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I. INTRODUCTION

The Federal Trade Commission (“FTC”) asks this Court to immediately halt a tax relief scam that has preyed on consumers for over a decade by falsely promising it can settle consumers’ tax debts for a fraction of the amount owed. American Tax Relief (“ATR”) advertises its tax settlement services nationally through radio, television, and Yellow Pages advertisements, as well as on its Internet website. It claims to have helped thousands of people in all 50 states save significant amounts of money by negotiating settlements with the IRS on behalf of their clients. During telephone calls, ATR tells consumers that they “qualify” for IRS programs that will enable those consumers to significantly reduce their tax debts. Unfortunately, that simply is not true. The tax relief programs touted by ATR are available only in very limited circumstances, and most of ATR’s customers do not qualify. As a result, rather than helping these financially-strapped consumers reduce their tax debts, ATR only adds to consumers’ problems by deceiving them into paying fees ranging from \$3,200 to \$25,000 for tax relief that never materializes.

Since 1999, ATR has employed three core illegal practices to deceive tens of thousands of consumers. First, ATR has falsely represented that it has significantly reduced the tax debts of thousands of its customers. Second, it has falsely represented that individual consumers “qualify” for programs that will significantly reduce their tax debts. And third, ATR has charged consumers without authorization. Through these deceptive practices, ATR has brought in tens, and possibly hundreds, of millions of dollars. Between January 2004 and October 2008 alone, in fact, ATR took in more than \$60 million.¹ Consumers have flooded law enforcement agencies and the Better Business Bureau (“BBB”) with complaints about ATR’s practices. The BBB, for

¹ PX 3, Search Warrant Aff. ¶ 15.

example, has received more than 375 complaints against ATR, and state attorneys general also have received, and forwarded to ATR, many additional complaints.²

ATR has persisted with its deceptive practices even after federal and state law enforcement actions challenged the practices. In April 2010, federal agents executed a criminal search warrant on ATR's business premises in Beverly Hills, California, based on allegations of fraud. Despite the execution of the criminal search warrant, ATR continues with the same scheme to deceive consumers who are desperate to reduce their tax debts. In 2006, moreover, the New York City Department of Consumer Affairs sued ATR for misrepresentation and deception. After settling those claims for \$100,000, ATR was not the least bit deterred.

Along with this Memorandum, the Commission has submitted extensive evidence establishing ATR's scheme to defraud consumers out of thousands of dollars under the guise of helping them reduce their tax debts. This evidence includes: declarations from three former employees which establish that ATR took money from consumers who clearly did not qualify for the tax relief programs they were promised; evidence from six undercover calls by government investigators that capture the false promises made to consumers; declarations from seventeen consumers victimized by ATR; and internal ATR documents that shed light on the pervasive nature of ATR's fraud. In addition, the FTC has submitted an expert declaration that explains the stringent requirements that must be met to qualify for the IRS's tax relief programs and the fact that very few people actually qualify. In total, this evidence shows that ATR has for many years been violating the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, which prohibits unfair or deceptive acts or practices.

² PX 10, Almond Dec. ¶ 9; PX 1, Menjivar Dec. ¶ 60y.

The FTC asks that this Court issue an *ex parte* temporary restraining order (“TRO”) to bring an immediate halt to Defendants’ ongoing illegal practices. The FTC further requests that the TRO include a freeze of Defendants’ and Relief Defendants’ assets and the appointment of a receiver over the corporate defendant to preserve assets for eventual restitution to Defendants’ victims and to take control of the business to ensure that no further harm comes to consumers.

II. BACKGROUND ON THE IRS’S TAX RELIEF PROGRAMS

Many people, especially in tough economic times, become delinquent in paying their taxes. Consumers who do not pay their taxes, or pay them late, often watch their tax debts pile up quickly; not only do the debts remain, but consumers also incur steep penalties and interest.³ In addition to these charges, the IRS has the right to use involuntary collection procedures to satisfy the taxpayers’ debts, including garnishing wages, imposing liens on real property, and even seizing consumers’ assets.⁴ The IRS has several programs to help taxpayers avoid these collection measures and satisfy their outstanding tax debts, including tax relief programs that permanently settle tax debts and abate penalties and interest.⁵

ATR’s business is focused on deceiving and ripping off those vulnerable consumers who owe substantial tax debts. Through its advertising and telemarketing pitch, ATR leads consumers to believe that the IRS’s tax relief programs are widely available and that almost all consumers qualify for some type of program – either an Offer in Compromise or Penalty Abatement – that will enable them to significantly reduce their tax debts. That simply is not the

³ PX 6, Dellinger Dec. ¶ 10.

⁴ PX 6, Dellinger Dec. ¶ 11.

⁵ PX 6, Dellinger Dec. ¶¶ 12, 14, 29.

case. As explained in the declaration of our tax expert, the IRS's Offer in Compromise and penalty and interest abatement programs are available only in very limited circumstances, where strict requirements are met.⁶

A. Offers in Compromise

ATR routinely tells consumers that the company can negotiate favorable tax settlements through what is called an Offer in Compromise ("OIC").⁷ The OIC program is the IRS's primary program allowing taxpayers to settle their tax debts for less than the full amount. Under this program, the IRS may agree to accept less than the full amount of taxes owed if the consumer is able to meet the specific criteria established by the IRS.⁸

In contrast to what ATR represents to potential customers, it is extremely difficult to meet the strict standards required for an OIC.⁹ The most common basis for an OIC is Doubt as to Collectibility, which means that due to the taxpayer's dire financial circumstances, the IRS

⁶ PX 6, Dellinger Dec. ¶¶ 12, 14, 16-27, 29-37. In addition to the IRS's tax relief programs, most taxpayers have the option of entering into installment agreements, which permits taxpayers to pay their tax debts over time but typically require taxpayers to pay off the entire amount of their tax debts. Most consumers can easily enter into installment agreements with the IRS on their own without the assistance of a tax practitioner. PX 6, Dellinger Dec. ¶¶ 12, 39-41; *see, e.g.*, PX 27, Pickett Dec. ¶¶ 28-29. ATR will sometimes offer to help consumers get installment agreements after failing to achieve the promised results, but ATR's customers never initially hire ATR for the purpose of achieving an installment agreement. PX 8, Byrd Dec. ¶ 24; PX 9, Garcia Dec. ¶¶ 18-19; PX 27, Pickett Dec. ¶¶ 34, 39.

⁷ PX 1, Menjivar Dec. ¶¶ 31-32, 41-42, Atts. V, DD-EE, GG-HH; PX 2, McKenney Dec. ¶ 10; PX 3, Search Warrant Aff. ¶ 20e; PX 7, Barton Dec. ¶ 11; PX 8, Byrd Dec. ¶ 30; PX 9, Garcia Dec. ¶¶ 24, 32; PX 10, Almond Dec. ¶ 9; PX 16, Dewese Dec. ¶¶ 4, 6, Att. A; PX 17, Dillon Dec. ¶¶ 4-5, Att. A; PX 23, Kline Dec. ¶¶ 6-7, Att. A; PX 24, Madson Dec. ¶¶ 5, 8, Att. B (p.2); PX 32, Ward Dec. ¶ 5.

⁸ PX 6, Dellinger Dec. ¶¶ 14-15.

⁹ PX 6, Dellinger Dec. ¶¶ 12, 14, 16-17, 21-22, 27.

will not be able to collect the full amount of the taxes owed.¹⁰ In order to show Doubt as to Collectibility, taxpayers must convince the IRS that they would be unable to pay off the total tax debt during the remainder of the ten-year statutory collection period, even by liquidating assets or making installment payments.¹¹ The IRS generally only accepts OICs if taxpayers agree to turn over nearly all of their current assets, and several years' worth of future income. Thus, although a taxpayer is not paying the full amount of the tax debt, the IRS receives almost everything the taxpayer has to offer. In the end, OICs typically are accepted only for those consumers who essentially have no current or future ability to pay.¹² And the vast majority of ATR's customers simply do not qualify for the OICs that ATR promises.¹³

B. Penalty and Interest Abatements

ATR also regularly tells consumers that they qualify for abatements which, purportedly, will reduce their penalties and interest, and significantly reduce consumers' tax debts overall.¹⁴ Penalties and interest can quickly accumulate on tax debt. Penalties can be assessed each month until they reach up to 50% of the taxes owed, and interest is compounded daily, until the tax debt

¹⁰ PX 6, Dellinger Dec. ¶ 16, 27. There are two other bases for seeking an OIC, Doubt as to Liability and Effective Tax Administration ("ETA"). Both are less frequently used, and ATR also rarely relies on them. Doubt as to Liability is an appropriate ground for an OIC only where there is a legitimate question as to whether the assessed tax liability is correct. *Id.* at ¶ 16. Those seeking an OIC on the grounds of ETA must prove that the collection of the tax would create an economic hardship or would be unfair and inequitable. *Id.* at ¶ 16.

¹¹ PX 6, Dellinger Dec. ¶¶ 15-16, 21-22, 27.

¹² PX 6, Dellinger Dec. ¶¶ 15-16, 21-22, 27.

¹³ PX 8, Byrd Dec. ¶ 23; PX 9, Garcia Dec. ¶¶ 15, 24.

