

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INTERNATIONAL PRODUCT DESIGN, INC.; THE
INNOVATION CENTER, INC.; NATIONAL IDEA
CENTER, INC.; NEW PRODUCTS OF AMERICA, INC.;
AZURE COMMUNICATIONS, INC dba LONDON
COMMUNICATIONS, INC.; INTERNATIONAL
LICENSING CORPORATION, INC.; ROBERT N.
WAXMAN; PETER DORAN; DARRELL MORMANDO;
JULIAN GUMPEL; AND GREG WILSON,

Defendants.

Case No. 1:97-cv-01114-AVB

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS EX PARTE MOTION FOR A
TEMPORARY RESTRAINING ORDER WITH ANCILLARY EQUITABLE RELIEF,
AND A PRELIMINARY INJUNCTION, PENDING DECISION ON PLAINTIFF'S
MOTION TO SHOW CAUSE WHY JULIAN GUMPEL
AND EIGHT BUSINESS ENTITIES UNDER HIS CONTROL
SHOULD NOT BE HELD IN CONTEMPT**

I. INTRODUCTION

Plaintiff, the Federal Trade Commission ("FTC" or "Commission") respectfully requests an *ex parte* Temporary Restraining Order, Preliminary Injunction, and other equitable relief to prevent the destruction of evidence and dissipation of assets pending action on the Commission's motion to show cause why Julian Gumpel ("Gumpel") and eight entities under his control should not be held in civil contempt for violating the core provisions of a Stipulated Order entered by this Court. Specifically, Gumpel and the entities he controls violate the Stipulated Order by operating an invention promotion business that: (1) falsely represents to consumers that they will

reap huge financial benefits by using Gumpel's business to promote their invention ideas; (2) falsely claims to expertly assess consumers' inventions; and (3) fails to disclose to consumers their dismal invention-commercialization record.

The Commission sued Gumpel and twelve co-defendants in 1997, alleging that they were violating the Federal Trade Commission Act, 15 U.S.C. § 45, by falsely representing that purchase of their invention promotion services would likely result in financial gain for consumers. In November 1998, this Court entered a Stipulated Order for Permanent Injunction ("Stipulated Order") that, *inter alia*, barred Gumpel, Azure Communications, Inc., and London Communications, Inc., from making false representations with respect to invention promotion services and which affirmatively required them to disclose their success (or lack thereof) in commercializing consumers' inventions.

Since then, Gumpel has created a new invention promotion business that violates the core provisions of the Stipulated Order while following the same, fraudulent business model that led to the Order. In this new venture, Gumpel, who, as noted below, was recently described by one federal judge as a liar of "top quality," again dupes consumers into paying thousands of dollars by misrepresenting that his invention promotion services will result in substantial financial gain and by falsely claiming to assess the market potential, patentability, and merit of consumers' ideas. Moreover, Gumpel fails to inform consumers of his lack of success in commercializing consumers' inventions as required by the Order.

Gumpel operates the scam through a web of corporate entities – many of which are defunct – that includes original defendants Azure Communications, Inc., and London Communications, Inc., and six other Contempt Defendants that have facilitated his violation of

the Stipulated Order while acting in concert or participation with him: Technical Lithographers, Inc., d/b/a Patent & Trademark Institute of America (“PTI”); United Licensing Corp.; International Patent Advisors, Inc.; Datatech Consulting, Inc.; International Product Marketing, Inc.; and Unicorp Consulting, Inc. (collectively, “Contempt Defendants”). Gumpel’s invention promotion business, marketing primarily through the name PTI, has earned tens of millions of dollars while defrauding consumers in violation of the Order.

Accordingly, the Commission has returned to this Court to institute proceedings for appropriate civil contempt sanctions and remedies.¹ In addition, the FTC moves for an *ex parte* Temporary Restraining Order to immediately halt Contempt Defendants’ contumacious business practices and to prevent the destruction of records and the dissipation of assets procured through violative conduct.

Federal Rule of Civil Procedure 65 provides for the issuance of the requested *ex parte* Temporary Restraining Order in order to prevent irreparable harm to the Court’s ability to grant effective final relief. FED. R. CIV. P. 65(b). Such relief is necessary here to prevent continuing

¹ In addition to the Motion for Temporary Restraining Order, the Commission is simultaneously filing in this Court the following *ex parte* motions: (1) Motion for Order to Show Cause Why Defendant Julian Gumpel and Eight Business Entities Under His Control Should Not Be Held in Contempt for Violating the Stipulated Order for Permanent Injunction and Final Relief; (2) Motion to Modify the Permanent Injunction; (3) Motion to File a Memorandum for a Temporary Restraining Order Exceeding Page Limitation; and (4) Motion to Temporarily Seal Filings. As set forth in the Memorandum in support of the Motion to Temporarily Seal Filings, the FTC requests that its moving papers, supporting documents, and any responsive orders be held under temporary seal to ensure that the Contempt Defendants do not receive notice of impending contempt proceedings before receiving service of an appropriate restraining order. As detailed *infra*, Gumpel’s documented history of deception, violation of court orders, and the nature of his current enterprise give rise to a great risk of asset dissipation and spoliation of evidence if he or the other Contempt Defendants were to receive notice of contempt proceedings prior to service of the requested Temporary Restraining Order.

fraud, destruction of evidence, and dissipation of assets. Federal courts have granted motions for *ex parte* Temporary Restraining Orders with similar ancillary relief in FTC cases,² including in contempt proceedings.³

II. STATEMENT OF FACTS

A. Original Action.

On September 14, 1997, the FTC filed a complaint against Gumpel and twelve other

² FTC cases within the Eastern District of Virginia granting *ex parte* Temporary Restraining Orders with ancillary equitable relief include *FTC v. Premier-Escrow.com*, Civ. No. 03-488-A (E.D. Va. Apr. 21, 2003) (*ex parte* TRO with asset freeze and expedited discovery); *FTC v. The Tungsten Group*, Civ. No. 01-CV-773 (E.D. Va. Oct. 15, 2001) (*ex parte* TRO with asset freeze, immediate access to premises, appointment of receiver, and expedited discovery); *FTC v. Pereira*, Civ. No. 99-1367-A (E.D. Va. 1999 Sept. 14, 1999) (*ex parte* TRO with expedited discovery); *FTC v. S.J.A. Society, Inc.*, No. 97-CV-472 (E.D. Va. May 12, 1997) (*ex parte* TRO with asset freeze, immediate access to premises, appointment of receiver, and expedited discovery); *FTC v. Global Patent Research Services, Inc.*, No. 96-676-A (E.D. Va. May 17, 1996) (*ex parte* TRO with asset freeze, immediate access to premises, and expedited discovery). All unpublished orders cited in this brief are included in the Exhibits in Support of Plaintiff's Motion for a Temporary Restraining Order and an Order to Show Cause. In order to reduce the burden on the Court and conserve resources, the Commission is submitting common exhibit books in support of both motions. All unpublished orders are identified as PX-LEGAL-01 through PX-LEGAL-10.

