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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 15-01921-DDP(PJWx)

FEDERAL TRADE COMMISSION,

Plaintiff,

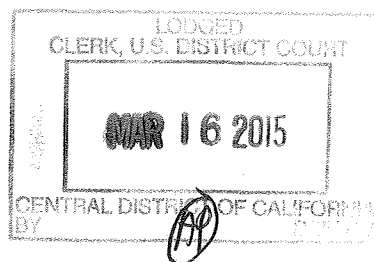
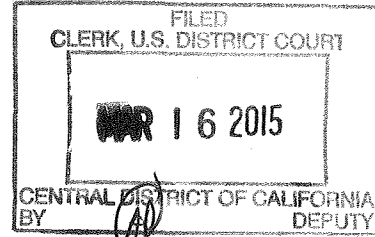
v.

FIRST TIME CREDIT SOLUTION,
CORP., a California Corporation, also
doing business as FTC CREDIT
SOLUTIONS, 1st CONSUMER
CREDIT USA, and DOCTOR de
CRÉDITO;

GUILLERMO LEYES, individually
and as an officer or manager of First
Time Credit Solution, Corp.;

MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF
FEDERAL TRADE
COMMISSION'S *EX PARTE*
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER AND FOR AN ORDER TO
SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE

(Filed Under Seal)



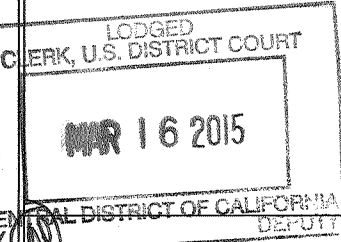
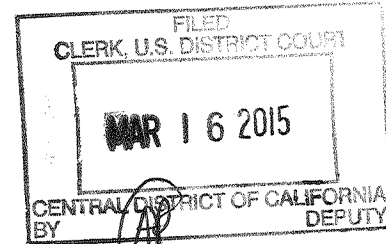
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SHOULD NOT ISSUE

(Filed Under Seal)

1 JIMENA PEREZ, individually and as)
2 an officer or manager of First Time)
3 Credit Solution, Corp.;)

4 MARIA BERNAL, individually and)
5 as an officer or manager of First Time)
6 Credit Solution, Corp.; and)

7 FERMIN CAMPOS, individually and)
8 as an officer or manager of First Time)
9 Credit Solution, Corp.,)

10 Defendants.)
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I. INTRODUCTION

The Federal Trade Commission (“Commission”) respectfully requests that the Court bring to an immediate halt defendants’ fraudulent scheme that uses a false affiliation with the Commission to rip off Spanish-Speaking consumers. Defendants pose as affiliates or licensees of the federal government, namely the Commission, misrepresenting that these credentials enable them to remove negative information from consumers’ credit reports and guarantee consumers a credit score of 700 or above within six months or less.¹ Defendants have injured numerous consumers, charging each victim approximately \$2,000, and continue to injure additional consumers on a daily basis. Their unlawful conduct violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section 404 of the Credit Repair Organization Act (“CROA”), 15 U.S.C. § 1679b.

To protect consumers and preserve assets for potential redress to defendants’ victims, the Commission seeks a temporary restraining order (“TRO”) that enjoins defendants’ unlawful conduct, freezes their assets, appoints a temporary receiver over the corporate defendant, permits Commission staff and the temporary receiver immediate access to defendants’ business premises and records, requires defendants to disclose their assets, and allows expedited discovery. The Commission also requests that the Court order defendants to show cause why a preliminary injunction should not issue against them.

¹ The Commission submits two volumes of exhibits in support of this Motion. References to exhibits appear as “PX [number].” The exhibit volumes have been numbered consecutively beginning with Page 1. Declarations are cited as “([name] Dec.),” and include citations to specific paragraphs (“¶”) and/or pertinent attachments (“Att. [letter]”).

II. STATEMENT OF FACTS

A. Defendants Deceptively Market Credit Repair Services

1. Defendants Use False Credentials, Including Misrepresenting Affiliation with the Government

Since at least January 2013, defendants have deceptively marketed, advertised, promoted, offered to sell, and sold credit repair services to consumers, preying primarily on Spanish-speaking consumers with burdensome debts and troubled credit histories.² Defendants include the California corporation First Time Credit Solution, Corp., doing business primarily as FTC Credit Solutions (“FTC Credit”), and four California residents who operate and manage FTC Credit – Guillermo Leyes, Maria Bernal, Jimena Lopez, and Fermin Campos.

Defendants market their services through Internet websites – including *ftccreditsolutions.org*, *ftccreditsolutions.com*, *drdecredito.com*, and *doctordecredito.org*,³ printed advertisements,⁴ social media,⁵ and on the radio.⁶ In their advertising and in communications with consumers, defendants represent that they are affiliated with or licensed by the Federal Trade Commission, while using the Commission’s name and a seal that is substantially similar to the Commission’s official seal.⁷ For example, principal defendant Guillermo Leyes recently made the

² It appears that defendants have been promoting their purported credit repair services without being registered with the Attorney General’s Office, in violation of California law. PX 21, Declaration of G. Weller, 354, ¶¶ 2-3.

³ See, e.g., PX 8, pages from defendants’ websites (“Websites”), 196-215.

⁴ See e.g., PX 13, defendants printed advertisements (“Ads”), 301-02.

⁵ See e.g., PX 10, defendants social media pages (“Social Media”), 230-35.

⁶ See e.g., PX 7, transcript of a Spanish-language radio show hosted by defendant Guillermo Leyes and English translation (“Radio Show”), 159-195.