¹⁴ PX 1, Menjivar Dec. ¶¶ 25-26, Att. P; PX 2, McKenney Dec. ¶ 20; PX 7, Barton Dec. ¶¶ 11-12; PX 8, Byrd Dec. ¶¶ 20, 30; PX 9, Garcia Dec. ¶¶ 15, 24, 32; PX 10, Almond Dec. ¶ 9.

is paid in full.¹⁵ Like OICs, however, penalty and interest abatements are extremely difficult to obtain.¹⁶

The IRS will only abate penalties if the taxpayer establishes “reasonable cause,” and decisions regarding penalty abatements are made by the IRS on a case-by-case basis.¹⁷ According to the Internal Revenue Manual, “reasonable cause” exists where “the taxpayer exercises ordinary business care and prudence in determining their tax obligations but nevertheless failed to comply with those obligations.”¹⁸ Examples of situations that may justify a penalty abatement include: death, serious illness, or unavoidable absence; fire, casualty, natural disaster, or other disturbance; unable to obtain records; erroneous advice or reliance; and ignorance of the law.¹⁹ Given the limited circumstances under which penalty abatements are granted by the IRS, few consumers qualify for such abatements.²⁰ ATR representatives, however, routinely tell consumers that they qualify for penalty abatements when they know little or nothing about whether the consumers have “reasonable cause” to have their penalties abated.²¹

Interest abatements are even harder to obtain from the IRS. While the IRS may consider a variety of factors in determining whether a penalty abatement is appropriate, it will only

¹⁵ PX 6, Dellinger Dec. ¶ 10.

¹⁶ PX 6, Dellinger Dec. ¶¶ 12, 29-30, 32, 35-37.

¹⁷ PX 6, Dellinger Dec. ¶ 30.

¹⁸ PX 6, Dellinger Dec. ¶ 31.

¹⁹ PX 6, Dellinger Dec. ¶ 32.

²⁰ PX 6, Dellinger Dec. ¶¶ 12, 29-30, 32, 35.

²¹ PX 7, Barton Dec. ¶ 11; PX 8, Byrd Dec. ¶¶ 30-31; PX 9, Garcia Dec. ¶ 32; PX 26, Monday Dec. ¶¶ 4-6, 9, Att. A.

remove interest if the taxpayer can show that the interest was accrued due to an IRS error.²²

Such a showing is extremely difficult to make, but that does not stop ATR from regularly representing to consumers that the interest on their tax debt will be abated.²³

III. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES

For over a decade, ATR has lied to consumers by telling them they “qualify” for specific programs that will enable them to significantly reduce their tax debts.²⁴ In order to get ATR’s “specialized help” to realize these savings, however, consumers must pay an up-front fee of between \$3,200 and \$25,000.²⁵ In reality, almost none of ATR’s customers are eligible for the tax relief programs they were promised,²⁶ and most end up losing large amounts of money to ATR that they could have used to pay down their tax debts.²⁷ ATR sometimes even withdraws

²² PX 6, Dellinger Dec. ¶¶ 36-37.

²³ PX 8, Byrd Dec. ¶¶ 23, 30; PX 9, Garcia Dec. ¶¶ 17, 24, 32.

²⁴ PX 1, Menjivar Dec. ¶¶ 21-42, Atts. P-HH (four undercover calls: qualified for OICs and penalty abatement); PX 2, McKenney Dec. ¶¶ 10, 20 (two undercover calls: qualified for OIC and penalty); PX 3, Search Warrant Aff. ¶ 20e (random sampling of 30 clients who had not complained to any agencies confirmed that consumers were told they qualified for OICs); PX 7, Barton Dec. ¶¶ 11-12; PX 8, Byrd Dec. ¶¶ 20, 30; PX 9, Garcia Dec. ¶¶ 24, 32 (80% of clients promised OICs and 10% promised abatements); PX 10, Almond Dec. ¶ 9; PX 16, Deweese Dec. ¶ 4 (OIC); PX 17, Dillon Dec. ¶ 4 (OIC); PX 23, Kline Dec. ¶ 6 (OIC); PX 24, Madson Dec. ¶ 5 (OIC); PX 32, Ward Dec. ¶ 5 (OIC).

²⁵ PX 1, Menjivar Dec. ¶¶ 26 (\$5,500), 32 (\$4,900), 41 (\$5,900), 42 (\$5,500), 60aa, Att. III (ATR’s fee schedules); PX 2, McKenney Dec. ¶ 11 (\$3,900), ¶ 22 (\$4,900); PX 7, Barton Dec. ¶ 13 (\$1,900 to \$10,000); PX 8, Byrd Dec. ¶ 29 (\$3,200 to \$15,000); PX 9, Garcia Dec. ¶ 31 (\$5,000 to \$20,000).

²⁶ PX 1, Menjivar Dec. ¶ 41, Att. FF; PX 8, Byrd Dec. ¶ 23 (“vast majority of ATR’s clients . . . did not qualify for OICs or interest or penalty abatements”); PX 9, Garcia Dec. ¶ 15 (“most of the clients simply did not qualify for OICs or abatements.”)

²⁷ PX 1, Menjivar Dec. ¶ 60y(i-iii), Att. EEEE-GGGG; PX 8, Byrd Dec. ¶ 29; PX 9, Garcia Dec. ¶ 19; *see, e.g.*, PX 16, Deweese Dec. ¶¶ 34-35; PX 17, Dillon Dec. ¶ 16; PX 20, Grimmette Dec. ¶ 19; PX 23, Kline Dec. ¶ 15; PX 24, Madson Dec. ¶ 26; PX 25, Mesler Dec. ¶ 13; PX 26, Monday Dec. ¶ 22; PX 27, Pickett Dec. ¶ 39; PX 32, Ward Dec. ¶ 18.

additional money from consumers' bank accounts or places additional charges on their credit cards without authorization, contributing to consumers' losses.²⁸ When ATR's clients realize they have been scammed, ATR refuses to return their money and uses a series of excuses and explanations to string them along for as long as possible.²⁹ Through these deceptive and unfair practices, ATR has taken in tens, and possibly hundreds, of millions of dollars since 1999.

A. The Advertisements

ATR markets its tax relief services through television and radio advertisements, as well as in the Yellow Pages and on its Internet website.³⁰ In its advertisements, ATR claims that it can save consumers significant amounts of money on their tax debts while also stopping IRS collection procedures. One ad, for example, states that "If you qualify, we can settle your tax debt for just a fraction of what you owe," and that ATR "can stop levies and garnishments and get you the best possible settlement within IRS guidelines."³¹ Other ATR ads claim that the company can also remove penalties, interest, and tax liens, and stop "Unbearable Monthly Payments."³² ATR touts its "staff of professionals who know the secrets of the IRS," and thus

²⁸ PX 8, Byrd Dec. ¶ 26; PX 9, Garcia Dec. ¶ 26; PX 10, Almond Dec. ¶ 9; PX 17, Dillon Dec. ¶¶ 7-8, 10; PX 19, Gaunt Dec. ¶¶ 12, 15; PX 24, Madson Dec. ¶¶ 21, 26; PX 28, Rutenbeck Dec. ¶¶ 10, 12-13; PX 31, Wales Dec. ¶¶ 13-15, 18-19.

²⁹ PX 1, Menjivar Dec. ¶ 60z, Att. HHHH; PX 8, Byrd Dec. ¶¶ 27-28; PX 9, Garcia Dec. ¶ 28 ("ATR had a policy of not providing refunds"); PX 10, Almond Dec. ¶¶ 9-10; PX 20, Grimmette Dec. ¶¶ 8-11, 15-17, 19; PX 23, Kline Dec. ¶¶ 8-15; PX 25, Mesler Dec. ¶¶ 7-13; PX 27, Pickett Dec. ¶¶ 10-39; PX 32, Ward Dec. ¶¶ 8-18.

³⁰ PX 1, Menjivar Dec. ¶¶ 11, 15, 48-50, Atts. L-N, LL-SS; PX 2, McKenney Dec. ¶¶ 6-7, Atts. A-D.

³¹ PX 1, Menjivar Dec. ¶ 14, Att. N; PX 2, McKenney Dec. ¶ 6a, Att. A (p. 4).

³² PX 1, Menjivar Dec. ¶¶ 11, 14, 48, Atts. L, M, LL-OO.

are supposedly able to achieve results not attainable by consumers on their own.³³ ATR's ads also make consumers think that they need to act quickly by falsely referring to the IRS's tax relief programs as a "one-time opportunity to settle your debt. . . . This is your one second chance, use it well."³⁴

Central to ATR's ads is a success rate claim, in which ATR purports to have successfully negotiated significant tax debt reductions for "thousands of honest, hard-working Americans."³⁵ ATR's website represents that the company has "successfully resolved thousands of cases in all 50 states."³⁶ This simply is not true. Former employees report that few, if any, of ATR's customers qualify for any type of tax relief.³⁷

ATR's ads also often provide testimonials from people bragging about how much they were able to save off their tax debts with ATR's help.³⁸ In one ad, for example, a couple claims that ATR reduced their tax debt from \$24,000 to \$2,000.³⁹ Another couple states their tax debt went from \$200,000 to \$40,000.⁴⁰ ATR's website even highlights a client who supposedly owed

³³ PX 1, Menjivar Dec. ¶ 11, Att. L.

