UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION and PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York,

Plaintiffs,

v.

KELLY S. BRACE et al.,

Defendants,

JOELLE LECLAIRE,

Relief Defendant.

Case No.:

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Federal Statutes

State Statutes

Other Authorities

I. INTRODUCTION

Defendants Kelly Brace and his debt-collection companies have taken millions from consumers through deception and fraud. Most egregiously, they have collected on payday loan debts that the purported lender had told them were fabricated, and that they knew consumers did not really owe. But even when the Defendants have collected on legitimate debts, they have used lies and other unlawful tactics. In short, as one of their former employees put it, the Defendants "shake down America." PX18 ¶ 78, at 185.

Unfortunately, the Defendants' fraudulent conduct has paid off, so far. Despite operating a relatively modest operation, their collectors have coerced, extorted, and tricked consumers into giving them almost $12 million. And Brace has diverted over $1 million of that money to himself and his ex-wife, Relief Defendant Joelle Leclaire.

The Defendants' scheme to deceive and pressure consumers into paying debts, regardless of whether they actually owe anything, is illegal. Their actions have violated the Federal Trade Commission Act, the Fair Debt Collection Practices Act ("FDCPA"), New York Executive Law Section 63, and New York General Business Law Sections 349 and 601.

To stop them from harming anyone else, the Federal Trade Commission and the State of New York request a Temporary Restraining Order enjoining further unlawful conduct, freezing assets, and allowing for expedited discovery, including immediate access to business premises for copying crucial documents. Brace and his companies' prior conduct shows that these measures are necessary. Brace already has a criminal conviction for defrauding consumers, and his scheme's operation shows a staggering contempt for legal process by: collecting on bogus debts, communicating with consumers using the names of shell companies to evade legal scrutiny and defeat creditors, and moving money out of the Corporate Defendants' accounts to

other accounts under his or his family's control. Without the proposed relief, Brace would likely abscond with assets and destroy evidence. The Court should therefore enter the proposed order to ensure effective final relief.[1]

II. DEFENDANTS

A. Individual Defendant

Individual Defendant **Kelly S. Brace** has been described as the CEO and "100%" owner of Defendant Credit Clear Solutions; Vice President, "member," and co-owner of Defendant Braclaire Management;[2] partner, "member," and owner of Defendant Solidus Group; and the only listed "member" of Defendant Solidus Solutions. PX18 ¶¶ 20, 25, 30, 38-40, 42, at 166, 168-70, 172-73; Atts. D, E, I, L, M, Q, R, S, U at 216-17, 219-20, 222-23 ("member" of Braclaire), 226, 228, 244 (Braclaire Vice President), 255-56 (100% owner and CEO of Credit Clear), 260 (owner of Credit Clear and co-owner of Braclaire), 280 (partner of Solidus Group), 285-87, 290 (member and owner of Solidus Group), 299-300 (member of Solidus Solutions). According to two former employees, Brace has run the enterprise from an office located at one of the call centers. *Id.* ¶ 77, at 185. Moreover, Brace has listed himself as a contact for the Corporate Defendants' telecommunications services, merchant accounts, payroll processing account, and website domain registries. *Id.* ¶¶ 16, 20, 23, 25, 30, at 165-70; Atts. B, E, H, I, L, at

[1] This Court has granted this relief in several FTC and FTC-State of New York actions. *See FTC v. Unified Global Group, LLC*, No. 15-cv-00422 (W.D.N.Y. May 12, 2015); *FTC v. Premier Debt Acquisitions*, No. 15-cv-00421 (W.D.N.Y. May 12, 2015); *FTC v. 4 Star Resolution LLC*, 15-cv-00112 (W.D.N.Y. Feb. 10, 2015); *FTC v. Vantage Point Servs., LLC*, 15-cv-00006 (W.D.N.Y. Jan. 5, 2015); *FTC v. Nat'l Check Registry*, 14-cv-00490 (W.D.N.Y. June 24, 2014); *FTC v. Fed. Check Processing, Inc.*, 14-cv-00122 (W.D.N.Y. Feb. 24, 2014); *FTC v. Navestad*, No. 09-cv-06329 (W.D.N.Y. July 1, 2009).

