accounting and payroll, used the same headquarters in Miami, and shared offices across the globe. (ECF No. 455 at ¶¶ 71, 73–81, 84–102, 113, 115–116, 127; ECF No. 472 at ¶¶ 71, 73–81, 84–102, 113, 115–16, 127.) The Court finds that the Corporate Defendants and the On Point Defendants operated under a "common enterprise" and are thus liable for the deceptive practices discussed above.

**B. Individual Defendants**

To hold an individual liable for the deceptive practices of a company, the FTC must show that the individual (1) "participated directly in the deceptive practices" or had "authority to control" such practices and (2) had "some knowledge" of the deceptive practices. *See FTC v. IAB Mktg. Assocs., LP*, 746 F.3d 1228, 1233 (11th Cir. 2014). An individual's title alone is not sufficient to establish individual liability. *See FTC v. Johnson*, 156 F. Supp. 3d 1202, 1210 (D. Nev. 2015). "Authority to control" may be shown by "active involvement in business affairs and the making of corporate policy." *See IAB Mktg.*, 746 F.3d at 1233. Knowledge may be established by showing that the individual had

(1) "actual knowledge of the deceptive conduct," (2) "was recklessly indifferent to its deceptiveness," or (3) "had an awareness of a high probability of deceptiveness and intentionally avoided learning of the truth." *FTC v. Primary Grp., Inc.*, 713 F. App'x 805, 807 (11th Cir. 2017). A defendant's "participation in corporate affairs is probative of knowledge." *See FTC v. Wilcox*, 926 F. Supp. 1091, 1104 (S.D. Fla. Sept. 29, 1995) (Ferguson, J.).

The parties dispute whether knowledge is a required showing if the FTC seeks only injunctive relief. The Court holds that knowledge is a required prong. *See IAB Mktg.*, 746 F.3d at 1233; *see also FTC v. Gem Merch. Corp.*, 87 F.3d 466, 470 (11th Cir. 1996). While the FTC argues that the type of relief sought should dictate the standard of liability, the degree of knowledge required is dictated by the statute. *See generally Aaron v. SEC*, 446 U.S. 680, 695–96 (1980). The FTC has not provided any argument why issuing an injunction under 15 U.S.C. § 53(b) for a violation of 15 U.S.C. § 45(a) would involve a different finding of individual liability than would be required under the FTC's previous practice of recovering monetary relief under those same provisions. Therefore, the Court will follow Eleventh Circuit precedent requiring a showing of "some knowledge" of the deceptive scheme. *See IAB Mktg.*, 746 F.3d at 1233.

The Court will now discuss individual liability as to Burton Katz, Brent Levison, Christopher Sherman, Elisha Rothman, and Robert Zangrillo.

### *1. Burton Katz*

The Court finds that individual liability is appropriate as to Burton Katz, as he had authority to control the deceptive practices and had some knowledge of such practices. The undisputed evidence establishes that Katz was the day-to-day leader at On Point and that he set corporate policy and developed On Point's strategy—therefore, he had the requisite authority to control. *See Gem Merch.*, 87 F.3d at 467–68; *Wilcox*, 926 F. Supp. at 1104 (holding that individuals had authority to control, in part, because they "made all the major business decisions"). While the parties dispute the legal significance of Katz's title, it is undisputed that Katz was the CEO and a board member at On Point, as well as an owner, member, officer, and manager of multiple Corporate Defendants. (ECF No. 455 at ¶¶ 143, 146; ECF No. 472 at ¶¶ 143, 146.) Moreover, it is undisputed that Katz developed business plans, reviewed On Point's domains, met with other executives and officers, received information concerning the design, content, testing, and marketing of On Point's websites, and directed the preparation of reports and budgets. (ECF No. 455 at ¶¶ 21,

141, 148–150, 152; ECF No. 472 at ¶¶ 21, 141, 148–150, 152.) Moreover, he received information regarding On Point's chargebacks, including that the chargebacks were "very high" on some accounts. (ECF No. 440-26 at 57, 70.) Additionally, Katz was not only aware of, but also used his authority to try to remedy the suspension of search-engine advertising accounts. (ECF No. 455 at ¶¶ 160–161; ECF No. 472 at ¶¶ 160–161.) These facts are enough to establish that Katz had authority to control the deceptive scheme. *See Gem Merch.*, 87 F.3d at 467–68, 470 (affirming the district court and holding that the "sole owner, president, and director" was individually liable when he "controlled the day-to-day affairs" and "was in a position to control" the relevant salespeople).