³ Cases granting FTC motions for *ex parte* Temporary Restraining Orders with ancillary equitable relief pending contempt proceedings include *McGregor v. Chierico*, 206 F.3d 1378, 1381 (11th Cir. 2000) (citing trial court's *ex parte* order for asset freeze and appointment of receiver, among other relief); *FTC v. Neiswonger*, Civ. No. 96cv02225 (E.D. Mo. July 17, 2006) (*ex parte* TRO with asset freeze, appointment of receiver, immediate access to premises and expedited discovery); *FTC v. Gill*, 183 F. Supp. 2d 1171, 1176-77 (C.D. Cal. 2001) (acknowledging issuance of *ex parte* TRO with asset freeze, appointment of receiver, immediate access to premises and expedited discovery); *FTC v. Chierico*, Civ. No. 96-1754 (S.D. Fla. June 23, 1998) (*ex parte* TRO with asset freeze, appointment of receiver, immediate access to premises, and expedited discovery); *FTC v. Giving You Credit, Inc.*, No. 96-C-2088 (N.D. Ill. Mar. 4, 1997) (*ex parte* TRO with asset freeze, immediate access to premises, and expedited discovery); *FTC v. Freedom Med., Inc.*, No. C2-95-510 (S.D. Ohio Nov. 7, 1995) (*ex parte* order granting immediate access to premises and continuing asset freeze and receiver); *FTC v. Paradise Palms Vacation Club*, No. C81-1160-V (W.D. Wash. June 29, 1992) (*ex parte* TRO with asset freeze and immediate access to premises).

defendants in *FTC v. International Product Design*, No. 1:97-cv-01114 (E.D. Va. 1997). The complaint charged defendants with violating Section 5 of the FTC Act, 15 U.S.C. § 45, by falsely representing that purchase of their invention promotion services would likely result in financial gain for consumers. FTC 1 ¶¶ 23-25, PX0007.⁴

On November 18, 1998, the Court entered the Stipulated Order that applied to Gumpel and several codefendants, including Azure Communications, Inc., and London Communications, Inc.⁵ See FTC 2. The Stipulated Order prohibits these original defendants – and others with notice of the order acting in concert with them – from falsely representing: (1) the likelihood that defendants' invention promotion services will result in financial gain; (2) defendants' past success in assisting customers to market their inventions; (3) that defendants assess the market potential, patentability, technical feasibility, or merit of customers' ideas; (4) that defendants make money from royalties generated by customers' inventions; and (5) any fact material to a consumer's decision to purchase invention promotion services. FTC 2, PX0013-14.

Defendants also are required to inform consumers, in their initial contact, that they will receive two copies of a separate Affirmative Disclosure document. *Id.*, PX0014-15. The Affirmative Disclosure, which is to be included in the first written material that consumers receive, must identify, for the preceding three years, the number of contracts the company has signed for invention promotion services; the number of consumers who have signed licensing

⁴ The evidentiary documents in the common exhibit books are identified first by exhibit (FTC ___) and then by a bates number added to the exhibits beginning with PX0001. Pursuant to Local Rule 7(C), all personal identifiers have been redacted from these exhibits.

⁵ London Communications, Inc. signed the Stipulated Order as a separate defendant even though the complaint misidentified this entity as a fictional name of defendant Azure Communications, Inc. FTC 2, PX0023; FTC 1 ¶ 12, PX0004.

agreements as a result of the company's services; and the number of consumers who "received more money than they paid" for the services. *Id.*, PX0024. Defendants must obtain a signed copy of the Affirmative Disclosure from consumers before offering, contracting for, or rendering services. *Id.*, PX0014.

B. Contempt Defendants' Violative Business Practices.

In the underlying case, Gumpel and the other original defendants marketed their invention promotion business in two phases – a first phase that purported to provide an assessment of an invention's merit, marketability, and patentability and a second, costlier phase that supposedly helped consumers to promote and license their inventions. *See* FTC 1 ¶ 20, PX0006. Today, under the mantle of PTI, Gumpel and the other Contempt Defendants use the same two-phase system to deceptively market their business in violation of the Order.

Specifically, consumers are invited to submit information about their inventions through the website inventorshelpline.com. FTC 18 ¶ 19(b), PX1793; *Id.*, PX2211 (index page of website inviting consumers to submit ideas); FTC 5 ¶ 3, PX0280; FTC 19 ¶ 7(b), PX2383. A consumer who makes a submission online is then called by a PTI telemarketer, who states that the invention has passed an initial screening process and been "approved." FTC 19 ¶ 7(j), PX2384; *Id.*, PX2662. The PTI telemarketer then urges the consumer to purchase a "Phase I" assessment for \$895 to \$1295. *See* FTC 19 ¶ 7(c), (d), PX2383; *Id.*, PX2669-72; FTC 4 ¶ 5, 0083; *Id.*, PX0101 (describing phases); FTC 3 ¶ ¶ 5-6, PX0027; FTC 18 ¶ 18(e), PX1792; *Id.*, PX2098-101. As discussed below, the assessment is invariably positive and is used to sell the more expensive "Phase II" services, which range in cost from \$5,000 to \$40,000, and purportedly include assistance in patenting and licensing the consumer's invention. FTC 3 ¶ ¶ 5, 9- 10, 12,

13, PX0027-29.

In selling both phases, Gumpel claims that his purported services will likely result in huge financial gains for consumers. For example, in a recorded telephone conversation, a PTI sales representative told consumer Mark Huxhold that his invention – a plastic holder for flowers or flags, to be placed on grave markers - could make “half a million a year.” FTC 5 ¶ 7, 11, PX0281-83; *Id.*, PX0433; *Id.*, PX0310 (invention description). Similarly, a sales representative assured another consumer that with PTI’s help, he could expect to earn between \$0.50 and \$2 per unit in a market of 35-40 million people for his “Fisherman’s Cooler,” a cooler with compartments for food and tackle. FTC 13 ¶¶ 10, 12, PX1246, PX1248-49; *Id.*, PX1294-95.

In another instance, Susie Butcher was told that her “phenomenal” invention – which consisted of adding decorations to a hair clipper – could be on the shelves within three months, inducing Butcher to sell her horse to raise \$5,000 for Phase II services. FTC 6 ¶¶ 5, 6, PX0456-57; *Id.*, PX0477-78. Kenneth Jenkins was told that PTI would secure a licensing agreement after representation at a single trade show of his idea for a microwaveable heating pad, FTC 8 ¶¶ 6, 7, PX0656; *Id.*, PX0671, and that he would earn \$5,000 per week in royalties and \$5 million in the first year of sales. *Id.* ¶ 7, PX0656. Michelle Padula purchased \$5,000 in patenting services after she was assured that, once patented, her disposable toilet brush could earn up to \$250,000 every four months in royalties. FTC 10 ¶¶ 7, 8, PX0905-06; *Id.*, PX0927-28. Finally, a PTI telemarketer told an undercover FTC investigator that a proposed bib with an attached dish – an idea that was in fact already patented – could bring in at least \$100,000 a year. FTC 18 ¶¶ 18(c), (e), PX1792; *Id.*, PX2106-07. He stressed that this number was “on the low side.” *Id.* at PX2106-07.

PTI buttresses its earnings claims by emphasizing, in sales literature and telemarketing, that, through its “licensing affiliate” United Licensing, it derives substantial income in royalties from successful consumer inventions. FTC 4 ¶ 5, 13, PX0083, 85; *Id.*, PX0107-09 (depicting licensing agreements); FTC 7 ¶ 8, PX0563; FTC 11 ¶ 7, PX1016; FTC 5 ¶ 11, PX0283; *Id.*, PX0430, 40. In a recorded telephone call, a PTI representative said United Licensing’s royalties were the secret to PTI’s financial success:

[Y]ou know, there’s not a lot of profit in doing these reports. We make our money – United Licensing subsidizes us financially. Once a product has been licensed and sold, then they pay [PTI] and that’s legal, because they’re doing all the work, they do all the sponsoring and everything else, and our profit, \$10 million last year, was based upon our products at United Licensing.”

FTC 18(e), PX1792; *Id.*, PX2110-11.