[2] Braclaire has listed Leclaire as its "President." PX18 ¶ 20, at 166; Att. E, at 226.

205, 225, 240, 244, and 255. And he has signed checks for the Defendants' payroll, rent, and utilities. *Id.* ¶ 106, at 194-95.

Most significantly, Brace has controlled the money. He has been the sole signatory on almost all of the operation's bank accounts, and the only other people with signatory authority on a few accounts have been his ex-wife, his father Roy Brace, and Roy's wife Letitia. *Id.* ¶¶ 18, 29, 37, 38, 42, at 165-66, 169, 171-73; Atts. D, K, P, Q, and U, at 215-23, 250-53, 272-76, 280-82, and 299-300. Brace has directed consumer money through a maze of corporate accounts. Braclaire's and Credit Clear's accounts have received consumer payments. *Id.* ¶ 90, at 188-89. But money has not stayed there for long. Brace has quickly moved it to other accounts under his control and, eventually, to other persons and entities, including $1.1 million to himself or Leclaire. *Id.* ¶¶ 92, 95, 97-98, 100, at 190-93.

Brace has a troubling history of deceptive conduct. In 1995, he was convicted of criminal fraud for operating a scam that told consumers that they had won prizes but, to claim them, they had to send a check or money order to the business. Brace and his co-conspirators pocketed the money and never paid out any "winnings." *Id.* ¶ 65 at 180-81, and Att. NN at 372-73. Now Brace has returned to his fraudulent ways, this time in the shakedown debt-collection industry.

B. Corporate Defendants

Brace has orchestrated his scheme through four different companies. He has used Corporate Defendant **Braclaire Management, LLC (also d/b/a Delaware Solutions, Clear Credit Services, and Clear Credit Solutions)** to process consumer payments and pay most expenses. *Id.* ¶ 13, at 164. Braclaire's bank accounts have received almost $11 million from victims of the scheme since July 2013. *Id.* ¶ 90, at 188-89. Braclaire has also paid the

employees' salaries, the call centers' rent and utilities, and purchased the phone numbers the enterprise used for collection. *Id*. ¶¶ 13 and 106, at 164, 194-95. Finally, Braclaire has held several merchant accounts with payment processors. *Id.* ¶ 19, at 166.

Corporate Defendant **Credit Clear Solutions, LLC** has held the scheme's merchant accounts, which are used to process consumer payments, and an additional bank account to receive payments. *Id.* ¶¶ 29, 30, 90, at 169-70, 188-89. Brace's father Roy is the sole signatory on Credit Clear's bank accounts. *Id.* ¶ 29, at 169; Att. K, at 250-53. Credit Clear has been described as a "sister company" and "West Coast affiliate" of Braclaire. *Id.* ¶ 32, at 170; Att. M, at 259. Its accounts have received over $1 million in consumer payments. *Id.* ¶ 90, at 188-89.

Brace has used Corporate Defendants **Solidus Group, LLC and Solidus Solutions, LLC** to purchase and sell debt portfolios, i.e., files containing information about consumers and debts they owe. *Id.* ¶ 35, at 171. Brace has also used Solidus Group to purchase the scheme's skip-tracing program. *Id.*; Att. S, at 289-94. Finally, Solidus Group has held accounts that have received millions from Braclaire and transferred substantial sums to Brace and Leclaire. *Id.* ¶¶ 92, 93, 99, at 190, 192.

Although technically distinct entities, Brace has run the Corporate Defendants as a single operation. On bank records and other documents, Braclaire, Solidus Group, and Solidus Solutions have used the addresses of call centers where employees collected payments that went to Braclaire and Credit Clear. *Id*. ¶¶ 16, 20, 39, 40, 76, 104, 108, at 165-66, 172-73, 185, 194-95; Atts. B, E, R, S, RR at 205, 225, 284-287, 290, 384; PX17 ¶ 9 at 124. Moreover, none of the Corporate Defendants has had offices separate from those call centers. *See* PX18 ¶¶ 20, 47, 122, at 166, 175, 199 (other addresses used are "virtual offices" or law firms). Brace has routinely shuffled money between the various entities. From July 2014 to April 2015, Credit Clear

transferred at least $620,000 to Braclaire, and Braclaire transferred over $2.3 million to Solidus Group. *Id.* ¶¶ 92, 93, 98, at 190-92.