Moreover, Katz had the requisite knowledge of the deceptive scheme. *See Primary Grp.*, 713 F. App'x at 807. Katz knew that chargebacks were high and that advertising accounts had been suspended. (ECF No. 455 at ¶¶ 160–161; ECF No. 472 at ¶¶ 160–161; ECF No. 440-26 at 57, 70.) Katz was also aware of employee feedback that raised concerns over potential deception. (ECF No. 455 at ¶ 151; ECF No. 472 at ¶ 151.) While this evidence may stop short of actual knowledge of the deceptive representations' explicit wording, this evidence demonstrates that Katz was at least "recklessly indifferent" to the deceptiveness at issue and that Katz was aware of and had authority to control the deceptive scheme, including the efforts to perpetuate and sustain the deceptive scheme. *See Primary Grp.*, 713 F. App'x at 807.

***2. Brent Levison***

The Court finds that individual liability is appropriate as to Brent Levison, as he had authority to control the deceptive practices and had some knowledge of such practices. Levison was a founder of On Point Global LLC, the Chief Administrative Officer and Senior Vice President of Products, and the general counsel. (ECF No. 455 at ¶¶ 136, 207; ECF No. 472 at ¶¶ 136, 207.) Through these positions, Levison readily had the authority to control relevant players in perpetuating the deceptive scheme. In particular, Levison played a role in building On Point's staff of content writers and oversaw On Point's payment processing team and call center. (ECF No. 455 at ¶¶ 212–214; ECF No. 472 at ¶¶ 212–214.) Levison also sought and received guidance from outside counsel regarding On Point's websites, advertising, and call center scripts. (ECF No. 455 at ¶ 215; ECF No. 472 at ¶ 215.) Moreover, Levison directed employees to toggle payment traffic ("load balancing") between merchant accounts when informed that certain accounts had high chargebacks. (ECF No. 440-38 at 115.) Therefore, the undisputed evidence

shows that Levison had authority to control the employees responsible for making the deceptive representations and otherwise perpetuating the deceptive scheme. *See IAB Mktg.*, 746 F.3d at 1233 (holding that "authority to control" can be established by "active involvement in business affairs and the making of corporate policy").

Last, Levison had "some knowledge" of the deceptive practices. Indeed, Levison was made aware, on multiple occasions, that chargeback rates were "very high" and "incredibly high" on some accounts. (ECF No. 455 at ¶¶ 220–221; ECF No. 472 at ¶¶ 220–221; ECF No. 440-26 at 57, 70.) And Levison was aware of the closure of an advertising account with Bing—after which Bing pointed On Point to its Misleading Content Policies—and discussed strategies to reinstall the account. (ECF No. 455 at ¶ 219; ECF No. 472 at ¶ 219.) Additionally, Levison was generally aware of customer complaints through the call center. (ECF No. 455 at ¶ 218; ECF No. 472 at ¶ 218); *FTC v. Ross*, 897 F. Supp. 2d 369, 386 (D. Md. 2012) (holding that an individual had sufficient knowledge when she had "awareness of consumer complaints"). Last, Levison personally guaranteed at least eighteen accounts for On Point billing companies, and he earned $257,720 in "productivity fees" for the charges his merchant accounts processed. (ECF No. 455 at ¶¶ 225–226; ECF No. 472 at ¶¶ 225–226.) These instances of knowledge, let alone the compliance conversations that Levison had with outside counsel, establish that Levison knew of several pieces of the deceptive mosaic and knew of, was recklessly indifferent to, or had an awareness of a high probability of deceptiveness and intentionally avoided learning the truth of the deceptive representations and omissions. *See Primary Grp.*, 713 F. App'x at 807.