⁷ See e.g., PX 8 (Websites), 196-202; PX 10 (Social Media), 230-35; PX 13 (Ads), 301-02; PX 16, Declaration of E. Martinez, Att. B, 343; PX 5, First Declaration of M. Esparza (“Esparza I Dec.”), Att. B, 128:23-25.

1 following affiliation claims while advertising defendants' services on the radio
2 station KBLA 1580 am (translated from Spanish):

3
4 Fourteen years working in banking tells you that I can help you. I
5 was the first to come here on the radio, bringing you what is called
6 credit restructuring. And what many ask, how are we going to
7 remove a bankruptcy? This is impossible. How are you going to
8 remove it? They have had to hold their tongues and say, well, we
9 don't know how he does it. And I am not going to tell them either.
10 Because to do it I have not rested my brain, to do it I studied and to
11 do it I have a license direct[ly] from the FTC, the Federal Trade
12 Commission.

13 ...

14 We will directly ask you, when you sit with Maria Bernal, or
15 Maricarmen Caballero, or Jimena [Lopez] my daughter, to- directly
16 ask the FTC to immediately send us your complete credit history,
17 from the moment you had Social Security, Okay? Like that we use
18 the good and the bad. In this way we will completely restructure
19 your credit and in ... no more, sorry, than 90, maximum 120 days,
20 you will come out with a score of 700, guaranteed in writing.⁸

21
22 Defendants, however, have never been affiliated with or licensed by the
23 Commission,⁹ and, as demonstrated below, their promises about removing negative
24 information from credit reports and guaranteeing a high credit score are false.

25
26
27 ⁸ PX 7 (Radio Show), 164:17-167:20.

28 ⁹ PX 22, Declaration of Commission Secretary D. Clark, ¶¶ 3-4.

1 **2. Defendants Falsely Claim an Ability to Lawfully Remove**
 2 **Negative Information from Consumers' Credit Reports and**
 3 **to Guarantee Consumers a Credit Score of 700 or Higher**

4 In their advertising and in verbal communications with consumers,
 5 defendants represent that their purported affiliation with the Commission, among
 6 other false credentials,¹⁰ allows them to lawfully remove negative information –
 7 such as late payments, defaults, foreclosures and bankruptcies – from consumers'
 8 credit reports, even when such information is accurate and non-obsolete.¹¹
 9 However, as demonstrated by the testimony of officials from Experian and
 10 Equifax,¹² no credit repair organization or individual can lawfully remove such
 11 information from a consumer's credit report.¹³

12 In addition to falsely promising the lawful removal of negative information
 13 from credit reports, defendants also "guarantee" consumers a credit score of 700 or
 14 higher, within six months or less, regardless of the consumer's current credit score
 15 or credit history.¹⁴ However, as demonstrated by the testimony of officials from
 16 Fair Isaac Corporation ("FICO")¹⁵ and Experian, no credit repair organization can
 17 guarantee such an outcome.¹⁶

18
 19 ¹⁰ Defendants' marketing materials tout other false credentials, including bogus
 20 rankings and awards, and fake endorsements from President Obama and from
 21 Mario Kreutzberger (known by his stage name, Don Francisco), the host of the
 22 popular Spanish TV show Sabado Gigante. See PX 8 (Websites), 203.

23 ¹¹ See, e.g., PX 1, Declaration of M. Picado ("Picado Dec."), Att. B-C, 10-19; PX 2
 24 Declaration of S. Teran ("Teran Dec."), Att. C, 39-40.

25 ¹² Experian and Equifax are two of the major national credit bureaus. See
 26 usa.gov/topics/money/credit/credit-reports/bureaus-scoring.shtml.

27 ¹³ See PX 18, Declaration of C. Helm ("Experian Dec."), 349, ¶ 6; PX 19
 28 Declaration of M. Leslie ("Equifax Dec."), 351, ¶ 7.

¹⁴ See, e.g., PX 13 (Ads), 301-302; PX 7 (Radio Show), 164:17-167:20.

¹⁵ FICO operates the credit scoring system (known as FICO score) used by nearly
 all U.S. banks. See usa.gov/topics/money/credit/credit-reports/bureaus-

1 A recent undercover call between defendant Maria Bernal and a
 2 Commission investigator, posing as a consumer seeking to improve her credit after
 3 filing for bankruptcy two years ago,¹⁷ demonstrates the misrepresentations
 4 defendants use to market their credit repair services (translated from Spanish):

5
 6 DEFENDANT BERNAL: For those people who have gone
 7 bankrupt, like you, the bankruptcy has to be deleted and each of
 8 the accounts has to be put into a positive state, so that they don't
 9 keep on affecting you badly and so that you can reestablish your
 10 credit ...

11 INVESTIGATOR: Okay. And how, and how -- how do I get -- I
 12 mean, how, how are they deleted? Sorry, that -- How do you
 13 delet--?

14 DEFENDANT BERNAL: We work under -- No, no, no, no, no.
 15 Don't worry, this is one of the questions that I need ... to explain it
 16 to you.

17 INVESTIGATOR: That's right.

18 DEFENDANT BERNAL: Okay, look. We work under the
 19 Federal Trade Commission, which is a law that was signed by the
 20 President in 2010, so that all the negative, all the stains can be
 21 deleted. Last year around August, he signed a law to delete
 22 student loans ... and the hospital accounts, people always have
 23 them. We apply and use all of this. You won't have to do
 24 absolutely anything ... Look, let me explain something to you.