³⁴ PX 1, Menjivar Dec. ¶ 47, Att. MM.

³⁵ PX 1, Menjivar Dec. ¶ 14, Att. M; *see also*, PX 31, Wales Dec. ¶ 5, Att. A.

³⁶ PX 1, Menjivar Dec. ¶ 11, Att. L.

³⁷ PX 8, Byrd Dec. ¶¶ 21, 23, 25; PX 9, Garcia Dec. ¶¶ 15, 20, 24, 30.

³⁸ PX 1, Menjivar Dec. ¶¶ 11, 14, 48, Atts. L, N, LL; PX 2, McKenney Dec. ¶ 6, Att. A (p. 4), Att. C (pp. 4-5).

³⁹ PX 1, Menjivar Dec. ¶ 48, Att. LL; PX 2, McKenney Dec. ¶ 6, Att. A (p. 4), Att. C (p. 4).

⁴⁰ *Id.* ATR's television advertisements include a disclaimer in small print that the "results are not typical." Even if these testimonials represent actual, as opposed to fabricated results, the testimonials clearly are intended to convey that ATR regularly obtains the same type of results for all of its customers. That, of course, is false, and the falsity of the claim is not negated by ATR's addition of the fine print

\$3 million in tax debt, but with ATR's help only had to pay the IRS \$3,000.⁴¹ Consumers are directed to call the company's toll-free number for a "free consultation."⁴²

B. The Sales Pitch

When consumers call ATR, they speak with sales representatives who reinforce the message conveyed in the ads. Although these representatives often refer to themselves as "tax consultants," they are merely commission-based sales people with no specialized tax experience.⁴³ During these calls, ATR sales representatives emphasize that ATR has expertise in helping consumers with tax problems by telling them that ATR has been in business for more than ten years, and in that time has helped "over 19,000 consumers."⁴⁴ The representatives generally ask consumers, at most, some very basic questions about their tax debts, income, assets, and liabilities, and then place the consumers on hold, purportedly to determine whether the consumers "qualify" for one of the IRS's tax relief programs.⁴⁵

disclaimer: "results are not typical." See Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255 (2010).

⁴¹ PX 1, Menjivar Dec. ¶ 11, Att. L.

⁴² PX 1, Menjivar Dec. ¶¶ 11,14, 48-50, Atts. L-N, LL-SS.

⁴³ PX 1, Menjivar Dec. ¶ 25, Att. P (p. 8); PX 8, Byrd Dec. ¶¶ 11, 25; PX 9, Garcia Dec. ¶¶ 31-32; PX 23, Kline Dec. ¶ 4 ("Tax Resolution Consultant"); PX 27, Pickett Dec. ¶ 4 ("Tax Resolution Case Manager"); PX 30, Violante Dec. ¶ 4 ("Tax Resolution Consultant"); PX 32, Ward Dec. ¶ 5 ("tax consultant").

⁴⁴ PX 1, Menjivar Dec. ¶¶ 25, 31, Atts. P (pp. 38, 50, 64), V (pp. 21, 29, 32).

⁴⁵ PX 1, Menjivar Dec. ¶¶ 25, 31, 41, 42, Atts. P (pp. 9-18), V (pp. 4-15), DD (pp. 9-14), GG (pp. 7-13); PX 17, Dillon Dec. ¶ 4; PX 18, Fullerton Dec. ¶ 3; PX 19, Gaunt Dec. ¶ 4; PX 24, Madson Dec. ¶ 4; PX 27, Pickett Dec. ¶ 4; PX 29, Tobias Dec. ¶ 3; PX 30, Violante Dec. ¶ 5; PX 32, Ward Dec. ¶ 5. In some cases, ATR representatives do not even ask questions about consumers' income, assets, or liabilities. See, e.g., PX 20, Grimmette Dec. ¶ 4; PX 22, Jaundoo Dec. ¶ 4; PX 23, Kline Dec. ¶ 4; PX 26, Monday Dec. ¶ 5.

When the ATR representatives come back on the line, they congratulate the consumers, telling them that the consumers “qualify” either for an OIC or penalty abatement per IRS guidelines⁴⁶ For those consumers who supposedly “qualify” for OICs, ATR represents that, with ATR’s help, obtaining an OIC is relatively easy, and it will save consumers a significant amount of money while leaving them with both money and assets.⁴⁷ Consumers who “qualify” for penalty abatements are told that such relief will remove both the penalties and interest assessed on the tax debt.⁴⁸ Regardless of which program the consumers supposedly “qualify” for, ATR representatives tell them that the arrangement will allow the consumers to significantly reduce their tax debts.⁴⁹ Indeed, ATR uses the same script to congratulate consumers who purportedly qualify for either form of relief:

Ok, good news! Based on the information you’ve provided me, you qualify for a Settlement (or Penalty Abatement). I will arrange a settlement with the IRS for you between \$\$ and \$\$ (I will petition to knock off 100% of the penalties and interest you qualify for).⁵⁰

⁴⁶ PX 1, Menjivar Dec. ¶¶ 21-42 (four undercover calls: qualified for OICs and penalty abatement); PX 2, McKenney Dec. ¶¶ 10, 20 (two undercover calls: qualified for OIC and penalty); PX 3, Search Warrant Aff. ¶ 20e, f (random sampling of 30 clients who had not complained to any agencies confirmed that consumers were told they qualified for OICs); PX 7, Barton Dec. ¶ 11; PX 8, Byrd Dec. ¶ 20; PX 9, Garcia Dec. ¶¶ 15, 24 (80% of clients promised OICs and 10% promised abatements); PX 16, Dewese Dec. ¶ 4 (OIC); PX 17, Dillon Dec. ¶ 4 (OIC); PX 23, Kline Dec. ¶ 6 (OIC); PX 24, Madson Dec. ¶ 5 (OIC); PX 32, Ward Dec. ¶ 5 (OIC).

⁴⁷ PX 1, Menjivar Dec. ¶¶ 32, 41, Att. DD (p. 25); PX 2, McKenney Dec. ¶ 10; PX 3, Search Warrant Aff. ¶ 20e, f; PX 7, Barton Dec. ¶¶ 11-12; PX 8, Byrd Dec. ¶ 30; PX 9, Garcia Dec. ¶¶ 15, 24; PX 16, Dewese Dec. ¶¶ 4, 6, Att. A; PX 17, Dillon Dec. ¶¶ 4-5, Att. A; PX 23, Kline Dec. ¶¶ 6-7, Att. A; PX 24, Madson Dec. ¶¶ 5, 8, Att. B; PX 32, Ward Dec. ¶ 5.

⁴⁸ PX 1, Menjivar Dec. ¶¶ 25-26, Att. P (pp. 19, 43); PX 2, McKenney Dec. ¶ 20; PX 8, Byrd Dec. ¶ 20; PX 9, Garcia Dec. ¶¶ 15, 24 (10% of clients promised abatements).

⁴⁹ PX 1, Menjivar Dec. ¶¶ 25, 31, 41, 42, Atts. P (pp. 19-20), V (p. 16), DD (p. 16), GG (p. 15); McKenney Dec. ¶¶ 10, 20; PX 7, Barton Dec. ¶ 12; PX 8, Byrd Dec. ¶ 30; PX 9, Garcia Dec. ¶ 26.

⁵⁰ PX 1, Menjivar Dec. ¶ 60b, Att. BBB.

A former ATR employee states that she could not recall a single consumer ever being told that they did not qualify for ATR's services.⁵¹

The entire qualification process, according to internal sales representatives' notes, should be completed within two minutes of the call being answered.⁵² Yet, according to an OIC expert, it would be impossible to determine someone's eligibility for IRS tax relief programs in a short telephone conversation since most of the time a taxpayer's documents need to be reviewed to determine eligibility.⁵³

To get consumers to hire the company, ATR representatives use scare tactics to create a sense of urgency during the calls by warning consumers about the aggressive collection tactics the IRS uses, such as obtaining liens or levies over properties or garnishing wages.⁵⁴ ATR then assures consumers that ATR can stop these tactics and reduce their taxes at the same time.⁵⁵ In one FTC undercover call, for example, the sales representative told the caller that ATR would prevent the IRS "from pursuing any type of aggressive collection action against you, such as bank levies or garnishments on your income."⁵⁶ If, however, the caller did not hire ATR, the IRS will "go sweep your bank account [T]hey'll attach to your 401K and, yes, they will

⁵¹ PX 7, Barton Dec. ¶ 11.

⁵² PX 1, Menjivar Dec. ¶ 60d, Att. DDD.

⁵³ PX 6, Dellinger Dec. ¶ 26; *see also* PX 1, Menjivar Dec. ¶ 60w, Att. CCCC (p. 3).

⁵⁴ PX 1, Menjivar Dec. ¶¶ 25, 31, Atts. P (p. 26), V (pp. 17-18, 27, 37, 52); PX 7, Barton Dec. ¶ 12; PX 19, Gaunt Dec. ¶ 5; PX 22, Jaundoo Dec. ¶ 4; PX 29, Tobias Dec. ¶ 3; PX 32, Ward Dec. ¶ 5.