### *3. Christopher Sherman*

The Court holds that there are genuinely disputed material facts concerning whether Christopher Sherman can be held individually liable for On Point's deceptive practices. There are materially disputed facts concerning the scope of Sherman's authority and whether he had authority to control in furtherance of the deceptive scheme. (ECF No. 455 at ¶¶ 265–266, 268; ECF No. 472 at ¶¶ 265–266, 268.) Moreover, there are genuine disputes regarding whether Sherman directly participated in the deceptive practices, including the practices intended to perpetuate and continue the deceptive scheme. (*See* ECF No. 455 at ¶¶ 265, 268, 271, 273, 277; ECF No. 472 at ¶¶ 265, 268, 271, 273, 277.) Sherman's notification of advertising-account suspensions and his awareness of consumer complaints and chargebacks establish that he had

"some knowledge" of the deceptive practices. (ECF No. 455 at ¶¶ 270, 273–274, 280.) But undisputed facts concerning Sherman's guaranteeing of certain merchant accounts and registration of certain URLs, as well as the fact that Sherman was a signatory on certain bank accounts, alone, do not establish that Sherman directly participated in or had authority to control the deceptive practices. (*See* ECF No. 455 at ¶¶ 275–280; ECF No. 472 at ¶¶ 275–280.) These actions may raise inferences that Sherman had some authority to control or directly participated in the deceptive scheme, but at the summary judgment stage, such inferences must be resolved in favor of the non-movant. *See Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590, 594 (11th Cir. 1995). Therefore, the Court denies summary judgment as to Christopher Sherman.

***4. Elisha Rothman***

The Court holds that there are genuinely disputed material facts concerning whether Elisha Rothman can be held individually liable for On Point's deceptive practices. There are genuinely disputed material facts concerning the scope of Rothman's authority and whether he had authority to control in furtherance of the deceptive scheme. (ECF No. 455 at ¶¶ 248–249, 251; ECF No. 472 at ¶¶ 248–249, 251.) And, like Sherman, there are genuine disputes regarding whether Rothman directly participated in the deceptive practices, including the practices intended to perpetuate and continue the deceptive scheme, and inferences regarding undisputed facts must be resolved in Rothman's favor. (*See* ECF No. 455 at ¶¶ 255–264; ECF No. 472 at ¶¶ 255–264.) Moreover, being aware of multiple merchant accounts, the PATH survey, and chargeback rates, alone, do not establish, beyond mere inferences, that Rothman was aware of the deceptive practices at issue. (ECF No. 455 at ¶¶ 252–255, 257, 259–264; ECF No. 472 at ¶¶ 252–255, 257, 259–264.) Therefore, the Court denies summary judgment as to Elisha Rothman.

***5. Robert Zangrillo***

The Court finds that there are genuine disputes of material facts regarding whether Robert Zangrillo directly participated in or had authority to control and whether he had the requisite knowledge of the deceptive practices. Robert Zangrillo had a relationship with On Point as both an individual, in which capacity he served as a consultant and the chairperson of On Point's Board of Managers, and as an investor through Dragon Global. (ECF No. 411 at ¶¶ 44, 47; ECF No. 446 at ¶¶ 44, 47.) This section pertains only to his individual role at On Point.

The parties vigorously dispute material facts regarding the scope of Zangrillo's roles and duties at On Point, as well as his knowledge concerning On Point's activities. Specifically, the parties dispute whether Zangrillo served as an executive, employee, or officer of On Point, whether he exercised—in whatever role he had—oversight or authority over On Point's strategy and practices, and whether Zangrillo had any awareness of the content of On Point's websites or of On Point's efforts to perpetuate its deceptive practices. (ECF No. 411 at ¶¶ 43, 49, 60, 65, 67–68; ECF No. 446 at ¶¶ 43, 49, 60, 65, 67–68, 120–122, 124, 128, 139, 141–142; ECF No. 458 at ¶¶ 120–122, 124, 128, 139, 141–142.) Therefore, summary judgment is not appropriate as to Robert Zangrillo.