25 scoring.shtml.

26 ¹⁶ See PX 18 (Experian Dec.), 349, ¶ 8; PX 20, Declaration of T. Quinn ("FICO
 27 Dec."), 352, ¶ 6.

28 ¹⁷ PX 5 ("Esparza I Dec."), Att. B, 127:1.

1 We have -- we have more than 7000 customers. You can check us
2 out on our website. You can see all of this, all the peo[ple], there
3 you can see the people to whom we have deleted, that we have
4 deleted the bankruptcies for too...

5 INVESTIGATOR: Okay, and how long more or less, more or less
6 does this take to -- I mean, to, to, so that I can start to get?

7 BERNAL: It's a maximum of six months. That's the maximum, but there
8 are people that have it completed in 60 to 90 days.¹⁸

9
10 In another undercover call between defendant Bernal and a Commission
11 investigator, posing as a consumer with \$19,000 in debt, Bernal represented that
12 FTC Credit could "delete" and "get a pardon" for that debt.¹⁹ She further
13 represented that FTC Credit could provide the consumer a credit score, guaranteed
14 in writing, of more than 700 within no more than six months.²⁰

15 As demonstrated by the testimony of officials from the credit bureaus and
16 from FICO, Ms. Bernal's representations about FTC Credit's ability to remove
17 negative information from consumers' credit reports and guarantee a credit score
18 of 700 or more, within six months or less, are false. A bankruptcy remains on a
19 consumer's credit report for a minimum of seven years, and no credit repair
20 organization can remove it from the report before the expiration date.²¹ Likewise,
21 no credit repair organization can guarantee a consumer a credit score of 700 or
22 higher, within six months or less, without having detailed and accurate information

23
24
25 ¹⁸ PX 5 (Esparza I Dec.), Att. B, 128:6-131:16.

26 ¹⁹ PX 5 (Esparza I Dec.), Att. A, 91:12-20.

27 ²⁰ PX 5 (Esparza I Dec.), Att. A, 96:3-5.

28 ²¹ PX 18 (Experian Dec.), 348-49, ¶¶ 4, 8; PX 19 (Equifax Dec.), 351, ¶¶ 5, 7.

1 about the consumer's current credit score and credit history.²² Defendant Bernal
2 had no such information while she guaranteed this result to the investigator.²³

3 **3. Defendants Draft Dispute Letters with False Information**

4 Defendants perform their credit repair services primarily by drafting letters
5 to the major national credit reporting bureaus, Equifax, Experian, and TransUnion
6 ("dispute letters").²⁴ The dispute letters challenge the accuracy of negative
7 information appearing on the credit reports of defendants' customers.²⁵

8 The dispute letters often do not mention defendants or indicate that
9 defendants drafted them.²⁶ Instead, defendants draft the letters in English to appear
10 as if they were drafted by their customers.²⁷ Many of defendants' customers have
11 limited English skills.²⁸ The dispute letters often contain untruthful information,
12 including fabricated disputes of negative information on the credit reports of
13 defendants' customers that is accurate and non-obsolete.²⁹

14 **4. Defendants Collect Hefty Advance Fees and Bilk Their** 15 **Customers Out of Thousands of Dollars**

16 Defendants routinely collect hundreds of dollars from their unsuspecting
17 customers immediately upon entering into credit repair services agreements, and
18 well before full performance of the promised services.³⁰ The large advance

20 ²² PX 20 (FICO Dec.), 352, ¶ 6; PX 18 (Experian Dec.), 349, ¶ 8.

21 ²³ *See generally* PX 5 (Esparza I Dec.), Att. A.

22 ²⁴ *See, e.g.*, PX 1 (Picado Dec.), Att. B-C, 10-19; PX 2 (Teran Dec.), Att. C 39-40.

23 ²⁵ *Id.*

24 ²⁶ *Id.*

25 ²⁷ PX 1 (Picado Dec.), 1-2, ¶ 6; PX 2 (Teran Dec.), 20, ¶ 7; PX 3 Declaration of A.
Salazar ("Salazar Dec."), 42, ¶ 6.

26 ²⁸ *Id.*

27 ²⁹ *See, e.g.*, PX 1 (Picado Dec.), 1-2, ¶ 6; PX 2 (Teran Dec.), 20, ¶ 8.

28 ³⁰ *See, e.g.*, PX 1 (Picado Dec.), 1, ¶ 5; PX 2 (Teran Dec.), 20, ¶ 5; PX 3 (Salazar

1 payment is routinely followed by additional payments so that the customer ends up
2 paying defendants approximately \$2,000.

3 Defendants conduct most of their business in cash and their suspicious
4 deposit practices have caused JPMorgan Chase Bank to initiate an inquiry into
5 FTC Credit's accounts with the bank.³¹ The bank ultimately closed these accounts
6 after defendants angrily refused to answer its questions about their business.³²

7 **III. THE DEFENDANTS**

8 Below is a description of FTC Credit, the corporate defendant that has
9 executed the scheme described in the Statement of Facts, and the four individual
10 defendants who control and participate in FTC Credit's unlawful conduct.

11 **First Time Credit Solution, Corp. ("FTC Credit")** does business as FTC
12 Credit Solutions, 1st Consumer Credit USA, and Doctor de Crédito.³³ It is a
13 California corporation with its principal place of business at 4255 E. Florence
14 Avenue, Bell, California 90201.³⁴ On its websites, FTC Credit refers to the Bell,
15 California office as the "main office," and claims to have offices in San Francisco,
16 New York, Dallas, Miami, and Chicago.³⁵

17 **Guillermo Leyes** is the Marketing Director of FTC Credit.³⁶ He is, or was
18 during the relevant period, a signatory for the company's bank accounts.³⁷ Leyes

19
20 Dec.), 41, ¶ 3; PX 4, Declaration of S. Hernandez ("Hernandez Dec."), 79, ¶ 3.