⁵⁵ PX 1, Menjivar Dec. ¶¶ 25, 31, 41, 42, Atts. P (p. 26), V (pp. 17-18, 27, 37, 52), DD (pp. 8, 16), GG (pp. 16, 18); PX 7, Barton Dec. ¶ 12; PX 18, Fullerton Dec. ¶¶ 3, 5; PX 19, Gaunt Dec. ¶ 5; PX Jaundoo Dec. ¶ 4; PX 32, Ward Dec. ¶ 5.

⁵⁶ PX 1, Menjivar Dec. ¶ 25, Att. P (p. 26).

contact your employer and they can take up to 75 percent of your income.”⁵⁷ Similarly, in another undercover call, the ATR representative tells the caller that, if he does not hire ATR, the IRS is “going to come in and they’re going to levy your bank accounts, garnish your income. They’re going to do whatever they have to to collect on this money.”⁵⁸ For many, these claims prove to be false, because, even after they hired ATR, IRS collection procedures continued.⁵⁹

After telling consumers that they qualify to receive significant reductions on their tax debts and warning consumers of the consequences of not hiring ATR, the representatives inform consumers that an up-front “one-time flat fee” is required before ATR can begin working on their case.⁶⁰ These fees have ranged anywhere from approximately \$3,200 to \$25,000 or more for each consumer, and the payment must be made immediately, either through credit card payments or debits from consumers’ bank accounts.⁶¹ While the fee is steep, consumers are assured that this amount “handles the case from start to finish” and is tax deductible.⁶²

⁵⁷ PX 1, Menjivar Dec. ¶ 25, Att. P (p. 26).

⁵⁸ PX 1, Menjivar Dec. ¶ 31, Att. V (p. 17).

⁵⁹ See PX 18, Fullerton Dec. ¶ 7; PX 24, Madson Dec. ¶ 16; PX 27, Pickett Dec. ¶ 23; PX 32, Ward Dec. ¶ 13.

⁶⁰ PX 1, Menjivar Dec. ¶¶ 25, 31, 41, 42, Atts. P (pp. 32-24, 45), V (pp. 26-27), DD (p. 20), GG (pp. 19-20); PX 2, McKenney Dec. ¶¶ 11, 22; *see, e.g.*, PX 16, Dewese Dec. ¶ 5; PX 20, Grimmette Dec. ¶¶ 5-6; PX 23, Kline Dec. ¶ 5; PX 25, Mesler Dec. ¶ 5; PX 26, Monday Dec. ¶ 7; PX 32, Ward Dec. ¶ 6.

⁶¹ *See supra* note 25.

⁶² PX 1, Menjivar Dec. ¶¶ 25, 31, 42, Atts. P (p. 45), V (pp. 26-27), GG (p. 20); PX 2, McKenney Dec. ¶¶ 11, 22. If consumers are unable to pay the full amount of ATR’s fee up front, ATR representatives make arrangements with consumers to spread out the fee over two or three installments. PX 7, Barton Dec. ¶ 13. The initial payment must be made immediately, however, and ATR fails initially to tell consumers that, aside from submitting their authorization forms to the IRS, ATR will not begin working on their case until the fee has been paid in full. *See, e.g.*, PX 21, Hosang-Roberts Dec. ¶ 11. Also, in most instances, such a fee would not be tax deductible.

Consumers are not told anything about ATR's refund policy and, if asked, the representatives say that ATR would not take a case it could not settle, and if a settlement offer is rejected, ATR will continue working on the case and file appeals with the IRS free of charge.⁶³

C. The Purported "Tax Relief Services"

Having signed consumers up and taken their money, ATR then provides consumers next to nothing in the way of "tax relief services." As explained above, ATR induces consumers to purchase its services by promising that they "qualify" for specific programs that will significantly reduce their tax debts. But for most consumers, ATR does not even submit applications to the IRS for these programs because they know that the consumers would never qualify.⁶⁴

After consumers agree to hire ATR, the first thing ATR does is to fax them two IRS forms – a power of attorney form that authorizes ATR to represent the consumer before the IRS, and a form that authorizes the IRS to provide ATR with information about the taxpayer.⁶⁵ These forms are accompanied by a letter congratulating the consumer for contacting ATR and confirming that based on the information provided in the telemarketing call, the consumer qualifies for either "an IRS program called the 'Offer-in-Compromise' . . . that allows people to

⁶³ PX 1, Menjivar Dec. ¶¶ 25, 31, Atts. P (pp. 46-47, 53), V (pp. 34-40); PX 2, McKenney Dec. ¶¶ 13, 22; PX 16, Dewese Dec. ¶ 5; PX 18, Fullerton Dec. ¶ 4; PX 19, Gaunt Dec. ¶ 6; PX 20, Grimmette Dec. ¶ 5; PX 21, Hosang-Roberts ¶ 6; PX 22, Jaundoo Dec. ¶ 4; PX 25, Mesler Dec. ¶ 5; PX 26, Monday Dec. ¶ 7; PX 27, Pickett Dec. ¶ 6; PX 30, Violante Dec. ¶ 6.

⁶⁴ PX 8, Byrd Dec. ¶¶ 21-23; PX 9, Garcia Dec. ¶ 24.

⁶⁵ PX 7, Barton Dec. ¶ 12; PX 16, Dewese Dec. ¶¶ 5-6, Att. A; PX 17, Dillon Dec. ¶¶ 4-5, Att. A; PX 18, Fullerton Dec. ¶¶ 3, 6; PX 19, Gaunt Dec. ¶¶ 6-7, Att. A; PX 21, Hosang-Roberts Dec. ¶¶ 5, 7-8; PX 24, Madson Dec. ¶ 8, Att. B; PX 26, Monday Dec. ¶¶ 6, 9, Att. A; PX 27, Pickett Dec. ¶¶ 5, 7, Att. A. ATR also sometimes faxes these forms to consumers who have not yet agreed to hire ATR so that they will be "readily available" in the event the consumer decides to hire ATR. See PX 1, Menjivar Dec. ¶¶ 25, 31, 41, 42, Atts. P, V, DD, GG; PX 31, Wales Dec. ¶¶ 9-10, Att. B.

settle their total tax debt for only a fraction of the debt,” or a “Penalty Abatement” that “[t]he IRS must accept . . . as it is submitted PER IRS GUIDELINES.”⁶⁶ Consumers are directed to sign the two forms and return them to ATR right away so that ATR can begin working on their cases.⁶⁷ If ATR actually forwards the signed forms to the IRS, this often represents the extent of ATR’s communication with the IRS about their customers’ tax debts.⁶⁸

Next, consumers receive in the mail from ATR a package containing two letters and financial questionnaires that seek more detailed financial information than ATR requested during the telephone consultation.⁶⁹ The first letter thanks the consumer for becoming a client, acknowledges payment, and instructs the consumer to fill out the questionnaires.⁷⁰ The second letter, which comes from “The Accounting Department,” appears to be a receipt for the consumer’s initial payment to ATR, and provides information on the balance due, if any.⁷¹

⁶⁶ PX 16, Deweese Dec. ¶ 6, Att. A (p.2) (OIC); PX 17, Dillon Dec. ¶ 5, Att. A (p. 2) (OIC); PX 24, Madson Dec. ¶ 8, Att. B (p. 2) (OIC); PX 26, Monday Dec. ¶ 9, Att. A (penalty abatement).

⁶⁷ PX 16, Deweese Dec. ¶ 5; PX 21, Hosang-Roberts Dec. ¶ 5; PX 23, Kline Dec. ¶ 5; PX 29, Tobias Dec. ¶ 4; PX 32, Ward Dec. ¶ 6.

⁶⁸ PX 8, Byrd Dec. ¶¶ 23-24, 29; PX 9, Garcia Dec. ¶¶ 18-19, 24-25; PX 27, Pickett Dec. ¶ 24.

⁶⁹ PX 7, Barton Dec. ¶ 12; PX16, Deweese Dec. ¶ 7, Att. B; PX 17, Dillon Dec. ¶ 9, Att. B; PX 19, Gaunt Dec. ¶ 8, Att. B; PX 22, Jaundoo Dec. ¶ 5; PX 23, Kline Dec. ¶ 7, Att. A; PX 24, Madson Dec. ¶ 9; PX 25, Mesler Dec. ¶ 6; PX 26, Monday Dec. ¶ 11, Att. C; PX 27, Pickett Dec. ¶ 9, Att. B; PX 32, Ward Dec. ¶ 10.

⁷⁰ PX16, Deweese Dec. ¶ 7, Att. B (p. 1); PX 17, Dillon Dec. ¶ 9, Att. B (p. 1); PX 19, Gaunt Dec. ¶ 8, Att. B (p. 1); PX 23, Kline Dec. ¶ 7, Att. A; PX 26, Monday Dec. ¶ 11, Att. C; PX 27, Pickett Dec. ¶ 9 Att. B (p. 1).

⁷¹ PX16, Deweese Dec. ¶ 7, Att. B (p. 2); PX 17, Dillon Dec. ¶ 9, Att. B (p. 2); PX 19, Gaunt Dec. ¶ 8, Att. B, p. 1; PX 23, Kline Dec. ¶ 7, Att. A; PX 26, Monday Dec. ¶ 11, Att. C; PX 30, Violante Dec. ¶ 15, Att. D; PX 27, Pickett Dec. ¶ 9 Att. B (p. 2).