To hide Brace and his companies' involvement, Brace's collectors have told consumers that they were employed by shell companies (now all defunct) and at least one fake company. Most prominently, they have collected under the names "Delaware Solutions, LLC," "Clear Credit Services, LLC," and "Clear Credit Solutions, LLC," which are named here as D/B/As of Braclaire. *Id.* ¶ 43, at 173-74. To further confuse consumers, these entities have used a single "virtual office" location in Delaware for their corporate address. *Id.* ¶¶ 47 and 68, at 175, 181-82.

Until they recently dissolved, Delaware Solutions and Clear Credit Services were active New York limited liability companies. *Id.* ¶¶ 44, 48, 49, 51, at 174-76; Atts. V, Z, AA, BB, at 302-03, 316-17, 319-20, 322-23. They are named as D/B/As of Braclaire because they are no longer active entities. Clear Credit Solutions never formally incorporated. *Id.* ¶ 60, at 178. Even when Delaware Solutions and Clear Credit Services existed, Braclaire and Credit Clear collected all consumer payments. *Id.* ¶ 90, at 188. So if consumers tried to recoup their money from Delaware Solutions or Clear Credit Services, they would find empty pockets.[3]

Brace's scheme has taken in almost $12 million in consumer payments since July 2013. *Id.* ¶ 90, at 188-89. Despite dissolving Delaware Solutions and Clear Credit Services in early August, his operation has continued collections. One consumer reported that a collector from

[3] In the past, Brace has cycled through additional collection names, including "Delaware Asset Management" and "Washington Recovery Services," likely recognizing that his companies get a reputation for fraud. *See id.* ¶¶ 43, 55, 56, at 174, 177.

"Delaware Solutions" harassed him as recently as September 1st, and the Commission continues to receive complaints about calls from Braclaire phone numbers. *Id.* ¶¶ 113-115, at 196-97.

C. Relief Defendant Leclaire

Joelle Leclaire is Brace's ex-wife and was a co-signatory until March 24, 2014 on the Braclaire accounts, from which she received over $340,000. *Id.* ¶¶ 18, 95, at 165-66, 191. She has also received at least $75,000 from Solidus Group. *Id.* ¶ 99, at 192. We have not yet uncovered evidence showing that she is currently involved in the scheme, so the Plaintiffs are not seeking preliminary relief against her.

III. DEFENDANTS' ILLEGAL DEBT-COLLECTION PRACTICES

Federal and New York laws prohibit debt collection through deceptive and abusive tactics. Below, we detail how the Defendants have violated those laws by collecting on debts that consumers never actually owed and, even when collecting on legitimate debts, routinely lying and applying unlawful pressure tactics.

A. Federal and New York Law Prohibit Deceptive Debt Collection.

Lying to consumers to get them to pay a debt, even a legitimate one, is unlawful. Section 5 of the FTC Act prohibits "unfair or deceptive practices in or affecting commerce." 15 U.S.C. § 45. Under Section 5, a material representation is deceptive if it is likely to mislead consumers who are acting reasonably under the circumstances. *FTC v. Verity Int'l, Ltd.*, 443 F.3d 48, 63 (2d Cir. 2006); *FTC v. Navestad* ("*Navestad II*"), No. 09-CV-6329T, 2012 WL 1014818, at *4 (W.D.N.Y. Mar. 23, 2012).

In determining whether a representation is likely to mislead consumers, the "court should focus on the overall impression" of the representation, "not its 'literal truth or falsity.'" *FTC v. Med. Billers Network, Inc.*, 543 F. Supp. 2d 283, 304 (S.D.N.Y. 2008) (citation omitted). In

particular, courts must consider the representation "'as a whole without emphasizing isolated words or phrases apart from their context.'" *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) (citation omitted). In determining whether a representation is deceptive, courts apply the perspective of "the least sophisticated consumer." *Id*. at 532.