21 ³¹ PX 23, JPMorgan Chase Bank CID Production ("JPMorgan Documents"), 357-
22 369.

23 ³² *Id.* at 364.

24 ³³ See generally PX 8 (Websites).

25 ³⁴ PX 17, First Time Credit Solution, Corp., Corporate Filings ("Corporate
26 Filings"), 344.

27 ³⁵ See, e.g., PX 8 (Websites), 197-198.

28 ³⁶ See PX 8 (Websites), 205; PX 1 (Picado Dec.), Att. A, 8.

³⁷ See PX 23 (JPMorgan Documents), 358.

1 has personally promoted the services of FTC Credit on the radio and on videos
2 posted on the Internet, and his image is displayed prominently on company
3 websites and in printed advertisements.³⁸

4 **Jimena Perez** is the Chief Executive Officer and Secretary of FTC Credit,
5 and a Director of the company.³⁹ Perez is, or was during the relevant period, a
6 signatory for the company's bank accounts,⁴⁰ and is personally marketing its
7 services to consumers and responds to consumer complaints.⁴¹

8 **Maria Bernal** is a General Manager and VP Sales Accountant at FTC
9 Credit,⁴² and personally markets the company's services to consumers.⁴³ An
10 investigator for the Commission, posing as a consumer seeking credit repair
11 services, has recorded undercover calls with Bernal, in which Bernal made
12 numerous misrepresentations.⁴⁴

13 **Fermin Campos** is the Chief Financial Officer of FTC Credit.⁴⁵ He is, or
14 was during the relevant period, a signatory for the company's bank accounts.⁴⁶
15 Campos is the registrant for the company's websites, which include the
16 misrepresentations at issue in this matter.⁴⁷

17 ³⁸ See, e.g., PX 8 (Websites), 203-206, 208-210, 215; PX 10 (Social Media), 231,
18 234-235; PX 7 (Radio Show), 162-194; PX 11, (defendants' YouTube videos),
19 236-260.

20 ³⁹ See, e.g., PX 17 (corporate filings), 346; PX 8 (Websites), 205.

21 ⁴⁰ See PX 23 (JPMorgan Documents), 359.

22 ⁴¹ See, e.g., PX 2 Teran Dec., 38; PX 16 (complaint correspondence) 340-342.

23 ⁴² See PX 2 (Teran Dec.), Att. B, 38 (Bernal's business card).

24 ⁴³ See, e.g., PX 5 (Esparza I Dec.), ¶ 6, 8; PX 7 (Radio Show), 167:13; PX
1(Picado Dec.), 2-3 ¶ 6; PX 3 (Salazar Dec.), ¶ 6; PX 4 (Hernandez Dec), ¶¶ 3-4.

25 ⁴⁴ PX 5 (Esparza I Dec.), Att. A, 90-101, Att. B, 126-148.

26 ⁴⁵ See PX 17(corporate filings), 346.

27 ⁴⁶ See PX 23 (JPMorgan Documents), 359.

28 ⁴⁷ See PX 9 (website registration), 216-229; PX 8 (Websites), 204-206.

1 IV. ARGUMENT

2 The Commission respectfully requests that the Court halt defendants'
3 fraudulent scheme. The proposed TRO filed with this Motion is narrowly tailored
4 to protect consumers by enjoining defendants' unlawful conduct, preserving assets
5 for potential redress to defendants' numerous victims, and preventing defendants
6 from destroying or tampering with evidence.

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

8 Section 13(b) of the FTC Act authorizes this Court to order preliminary and
9 permanent injunctive relief enjoining violations of Section 5 of the FTC Act and
10 "any ancillary relief necessary to accomplish complete justice."⁴⁸ Pursuant to
11 Section 410(b)(1) of CROA, any violation of any requirement or prohibition of
12 CROA constitutes an unfair or deceptive act or practice in commerce in violation
13 of Section 5(a) of the FTC Act.⁴⁹

14 The Court may enter a TRO, or other preliminary relief, to preserve the
15 possibility of providing effective final relief.⁵⁰ Such ancillary relief may include,
16 among other means, an asset freeze to preserve assets for restitution to victims, the
17 appointment of a temporary receiver, and immediate access to defendants' business
18 premises.⁵¹ Courts in this district have repeatedly issued TROs with the type of
19 relief requested here in deception cases such as this case.⁵² As demonstrated

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21 ⁴⁸ *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111-13 (9th Cir. 1982); *FTC v.*
22 *BurnLounge, Inc.*, 584 Fed. Appx. 315, 317 (9th Cir. 2014).

23 ⁴⁹ 15 U.S.C. § 1679h(b)(1).

24 ⁵⁰ *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1232 & n.2 (9th Cir. 1999); *FTC*
25 *v. Am. Nat'l Cellular, Inc.*, 810 F.2d 1511, 1512 (9th Cir. 1987).

26 ⁵¹ *Id.*

27 ⁵² See, e.g., *FTC v. Asset & Capital Mgmt. Group, Inc.*, CV-13-5267 (Jul. 24,
28 2013); *FTC v. Am. Mortgage Consulting Group, LLC*, CV-12-01561 (Sep. 18,
2012); *FTC v. Forensic Case Mgmt. Servs., Inc.*, CV-11-07484 (Sep. 12, 2011);
FTC v. U.S. Homeowner Relief, Inc., CV-10-01452 (Sep. 28, 2010); *Affordable*

below, the TRO that the Commission seeks here is appropriate and necessary.