There is also a statement in this second letter, in small print, relating to ATR's cancellation policy. It states:

If you decide to cancel our services, you have 5 days from the date of this letter to notify us in writing. You will be refunded up to 50% of the fee only if the fee is paid in full. This pays for the preliminary work and advice you have already received. The finalized work will not be sent to you until the fee is paid in full.

Consumers are not told about this policy during the sales call, and most also do not notice this statement on the receipt.⁷² Often this cancellation period is about to expire, or already has expired, by the time consumers receive this letter.⁷³ For many consumers, ATR later points to this policy in denying their refund requests.⁷⁴

After filling out and mailing back the questionnaires, consumers routinely sit and wait for months without hearing anything from ATR.⁷⁵ Consumers who inquire as to the status of their cases often have to call several times before getting any information, and when they do speak to the right person, they are just given a series of excuses as to why ATR has failed to make progress in reducing their tax debts.⁷⁶ In many cases, ATR blames the consumers for the lack of

⁷² PX 16, Deweese Dec. ¶¶ 5, 7; PX 18, Fullerton Dec. ¶ 4; PX 19, Gaunt Dec. ¶¶ 6, 8; PX 20, Grimmette Dec. ¶ 5; PX 21, Hosang-Roberts ¶ 6; PX 22, Jaundoo Dec. ¶¶ 4, 7; PX 25, Mesler Dec. ¶ 5; PX 26, Monday Dec. ¶ 7; PX 27, Pickett Dec. ¶ 6; PX 30, Violante Dec. ¶ 6.

⁷³ PX 7, Barton Dec. ¶ 12 (package mailed day after clients were charged); PX 16, Deweese Dec. ¶ 7 (one week); PX 17, Dillon Dec. ¶ 9 (one week); PX 22, Jaundoo Dec. ¶ 5 (a week or so); PX 24, Madson Dec. ¶ 9 (a week or two); PX 25, Mesler Dec. ¶ 6 (within a week); PX 26, Monday Dec. ¶ 11, Att. C (postmark shows package mailed day after hiring ATR); PX 30, Violante Dec. ¶ 15, Att. D (8 days); PX 32, Ward Dec. ¶ 10 (six weeks).

⁷⁴ PX 1, Menjivar Dec. ¶ 60z, Att. HHHH (pp. 7-34); PX 3, Search Warrant Aff. ¶ 21t; PX 21, Hosang-Roberts ¶ 14; PX 22, Jaundoo Dec. ¶ 7.

⁷⁵ PX 8, Byrd Dec. ¶ 20; PX 20, Grimmette Dec. ¶¶ 8-11, 15-17, 19; PX 23, Kline Dec. ¶¶ 8-15; PX 25, Mesler Dec. ¶¶ 7-13; PX 27, Pickett Dec. ¶¶ 10-39; PX 32, Ward Dec. ¶¶ 10-18.

⁷⁶ See, e.g., PX 20, Grimmette Dec. ¶¶ 8-11, 15-17, 19; PX 23, Kline Dec. ¶¶ 8-15; PX 25, Mesler Dec. ¶¶ 7-13; PX 27, Pickett Dec. ¶¶ 10-39; PX 32, Ward Dec. ¶¶ 8-18.

progress, claiming that consumers did not provide, or did not provide in a timely way, all of the paperwork, information, or documents necessary for ATR to begin working on their cases.⁷⁷ In other cases, ATR accuses consumers of lying to ATR's sales representative during the initial consultation about the extent of their tax liabilities or their income and assets.⁷⁸ ATR claims that its sales representatives would not have qualified the consumer based on their actual information or that ATR would have charged the consumer more for its services had accurate information been provided.⁷⁹ Still other consumers learn, for the first time, that ATR will not work on their case until they have paid the entire fee.⁸⁰

Unfortunately, ATR's excuses are really just a way to deflect attention away from the fact that ATR does little, or nothing, for most of its customers.⁸¹ Former employees report that ATR does not even bother to apply for an OIC or penalty abatement in most cases because its customers simply do not qualify for these programs under IRS guidelines.⁸² As explained above, OICs are only available to consumers who are in the most dire financial circumstances and most of ATR's customers do not fall into this category.⁸³ Even if they did, ATR never makes clear that an OIC would require the consumer to give up nearly all of his or her current assets and

⁷⁷ PX 1, Menjivar Dec. ¶ 60z, Att. HHHH; PX 10, Almond Dec. ¶ 10.

⁷⁸ PX 1, Menjivar Dec. ¶¶ 60y(i), 60z, Atts. EEEE (pp. 36-38, 44, 46-47), HHHH.

⁷⁹ *Id.*

⁸⁰ PX 21, Hosang-Roberts ¶ 11.

⁸¹ PX 1, Menjivar Dec. ¶ 60w, Att. CCCC (p. 3); PX 27, Pickett Dec. ¶¶ 24, 27.

⁸² PX 8, Byrd Dec. ¶ 23; PX 9, Garcia Dec. ¶ 24.

⁸³ PX 6, Dellinger Dec. ¶¶ 14-15, 27; PX 8, Byrd Dec. ¶¶ 22-23; PX 9, Garcia Dec. ¶¶ 16, 23-25.

cash, plus several years' worth of future income.⁸⁴ The reality is, however, that the majority of ATR's clients simply do not meet the requirements for an OIC,⁸⁵ and would not have hired ATR if they knew that they likely would never qualify for an OIC.⁸⁶

ATR also generally fails to obtain penalty and interest abatements for consumers who were promised that relief.⁸⁷ The determining factor for the IRS in abating penalties is the existence of "reasonable cause," and ATR does not have sufficient information to determine whether "reasonable cause" exists when it promises consumers penalty abatements.⁸⁸ Furthermore, since penalty abatement decisions are highly discretionary, there is no way that ATR could truthfully promise this relief in advance. There is no indication that ATR ever obtains interest abatements for its customers either.⁸⁹

D. ATR's Unauthorized Charges and Refusal to Provide Refunds

In addition to not providing the promised services, ATR frequently charges consumers without authorization.⁹⁰ It also regularly fails to provide dissatisfied consumers with refunds,

⁸⁴ PX 1, Menjivar Dec. ¶ 32; PX 2, McKenney Dec. ¶ 10.

⁸⁵ PX 1, Menjivar Dec. ¶¶ 41, 60w, Atts. FF, CCCC (p. 3); PX 8, Byrd Dec. ¶¶ 23-24; PX 9, Garcia Dec. ¶¶ 24, 26-28.

⁸⁶ *See, e.g.*, PX 16, Dewese Dec. ¶ 35; PX 17, Dillon Dec. ¶¶ 15-16.

⁸⁷ PX 8, Byrd Dec. ¶¶ 21, 23; PX 9, Garcia Dec. ¶¶ 15, 17, 24.

⁸⁸ PX 1, Menjivar ¶¶ 25-26, Att. P; PX 2, McKenney Dec. ¶¶ 19-20; PX 6, Dellinger Dec. ¶¶ 30-32 (need reasonable cause); PX 9, Garcia Dec. ¶ 17 (same); PX 26, Monday Dec. ¶¶ 4-5 (only asked general questions about tax debt).

⁸⁹ PX 8, Byrd Dec. ¶ 21; PX 9, Garcia Dec. ¶¶ 17, 24.

⁹⁰ PX 1, Menjivar Dec. ¶ 60y(ii), Att. FFFF; PX 3, Search Warrant Aff. ¶¶ 6, 19c-e, 20b; PX 8, Byrd Dec. ¶ 26; PX 9, Garcia Dec. ¶ 26; PX 10, Almond Dec. ¶ 9; PX 17, Dillon Dec. ¶¶ 7-8, 10; PX 19, Gaunt Dec. ¶¶ 12, 15; PX 24, Madson Dec. ¶¶ 21, 26; PX 28, Rutenbeck Dec. ¶¶ 10-13; PX 31, Wales Dec. ¶¶ 13-15, 18-19.

unless customers take the additional step of involving law enforcement or the BBB.⁹¹ Even then, it typically only provides partial refunds, at most.⁹²

ATR's unauthorized charges take a couple of different forms. First, the company sometimes charges consumers who contacted ATR, but never agreed to hire them, and thus did not authorize any charges to their accounts.⁹³ It does this by convincing those consumers to provide their account information, while assuring them that no charges will be assessed until the consumer actually decides to hire ATR or secures the promised tax relief.⁹⁴ Of course, having obtained consumers' account information under these false pretenses, ATR then proceeds to charge the accounts immediately.⁹⁵ Second, ATR sometimes charges consumers who did agree to hire ATR an amount greater than consumers actually authorized.⁹⁶ In some cases, ATR simply charges consumers more than, sometimes even twice, what they had agreed to pay without their permission.⁹⁷ In other instances, ATR informs consumers that additional money is

⁹¹ PX 3, Search Warrant Aff. ¶¶ 20b-c, 21t, ee, ff; PX 8, Byrd Dec. ¶¶ 27-28; PX Garcia Dec. ¶ 28; PX 10, Almond Dec. ¶¶ 9-10; *see, e.g.*, PX 17, Dillon Dec. ¶¶ 7, 11, 14, 16 (no refund); PX 18, Fullerton Dec. ¶¶ 11, 16-19 (partial); PX 20, Grimmette Dec. ¶¶ 15, 18, 19 (no refund); PX 21, Hosang-Roberts Dec. ¶¶ 11-14, 16, 20-21 (partial); PX 22, Jaundoo Dec. ¶¶ 7-8, 13-14 (partial); PX 24, Madson Dec. ¶¶ 22-26 (no refund); PX 25, Mesler Dec. ¶¶ 10, 13 (no refund); PX 27, Pickett Dec. ¶¶ 27, 31, 35, 37, 39 (partial); PX 30, Violante Dec. ¶¶ 19-27 (partial); PX 32, Ward Dec. ¶¶ 15, 18 (no refund).