**C. Dragon Global Defendants**

As set out above, under Section 5(a), a corporate entity can be held liable for the conduct of other entities where "the structure, organization, and pattern of a business venture reveal a common enterprise or a maze of integrated business entities." *Lanier Law*, 715 F. App'x at 979. Courts look to whether the businesses "share office space and employees, commingle funds, coordinate advertising efforts, and operate under common control." *Id.* at 979–80. However, these factors are not strictly applied; rather, courts look to whether the entities "maintained an unholy alliance." *FTC v. Pointbreak Media, LLC*, 376 F. Supp. 3d 1257, 1270 (S.D. Fla. 2019) (Altonaga, J.). Therefore, courts are primarily tasked with "evaluating the pattern and frame-work of the whole enterprise." *Id.* at 1269 (quoting *FTC v. HES Merch. Servs. Co.*, No. 6:12-cv-1618-Orl-22KRS, 2014 WL 6863506, at *5 (M.D. Fla. Nov. 18, 2014)).

The Court holds that the undisputed material facts establish that the Dragon Global Defendants did not operate a "common enterprise" with the Corporate Defendants. Dragon Global was a separate entity with a separate purpose—while On Point and the Corporate Defendants sought to collectively create and operate a business built, in relevant part, around the sale of paid guides and the collection of consumer data, Dragon Global sought to invest in entities, like On Point. (ECF No. 411 at ¶¶ 2–4; ECF No. 446 at ¶¶ 2–4.)

As an investor, Dragon Global was interested in the success of On Point, but there is no evidence that Dragon Global's relationship with On Point extended beyond that of an investor. ***First***, as to shared employees, Dragon Global introduced On Point to a roster of advisors, some of whom may have advised both Dragon Global and On Point. (ECF No. 455 at ¶ 103; ECF No. 472 at ¶ 103; ECF No. 411 at ¶¶ 73–75.) Moreover, the FTC alleges that Dragon

Global and On Point shared anywhere from two to five employees. (ECF No. 455 at ¶¶ 106–107, 110–112; ECF No. 446 at ¶¶ 156–157.) While Dragon Global disputes that any employees overlapped, the Court finds that sharing two to five employees, one of whom was an administrative assistant and the other appeared to perform primarily administrative tasks (ECF No. 446 at ¶¶ 146, 157), does not weigh heavily when considering whether companies with hundreds of employees and multiple business lines were involved in a "maze of integrated business entities." *See Lanier Law*, 715 F. App'x at 979.

***Second***, the Court finds that Dragon Global and On Point did not meaningfully share office space. Rather, Dragon Global subleased office space to On Point at market rate, as Dragon Global has done for other investments. (ECF No. 411 at ¶¶ 76, 78; ECF No. 446 at ¶¶ 76, 78.) Two Dragon Global employees had keycard access to this office space after subleasing it to On Point; however, Zangrillo had a relationship to On Point nominally separate from Dragon Global, and therefore it would be no surprise that he had access to this office and used it. (ECF No. 455 at ¶¶ 123–124; ECF No. 472 at ¶¶ 123–124.) And while Dragon Global publicly represented that it had the same address as On Point, there is no evidence that Dragon Global used this address. (*See* ECF No. 455 at ¶¶ 117, 119; ECF No. 472 at ¶¶ 117, 119.) This prong does not weigh heavily in favor of finding a common enterprise.

***Third***, and most importantly, On Point and Dragon Global did not share bank accounts. (ECF No. 411 at ¶ 91; ECF No. 472 at ¶ 91.) There is no evidence of commingling funds. This weighs in favor against finding that the entities constituted an unholy alliance. *See Lanier Law*, 715 F. App'x at 980 (finding a common enterprise where, in part, the firms could all access the same financial accounts to process payments); *In re Sanctuary Belize Litig.*, 482 F. Supp. 3d 373, 431 (D. Md. 2020) (finding a common enterprise where the funds were "so commingled" that there was "just one humongous account" for all activity).