B. The Proposed TRO is Appropriate and Necessary

In considering a TRO or preliminary injunction under Section 13(b) of the FTC Act, courts (1) determine the likelihood that the Commission will ultimately succeed on the merits and (2) balance the equities.⁵³ In balancing the equities, “the public interest should receive greater weight” than any private interest.⁵⁴ The Commission need *not* prove irreparable injury, which is presumed.⁵⁵ “Because irreparable injury must be presumed in a statutory enforcement action, the district court need only to find some chance of probable success on the merits.”⁵⁶ The application of the above-noted factors to the facts of this case warrants the issuance of the proposed TRO and requiring defendants to show cause why the Court should not issue a preliminary injunction against them.

1. The Commission is Likely to Succeed on the Merits

The evidence attached to this Motion demonstrates that defendants have violated Section 5 of the FTC Act and Section 404 of CROA.

a. Defendants Have Violated Section 5 of the FTC Act
(Counts I–III)

Section 5(a) of the FTC Act prohibits “unfair or deceptive acts or practices.”⁵⁷ An act or practice is deceptive if it involves a material

Media, LLC, 179 F.3d at 1232-33, 128; *FTC v. Publ’g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1999).

⁵³ *Affordable Media*, 179 F.3d at 1233.

⁵⁴ *Id.* 1236 (quoting *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989)).

⁵⁵ *Affordable Media, LLC*, 179 F.3d at 1233 (quoting *FTC v. Warner Commc’n, Inc.*, 742 F.2d 1156, 1159 (9th Cir. 1984)).

⁵⁶ *World Wide Factors, Ltd.*, 882 F.2d at 347 (quoting *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 176 (9th Cir. 1987)).

⁵⁷ 15 U.S.C. § 45(a).

misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances.⁵⁸ Courts consider the overall “net impression” that the misrepresentation or omission creates.⁵⁹ Express claims, or deliberately made implied claims, used to induce payments for products or services are presumed to be material.⁶⁰ The Commission need *not* prove actual reliance by consumers to establish materiality.⁶¹

As demonstrated in the Statement of Facts, pages 2-8, defendants have made the following material misrepresentations, expressly or by implication, to consumers:

- (1) Defendants are affiliated or licensed with the Commission;
- (2) Defendants can lawfully remove negative information, including accurate and non-obsolete information, from consumers’ credit reports; and
- (3) Defendants can guarantee consumers a credit score of 700 or higher within six months or less.

Such express claims, or deliberately made implied claims, are presumed to be material as defendants used them in marketing their services to induce payments from their victims.⁶² As to the first claim, courts have long held that false

⁵⁸ *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001); *FTC v. Stefanchik*, 559 F.3d 924, 928 n.7 (9th Cir. 2009) (quoting *Gill*, 265 F.3d at 950).

⁵⁹ *Stefanchik*, 559 F.3d at 928. “A solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.” *Id.* (quoting *FTC v. Cyberspace.Com, LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006)).

⁶⁰ *FTC v. Pantron*, 33 F.3d 1088, 1095-96 (9th Cir. 1994); *see also Cyberspace.com, LLC*, 453 F.3d at 1201 (material statements include information that is likely to affect consumers’ choice to purchase).

⁶¹ *FTC v. Figgie Int’l*, 994 F.2d 595, 605 (9th Cir. 1993); *FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1072 (C.D. Cal. 2012).

⁶² *Pantron*, 33 F.3d at 1095-96; *Cyberspace.com, LLC*, 453 F.3d at 1201.

1 representations of government affiliation or association violate Section 5 of the
 2 FTC Act.⁶³ As to the second and third claims, there is no dispute that a consumer
 3 who seeks to repair her credit would consider material claims about a credit repair
 4 organization's ability to remove negative information from her credit report and
 5 guarantee a high credit score within six months or less. Indeed, the attached
 6 consumer declarations and complaints that consumer victims filed with
 7 government and private agencies demonstrate that defendants' misrepresentations
 8 have, in fact, induced consumers to make hefty payments to defendants.⁶⁴ Thus,
 9 the Commission is likely to succeed in establishing that defendants have violated
 10 Section 5 of the FTC Act.

11 b. Defendants Have Violated Section 404(a)(3) of CROA
 12 (Count IV)

13 Section 404(a)(3) of CROA provides that "[n]o person may ... make or use
 14 any untrue or misleading representation of the services of the credit repair
 15 organization."⁶⁵ Defendants fall under CROA's definition of "credit repair
 16 organization," which covers any person who uses any instrumentality of interstate
 17 commerce or the mails to offer to provide services, in return for a fee, to improve a
 18

19 ⁶³ See, e.g., *Slough v. FTC*, 396 F.2d 870, 872 (5th Cir.), *cert denied*, 393 U.S. 980
 20 (1968) (misleading use of the name "State Credit Control Board"); *United States*
 21 *Ass'n of Credit Bureaus, Inc. v. FTC*, 299 F.2d 220 (7th Cir. 1962) (misleading use
 22 of "United States" in connection with insignia is direct or implied representations
 23 that business is connected with or an agency of the U. S. government); *United*
 24 *States Navy Weekly, Inc. v. FTC*, 207 F.2d 17 (D.C. Cir. 1953) (use of apparently
 25 official name for unofficial publication that is privately owned and operated is
 26 misleading).