A representation is material if it "'involves information that is important to consumers'" and will likely affect their conduct. *Navestad II*, 2012 WL 1014818, at *4 (citation omitted). Express representations are "presumed material," *Med. Billers Network*, 543 F. Supp. 2d at 304, as are any implied claims the speaker intends to make. *FTC v. Bronson Partners, LLC*, 564 F. Supp. 2d 119, 135 (D. Conn. 2008).

Like the FTC Act, the FDCPA prohibits deceptive, unfair, and abusive practices in debt collection. 15 U.S.C. §§ 1692-1692p. In enacting the FDCPA, Congress recognized that "less ethical debt collectors," among other things, "impersonate public officials and lawyers, disclose debtors' personal affairs to employers and engage in other sorts of unscrupulous practices." *Russell v. Equifax A.R.S.*, 74 F.3d 30, 33 (2d Cir. 1996). The FDCPA aims "to eliminate such practices." *Id.* As an enforcement mechanism, the FDCPA deems a violation of its provisions "an unfair or deceptive act or practice" in violation of the FTC Act. 15 U.S.C. § 1692*l*(a).

Section 807 of the FDCPA forbids debt collectors from making "any false, deceptive, or misleading representation" and provides a non-exhaustive list of prohibited misrepresentations. 15 U.S.C. § 1692e. In applying Section 1692e, courts look to whether the "least sophisticated consumer" would be deceived to ensure that the statute "protects all consumers, the gullible as well as the shrewd." *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993).

In addition, the FDCPA forbids debt collectors from harassing, oppressing, or abusing consumers, and explicitly prohibits many practices. The prohibited practices include: contacting

third parties except to acquire information about consumers' locations; placing telephone calls "without meaningful disclosure of the caller's identity"; and failing to provide, either in the initial communication with the consumer or within five days of that communication, the amount of the debt, the name of the creditor, and information about the consumer's right to contest the debt. 15 U.S.C. §§ 1692c(b); 1692d(6); and 1692g(a).

New York law also bars deceptive and abusive debt-collection practices. New York Executive Law Section 63(12) empowers the Attorney General to seek relief against businesses engaging in persistent or repeated "fraud or illegality." N.Y. Exec. Law § 63(12). Section 63(12) defines "fraud" to include "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions." N.Y. Exec. Law § 63(12). A violation of state, federal, or local law constitutes illegality within the meaning of § 63(12). *New York v. Actavis, PLC*, 14-cv-7473, 2014 WL 7015198, at *43 (S.D.N.Y. Dec. 11, 2014); *New York v. Feldman*, 210 F. Supp. 2d 294, 300 (S.D.N.Y. 2002); *State v. Princess Prestige*, 42 N.Y.2d 104, 107 (N.Y. 1977); *People v. Empyre Inground Pools, Inc*., 227 A.D.2d 731, 732-733 (N.Y. App. Div. 3d Dept. 1996). Traditional elements of common law fraud such as reliance, actual deception, knowledge of deception, and intent to deceive are not required. *See People v. Apple Health & Sports Clubs, Ltd.* ("*Apple Health III*"), 206 A.D.2d 266, 267 (N.Y. App. Div. 1st Dept. 1994). Rather, conduct is fraudulent under Section 63(12) if it "has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." *State v. Gen. Elect. Co.*, 302 A.D.2d 314, 314 (N.Y. App. Div. 1st Dept. 2003). Like the FDCPA, Section 63(12) protects the credulous and the unthinking as well as the cynical and intelligent, the trusting as well as the suspicious. *Id*.

New York General Business Law Section 349 similarly provides that "[d]eceptive acts or practices in the conduct of any business . . . in this state are hereby declared unlawful." N.Y. Gen. Bus. Law § 349(a). The meaning of deceptive practices under General Business Law Section 349 is parallel to fraud under Executive Law Section 63(12). *State v. Colo. State Christian Coll.*, 76 Misc. 2d 50, 56 (Sup. Ct. N.Y. Co. 1973).