PTI also bolsters its earnings claims by prominently featuring items from reputable companies such as Conair’s Cord-Keeper hair dryer and Zelco’s “Itty Bitty Booklight” on its website. In this regard, PTI’s website includes a photograph of these products, a description of their technological advances, and lists pricing information next to PTI’s toll-free number. FTC 18 ¶ 19(b), PX1793; *Id.*, PX2240-41. However, officials with Conair and Zelco state that these inventions were developed by their own employees, that the companies pay no licensing or distribution fees to PTI or United Licensing, and that they did not authorize the promotion of their products on PTI’s website. FTC 15 ¶¶ 6, 7, 9, 10, PX1523-PX1524; FTC 16 ¶¶ 4, 5, PX1528.

The Contempt Defendants’ earnings claims are false. Few, if any, consumers have benefitted financially from Gumpel’s invention promotion services. None of the consumers who provided declarations to the FTC has secured a licensing agreement or profited financially from

an invention. *See, e.g.*, FTC 4 ¶ 18, PX0086; FTC 5 ¶ 15, PX0284; FTC 6 ¶ 15, PX0459; FTC 7 ¶ 16, PX0565; FTC 8 ¶ 12, PX0657; FTC 9 ¶ 14, PX0813; FTC 10 ¶ 14, PX0908; FTC 11 ¶ 13, PX1017-18; FTC 12 ¶ 13, PX1154; FTC 13 ¶ 17, PX1250. Moreover, Paul Kokoris, who worked as a sales consultant for PTI from 2001 to 2005, could not identify a single PTI client who made money from his or her invention. FTC 3 ¶¶ 2, 16, PX0027, PX0030. Consumers' experiences were perhaps best summed up in a May 2006 interview on Good Morning America, when a reporter asked Gumpel whether he knew of any PTI clients who had earned money on an invention. Gumpel was unable to identify a single consumer who profited from his services, saying only that he would have to "do a great deal of research." FTC 19 ¶ 6, PX2382; *Id.*, PX2646.

In addition to making false earnings claims, PTI falsely represents that it assesses the merit, marketability, and patentability of inventions. This assessment is supposed to occur at two levels. First, PTI claims that it screens each initial submission and rejects many if not most of them, approving only "viable" proposals that satisfy "strict criteria." FTC 18 ¶ 19(b), PX1793; *Id.*, PX2211 (stating that "viable submissions" will be forwarded to PTI), PX2287 ("We have strict criteria for which an invention must meet"); *see also* FTC 11 ¶ 3, PX1015; *Id.*, PX1019 (inviting consumer to submit proposal so that PTI can determine if idea is "something to pursue").⁶ Second, PTI promises to provide an objective, thorough evaluation of inventions to consumers who purchase "Phase I" reports. FTC 19 ¶ 7(1), PX2384; *Id.*, PX2710 ("The Report

⁶ For example, a PTI representative told an FTC investigator that PTI "turn[s] down 60 percent of the applications that come in on a weekly basis." FTC 18 ¶ 18(e), PX1792; *Id.*, PX2110. Similarly, consumer Dallas McClain was told that PTI rejects most initial submissions. FTC 13 ¶ 4, PX1246.

will provide you with a complete, objective and honest evaluation of your invention idea.”). In fact, both the initial screening and Phase I reports are merely vehicles to further sales.

PTI’s initial “screening” process approves even ideas with obvious flaws. For example, an undercover investigator proposed a “safety” turkey fryer that employed high-pressure water to suppress an oil fire. FTC 19 ¶ 7(c), PX2383; *Id.*, PX3021-PX3022. A PTI representative informed the FTC investigator who pitched the idea that PTI had reviewed and approved the proposal, explaining that “we don’t work with every idea that comes [this] way.” FTC 19 ¶ 7(j), PX2384; *Id.*, PX2662. She elaborated that out of every ten submissions, PTI rejects two or three summarily and gives another three or four “strong precautionary notes, such as possible design or mechanical flaws.” *Id.*, PX2735. Yet PTI identified no such flaws in its screening of the safety turkey fryer.⁷

PTI similarly “approved” the submission of another FTC investigator, who proposed a child’s bib with an attached dish. FTC 18 ¶ 18 (e), PX1792; *Id.*, PX2133. The PTI salesperson told the investigator his idea was “unique” and likely patentable. *Id.*, PX2110, 18. In fact, the submission had been copied from an existing patent.⁸ *Id.* ¶ 18(c), PX1792.

⁷ Only after the undercover investigator purchased a Phase I report for \$895 report did PTI point out, on page 16 of the report, that water is not effective in extinguishing oil fires. FTC 19 ¶ 7(t), PX2385; *Id.*, PX2895.

⁸ PTI representatives claim that Phase I assessments provide a preliminary patent analysis “as extensive and complete as the search that the U.S. Patent and Trademark Office would conduct” before issuing a patent. FTC 10 ¶ 5, PX0904. However, in many instances, the reports fail to identify obviously relevant patents for identical or very similar inventions. For example, the report produced for Michelle Padula’s invention did not identify several relevant patents that were later cited by the U.S. Patent and Trademark Office in rejecting her patent application. *Id.* ¶¶ 7, 12, PX0905, 07; *Id.*, PX0961-78, PX1000-06. PTI’s preliminary patent analysis for Karen and David Butts’ proposal – a padlock cover – yielded a similarly misleading result, failing to identify four existing patents for padlock covers. FTC 4 ¶ 7, 11, PX0083-84;

Consumers who purchase the Phase I report are promised a “complete, objective, and honest evaluation” that will examine ideas “from an *unemotional*, more critical viewpoint.” *See, e.g.,* FTC 4 ¶ 5, PX0083; *Id.*, PX0106 (emphasis in original). In fact, the Phase I report invariably provides a positive assessment. Of 11 Phase I reports obtained by the Commission from consumers, each gave a positive assessment. FTC 19 ¶ 5, PX2382 (summarizing positive assessments of portfolios). Former sales consultant Kokoris stated that every report he saw in five years at PTI provided a positive assessment. FTC 3 ¶12, PX0028-29.

These uniformly positive results demonstrate that PTI does not provide a true assessment of inventions. In this regard, Gerald Udell, a professor of marketing and an expert in invention assessment at Missouri State University who has been retained by the Commission, states that only a very small percentage of inventions succeed, and that this percentage is even smaller for the very preliminary “invention ideas” commonly submitted to invention assessment companies. FTC 17 ¶ 9, 12, PX1536-37, PX1541. Thus, any assessment process that always or nearly always recommends further development fails, by definition, to provide an objective evaluation of inventions. Because most inventions are simply not suitable for further development, the fact that all or nearly all of PTI’s reports are positive shows that PTI’s assessments are neither accurate nor the expert appraisal that PTI represents them to be.

Indeed, Dr. Udell reviewed three PTI reports and disagreed with the conclusion in each that further development of the idea was warranted. *Id.* ¶ 13, PX1543. Specifically, he found

Id., PX0157-71, PX0187.

that PTI's reports fail to consider the factors most significant to analyzing commonly submitted inventions. *Id.* ¶ 12, PX1540. Rather, Dr. Udell states that the limited market information provided in PTI's reports is generic data that is irrelevant and even potentially misleading. *Id.* ¶ 10, PX1537 (boilerplate information); *Id.*, PX1783-87 (irrelevant, missing and misleading information in portfolios). The remaining information in the evaluations "appears to be repetitive or to elaborate on what the inventors appear to have supplied to PTI." *Id.* ¶ 12, PX1539. Thus, the evaluations contained in the reports "appear to be meaningless" and "fall short of meeting their stated purpose" of evaluating invention ideas. *Id.* ¶ 11, PX1538; *Id.* ¶ 13, PX1543.