27 ⁶⁴ See PX 1 (Picado Dec.); PX 2 (Teran Dec.); PX 3 (Salazar Dec.); PX 4
 28 (Hernandez Dec.); PX 14 (complaints from Consumer Sentinel Database); PX 15,
 (complaints from BCA Colton); PX 16 (complaint from Los Angeles County
 Consumer Affairs).

⁶⁵ 15 U.S.C. § 1679b(a)(3).

1 consumer's credit record, credit history, or credit rating.⁶⁶ To demonstrate that
 2 defendants have violated Section 404(a)(3), the Commission only needs to show an
 3 untrue or misleading statement regarding a credit repair service; the statement need
 4 *not* be designed to induce the consumer's purchase.⁶⁷

5 There is no doubt that defendants' misrepresentations regarding affiliation
 6 with the Commission, ability to remove negative information from consumers'
 7 credit reports, and ability to guarantee consumers a credit score of 700 or higher
 8 within six months constitute "untrue or misleading representation[s] of the services
 9 of the credit repair organization." Thus, the Commission is likely to establish that
 10 defendants have violated 404(a)(3) of CROA.

11 c. Defendants Have Violated Section 404(b) of CROA
 12 (Count V)

13 Section 404(b) of CROA prohibits credit repair organizations from charging
 14 or receiving any money or other valuable consideration for the performance of any
 15 service, which the credit repair organization has agreed to perform, before such
 16 service is fully performed.⁶⁸ As shown on pages 7-8 of the Statement of Facts,
 17 defendants collect hefty advance payments from their customers well before full
 18 performance of the promised services. Thus, the Commission is likely to succeed
 19 in showing that defendants have violated Section 404(b) of CROA.

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24 ⁶⁶ 15 U.S.C. § 1679a(a)(3).

25 ⁶⁷ *Gill*, 265 F.3d at 955 ("[L]iability attaches even if the representation made by the
 26 credit repair organization is not made for the purpose of inducing consumers to
 27 purchase a particular service or good.") (internal quotations omitted); *FTC v. RCA*
Credit Serv's, LLC, 727 F. Supp. 2d 1320, 1334 (M.D. Fla. 2010) (citing *Gill*).

28 ⁶⁸ 15 U.S.C. § 1679b(b).

d. The Individual Defendants are Liable for FTC Credit's
Violations of the FTC Act and CROA⁶⁹

An individual defendant is liable for injunctive and monetary relief under the FTC Act if the Court finds that the individual (1) participated directly in or had some measure of control over a company's unlawful conduct and (2) had actual or constructive knowledge of the unlawful conduct.⁷⁰ Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer."⁷¹ Bank signatory authority or acquiring services on behalf of a corporation also evidences authority to control.⁷² The knowledge element does *not* require the Commission to prove subjective intent to defraud.⁷³ The Commission need only demonstrate that the individual had actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such representations, or an awareness of a high probability of deception, coupled with the intentional avoidance of the truth.⁷⁴ In addition, participation in corporate affairs is probative of knowledge.⁷⁵

The Statement of Facts, pages 8-9, details the role of each individual defendant in the scheme. The individuals' executive and/or managerial positions

⁶⁹ Pursuant to Section 410(b)(1) of CROA, 15 U.S.C. § 1679h(b)(1), any violation of any requirement or prohibition of CROA constitutes an unfair or deceptive act or practice in commerce in violation of Section 5(a) of the FTC Act.

⁷⁰ *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1101-1102 (9th Cir. 2014).

⁷¹ *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, 573 (7th Cir. 1989); *FTC v. Wilcox*, 926 F. Supp. 1091, 1104 (S.D. Fla. 1995).

⁷² *FTC v. USA Fin., LLC*, 415 Fed. Appx. 970, 974-75 (11th Cir. 2011).

⁷³ *Grant Connect, LLC*, 763 F.3d at 1102.

⁷⁴ *Id.* at 1101-02.

⁷⁵ *Id.*; *FTC v. Sharp*, 782 F. Supp. 1445, 1450 (D. Nev. 1991).

1 at FTC Credit, and the affirmative steps they each have taken to implement the
 2 scheme, demonstrate that they all have participated in this scheme with knowledge
 3 about the misrepresentations, and with some measure of control over FTC Credit's
 4 operations. For example, defendant Leyes, FTC Credit's Marketing Director, has
 5 been the leader and face of the scheme, and has deceptively promoted FTC
 6 Credit's services on the Internet and on the radio. Defendants Lopez and Campos
 7 are FTC Credit's officers and signatories for its bank accounts. Lopez is also a
 8 Director of the company and has personally promoted its service to consumers,
 9 while Campos is the registrant for the company's deceptive websites. Finally,
 10 defendant Bernal is FTC Credit's General Manager, and has personally marketed
 11 its services to consumers. Thus, the Commission is likely to succeed in proving
 12 that the individual defendants are liable for FTC Credit's unlawful conduct.

13 **2. The Equities Tip Decidedly in the Public's Favor**

14 "[W]hen a district court balances the hardships of the public interest against
 15 a private interest, the public interest should receive greater weight."⁷⁶ The public
 16 interest in this case is obvious and compelling – halting defendants' unlawful and
 17 injurious conduct and preserving assets that may be used for restitution to their
 18 victims. Defendants, by contrast, have no legitimate interest in continuing to
 19 defraud consumers.⁷⁷

20 In sum, because the Commission is likely to succeed on the merits, and the
 21 equities tip decidedly in the public's favor, the requested TRO is warranted.