⁹² *Id.*

⁹³ PX 1, Menjivar Dec. ¶ 60y(ii), Att. FFFF (pp. 11, 16-21); PX 31, Wales Dec. ¶¶ 13-15, 18-19.

⁹⁴ PX 1, Menjivar Dec. ¶ 60y(ii), Att. FFFF (pp. 11, 21); PX 31, Wales Dec. ¶¶ 8-14.

⁹⁵ PX 31, Wales Dec. ¶¶ 13-15.

⁹⁶ PX 8, Byrd Dec. ¶ 26; PX 9, Garcia Dec. ¶ 26; PX 19, Gaunt Dec. ¶¶ 10, 12, 15; PX Madson Dec. ¶¶ 18-19, 21-22, 26; PX 28, Rutenbeck Dec. ¶¶ 3, 7, 10-12.

⁹⁷ PX 1, Menjivar Dec. ¶ 60y(ii), Att. FFFF (pp. 7-8); PX 9, Garcia Dec. ¶ 26; PX 28, Rutenbeck Dec. ¶¶ 3, 10, 12.

required before ATR will continue working on their files.⁹⁸ When consumers refuse to pay these additional charges, ATR charges them anyway.⁹⁹

Consumers' requests for refunds of ATR's charges are generally denied.¹⁰⁰ As described above, ATR typically blames its failure to get results on consumers. ATR also sometimes cites to its five-day partial refund policy, which is often only conveyed to consumers in a letter that consumers receive after the refund period has already expired.¹⁰¹ In rare instances, ATR provides partial refunds, but only to the most zealous consumers who file complaints with law enforcement agencies or the BBB, or who file their own lawsuits against ATR.¹⁰²

IV. DEFENDANTS

The parties responsible for this fraud are ATR and its two owners and principals, Alex Hahn and Joo Park, who are married. Park's parents, Young Soon Park and Il Kon Park are

⁹⁸ In these cases, ATR often claims that additional money is necessary because the case required more work than initially expected, allegedly because the consumer lied, or failed to inform ATR, about the full extent of his or her tax liabilities. PX 1, Menjivar Dec. ¶ 60y(ii), Att. FFFF (pp. 5-6, 12-15); PX 24, Madson Dec. ¶¶ 15-22. In other cases, ATR claims the money is needed because a deadline was missed by the consumer. PX 1, Menjivar Dec. ¶ 60y(ii), Att. FFFF (p. 23). PX 19, Gaunt Dec. ¶ 10 (deadline missed by a day).

⁹⁹ PX 1, Menjivar Dec. ¶ 60y(ii), Att. FFFF (pp. 5-6, 12-15); PX 9, Garcia Dec. ¶ 26; PX 19, Gaunt Dec. ¶¶ 10, 12, 15; PX 28, Rutenbeck Dec. ¶¶ 3, 7, 10-12. In some cases, consumers have reluctantly agreed to pay the additional fees. See PX 1, Menjivar Dec. ¶ 60y(iii), Att. GGGG; PX 25, Mesler ¶ 6 (paid additional \$4,500).

¹⁰⁰ PX 1, Menjivar Dec. ¶ 60z, Att. HHHH; PX 8, Byrd Dec. ¶¶ 27-28; PX Garcia Dec. ¶ 28; PX 10, Almond Dec. ¶¶ 9-10; PX 18, Fullerton Dec. ¶¶ 11, 16-19; PX 21, Hosang-Roberts Dec. ¶¶ 11-14, 16, 21; PX 22, Jaundoo Dec. ¶¶ 7-8, 13-14; PX 23, Kline Dec. ¶ 14; PX 24, Madson Dec. ¶¶ 22-26; PX 25, Mesler Dec. ¶¶ 10, 13; PX 27, Pickett Dec. ¶¶ 27, 31, 35, 37, 39; PX 29, Tobias Dec. ¶¶ 14-16; PX 30, Violante Dec. ¶¶ 19-27; PX 32, Ward Dec. ¶¶ 15, 18.

¹⁰¹ PX 1, Menjivar Dec. ¶ 60z, Att. HHHH (pp. 7-34); PX 3, Search Warrant Aff. ¶ 21; PX 21, Hosang-Roberts ¶ 14; PX 22, Jaundoo Dec. ¶ 7.

¹⁰² See *supra* note 91.

named as relief defendants in the Commission's complaint because millions in proceeds from the tax relief scheme have been diverted to them.

Defendant ATR is a California limited liability corporation.¹⁰³ While ATR was originally registered in July 1999, its registration was suspended on October 1, 2009 for, ironically, nonpayment of state taxes for the years 2005, 2008, and 2009 and partial payment of taxes in 2004.¹⁰⁴ At present, ATR is still under suspension.¹⁰⁵ Its offices are currently located in Beverly Hills, California.¹⁰⁶

ATR is no stranger to law enforcement. Earlier this year, criminal authorities in California executed a search warrant on ATR's business premises after finding reason to believe that the company was "permeated by fraud."¹⁰⁷ Despite execution of this criminal search warrant, ATR continues to operate and to engage in the same deceptive practices.¹⁰⁸ In 2006, moreover, the New York City Department of Consumer Affairs filed a lawsuit against ATR, alleging that postcards about its tax relief services that ATR was sending to NYC consumers were deceptive and misleading. The complaint also alleged that ATR failed to disclose the requirements needed to qualify for the tax settlements ATR was touting. ATR agreed to pay \$100,000 and comply with a limited injunction to settle the matter.¹⁰⁹

¹⁰³ PX 1, Menjivar Dec. ¶ 4, Att. A.

¹⁰⁴ PX 1, Menjivar Dec. ¶¶ 8-9, Atts. J, K.

¹⁰⁵ PX 1, Menjivar Dec. ¶ 8, Att. J.

¹⁰⁶ PX 3, Search Warrant Aff. ¶ 2.

¹⁰⁷ PX 3, Search Warrant Aff. ¶ 6.

¹⁰⁸ PX 1, Menjivar Dec. ¶ 31.

¹⁰⁹ PX 14, Verified Amended Complaint; PX 15, Settlement Agreement.

Defendants Hahn and Park are the owners and principals of ATR. Hahn is in charge of the daily operations of the company,¹¹⁰ and he has identified himself as the “owner” and “manager” of ATR in various documents.¹¹¹ He also registered ATR’s website, is the point person for ATR’s credit card processing, arranges for advertising on behalf of ATR, and even speaks with ATR’s clients and prospective clients on occasion.¹¹² Hahn has a long history of consumer fraud. In addition to operating ATR, he was convicted in 2006 of mail fraud in connection with a business that sold medical billing opportunities through fraudulent telemarketing. Hahn was sentenced to five years probation and ordered to pay restitution of \$1,283,568 to the victims, which he paid with a check drawn on ATR’s business account.¹¹³

Defendant Park is the Chief Executive Officer (“CEO”) of ATR¹¹⁴ and in that position is heavily involved in the financial and corporate affairs of the company.¹¹⁵ Among other things, she is a signatory on ATR’s bank accounts and signs checks drawn on its accounts, entered into an agreement with the IRS on behalf of ATR, and is listed as the “employer” on ATR employees’ W-2 forms.¹¹⁶

¹¹⁰ PX 7, Barton Dec. ¶¶ 4, 16-17, 21; PX 8, Byrd Dec. ¶10; PX 9, Garcia Dec. ¶ 9.

¹¹¹ PX 1, Menjivar Dec. ¶¶ 60j, 60k, 60l, 60u, 60v, Atts. PPP-RRR, AAAA, BBBB.

¹¹² PX 1, Menjivar Dec. ¶¶ 16, 60m, 60v, Atts. O, SSS, BBBB; PX 7, Barton Dec. ¶ 16.

¹¹³ PX 3, Search Warrant Aff. ¶ 9; PX 11, Indictment; PX 12, Plea Agreement; PX 13, Judgment and Probation Order.

¹¹⁴ PX 1, Menjivar Dec. ¶¶ 7a, 11, Atts. G, L.

¹¹⁵ PX 1, Menjivar Dec. ¶¶ 4, 6c, 18, 60h-o, 60q-r, 60x, Atts. A, C, NNN-UUU, WWW-YYY, DDDD.

¹¹⁶ PX 1, Menjivar Dec. ¶¶ 44a, 44b, 60p, 60t, Atts. II, JJ, VVV, ZZZ; PX 8, Byrd Dec. ¶ 10, Att. A.