Although the Phase I reports fail to provide valid assessments, they do serve PTI's purpose of serving as a launching pad for selling Phase II services, which range in cost from \$5,000 to \$40,000.⁹ FTC 3 ¶¶ 9, 12, PX0029; FTC 8 ¶¶ 7, 8, PX0656 (\$47,000); *Id.*, PX0772 (showing patent cost schedule). Once the Phase I report is issued, either the original salesperson or a "closer" calls to congratulate the consumer on the report's results, claiming PTI has particularly selected the invention for further development. *See, e.g.*, FTC 13 ¶ 9, PX1248; FTC 11 ¶ 6, PX1017; FTC 3 ¶ 11, PX0028; FTC ¶ 7, PX0563. PTI sales representatives then falsely suggest that the consumer's results are extraordinary, by claiming, for example, that they have "a half dozen" Phase I reports with negative results on their desk. FTC 19 ¶ 7(q), PX2385; *Id.*, PX2784-85. In fact, PTI attempts to sell Phase II services to all Phase I purchasers. FTC 3

⁹ Former sales consultant Kokoris stated that the Phase I report's main purpose was to promote sales of Phase II services, FTC 3 ¶ 12, PX0028-29, a point underscored by an internal PTI memo that emphasizes using reports to increase "conversions" to Phase II sales. *Id.*, PX0036.

¶¶ 12-13, PX0028-29.

A key part of the Phase II sales pitch is PTI's promise that consumers who purchase this phase will receive patenting services and representation at trade shows by PTI's "affiliate," United Licensing. PTI representatives use the "no cost" benefit of trade show representation as an inducement to sell patenting services. FTC 4 ¶¶ 5, 7, 8, PX0083-84; *Id.*, PX093 (showing role of United Licensing); *Id.*, PX0101 (describing United Licensing's "NO COST" services); *Id.*, PX0111 (trade show advertisement); *Id.*, PX0141-42 (describing trade show representation). Specifically, PTI representatives tell consumers it is essential to pay for Phase II immediately so that their inventions can be included in upcoming trade shows, at which United Licensing will seek licensing agreements on their behalf. FTC 5 ¶¶ 6, 11-12, PX0281, 283; *Id.*, PX0427-30; FTC 4 ¶¶ 7-8, PX0083; FTC 6 ¶ 8, PX0457.

However, after consumers pay for Phase II services, PTI virtually disappears. First, consumers lose the ability to reach any live person at PTI. Indeed, phone messages are not returned. FTC 11 ¶ 8, PX1016-PX1017; FTC 9 ¶ 8, PX0812; FTC 4 ¶ 10, PX0085; FTC 8 ¶ 11, PX0458.

Second, the promise of active trade show representation is not fulfilled. In this regard, PTI or United Licensing often send form letters stating that a particular manufacturer expressed interest in the consumer's invention at a trade show. FTC 7 ¶ 15, PX0565; FTC 9 ¶ 11, PX0813; FTC 10 ¶ 13, PX0907-PX0908; FTC 11 ¶ 11, PX1017; FTC 14 ¶¶ 11, 13-15, PX1361-PX1363. However, consumers who have followed up on these letters report that the manufacturers have no knowledge of – much less interest in – either the invention or PTI/United Licensing. FTC 7 ¶ 15, PX0813; FTC 9 ¶ 12, PX0813; FTC 10 ¶ 13, PX0907-PX0908; FTC 11 ¶ 13, PX1017; FTC 14

¶¶ 11, 13-15, PX1387-89.

Third, patenting services prove illusory. After consumers pay several thousand dollars for such services, it takes several months – and in some cases years – before consumers are even contacted by an attorney. FTC 9 ¶ 15, PX0813 (two-year wait); FTC 6 ¶ 11, PX0458; FTC 10 ¶¶ 9-10, PX906. When consumers finally hear from an attorney by letter, the attorney usually does not even provide a telephone number. FTC 9 ¶ 15, PX0813; FTC 6 ¶¶ 10-12, PX0458; FTC 10 ¶¶ 9-10, PX0906. Often, consumers learn that their ideas are not unique and have already been patented. *See, e.g.*, FTC 4 ¶¶ 7, 11, 17, PX0083-84, 86; *Id.*, PX0187; FTC 10 ¶¶ 5, 12, PX0904-05, 07; *Id.*, PX1000-06; FTC 11 ¶ 14, PX1018. Consumers who then complain are told that getting a patent is not PTI's problem. FTC 9 ¶ 8, PX0812.

Significantly, one communication is conspicuously absent from the aggressive sales pitches, both oral and written, made by PTI to consumers: the Affirmative Disclosure required by the Stipulated Order. When FTC investigators made undercover submissions of inventions, PTI neither mentioned the Affirmative Disclosure in telephone conversations, nor did it provide it in materials sent by mail. FTC 18 ¶ 18(g), PX1792; FTC 19 ¶ 7(v), PX2386. Similarly, none of the eleven PTI consumers who provided declarations for this investigation recalled receiving any such disclosure. FTC 4 ¶ 9, PX0084; FTC 5 ¶ 14, PX0283-84; FTC 6 ¶ 17, PX0459; FTC 7 ¶ PX0565; FTC 8 ¶ 11, PX0657; FTC 9 ¶ 10, PX0812; FTC 10 ¶ 15, PX0908; FTC 11 ¶ 9, PX1017; FTC 12 ¶ 12, PX1153-54; FTC 13 ¶ 16, PX1250; FTC 14 ¶ 10, PX1386-87. Moreover, Kokoris, the former sales consultant, states PTI did not provide the required disclosures during the time he worked for PTI, from 2001 through 2005. FTC 3 ¶ 17, PX0017.

The Contempt Defendants' invention promotion scheme is designed to persuade

consumers to spend tens of thousands of dollars for worthless services by falsely representing that their ideas have been expertly assessed and have market potential that likely will net them huge profits. In fact, the real money makers are Gumpel and his various corporations. An Experian Business Report indicated that PTI has annual sales of \$7.5 million. FTC 18 ¶ 17, PX1791; *Id.*, PX2057-59. However, bank records indicate even higher revenues. For example, in September 2006, accounts for contempt defendant Datatech Consulting, Inc., d/b/a PTI, ended the month with a balance of more than \$1.6 million. FTC 19 ¶ 2(a)(vi), PX2376; *Id.*, PX2480-87. Gumpel transfers significant funds (often exceeding \$1 million) from this account each month to another contempt defendant, International Product Marketing, which subsequently forwards the funds to original defendant Azure Communications, Inc. *Id.* ¶¶ 2(a)(iv), 3(a)(v), PX2376, PX2378; *Id.*, PX2410-87, PX2979-85.

C. Parties to Current Action: Contempt Defendants.

1. Julian Gumpel, an original defendant, controls his invention promotion business through various corporate shells, including two original corporate defendants and six other entities. He is president of Contempt Defendants Technical Lithographers, Inc., d/b/a Patent & Trademark Institute (PTI); United Licensing Corp.; International Patent Advisors, Inc.; Datatech Consulting, Inc.; Unicorp Consulting, Inc.; and Azure Communications, Inc., and an officer of contempt defendant International Product Marketing, Inc. Gumpel sets corporate policies, makes personnel decisions, and personally negotiates with consumers in some instances. FTC 3 ¶ 1, PX0027; FTC 12 ¶ 10, PX1153. He applied for trademarks for the website name “inventorshelpline.com” and for the phrase “Free Inventor’s Kit.” FTC 18 ¶ 20, PX1793; *Id.*, PX2373-74.