22 **C. The Proposed TRO is Appropriate and Narrowly Tailored**

23 The Commission filed this action *ex parte* in order to stop defendants'

25 ⁷⁶ *World Wide Factors*, 882 F.2d at 347; *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988).

26 ⁷⁷ See *World Wide Factors*, 882 F.2d at 347 ("no oppressive hardship to defendants
 27 in requiring them to comply with the FTC Act, refrain from fraudulent
 28 representation or preserve their assets from dissipation or concealment.").

1 fraudulent conduct and to pursue restitution for their victims. If defendants receive
 2 advance warning of this enforcement action, there is a substantial risk that they
 3 will dissipate assets or destroy evidence, which will frustrate the Court's ability to
 4 grant the final relief that consumers deserve.⁷⁸ Accordingly, the proposed TRO
 5 includes the following narrowly tailored measures: (1) an injunction halting
 6 defendants' unlawful conduct; (2) a temporary freeze on defendants' assets; (3) a
 7 temporary receiver over FTC Credit to marshal and preserve its assets, manage its
 8 business affairs, and ascertain whether it engages in any lawful, profitable activity;
 9 (4) permission for Commission staff and the temporary receiver to immediately
 10 access the premises and records of FTC Credit; (5) a requirement that defendants
 11 fully disclose their assets; and (6) expedited discovery.

12 The Ninth Circuit has repeatedly upheld the authority of district courts to
 13 order an asset freeze to preserve the possibility of consumer redress,⁷⁹ and courts in
 14 this district have frozen defendants' assets in numerous enforcement actions.⁸⁰ An
 15 asset freeze is warranted where the Commission is likely to succeed on the merits
 16 and there is a likelihood of dissipation of assets.⁸¹ As demonstrated above, the
 17 Commission is likely to succeed on its claims against defendants, and the
 18 fraudulent nature of defendants' scheme, coupled with their refusal to answer
 19 JPMorgan Chase Bank's questions about their suspicious banking and business
 20 activities,⁸² establish a likelihood of asset dissipation.⁸³ Because the Commission

21 ⁷⁸ See Certification of Commission Counsel Rhonda Perkins Pursuant to Fed. R.
 22 Civ. P. 65(b), filed contemporaneously.

23 ⁷⁹ See, e.g., *Affordable Media, LLC*, 179 F.3d at 1232-33, 128; *Publ'g Clearing*
 24 *House, Inc.*, 104 F.3d at 1170; *FTC v. Am. Nat'l Cellular, Inc.*, 810 F.2d 1511,
 1514 (9th Cir. 1987).

25 ⁸⁰ See, *supra*, note 52.

26 ⁸¹ *Johnson v. Couturier*, 572 F.3d 1067, 1085, n.11 (9th Cir. 2009).

27 ⁸² See PX 23 (JPMorgan Documents), 364-365.

28 ⁸³ *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972).

1 is likely to succeed in showing that the individual defendants are personally liable
2 for restitution, the asset freeze should extend to their assets as well.⁸⁴

3 The appointment of a temporary receiver is necessary and appropriate when,
4 as here, there is “imminent danger of property being lost, injured, diminished in
5 value or squandered, and where legal remedies are inadequate.”⁸⁵ Where
6 defendants have been engaged in deception, “it is likely that in the absence of the
7 appointment of a receiver to maintain the *status quo*, the corporate assets will be
8 subject to diversion and waste” to the detriment of the fraud’s victims.⁸⁶ The
9 temporary receiver will help prevent defendants from disposing of ill-gotten funds
10 by identifying, securing and controlling the use of FTC Credit’s assets, as well as
11 marshaling and preserving its records. The temporary receiver may also assist in
12 determining the full extent of the fraud and identify additional victims.

13 Finally, expedited discovery is necessary and appropriate, among other
14 reasons, to determine immediately whether other companies or individuals have
15 been involved in, or benefited from, the unlawful scheme. Given the scheme’s
16 fraudulent nature, it is possible that yet-to-be-identified perpetrators have
17 implemented measures to conceal their involvement in the scheme and, absent
18 expedited discovery, would destroy evidence or dissipate assets.

19 **D. The Court May Enter the Relief Requested Against Defendant**
20 **Leyes Notwithstanding His Pending Bankruptcy Petition**

21 It appears that, on February 17, 2015, Leyes filed a petition for relief under
22 Chapter 7 of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, in the United States
23 Bankruptcy Court for the Central District of California.⁸⁷ As an initial matter, this

24 ⁸⁴ *World Travel Vactation Brokers*, 861 F.2d at 1031.

25 ⁸⁵ *Leone Indus. v. Assoc. Packaging, Inc.*, 795 F. Supp. 117, 120 (D.N.J. 1992).

26 ⁸⁶ *SEC v. First Fin. Group*, 645 F.2d 429, 438 (5th Cir. 1981).

27 ⁸⁷ *In re Guillermo Leyes*, 1:15-bk-10497-AA (Bankr. C.D. Cal. Feb. 17, 2015).
28 While Leyes has been the face and leader of FTC Credit since at least 2013,

1 Court has jurisdiction to determine whether the automatic stay that went into effect
 2 when Leyes filed his petition applies to this action.⁸⁸ The automatic stay, however,
 3 does not prevent this Court from providing full equitable relief in this case.