The Relief Defendants, Young Soon Park and Il Kon Park, are Park's parents and also reside in California.¹¹⁷ These two have received millions of dollars in funds and assets which can be traced to the business activities of ATR,¹¹⁸ including the condominium where they reside, which was purchased for \$525,000, and the home Hahn and Park currently reside at, which was purchased for \$3.4 million.¹¹⁹

Although Defendants are located near Los Angeles, they have perpetrated their scheme across the U.S., including the Northern District of Illinois, with ATR's nationwide advertising campaigns and Internet website.¹²⁰ Moreover, according to documents the FTC received from Comcast, ATR did not air its commercials in the Los Angeles area, where the company is located.¹²¹ By contrast, ATR has advertised heavily in the Chicago area.¹²²

Venue is proper in the Northern District of Illinois. Pursuant to the FTC Act, an action may be brought in any district where a corporation or person "resides or transacts business." 15 U.S.C. § 53(b). Here, the Defendants have transacted business in this district, as evidenced by Comcast's records and sworn declarations from victims in this district.¹²³ Moreover, because

¹¹⁷ PX 1, Menjivar Dec. ¶¶ 55, 56, 58, Atts. XX, YY.

¹¹⁸ PX 1, Menjivar Dec. ¶ 60g, Att. MMM; PX 3, Search Warrant Aff. ¶ 18; PX 4, Seizure Warrant Aff. ¶¶ 8, 11-15; PX 5, Seizure Warrant Aff. ¶ 8.

¹¹⁹ PX 1, Menjivar Dec. ¶¶ 53-56, 58, Atts. VV, WW, XX, YY; PX 3, Search Warrant Aff. ¶ 18c.

¹²⁰ PX 1, Menjivar Dec. ¶¶ 11-15, 47-50 Atts. L-N, KK-SS; PX 8, Byrd Dec. ¶ 20; PX 9, Garcia Dec. ¶ 30; PX 10, Almond Dec. ¶ 9; PXs 16-32 (consumer declarations).

¹²¹ PX 1, Menjivar Dec. ¶ 47, Att. KK.

¹²² *Id.*

¹²³ PX 1, Menjivar ¶ 47, Att. 47; PX 18, Fullerton Dec. ¶ 1 (Chicago); PX 27, Pickett Dec. ¶ 1 (Chicago); PX 29, Tobias Dec. ¶ 1 (South Holland).

personal jurisdiction is proper in this matter, it necessarily follows that venue is proper pursuant to 28 U.S.C. § 1391(c), which provides that venue is proper in any judicial district in which a defendant corporation is subject to personal jurisdiction.

V. ARGUMENT

The FTC asks that the Court bring this scam to an immediate halt by issuing a temporary restraining order. The FTC also asks that the Court freeze Defendants' and Relief Defendants' assets to preserve them for restitution to victims, and appoint a temporary receiver to both preserve assets and manage the affairs of the corporate defendant. Although criminal authorities executed a search warrant at ATR's business premises on April 8, 2010, Defendants have continued to operate their business and to make false claims about their ability to settle taxpayers' debts. Therefore, immediate injunctive relief, which includes both an asset freeze and appointment of receiver, is especially important considering that the criminal search warrant did not affect Defendants' ongoing conduct. This Court has full authority to enter the requested relief, which is strongly supported by the evidence. Courts in this district have repeatedly granted *ex parte* TROs that include these types of relief in FTC actions.¹²⁴

¹²⁴ See, e.g., *FTC v. Central Coast Nutraceuticals, Inc., et al.*, No. 10 C 4931 (N.D. Ill. Aug. 6, 2010) (Norgle, J.) (*ex parte* TRO with asset freeze and appointment of receiver); *FTC v. Asia Pacific Telecom, Inc., et al.*, No. 10 C 3168 (N.D. Ill. May 25, 2010) (Hart, J.) (same); *FTC v. API Trade, LLC, et al.*, No. 10 C 1543 (N.D. Ill. March 10, 2010) (Guzman, J.) (*ex parte* TRO with asset freeze); *FTC v. 2145183 Ontario Inc., et al.*, No. 09 C 7423 (N.D. Ill. Nov. 30, 2009) (Grady, J.) (*ex parte* TRO with asset freeze and appointment of receiver); *FTC v. Integration Media, Inc., et al.*, No. 09 C 3160 (N.D. Ill. May 27, 2009) (Bucklo, J.) (*ex parte* TRO with asset freeze); *FTC v. Data Bus. Solutions, Inc., et al.*, No. 08 C 2783 (N.D. Ill. May 14, 2008) (Dow, J.) (same); *FTC v. Union Consumer Benefits*, No. 08 C 2309 (N.D. Ill. April 23, 2008) (Aspen, J.) (same); *FTC v. Spear Systems, Inc., et al.*, No. 07 C 5597 (N.D. Ill. Oct. 3, 2007) (Andersen, J.) (same); *FTC v. Sili Nutraceuticals, LLC, et al.*, No. 07 C 4541 (N.D. Ill. Aug. 13, 2007) (Kennelly, J.) (same); *FTC v. 1522838 Ontario Inc., et al.*, No. 06 C 5378 (N.D. Ill. Oct. 4, 2006) (Gettleman, J.) (same); *FTC v. Datacom Mktg., et al.*, No. 06 C 2574 (N.D. Ill. May 9, 2006) (Holderman, C.J.) (same); *FTC v. Cleverlink Trading Ltd., et al.*, No. 05 C 2889 (N.D. Ill. May 16, 2005) (St. Eve, J.) (same).

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

The FTC Act provides that “in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction.” 15 U.S.C. § 53(b). Once the Commission invokes the federal court’s equitable powers, the full breadth of the court’s authority is available, including the power to grant such ancillary final relief as rescission of contracts and restitution. *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir. 1989). The court may also enter a temporary restraining order, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief. *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1026 (7th Cir. 1988); *see also Amy Travel*, 875 F.2d at 571. Such ancillary relief may include an asset freeze to preserve assets for eventual restitution to victimized consumers. The commission of past illegal conduct is “highly suggestive of the likelihood of future violations.” *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979). *See also FTC v. Direct Mktg. Concepts, Inc.*, 648 F. Supp. 2d 202, 212 (D. Mass. 2009); *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1017 (N.D. Ind. 2000); *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 536 (S.D.N.Y. 2000).

B. A Temporary Restraining Order is Appropriate and Necessary

To grant preliminary injunctive relief in an FTC Act case, the district court must: (1) determine the likelihood that the Commission will ultimately succeed on the merits, and (2) balance the equities. *World Travel*, 861 F.2d at 1029. Under this “public interest” test, “it is not necessary for the FTC to demonstrate irreparable injury.” *Id.* When the court balances the equities, the public interest “must receive far greater weight” than any private concerns. *Id.*

1. The FTC Has Demonstrated There is a Strong Likelihood That Defendants Have Violated the FTC Act

There is no doubt that Defendants' activities qualify as deceptive acts or practices under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances. *FTC v. Bay Area Bus. Council*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. World Media Brokers*, 415 F.3d 758, 763 (7th Cir. 2005); *World Travel*, 861 F.2d at 1029. The materiality requirement is satisfied if the misrepresentation or omission involves information that is likely to affect a consumer's choice of, or conduct regarding, a product or service. *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992), *cert. denied*, 507 U.S. 909 (1993). In deciding whether particular statements are deceptive, courts must look to the "overall net impression" of consumers. *See id.*

Here, Defendants have violated the FTC Act by consistently making a series of false claims about their tax relief services. Defendants regularly represent that consumers qualify for specific tax relief programs and that, with Defendants' help, the consumers will be able to reduce their total tax debts significantly. Defendants further misrepresent that they have already helped thousands of other consumers significantly reduce their tax debts. The Commission's sworn consumer declarations demonstrate that these lies often succeed in inducing consumers to pay thousands of dollars for Defendants' tax relief services when they otherwise would not have. The misrepresentations are clearly material, in that they are likely to and do affect consumers' conduct.

Defendants also routinely make unauthorized withdrawals from consumers' bank accounts and submit unauthorized charges to consumers' credit cards. These practices are

“unfair” and also violate Section 5. Under Section 5(n) of the FTC Act, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or to competition. See 15 U.S.C. § 45(n); see also *Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354, 1363-66 (11th Cir. 1988). Courts have consistently held unauthorized charges to be unfair under the FTC Act. See, e.g., *FTC v. Global Mktg. Group, Inc.*, 594 F. Supp. 2d 1281, 1288-89 (M.D. Fla. 2008); *FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d 1176, 1201 (C.D. Cal. 2000).

Defendants’ business practices clearly violate the FTC Act. Defendants make a series of blatantly false statements to induce consumers to purchase their tax relief services. Once they have consumers’ money, they often do nothing at all to try to reduce consumers’ tax debts. Defendants’ former employees acknowledge that in all but a very few cases, ATR simply could not provide the substantial tax savings that it promised. Defendants have been repeatedly notified that their business practices are not lawful, but they continue misrepresenting their ability to reduce consumers’ tax debts and placing unauthorized charges on consumers’ accounts. Accordingly, a temporary restraining order to stop these practices is warranted.