Gumpel's most recent misadventure in federal court occurred in *Estate of Mickey Mantle v. Gumpel et al.*, No. 1:04-cv-03575 (S.D.N.Y. 2004), in which the court found that Gumpel had ignored a court order to appear, repeatedly violated the terms of a stipulated order requiring him to turn over documents, and given false testimony about how he acquired a valuable piece of Mickey Mantle memorabilia that turned out to be government property.¹⁰

In the Mantle case, Gumpel entered into a stipulated permanent injunction resolving allegations that he had infringed on trademarks by selling Mickey Mantle memorabilia without authorization. See *Estate of Mickey Mantle*, No. 1:04-cv-03575 (S.D.N.Y. 2004), PX0010-47 (complaint), PX1051-65 (stipulated final judgment and writ of permanent injunction). The court subsequently found that Gumpel had repeatedly violated the injunction, "causing much frustration and expense to the plaintiff," and had also violated other court orders, including an order to appear. *Id.*, slip op. at PX1967-69 (Oct. 14, 2004). Gumpel was ordered to pay \$10,000 in liquidated damages and fees. *Id.* at PX1969. Gumpel testified that he had never read the terms of the permanent injunction he had signed, and that certain records he was supposed to disclose either never existed or were destroyed prior to litigation. *Id.*, hearing trans. at PX1984, PX1993-94 (Sept. 29, 2004). At the conclusion of the hearing, the court stated that it found Gumpel "to be right up there in the court's roster of liars of top quality." *Id.* at PX2040.

¹⁰ The memorabilia in question was an FBI fingerprint card used in an application to carry a firearm that Mantle filed with the New York Police Department in 1968. Gumpel had attempted to auction off this card for more than \$110,000, but he was forced to return the card to the City of New York after the city filed a lawsuit in state court alleging it was government property. See *City of New York v. Gumpel et al.*, No. 400292/04 (N.Y. Sup. Ct. February 5, 2004), FTC 18 ¶ 15, PX1790-91; FTC 18, PX1949-50. At the federal hearing involving his alleged violation of the stipulated judgment, Gumpel claimed he had acquired the fingerprint card from a man he knew only as "Bob." The court said, "I don't believe that for a second." FTC 18 ¶ 15, PX1790-91; *Id.*, PX2043.

2. Other Contempt Defendants.

a. Technical Lithographers, Inc., d/b/a Patent & Trademark Institute of America (“PTI”) is a dissolved New York corporation for which Gumpel holds himself out as president. *Id.* ¶ 2, PX1788, PX1840-45. PTI’s name appears throughout the inventorshelpline website and company literature, which includes a “Business Information Report” that identifies Gumpel as president and chief executive officer of PTI and references Dun & Bradstreet Report No. 02-576-5145. *See, e.g., Id.* ¶ 19(b); *Id.*, PX2211-2372 (website); FTC 14 ¶ 6, PX1385-86; *Id.*, PX1395-1407 (company literature); FTC 5 ¶ 8, PX0282; *Id.*, PX0405-06 (business information sheet). The referenced Dun & Bradstreet Report identifies PTI as a d/b/a of Technical Lithographers, Inc. FTC 18 ¶ 16, PX1791; *Id.*, PX2047.

b. United Licensing Corporation (“United Licensing”) is a current Nevada corporation. Gumpel is its president, sole officer, and director. *Id.* ¶ 9, PX1789; *Id.*, PX1801-19. PTI’s sales documents make frequent reference to United Licensing, claiming that it is an independent entity responsible for securing agreements with manufacturers. FTC 4 ¶¶ 5, 13, PX0083, 85; *Id.*, PX0093, PX0224-29.

c. International Patent Advisors, Inc. (“IPA”) is a current New York corporation of which Gumpel is president. FTC 18 ¶ 11, PX1790; *Id.*, PX1851-58; FTC 19 ¶ 2(b)(ii)(1), PX2377; *Id.*, PX2396. It regularly receives funds from Azure Communications, Inc. FTC 19 ¶ 2(b)(iii), PX2377; *Id.*, PX2523-25. Promotional materials state that after PTI contracts to provide patenting services, PTI forwards the consumer’s information to IPA, which then refers the matter to a patent attorney. FTC 5 ¶¶ 7, 8, PX0281-82; *Id.*, PX360-61, 408.

d. Datatech Consulting, Inc. (“Datatech”) is a defunct Nevada corporation of which

Gumpel is president. FTC 18 ¶ 6, PX1789; *Id.*, PX1794-1800, 2976. Consumer checks made payable to PTI are deposited in a bank account for “Data Tech Consulting d/b/a Patent and Trademark Institute.” FTC 19 ¶ 2(a)(iii), PX2375-76; *Id.*, PX2480-87, 2492-2502. PTI consumers also have been instructed to wire payments to this account, for which bank records list Gumpel as the contact. FTC 3 ¶ 19, PX0030; *Id.*, PX 0081; FTC 19 ¶ 2(a)(ii)(3), PX2375; *Id.*, PX2406-09.

e. International Product Marketing, Inc., (“IPM”) is a dissolved New York corporation of which Gumpel is an officer. FTC 18 ¶ 10, PX1789; *Id.*, PX1846-50, 1864; *Id.* ¶ 14, PX1790; *Id.*, PX1914 (Answer Verification in *Ferrante v. International Product Marketing, Inc. d/b/a Patent and Trademark Institute of America*, Index No. 05-004055 (N.Y. Sup. Ct. April 15, 2005), where Gumpel admits that he is an officer of IPM). Contracts for certain of PTI’s services use the name “International Product Marketing Inc. (doing business as) Patent and Trademark Institute of America.” *See, e.g.*, FTC 4 ¶ 8, PX0083-84; *Id.*, PX0174; FTC 6 ¶ 8, PX0457; *Id.*, PX0537; FTC 7 ¶ 10, PX0564; *Id.*, PX0639; FTC 10 ¶ 8, PX0905-06; *Id.*, PX0981. Each month, Gumpel wires hundreds of thousands of dollars from a Data Tech/PTI account to one for “Intl Product Marketing Inc. DBA PTI,” for which he has sole signatory authority. FTC 19 ¶ 2(a)(iv), PX2376; *Id.*, PX2488-91; *Id.* ¶ 3(a)(i) and (iv), PX2377-78; *Id.*, PX2977.

f. Unicorp Consulting, Inc., d/b/a UNI Corp., (“Unicorp”) is a defunct Nevada corporation of which Gumpel is president. FTC 18 ¶ 4, PX1788; *Id.*, PX1870. It is the registrant for PTI’s website, inventorshelpline.com. *Id.* ¶ 12, PX1790; *Id.*, PX1880-1881. Gumpel signed a settlement on Unicorp’s behalf in *Estate of Mickey Mantle v. Gumpel et al.*, No. 1:04-cv-03575 (S.D. N.Y. July 2, 2004), *Id.* ¶ 15(b), PX1791; *Id.*, PX1954.

g. Azure Communications, Inc., is an original defendant and an active Delaware corporation of which Gumpel is president, secretary and treasurer. *Id.* ¶ 7, PX1789; *Id.*, PX1824-31, 1833-35. Azure receives approximately \$1 million each month in PTI funds, transferred through an account for International Product Marketing, and it pays PTI employees and sales consultants. FTC 19 ¶ 3(b)(iii), PX2380; *Id.*, PX2554-61; *Id.* ¶ 3(b)(vii), PX2380-81; *Id.*, PX3006-17. Azure is also the registrant of inventconnect.com, the domain name used for PTI email. FTC 18 ¶¶ 13(a), 18(f), PX1790, 1792; *Id.*, PX1882-83, PX2064.

h. London Communications, Inc. (“LCI”) is an original defendant and an active Delaware corporation that was originally incorporated as “The Inventor’s Helpline, Inc,” the domain name for PTI’s website, inventorshelpline.com. FTC 18 ¶ 8, PX1789; *Id.*, PX1875-79, PX1832. LCI’s name appears on the return address label of some PTI mailings sent to consumers. FTC 6 ¶ 18, PX0459; *Id.*, PX0561; FTC 10 ¶ 16, PX0908; *Id.*, PX1014. Its checks list the address of the Las Vegas office used by United Licensing. FTC 19 ¶ 3(b)(v), PX2380; *Id.*, PX3000.