***Fourth***, the FTC points that On Point and Dragon Global shared assets, such as web domains and a subtenant's rent, and coordinated advertising. (ECF No. 454 at 18.) At most, Dragon Global, at one time, owned two web domains that On Point later acquired at arms'-length. (ECF No. 446 at ¶¶ 105–106, 160; ECF No. 458 at ¶¶ 105–106, 160.) As to the subtenant's rent, conflicting payments by a third-party subtenant do not show an integrated maze. Last, as to advertising, the only example that the FTC provides is that Dragon Global advertised On Point as its sole "early-stage control investment." (ECF No. 455 at ¶ 134.) However, Dragon Global did not represent itself to be

On Point or otherwise represent that it offered the same services that On Point offered; it only represented that it invested in On Point. *See Nat'l Urological Grp.*, 645 F. Supp. 2d at 1183–84 (finding a common enterprise where the entities shared and used the same advertising materials for its products).

The Court notes that the FTC produced evidence suggesting that Dragon Global is "ultimately Bob [Zangrillo]." (*See* ECF No. 455 at ¶ 162.) However, the FTC has not established facts sufficient to attribute acts taken by Zangrillo as On Point's chairperson or consultant to the Dragon Global Defendants. Zangrillo exercised special approval rights on behalf of Dragon Global, and he at times used his Dragon Global email when conducting work for On Point (ECF No. 411 at ¶¶ 52, 54; ECF No. 446 at ¶¶ 52, 54, 148.) However, these do not establish that Zangrillo's role and knowledge as chairperson and consultant at On Point are attributed to Dragon Global.

In total, the undisputed facts establish that the Dragon Global Defendants did not operate as a common enterprise with On Point. Rather, Dragon Global had an existence and purpose separate from On Point. Dragon Global invested in On Point, had a financial interest in its success, and provided resources, such as sharing the names of advisors and the time of an administrative assistant, in pursuit of maximizing its investment.

**6. Discussion - Remedy**

When issuing as injunction under Section 13(b), courts may "frame its order broadly enough to prevent respondents from engaging in similarly illegal practices in [the] future[.]" *Colgate-Palmolive*, 380 U.S. at 395. Therefore, parties must "expect some fencing in" provisions that extend beyond the specific violations at issue. *Id.* When issuing a permanent injunction, courts look to the following factors, among others: (1) the egregiousness of the defendant's actions, (2) the isolated or recurrent nature of the infraction, (3) the degree of scienter involved, and (4) the likelihood that the defendant's occupation will present opportunities for future violations." *FTC v. Partners in Health Care Ass'n*, 189 F. Supp. 3d 1356, 1369–70 (S.D. Fla. 2016) (Scola, J.). An injunction and its prohibitions must be stated "specifically" and "in reasonable detail." *See LabMD, Inc. v. FTC*, 894 F.3d 1221, 1235 (11th Cir. 2018).

**A. Egregiousness and Recurrent Nature**

The Court finds that the violations were egregious in scope and duration. The violations resulted in potential consumer loss of over $85 million

in three years from paid guides and $17 million in one year from the freemium websites. (ECF No. 455 at ¶¶ 46, 68; ECF No. 472 at ¶¶ 46, 68.) Moreover, these violations come in contempt, as discussed in a contemporaneously filed order in the *Acquinity* matter, of a previous order enjoining Katz from making false or misleading representations. (ECF No. 455 at ¶¶ 281–284; ECF No. 472 at ¶¶ 281–284.) The Defendants argue that the violations at issue were not egregious, as the Defendants operated the websites at issue in good faith, including by consulting with counsel on compliance, training staff, and incorporating disclaimers. (ECF No. 471 at 20–21.) However, while the Liable Defendants[4] may have undertaken some steps to operate their websites in good faith, the evidence demonstrates that the Liable Defendants, when aware of the deceptiveness of the websites, sought to perpetuate the deception and evade limits on such deception, including by load balancing across merchant accounts, splitting sales from the paid-guide business, and writing fake reviews. *See supra* § 2.C.

**B. Scienter**

As discussed above, Burton Katz and Brent Levison had the requisite knowledge to be held liable. *See supra* §§ 5.B.1, 5.B.2. A higher degree of scienter is not required for permanently enjoining such deceptive conduct.