2. Alex Hahn and Joo Park are Personally Liable

An individual defendant may be held liable for injunctive relief and monetary restitution under the FTC Act if the Court finds (1) that he participated directly in or had some measure of control over a corporation’s deceptive practices, and (2) that he had actual or constructive knowledge of the practices. *World Media Brokers*, 415 F.3d at 764; *Bay Area*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 573-74. Authority to control may be evidenced by “active involvement in the corporate affairs, including assuming the duties of a corporate officer.” *World Media Brokers*, 415 F.3d at 764 (citing *Amy Travel*, 875 F.2d at 573). The knowledge requirement is

satisfied by a showing that the defendant (1) had actual knowledge of the deceptive acts or practices, (2) was recklessly indifferent to the truth or falsity of the representations, or (3) had an awareness of a high probability of fraud coupled with an intentional avoidance of the truth. *Id.*; *Bay Area*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 573. An individual's "degree of participation in business affairs is probative of knowledge." *Id.* The Commission need not prove subjective intent to defraud. *Id.* Here, there is ample evidence that the Commission is likely to meet the standard for establishing Hahn's and Park's individual liability.

Hahn clearly both controls ATR and is aware of the company's practices. He has identified himself as the "owner" or "manager" of ATR on ATR's bank account information forms and in other documents.¹²⁵ Moreover, three former ATR employees state that Hahn oversees and controls the daily operations at ATR and is present at the company's offices most of the time.¹²⁶ Hahn has even handled calls with prospective ATR clients.¹²⁷ He is also the point person in dealing with the BBB regarding consumer complaints.¹²⁸

Park also has control over ATR. She is a signatory on the company's bank accounts, and her signature appears on most of the checks drawn on those accounts.¹²⁹ She is also listed as the registered agent of ATR on its corporate papers, the "employer" on the employees' W-2 forms,

¹²⁵ PX 1, Menjivar Dec. ¶¶ 60j, 60k, 60l, 60u, 60v, Atts. PPP-RRR, AAAA, BBBB.

¹²⁶ PX 7, Barton Dec. ¶¶ 4, 16-17, 21; PX 8, Byrd Dec. ¶ 10; PX 9, Garcia Dec. ¶¶ 8-11.

¹²⁷ PX 7, Barton Dec. ¶ 16.

¹²⁸ PX 10, Almond Dec. ¶¶ 17-19, 21-22, 25-26

¹²⁹ PX 1, Menjivar Dec. ¶¶ 44a, 44b, 60t, Atts. II, JJ, ZZZ. For purposes of obtaining monetary relief, the FTC has also named Park's parents, Young Soon Park and Il Kon Park, as relief defendants in this action. Young Soon Park and Il Kon Park have received substantial sums of money and assets that can be traced to ATR's fraudulent practices. PX 1, Menjivar Dec. ¶ 60g, Att. MMM; PX 3, Search Warrant Aff. ¶ 18; PX 4, Seizure Warrant Aff. ¶¶ 8, 11-15; PX 5, Seizure Warrant Aff. ¶ 8.

and the CEO in a Dun and Bradstreet report on ATR.¹³⁰ Park also knew, or at least should have known, of ATR's deceptive practices. According to one former employee, she comes into the office on occasion.¹³¹ As the registered agent for the corporation, she presumably receives notice of lawsuits filed against the company. Additionally, she has signed legal settlements with ATR clients who sued the company for breach of contract and fraud, has paid judgment creditors in lawsuits, and has been named personally in some of the lawsuits filed against ATR.¹³² Therefore, Park meets the standard for individually liability.

3. The Equities Tip Decidedly in the Commission's Favor

Once the Commission has shown a likelihood of success on the merits, the Court must balance the equities, assigning "far greater weight" to the public interest than to any of defendants' private concerns. *World Travel*, 861 F.2d at 1029. The public equities in this case are compelling, as the public has a strong interest in halting Defendants' illegal activities and preserving assets necessary to provide effective final relief to thousands of victims. Defendants, by contrast, have no legitimate interest in continuing to engage in illegal conduct. *See FTC v. World Wide Factors, Ltd*, 882 F.2d 344, 347 (9th Cir. 1989) (upholding finding of "no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment").

¹³⁰ PX 1, Menjivar Dec. ¶¶ 4, 7a, Atts. A, G; PX 9, Byrd Dec. ¶ 10, Att. A.

¹³¹ PX 9, Garcia Dec. ¶ 36.

¹³² PX 1, Menjivar Dec. ¶ 60x, Att. DDDD.

C. The Court Should Enter the FTC's Proposed *Ex Parte* TRO

Ex parte relief is necessary here. An *ex parte* TRO is warranted where facts show that irreparable injury, loss, or damage may result before defendants may be heard in opposition. See Fed. R. Civ. P. 65(b). In executing the April 2010 search warrant, the criminal authorities seized some of ATR's documents and some, but not all, of its bank accounts and other assets.¹³³ Despite that, ATR has continued to operate and to engage in the same deceptive practices. It thus has continued to generate additional records and assets that should be preserved. If Defendants receive prior notice of the FTC's action, there is a tangible risk that these materials and assets will disappear. These Defendants have routinely transferred assets to third parties, namely Park's parents, and registered assets in their names, presumably in an attempt to hide them. To date, Defendants have transferred, at the very least, over \$15.5 million in funds and assets to the Relief Defendants.¹³⁴ It is reasonable to believe that, if Defendants receive advance warning of this matter, they will dissipate funds even further, both in the U.S. and overseas, before those assets can be frozen by the Court. Additionally, *ex parte* relief will help preserve evidence. Defendants have taken steps to hide their business activities from government agents in the past,¹³⁵ and likely would do so here too if given the chance. In addition, Defendants' own records indicate that some client files already have been destroyed.¹³⁶ In sum, *ex parte* relief is

¹³³ The criminal authorities also made *lis pendens* filings against some of Defendants' real properties. PX Menjivar Dec. ¶ 58.

¹³⁴ PX 4, Seizure Warrant Aff. ¶¶ 8, 11-15; *see also* PX 1, Menjivar Dec. ¶ 60g, Att.; PX 3, Search Warrant Aff. ¶ 18; PX 5, Seizure Warrant Aff. ¶ 8.

¹³⁵ During a government audit in 2009, Hahn tried to conceal the existence of ATR's sales department from the auditors by blocking an adjoining door and covering up the suite number. PX 7, Barton Dec. ¶ 19.

¹³⁶ PX 1, Menjivar Dec. ¶ 60bb, Att. JJJJ.

necessary to preserve the status quo and ensure the Defendants cannot hide or destroy records and dissipate assets, both of which they have done in the past.

Part of the relief sought by the FTC in this case is restitution for consumers who were defrauded by Defendants' misrepresentations. To preserve the possibility for such relief, the Commission seeks a freeze of Defendants' and Relief Defendants' assets and an immediate accounting to prevent concealment or dissipation of assets pending a final resolution of this litigation. Given the many millions of dollars that have already been fraudulently transferred to the Relief Defendants, an asset freeze against them is warranted.

An asset freeze is appropriate once the Court determines that the Commission is likely to prevail on the merits and that restitution would be an appropriate final remedy. *See World Travel*, 861 F.2d at 1031 & n.9. In the words of the Seventh Circuit, the district court at that juncture has "a duty to ensure that the assets of the corporate defendants [are] available to make restitution to injured consumers." *Id.* at 1031. In a case such as this, where the Commission is likely to succeed in showing that corporate officers are individually liable for the payment of restitution, the freeze should extend to individual assets as well. *Id.* (affirming freeze on individual assets). This Court has authority to order a party to "freeze" property under its control, whether the property is within or outside the United States. *U.S. v. First Nat'l City Bank*, 379 U.S. 378, 384 (1965). Such an order is necessary and appropriate here to ensure the possibility of effective final relief.

The appointment of a temporary receiver over the corporate defendant is necessary to preserve the potential for a complete remedy. Such an appointment is particularly appropriate where defendants' pervasive fraud presents the likelihood of continued misconduct. If Defendants here are allowed to remain in control of their business, it is likely that they will

continue to defraud consumers and that evidence will be destroyed and the fruits of their fraud will be dissipated. By taking custody of the business, a neutral receiver would prevent further harm to consumers and prevent destruction or concealment of assets and records without disrupting any legitimate business activity. At the same time, a temporary receiver would be helpful to the court in assessing the extent of Defendants' fraud, tracing the proceeds of that fraud, preparing an accounting, and making an independent report of Defendants' activities to the Court.

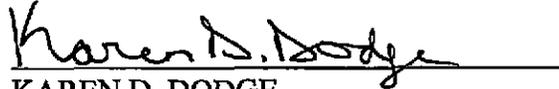
VI. CONCLUSION

Defendants have caused, and are likely to continue to cause, substantial injury to the public through their violations of the FTC Act. The Commission respectfully requests that the Court issue the proposed TRO to protect the public from further harm and to help ensure the possibility of effective final relief for defrauded consumers.¹³⁷

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Respectfully Submitted,

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¹³⁷ The FTC has submitted a proposed *Ex Parte* Temporary Restraining Order with its papers.