III. LAW AND DISCUSSION

The Court has authority to grant a Temporary Restraining Order where, as here, the Commission is overwhelmingly likely to prevail in its contempt action and the equities favor issuing the injunction. In addition, *ex parte* relief, including an asset freeze, appointment of a receiver, immediate access to defendants’ business premises, and expedited discovery is necessary to halt Contempt Defendants’ contumacious actions and to prevent them from dissipating their assets or destroying evidence.

A. This Court Has Authority to Grant a Temporary Restraining Order,

Pending Adjudication of the Commission's Contempt Motion.

The Court has the authority to issue the equitable relief sought by the Commission pursuant to its inherent equitable powers to enforce its Permanent Injunction, preserve the status quo, and provide for complete equitable relief, including redress to consumers harmed by defendants' contumacious conduct. *Shillitani v. United States*, 384 U.S. 364, 370 (1966). Moreover, in a contempt proceeding to enforce a permanent injunction, the Court retains its power to issue a Rule 65(b) *ex parte* Temporary Restraining Order with ancillary equitable relief where necessary to preserve a meaningful contempt remedy. *See United States v. United Mine Workers*, 330 U.S. 258, 301 (1947) (district court properly issued and extended an *ex parte* Temporary Restraining Order to preserve the status quo while the government's contempt motion could be heard); *see also* cases cited in note 3, *supra*.

B. The Commission Meets the Standard for Entry of a Temporary Restraining Order.

"[T]he law of injunctions differs with respect to governmental plaintiffs . . . as opposed to private individuals." *Environmental Def. Fund v. Lamphier*, 714 F.2d 331, 337 (4th Cir. 1983).¹¹ When the FTC seeks an injunction pursuant to its duty to enforce a federal statute, it need only demonstrate that: 1) it is likely to succeed on the merits, and 2) the equities weigh in favor of granting the sought relief. *Food Town Stores*, 539 F.2d 1339, 1343-44 (4th Cir. 1976); *see also* *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346 (9th Cir. 1989); *FTC v. Ameridebt*, 373 F.

¹¹ In litigation between private parties, federal courts generally apply a four-part balance-of-hardship analysis in determining whether to grant a preliminary injunction. *See, e.g., Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189, 196 (4th Cir. 1977) (trial court must balance the hardship to plaintiff, the hardship to defendant, the merits of plaintiff's case, and the public interest).

Supp.2d 558, 563 (D. Md. 2005). In weighing the equities, harm to the public is presumed. *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 175 (9th Cir. 1987).¹² Moreover, “the equities to be weighed are not . . . the usual equities in private litigation,” but instead only the “public equities.” *Food Town Stores*, 539 F.2d at 1343-44; *see also Ameridebt*, 373 F. Supp.2d at 564.

1. The Commission Is Likely to Succeed on the Merits in its Contempt Action.

The Commission has established each of the elements of contempt by clear and convincing evidence. The elements of contempt are:

(1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) . . . that the decree was in the movant’s “favor”; (3) . . . that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive) of such violations; and (4) . . . that [the] movant suffered harm as a result.

JTH Tax, Inc. v. H&R Block Eastern Tax Servs., Inc., 359 F.3d 699, 705 (4th Cir. 2004) (quoting *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 301 (4th Cir. 2000) and *Colonial Williamsburg Found. v. The Kittinger Co.*, 792 F. Supp. 1397, 1405-06 (E.D. Va. 1992)).

a. Defendants Have Knowledge of the Order.

Gumpel, Azure, and LCI have notice of the Stipulated Order because they signed it as defendants. *See SEC v. Current Fin. Servs., Inc.*, 798 F. Supp. 802, 806 (D. D.C. 1992) (“The

¹² Even if the traditional test for injunctive relief applied, the Commission would still be entitled to the injunction. Under the traditional test, if a party shows a likelihood of success on the merits, then it need only show that irreparable injury is “possible.” *Blackwelder Furniture Co.*, 550 F.2d at 195. There is a great risk of irreparable injury to the Commission in the absence of the injunction sought. As explained below, the nature of Contempt Defendants’ business, along with Gumpel’s history of fraud and defiance of court orders demonstrates that, unless enjoined, defendants are likely to dissipate their assets and destroy evidence, preventing this Court from issuing a complete equitable remedy.

Court may assume that respondents ... who are parties to this action, had notice of its Orders.”). The remaining Contempt Defendants have notice of the Stipulated Order through their officer, Gumpel. *See* 3 WILLIAM MEADE FLETCHER, ET AL., FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 809 (perm. ed. rev. vol. 2001) (“Where the officer to whom notice is given or by whom knowledge is acquired is in effect the corporation, the notice is generally imputed to the corporation.”).¹³

b. The Permanent Injunction was in the Commission’s Favor.

The injunction inured to the Commission’s benefit because its provisions are directed at restraining defendants’ behavior, and because it required them to report information to, and be monitored by, the Commission. *See Colonial*, 792 F. Supp. at 1406 (consent judgment favored movant where order limited alleged contemnor’s behavior in regard to movant).

c. Contempt Defendants Have Violated and are Continuing to Violate the Stipulated Order.

While a contemnor must have at least “constructive knowledge” of the acts violating a court to be held in contempt, “willfulness is not an element of contempt.” *In re General Motors*, 61 F.3d 256, 258 (4th Cir. 1995). Thus, the Commission need only show that Gumpel affirmatively engaged in acts violating provisions of the Order. *Omega World Travel v. Omega Travel, Inc.*, 710 F.Supp. 169, 170 (E.D. Va. 1989). Gumpel, acting through the corporate

¹³ *See also Cablevision Sys. Corp. v. Muneyyirci*, No. 90-2997, 1995 WL 362541 at *3 n1 (E.D.N.Y. Aug. 24, 1990) (firm “had actual notice . . . by virtue of the fact that the people controlling the corporation had actual knowledge of those orders”); *Chanel Indus., Inc. v. Pierre Marche, Inc.*, 199 F. Supp. 748, 753 (E.D. Mo. 1961) (corporation had knowledge of consent judgment because it had hired the former president of a party to the original proceedings); *see also TMT North Am., Inc. v. The Magic Touch GMBH*, 57 F. Supp.2d 586, 590 (N.D. Ill. 1999) (assuming that corporation formed by defendant after consent judgment had notice of and was subject to injunction).

Contempt Defendants, takes actions that violate the Order as a matter of course in operating his invention promotion scheme. Specifically, he misrepresents the likelihood of financial gain to consumers from his invention promotion services; falsely claims to assess the market potential, patentability, and merit of consumers' invention ideas; and fails to make the affirmative disclosure required by the Order. These actions violate three core provisions of the Order:

i. Defendants' Misrepresentations Regarding the Likelihood of Financial Gain to Consumers Violate Section I(1) of the Order.

Section I(1) of the order specifically forbids Gumpel from misrepresenting "the likelihood that [his] invention promotion services will result in financial gain for any customer." As shown in Section II.B above, PTI routinely promises consumers riches if they purchase Gumpel's invention promotion services. For example, a PTI representative told consumer Mark Huxhold that his plastic holder for flags or flowers could make half a million dollars annually. Another representative told an FTC investigator that an invention idea copied from an existing patent could bring in - "on the low side" - one hundred thousand dollars annually. These claims are buttressed by defendants' misrepresentations that their "licensing affiliate," United Licensing Corp., receives substantial royalties from customers' inventions and that they have successfully licensed products with reputable companies such as Conair and Zelco.