**C. Likelihood of Future Violations**

The Court finds that the Liable Defendants have amble ability to commit future violations absent a permanent injunction. In particular, the low barriers to entering the online advertising and sales business weigh strongly in favor of a permanent injunction. *See Wash. Data Res.*, 856 F. Supp. 2d at 1282 (holding that where the "economic barriers to enter the [specific] industry are minimal," there is a "cognizable danger of a recurrent violation").

**D. Reasonable Relation**

An injunction must be "narrowly tailored to fit the specific legal violations adjudged." *Keener v. Convergys Corp.*, 342 F.3d 1264, 1269 (11th Cir. 2003). Courts may include "fencing-in" relief to prevent defendants from engaging in "similarly illegal practices." *Colgate-Palmolive*, 380 U.S. at 395. Nonetheless,

[4] The Court will refer to the On Point Defendants, Corporate Defendants, Burton Katz, and Brent Levison as the Liable Defendants.

the injunction must bear a "reasonable relation" to the violative conduct. *See Partners in Health Care*, 189 F. Supp. 3d at 1370.

The Court finds that a complete ban on the provision of assistance with government services is not reasonably tailored to the violative conduct here. Rather, the Court already found that On Point's services could be beneficial to consumers if operated in a non-deceptive way. (ECF No. 234.) The permanent injunction will ensure that the websites are not operated in a deceptive manner, and the Court will not permanently prohibit the provision of such services.

The Defendants also argue that the FTC's proposed prohibition on the use of customer information without express verifiable authorization is not reasonably related to the violative conduct. However, the use of such consumer information is permitted, provided that the Liable Defendants first obtain the consumer's electronic signature. The Court above held that On Point's freemium business made false or misleading representations to consumers, and the loss to consumers because of such practices was in the form of an unauthorized use of their personal information. Therefore, the restriction on the use of consumer information is reasonably related to the violative conduct. Moreover, the requirement to obtain a consumer's electronic signature does not appear to be so different than the consent widely obtained online through clickwrap agreements and the like. *See Mason v. Midland Funding LLC*, 815 F. App'x 320, 322 (11th Cir. 2020) (noting the widespread use of clickwrap agreements online). Therefore, the Court holds that only the FTC's proposed ban on assistance with government services is overbroad and not reasonably related to the violative conduct.

**7. Conclusion**

In total, the Court **grants in part and denies in part** the FTC's motion for summary judgment (**ECF No. 454**) and **grants in part and denies in part** the Dragon Global Defendants' motion for summary judgment (**ECF No. 410**). In particular, the Court finds that summary judgment is appropriately entered in favor of the FTC as to the Corporate Defendants, Burton Katz, and Brent Levison. Moreover, the Court holds that summary judgment is appropriately entered as to the Dragon Global Defendants. The Court denies the FTC's motion for summary judgment as to Robert Zangrillo, Christopher Sherman, and Elisha Rothman, and the Court denies the Dragon Global Defendants' motion for summary judgment as to Robert Zangrillo.

**DEFINITIONS**

For the purpose of this Order, the following definitions apply:

A. "**Clear(ly) and conspicuous(ly)**" means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
8. When the representation or sales practice targets a specific

audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that group.

B. "**Corporate Defendants**" means On Point Global LLC; On Point Employment LLC; On Point Guides LLC f/k/a Rogue Media Services LLC; DG DMV LLC; On Point Domains LLC; Final Draft Media LLC; Waltham Technologies LLC; Cambridge Media Series LLC f/k/a License America Media Series LLC; Issue Based Media LLC; Bella Vista Media Ltd. also d/b/a BV Media; Carganet S.A. also d/b/a G8 Labs; Direct Market LLC; Bluebird Media LLC; Borat Media LLC; Bring Back the Magic Media LLC; Chametz Media LLC; Chelsea Media LLC; Coinstar Media LLC; Domain Development Studios LLC; Domain Dividends Media LLC; Eagle Media LLC; Falcon Media LLC; GNR Media LLC; Island Media LLC; Leatherback Media Group LLC; Macau Media LLC; CEG Media LLC f/k/a Matzoh Media LLC; MBL Media Ltd. Inc.; Orange and Blue Media LLC; Orange Grove Media LLC; Panther Media LLC; Pirate Media LLC; Pivot Media Group LLC; PJ Groove Media LLC; Sandman Media Group LLC; Shadow Media LLC; Skylar Media LLC; Slayer Billing LLC; Spartacus Media LLC; Very Busy Media LLC; Wasabi Media LLC; Yamazaki Media LLC; Bronco Family Holdings LP a/k/a Bronco Holdings Family LP; BAL Family LP; Cardozo Holdings LLC; 714 Media Ltd.; Mac Media Ltd.; License America Management LLC; License America Holdings LLC; Blackbird Media LLC; and their successors and assigns, individually, collectively, or in any combination.