In addition to general prohibitions against fraud and deception, New York General Business Law Section 601 prohibits several debt-collection practices. Among other things, Section 601 forbids: simulating a representative of State government; communicating or threatening to communicate any information affecting a consumer's credit with knowledge or reason to know the information is false; disclosing or threatening to disclose information concerning the existence of a debt known to be disputed by the debtor without disclosing that fact; threatening any action which the debt collector does not take in its usual course of business; and claiming, attempting, or threatening to enforce a right with knowledge or reason to know that the right does not exist. N.Y. Gen. Bus. Law § 601(1), (3), (5), (7), and (8).

As detailed below, Defendants' scheme has violated all of these laws by collecting on fake debts and engaging in other deceptive and unlawful practices.

B. Collection on Fake Debts

The Defendants collected on a portfolio of "debts" owed to "500FastCash" that they knew were fake, and collected on other debts they knew or should have known were dubious, in violation of Federal and New York law.

1. *The Fake "500FastCash" Debts*

At some point in 2014, the Defendants obtained debts supposedly owed to "500FastCash," a d/b/a of payday lender Red Cedar Services, Inc. As described in a declaration

from Red Cedar's former General Counsel Jared Marsh, in the summer of 2014, Red Cedar began receiving complaints from consumers who had been harassed by "Delaware Solutions" and "Clear Credit Services." PX16 ¶¶ 4-5, 9, at 94-95. Disturbingly, most of these consumers were not Red Cedar borrowers. *Id.* ¶ 5, at 95.

After learning about the collection on fake 500FastCash debts, Marsh tried to stop it. First, in late September and early October he sent letters by mail and fax to "Clear Credit Solutions" and by mail to "Delaware Solutions." *Id.* ¶¶ 13-14, at 96; Atts. A and B at 100-05. The letters explained that Red Cedar had never sold any of its debts and further stated, "any activity [Delaware Solutions/Clear Credit Solutions] has undertaken on accounts where 500FastCash is identified as a creditor are UNAUTHORIZED and UNLAWFUL and 500FastCash hereby ORDERS YOU TO STOP such activities immediately." *Id.* Atts. A and B, at 101, 104. Marsh's letters did not return to sender, and his fax transmitted successfully. *Id.* ¶ 16, at 97.

Next, Marsh called a number for Clear Credit Solutions provided by a consumer. *Id.* ¶ 18, at 97. He spoke with a manager and informed him that collection on the fake 500FastCash debts was unlawful. *Id.* The manager replied that a rogue, and now fired, employee had uploaded the 500FastCash debts, and that the Defendants had deleted the debts from their database. *Id.* ¶ 19, at 97.

But Red Cedar continued to receive complaints, so Marsh called again in October. *Id.* ¶ 21, at 98. This time, the Defendants' employees responded with hostility, demanding that he speak with their attorney but refusing to give him the attorney's contact information. *Id.*

Finally, Marsh called again in November, but Delaware Solutions refused to connect him to a manager and threatened to report him to his state bar or "law enforcement."[4] *Id.* ¶ 22, at 98-99.

The Defendants ignored Marsh and continued collecting. Red Cedar continued to receive complaints about Delaware Solutions and Clear Credit through July of this year. *Id.* ¶¶ 7-8, and 23, at 95, 99. And the Defendants' former employees confirm that they collected on 500FastCash debts in 2015. PX18 ¶¶ 84-85, at 187. Consumers likewise report that the Defendants attempted to collect on the fake debts well into 2015. *See, e.g.*, *id.* ¶ 86, at 187 and Att. PP, at 379 (collection in April 2015). Notably, some of these consumers told the Defendants that the debts were fake. *See, e.g.*, PX1 ¶ 8, at 2 (consumer told collector that she "knew he was working a scam"); PX8 ¶ 8, at 53 (consumer told collector she knew the collection was a scam and that she had filed a police report).