In fact, few, if any, of Gumpel's customers make money from their invention ideas. As discussed in Section II.B, former PTI consultant Paul Kokoris cannot identify a single customer "who received a net financial benefit as a result of using PTI's services." FTC 3, ¶ 16; PX0030. None of the declarants made money from their inventions. Even Gumpel himself could not identify a single successful client when asked in an interview earlier this year.

ii. Defendants' False Claims that They Evaluate Invention Ideas Violate Section I(3) of the Order.

Section I(3) of the Stipulated Order prohibits Gumpel from “[f]alsely representing, directly or by implication, that [he] assess[es] or evaluate[s] the market potential, patentability, technical feasibility, or merit of ideas submitted by any customer.” As shown in Section II.B, Gumpel represents that his business initially screens invention submissions for potential merit and, for a fee ranging between approximately \$900 and \$1200, provides more thorough, written evaluations of invention ideas’ merit, market potential, and patentability. Gumpel’s website claims that it will accept only “viable” invention ideas that meet “strict criteria.” In addition, PTI represented to FTC investigators that it rejects many invention ideas during this immediate screening, claiming that “we don’t work with every idea that comes [this] way.” FTC 19 ¶ 7(j), PX2384; *Id.*, PX2662. Similarly, PTI’s promotional materials represent that the written, Phase I reports will be “complete, objective, and honest evaluation[s]” of a new product idea.

However, PTI actually “approves” virtually all invention ideas submitted by consumers, and the Phase I reports consistently recommend further development of those ideas, regardless of their merit. An FTC investigator submitted an idea with an obvious flaw: a “safety” turkey fryer that would use water to suppress an oil fire. PTI told the investigator that the idea had been “approved” and that PTI’s screening process would have identified “possible design or mechanical flaws.” Similarly, another investigator was told that his idea - which was copied from an existing patent - was unique and likely patentable.

The written reports likewise are not real assessments or evaluations of invention ideas. While the success rate for invention ideas is less than one percent, PTI approves almost all of the

submissions it receives from consumers. Such consistently positive evaluations are, by definition, not true evaluations. In this regard, Dr. Udell reviewed three PTI evaluations and concluded that they are not at all helpful to inventors because they failed to consider critical factors necessary to determining whether an invention idea warrants further development.

iii. Defendants are Failing to Make the Affirmative Disclosure Required by Section II of the Order.

Section II of the Stipulated order requires Gumpel to include in the initial materials sent to each consumer “two copies of a separate Affirmative Disclosure Statement regarding the difficulties of invention promotion ... in the form of Appendix A” Appendix A to the Order requires Gumpel to disclose, among other things, the number of customers who have purchased Phase I reports from him and the number of customers that have successfully commercialized their inventions.

As discussed in Section II.B above, none of the eleven declarants nor the two FTC investigators who submitted invention ideas to Gumpel received the affirmative disclosure document required by the Stipulated Order. Moreover, Kokoris confirms that PTI did not make the required disclosure during the five years he worked for the company.

iv. Gumpel’s Business Entities also Violate the Order.

The business entities Gumpel uses to carry out his scheme also are subject to the Order either as original defendants or because they have notice of it and are acting in concert or participation with Gumpel pursuant to Fed. R. Civ. P. 65(d). Moreover, they are in contempt of the Stipulated Order because, at a minimum, they facilitate Gumpel’s violation of its core provisions. “[I]t has long been recognized that a nonparty may be held in civil contempt if, and

to the extent that, he knowingly aids or abets an enjoined party in transgressing a court order.”

Goya Foods, Inc. v. Wallack Mgmt. Co., 290 F.3d 63, 75 (1st Cir. 2002).¹⁴

As discussed in Section II.C, each of the Contempt Defendants directly violated the Stipulated Order or facilitated Gumpel’s violation of it. PTI and United Licensing are the public face of the fraud, engaging in affirmative misrepresentations that violate the core provisions of the Order. IPA purports to serve as the operation’s patenting arm and receives significant funds through transfers from Datatech, which receives payments from consumers. International Product Marketing contracts with consumers for services that are never provided. Unicorp and Azure support the scheme by providing the website and email domain names used by PTI. Moreover, Azure pays PTI employees. LCI supports the operation through mailings from the New York and Virginia offices. Thus, all corporate defendants have engaged in affirmative acts that aid or abet violations of the Stipulated Order.

d. The Commission Suffers Harm from Defendants’ Violations of the Stipulated Order.

The Commission is harmed by Contempt Defendants’ violations because they harm consumers. “Congress established the FTC at least in part ‘to protect consumers from economic injuries.’” *FTC v. Kuykendall*, 371 F.3d 745, 753 (10th Cir. 2004) (quoting *FTC v. Febre*, 128 F.3d 530, 536 (7th Cir. 1997)). The Commission, therefore, is justified in seeking civil contempt for violation of an order that provided for consumer redress and for “ongoing regulation of the defendants’ business practices” where those regulations were intended in part to prevent further

¹⁴ In *Goya Foods*, the alleged contemnors had facilitated a party’s sale of property subject to an asset freeze. The court upheld the finding of contempt against the third parties (including an unrelated purchaser) because they knew of the decree and participated in actions that violated it. *Id.* at 76.

consumer injury. *Id.* at 753-54; *cf. SEC v. Moss*, 644 F.2d 313, 316 (4th Cir. 1981) (affirming district court's grant of public agency's petition for civil contempt against defendant for failure to comply with consent judgment).

2. The Equities Favor Granting the Requested Injunction.

Granting the requested injunctive relief would serve the public interest by halting Contempt Defendants' contumacious misrepresentations to consumers, upholding the authority of the Court's Order, and preserving the Court's ability to order a meaningful remedy, including consumer redress. Against these benefits to the public, the defendants have no legitimate interest in maintaining their illicit business operations in violation of a court order, dissipating their assets, or destroying their records. *See CFTC v. British American Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977) (district court erred in giving weight to defendant's interest in continuing its unlawful actions because "a court of equity is under no duty 'to protect illegitimate profits or advance business which is conducted [illegally].'" (quoting *FTC v. Thomsen-King & Co.*, 109 F.2d 516, 519 (7th Cir. 1940)); *see also Food Town Stores*, 539 F.2d at 1344 (court should not consider "private injury" to defendant in determining whether FTC is entitled to injunctive relief).

C. Entry of the Proposed Ancillary Relief, Including an Asset Freeze, Evidence Preservation, and Appointment of a Receiver, is Necessary.

To preserve the possibility of final effective relief, the Commission seeks a TRO that: (1) freezes Contempt Defendants' assets to preserve their ill-gotten gains for consumer redress; (2) orders defendants not to destroy records; (3) appoints a receiver to insure that the corporate Contempt Defendants operate in compliance with the Order; and (4) allows expedited discovery,

including immediate access to Contempt Defendants' business premises. The Court has broad authority to order the requested preliminary relief, which is necessary to preserve a full and complete remedy in the contempt action. *See generally Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *Fed. Savings & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 561-62 (5th Cir. 1987). Indeed, many other courts have granted similar ancillary relief in FTC cases. *See, e.g., McGregor*, 206 F.3d at 1381; *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432 (11th Cir. 1984); *Ameridebt*, 373 F. Supp.2d 558, 565 (D. Md. 2005); *see also* cases cited in *supra* n. 2 and 3.