4 The automatic stay provision of the Bankruptcy Code normally stays
 5 litigation against a debtor upon the filing of a bankruptcy petition.⁸⁹ The Code,
 6 however, specifically exempts from the automatic stay “the commencement or
 7 continuation of an action or proceeding by a governmental unit . . . to enforce such
 8 governmental unit’s . . . police and regulatory power.”⁹⁰ Courts have repeatedly
 9 held that Commission enforcement actions seeking injunctive relief for violations
 10 of the FTC Act fall under this exception and may proceed notwithstanding the
 11 filing of a bankruptcy petition.⁹¹ This is because permitting the Commission to
 12 pursue its “claims for rescission, restitution and disgorgement would primarily
 13 serve the public purposes of justice and deterrence.”⁹²

14 appearing on its websites as the company’s “Marketing Director” and promoting it
 15 on the radio and in numerous videos on the Internet, his bankruptcy petition states
 16 that he has been unemployed since 2005 and that his income comes solely from
 “family help.” *Id.* at 29, 44.

17 ⁸⁸ See, e.g., *In re Baldwin-United Corp. Litig.*, 765 F.2d 343, 347 (2d Cir. 1985)
 18 (“The court in which the litigation claimed to be stayed is pending has jurisdiction
 19 to determine not only its own jurisdiction but also the more precise question
 20 whether the proceeding pending before it is subject to the automatic stay.”);
Lockyer v. Mirant Corp., 398 F.3d 1098, 1107 (9th Cir. 2005) (same).

21 ⁸⁹ 11 U.S.C. § 362(a).

22 ⁹⁰ 11U.S.C. § 362(b)(4),

23 ⁹¹ See, e.g., *FTC v. Consumer Health Benefits Ass’n*, No. 10-CV-3551, 2011 WL
 24 2341097, *1-4 (E.D.N.Y. Jun. 8, 2011); *FTC v. Holiday Enters., Inc.*, No. 1:06-
 25 CV-2939, 2008 WL 953358, *12 (N.D. Ga. Feb. 5, 2008); *FTC v. AmeriDebt, Inc.*,
 26 343 F. Supp. 2d 451, 459 (D. Md. 2004); *FTC v. Am. Std. Credit Sys., Inc.*, 874 F.
 27 Supp. 1080, 1083, n.2 (C.D. Cal. 1994); *In re First Alliance Mortg. Co.*, 264 B.R.
 634, 645-51 (C.D. Cal. 2001); *FTC v. R.A. Walker & Assocs., Inc.*, 37 B.R. 608
 (D.D.C. 1983).

28 ⁹² *AmeriDebt*, 343 F. Supp. at 458; see also *In re First Alliance Mortg. Co.*, 264

1 Courts have repeatedly ruled that the filing of a bankruptcy petition does not
 2 diminish a district court's power to impose and maintain an asset freeze against a
 3 debtor/defendant in governmental enforcement actions.⁹³ Indeed, in cases such as
 4 this, the best way to safeguard assets for the ultimate benefit of consumer victims
 5 and other potential creditors is to maintain an asset freeze.

6 A Chapter 7 Trustee has been appointed in Leyes bankruptcy case.⁹⁴ To the
 7 extent the Trustee locates assets not previously disclosed by Leyes, those assets
 8 were likely procured using ill-gotten gains from FTC Credit. Thus, if the
 9 Commission prevails in this action, the assets under the Chapter 7 Trustee's
 10 control, and frozen by the requested freeze, will be subject to a constructive trust in
 11 favor of defrauded consumers.⁹⁵ In sum, Leyes's bankruptcy petition does not
 12 prevent this Court from entering the relief requested in this Motion as to Leyes.

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 15
 16 B.R. at 649-52 (Commission enforcement action falls under exception).

17 ⁹³ See, e.g., *SEC v. Wyly*, No. 10-cv-5760, 2014 WL 5569363, *2-3 (S.D.N.Y.
 18 Nov. 3, 2014) (imposing asset freeze after filing of bankruptcy petition); *SEC v.*
 19 *Morriss*, No. 4:12-CV-80, 2012 WL 2154903 (E.D. Mo. June 13, 2012) (same);
 20 *SEC v. Reynolds*, No. 08-CV-438, 2011 WL 903395 (N.D. Tex. Mar 16, 2011)
 (finding debtor in contempt for violating asset freeze).

21 ⁹⁴ Leyes has not disclosed any assets in his bankruptcy petition that have realizable
 value.

22 ⁹⁵ See, e.g., *R.A. Walker & Assocs., Inc.*, 37 B.R. at 612 (assets frozen by the
 23 district court's may not become part of debtor's bankruptcy estate if subject to
 24 constructive trust; "Assets of the defendants' estate which were acquired by fraud
 25 may not be 'property of the estate,' and thus not within the jurisdiction of the
 26 Bankruptcy Court. In addition, if homes or other property held by the defendants
 27 are found to be held in trust, they would not be part of the debtors' estate.")
 (citations omitted); see also *FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127 (9th
 28 Cir. 2010) (affirming imposition of constructive trust on proceeds of fraudulent
 venture); *FTC v. Crittenden*, 19 F.3d 26 (9th Cir. 1994) (same).

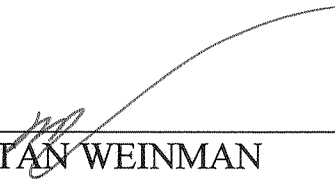
1 **V. CONCLUSION**

2 In order to halt defendants' fraudulent scheme and protect consumers, the
3 Commission requests that the Court issue the proposed TRO and order defendants
4 to show cause why a preliminary injunction should not issue against them.

5
6
7 March 16, 2015

Respectfully submitted,

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