In collecting on the bogus debts, the Defendants used consumers' personal information to make them appear legitimate. For example, when a consumer challenged her debt, the collector recited her address, place of employment, and even car-purchase history. PX4 ¶ 5, at 18-19. And even if they could not convince consumers that the debts were real, the collectors tried to intimidate them into paying anyway by, as described below, misrepresenting that they would sue them or have them incarcerated if they did not pay.

2. *Other Dubious Debts*

The Defendants have also collected on other questionable debts. Specifically, they have tried to collect on "loans" issued by the defendants in *FTC v. CWB Services et al*. and *CFPB v.*

[4] In addition, a Red Cedar employee received a phone call in 2014 from someone from "Clear Credit Solutions" attempting to validate the 500FastCash debts. The Red Cedar employee responded that 500FastCash had not sold any of its debts and demanded the name of the debt broker who sold the portfolio. The caller refused to provide additional information. PX16 ¶ 17, at 97.

Moseley et al., which the Commission and the Consumer Financial Protection Bureau filed in September of 2014. The defendants in those cases used consumers' bank account information to access their accounts and impose loans on the consumers without their permission. If they refused to pay, those lenders sold the "debts" to collectors, who then harassed the consumers for more money. *See FTC v. CWB Servs. et al.*, 4:14-cv-783-DW (W.D. Mo.) and *CFPB v. Moseley et al.*, 4:14-cv-789-DW (W.D. Mo.).

Here, consumers report that the Defendants have attempted to collect on these illegal "loans" as recently as February 2015, months after the Commission and the CFPB filed their complaints. Consumers state that they had told the collectors that they had never heard of the purported loans, but the Defendants' collectors continued to demand payment. *See* PX6 ¶¶ 7, 10, at 31 (collector ignored consumer's challenge of purported debt to defendant in FTC case and responded with threat); PX10 ¶¶ 6-7, at 65 (same for purported debt to defendant in CFPB case).

3. *Defendants' Fake-Debt Collection Succeeded.*

Unfortunately, the Defendants' lies that consumers owed, or could be forced to pay, the alleged debts often convinced them to pay, even when they knew that they did not owe the debts. Trista Graham, for example, knew she did not owe a debt to 500FastCash, but paid $775 because she "was worried about being prosecuted." PX14 ¶ 8, at 84. Dynithia Middleton also knew that she could not have been the debtor on an alleged 500FastCash loan, but after the Defendants threatened her and recited her personal information, including her car-purchase history, she agreed to pay because "I wanted this problem to go away." PX4 ¶¶ 5-6, 8, at 19. Keisha Sims likewise did not recall having a loan with 500FastCash, but after the collector listed detailed

information about the supposed loan, she "assumed that he was being honest" and decided to pay.[5] PX8 ¶ 4, at 52.

4. *Defendants' Fake-Debt Collection Was Illegal.*

The Defendants' fake-debt collection violated Section 5 of the FTC Act, the FDCPA, New York Executive Law Section 63(12), and New York General Business Law Section 349. It violated Section 5 in two ways. First, by representing that consumers owed a debt that they do not owe, or that the Defendants could make them pay, the Defendants made false representations that were material and upon which consumers were likely to rely. Second, by claiming that the debts were valid, the Defendants represented that they had a reasonable basis for believing that consumers owed those debts. But they could not have had a reasonable basis because Red Cedar had repeatedly told them that its debts were fake, the government's suits had cast doubt on the *CWB* and *Moseley* debts, and many consumers had contested their debts. For the same reasons, the Defendants' fake-debt collection violated FDCPA Section 807's prohibition on false, deceptive, or misleading representations; New York Executive Law Section 63's prohibition on fraudulent or illegal acts; and General Business Law Section 349's prohibition on deceptive acts and practices. 15 U.S.C. § 1692e; N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. § 349.