C. "**Defendants**" means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

D. "**Express Verifiable Authorization**" means express written authorization by the customer, which includes the customer's signature, and shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law, and which evidences clearly both the customer's authorization of the uses Defendant will make of the customer's information and the customer's receipt, prior to providing such authorization, of: (1) an accurate description, Clearly and Conspicuously stated, of

the information to be collected; (2) an accurate description, Clearly and Conspicuously stated, of the goods or services to be provided in exchange for the information; (3) an accurate description, Clearly and Conspicuously stated, of the specific use, disclosure, or sale Defendants are authorized to make of the information the customer is providing; and (4) an accurate description, Clearly and Conspicuously stated, of the identity or specific category of any third party to whom the information will be disclosed or sold.

E. "**Individual Defendants**" means Burton Katz and Brent Levison, individually, collectively, or in any combination.

F. "**Sensitive Information**" means:

1. information about an individual's past, present, or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual;
2. a consumer's financial institution account number, credit or debit card information, or any other information by which a consumer's financial account can be accessed, or by which a consumer might be charged for goods or services;
3. Social Security number;
4. geolocation information; or,
5. information about an individual if any information that individual provided indicates he or she is a minor.

## ORDER

### I. BAN ON SALE OR DISCLOSURE OF SENSITIVE INFORMATION

IT IS ORDERED that Corporate Defendants, Burton Katz, and Brent Levison are permanently restrained and enjoined from selling, disclosing, or permitting third parties to access customers' Sensitive Information, whether directly or through an intermediary, unless the disclosure or access is necessary to provide the good or service offered to the customer that induces the customer to provide the Sensitive Information.

## II. PROHIBITION AGAINST USE OF INFORMATION WITHOUT EXPRESS VERIFIABLE AUTHORIZATION

IT IS FURTHER ORERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from disclosing or using information obtained from a customer without that customer's Express Verifiable Authorization for such disclosure or use.

## III. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering any good or service are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

A. that consumers can complete state motor vehicle or state licensing transactions, eligibility determinations for public benefits, or any other governmental transactions on Defendants' websites;

B. that consumers who submit payment or personal information on Defendants' websites will receive a state motor vehicle service, state license, eligibility determination for public benefits, or any other governmental service;

C. that consumers who submit payment or personal information on Defendants' websites can demonstrably conduct or complete a government transaction more quickly or efficiently on Defendants' websites than by conducting the same transaction directly with the government;

D. that the information Defendants provide regarding government services and transactions is demonstrably more accurate or easier to understand than information the government provides about those services and transactions; or

E. any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

## IV. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order are permanently restrained and enjoined from directly or indirectly:

A. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the operation of websites offering assistance with government services and transactions; and

B. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

## V. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 10 years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur

within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

## VI. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including

title, role, responsibilities, participation, authority, control, and any ownership.

B. For 20 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious names, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade

Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. On Point Global LLC, et al., X130054.

## VII. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Order and retain each such record for 5 years. Specifically, each Corporate Defendant and each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. accounting records showing the revenues from all goods or services sold;

B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. a copy of each unique advertisement, website, or other marketing material.

## VIII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of

Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

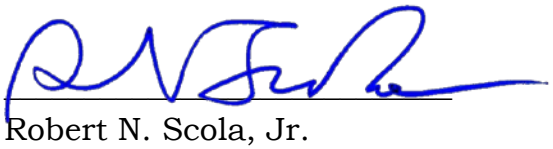
C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

## IX. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**Done and ordered** at Miami, Florida, on September 29, 2021.



Robert N. Scola, Jr.
United States District Judge