1. An Asset Freeze is Necessary to Prevent Dissipation.

An asset freeze is necessary to prevent Gumpel and the corporate defendants from dissipation that would hamper the Court's ability to order monetary relief. The requested freeze is well within the Court's authority. *See, e.g., FTC v. Gem Merch. Corp.*, 87 F.3d 466, 469 (11th Cir. 1996) (district court may order an asset freeze in order to make permanent relief possible); *Kemp v. Peterson*, 940 F.2d 110, 113-14 (4th Cir. 1991) (same); *International Controls Corp. v. Vesco*, 490 F.2d 1334, 1347 (2d Cir. 1974) (asset freeze is appropriate to assure compensation to victims of fraud); *Ameridebt*, 373 F. Supp.2d at 565 (ordering asset freeze where FTC had shown possibility that defendant would dissipate assets). An asset freeze is appropriate even when there is only a mere possibility of asset dissipation. *Fed. Savings & Loan Ins. Corp. v. Sahni*, 868 F.2d 1096, 1097 (9th Cir. 1989) (reversing district court's denial of asset freeze because requiring a showing of "likelihood" of asset dissipation was improper).¹⁵

¹⁵ In addition to a provision directing the Contempt Defendants not to dissipate or conceal assets, the proposed TRO includes a provision directing financial institutions to freeze the assets of the Contempt Defendants that are in their custody or control. This Court has the

Gumpel's use of at least eight different corporate and fictitious entities to operate his scheme and funnel profits among various entities demonstrates his intention and ability to hide his assets. *See, e.g., In re Estate of Ferdinand Marcos, Human Rights Litig.*, 25 F.3d 1467, 1480 (9th Cir. 1994) (asset freeze proper where defendants had a history of funneling money through shell corporations). Moreover, Gumpel's business is permeated by fraud and deception. As explained in the Certification of Counsel filed in support of this Motion, the FTC's experience in fraud cases of this nature shows that defendants who engage in such activities will dissipate their assets if given the opportunity.

2. An Order to Preserve Evidence is Necessary to Prevent Spoliation.

In order to prevent the destruction of evidence, the Commission also requests an order that all parties preserve all documents concerning or relating to Contempt Defendants. As discussed in Section II.C, Gumpel has repeatedly demonstrated his lack of respect for the judicial process. He has disregarded orders issued by this Court and by the Southern District of New York in *Estate of Mickey Mantle*, including orders to produce evidence that he claimed had been destroyed. Gumpel's conduct was so outrageous there that the court remarked that he was "right up there in the court's roster of liars of top quality." FTC 18 ¶ 15, PX1790-91; *Id.*, PX2040. Moreover, an order to preserve evidence would not place any significant burden on Contempt Defendants. *See, e.g., SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n. 11 (2d Cir. 1990) (characterizing such orders as "innocuous").

authority to direct its order to such third parties to preserve assets that are easily dissipated and may be difficult or impossible to trace. *See United States v. First Nat'l City Bank*, 379 U.S. 378, 385 (1965); *Reebok Int'l, Ltd. v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995); *Waffenschmidt v. Mackay*, 763 F.2d 711, 714 (5th Cir. 1985).

3. Appointment of a Receiver is Necessary to Insure Compliance with This Court's Orders.

The appointment of a receiver is appropriate “in circumstances where dissipation of assets and destruction of documents are foreseeable,” and where there is “fraud, or the imminent danger of property being lost, injured, diminished in value or squandered” *In re Nat'l Credit Mgmt. Group, LLC*, 21 F. Supp. 2d 424, 463 (D. N.J. 1998) (quoting *Leone Indus. v. Associated Packaging Inc.*, 795 F. Supp. 117, 120 (D. N.J. 1992)); see also *FTC v. American Nat'l Cellular, Inc.*, 810 F.2d 1511, 1514 (9th Cir. 1987) (affirming appointment of receiver in FTC action); *U.S. Oil & Gas*, 748 F.2d at 1432 (same); *SEC v. Bowler*, 427 F.2d 190, 198 (4th Cir. 1970) (district court erred in refusing to appoint a receiver where defendants had used business to commit fraud); *Ameridebt*, 373 F. Supp.2d at 565 (appointing receiver in FTC action).

Here, Contempt Defendants are actively engaging in fraud, and will continue to do so if the instruments of their fraud are not placed in receivership. Without the oversight of a receiver, their operations will continue to cause great consumer harm. Moreover, Gumpel has shown that he is incapable of lawfully operating an invention promotion business or obeying court orders.

Furthermore, as explained above, there is a serious risk that defendants will attempt to dissipate their assets or destroy evidence. Appointment of a receiver is therefore necessary to preserve a complete equitable remedy.¹⁶ Without this requested ancillary relief, the defendants

¹⁶ The FTC also requests leave of Court for expedited discovery, including immediate access to defendants' business premises, immediate financial disclosures, depositions of corporate officers and employees, and subpoenas for documents. This expedited discovery is necessary to ensure a full accounting of defendants' assets and any potentially relevant documents in their possession. Federal Rules of Civil Procedure 26(d), 33(a), and 34(b) allow the Court to alter the standard provisions and time frames that govern depositions and production

will likely empty their coffers and offices.

D. Ex Parte Relief is Necessary to Preserve Complete Equitable Relief.

The Court has the authority to enter the requested Temporary Restraining Order without notice to the Contempt Defendants because prior notice may well eviscerate the Court's ability to enter complete relief as it may deem appropriate. "District courts are afforded wide discretion in fashioning an equitable remedy for civil contempt." *McGregor*, 206 F.3d at 1385. Pursuant to Federal Rule of Civil Procedure 65, a Temporary Restraining Order may be granted without notice to defendants if "immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition" FED. R. CIV. P. 65(b). Entry of an order without notice to a defendant is proper where there is a risk that the defendant will destroy assets or evidence. *See, e.g., Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 678-79 (1974).

As set forth above and in the Certification of Counsel submitted in support of this Motion, substantial evidence demonstrates that immediate and irreparable injury is likely to occur if the Court notifies the Contempt Defendants of the Commission's contempt filings before service of the requested Temporary Restraining Order. The nature of Gumpel's invention

of documents, and the Court has broad and flexible authority in equity to grant preliminary emergency relief. *See Porter*, 328 U.S. at 398; *Physicians Interactive v. Lathian Sys., Inc.*, No. CA 03-1193-A, 2003 WL 23018270 at *4, 10-11 (E.D. Va. Dec. 5, 2003) (ordering expedited discovery and noting that the Federal Rules of Civil Procedure "give this Court the power ... to expedite the time for responding to the discovery sought"); *Federal Express Corp. v. Federal Espresso, Inc.*, No. Civ.A.97CV1219RSPGJD, 1997 WL 736530 at *2 (N.D.N.Y. Nov. 24, 1997) (early discovery "will be appropriate in some cases, such as those involving requests for a preliminary injunction") (quoting commentary to FED. R. CIV. P. 26(d)). Numerous federal courts have ordered similar expedited discovery orders at the outset of FTC proceedings. *See supra* notes 2 and 3.

promotion business, which deceives consumers as a matter of course, his defiance of court orders, and his shifting of funds among various fictitious entities demonstrates the need for *ex parte* relief. As set forth fully in the Certification of Counsel, it is the FTC's experience that defendants engaged in similar, fraudulent schemes dissipate their assets and/or destroy records if given prior notice of a TRO. Indeed, many courts have issued similar *ex parte* orders in FTC cases for this reason. *See supra* notes 2 and 3.

IV. CONCLUSION

WHEREFORE, the Commission requests that the Court enter the proposed Temporary Restraining Order, and then a Preliminary Injunction, pending a final decision on the Commission's contempt motion.

Respectfully submitted,

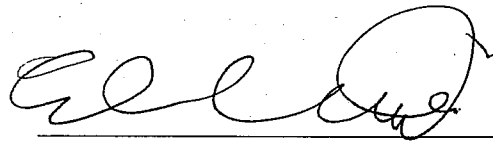
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