C. Defendants' Deceptive and Abusive Debt Collection

The Defendants fake-debt collection has been only part of their larger scheme to collect debts through deception and abuse. Consumer declarations, and almost 1,000 consumer

[5] Fortunately, after scheduling their payments, both Ms. Middleton and Ms. Sims learned that the operation was fraudulent before the Defendants could steal their money. Ms. Middleton researched the name Defendants had used when talking to her, Clear Credit Services, and immediately concluded that it was a fraud. Ms. Sims heard from a friend that the 500FastCash calls were scams. Both were able to stop their scheduled payments, but only by cancelling their bankcards, a serious inconvenience. PX4 ¶¶ 12-13, at 20; PX8 ¶¶ 5-6, at 52-53.

complaints,[6] detail the Defendants' unlawful collection practices. The Defendants' collectors have frequently initiated contact with consumers using fake identities, such as process servers, to trick them into calling back. If consumers call, the collectors have misrepresented that they would face dire consequences, like criminal prosecution, if they did not pay immediately. To harass or shame consumers into paying, the collectors have also disclosed or threatened to disclose the alleged debts to third parties. Finally, they have failed to identify themselves when calling consumers, and failed to provide FDCPA-required disclosures. As with their fake debt collection, the Defendants' illegal tactics have succeeded far too often.

1. *Defendants' Use of Fake Identities*

Brace's collectors have often misrepresented themselves as process servers or lawyers, or as affiliated with lawyers or law enforcement. They have used these fake identities to convince consumers that they can initiate civil or criminal proceedings on a moment's notice. For example, Declarant Shirena Outlaw reports receiving a voicemail for her husband from a "process server" named David Brown, who threatened to serve process at her husband's work or home, unless he called Delaware Solutions. PX13 ¶ 2, at 80; *see also* PX5 ¶ 7, at 29 ("I received a call from someone claiming to be a 'judiciary process server.' He told me that he intended to show up at my place of work with a uniformed officer in order to serve me with court papers."); PX12 ¶ 4, at 77 ("He said he was a process server and that he planned to come to my place of employment within the next 48 hours to serve me a warrant."). Other consumers report voicemails from the "pre-legal" divisions of the Defendants. PX4 ¶ 2, at 18; PX1 ¶ 5, at 1; PX10 ¶ 2, at 65; *see also* PX6 ¶ 2, at 30 (voicemails from "litigation firm" Clear Credit Solutions);

[6] Consumer complaints usually represent only the "tip of the iceberg" when it comes to consumer harm. *See, e.g.*, *United States v. Brien*, 617 F.2d 299, 308 (1st Cir. 1980); *United States v. Offices Known as 50 State Distrib. Co.*, 708 F.2d 1371, 1374-75 (9th Cir. 1983).

PX11 ¶ 2, at 69 (call from "head of the litigations department with the law offices of Clear Solutions"). The Defendants' collectors have also misrepresented themselves as affiliated with governmental agencies or law enforcement. Complaints associated with the Defendants' telephone numbers allege harassment from "New Castle County Civil Claims Court," "Pierce County Courts Department," "Miami Dade County," and the "Office of Investigations." PX18 ¶ 70, at 182-83. And one of the Defendants' former employees admitted she would tell consumers that she worked for a sheriff's department. *Id.* ¶ 81, at 186.

Collectors have also misrepresented themselves and their affiliations even after the consumers called back. PX5 ¶ 7, at 29 (after speaking with collector, consumer was later contacted by "judicial process server" who threatened to serve him at his place of employment alongside a uniformed police officer). One collector admitted that she was a debt collector working for "Clear Credit Solutions" only after a consumer repeatedly questioned her, and told her that she had to reveal that information under the FDCPA. PX12 ¶¶ 7-8, at 77-78. Consumer complaints confirm that consumers are frequently confused about for whom the Defendants' collectors work. PX18 ¶ 70, at 182-83.

In some instances, the collectors do not even give any indication about who they are or for whom they work. For example, when one declarant dialed the Defendants' call back number, a representative answered "Fraud Services." PX2 ¶ 5, at 8.

To further their ruse, the Defendants have often changed phone numbers. Braclaire has purchased at least 233 phone numbers, many with area codes for locations nowhere near Buffalo, presumably to trick consumers into thinking the callers are local. PX18 ¶¶ 15-16, 118, at 165, 198; Att. C, at 209-13. Changing numbers also prevents consumers from researching them and finding out they belong to scammers.

2. *Defendants' Misrepresentations*

Building on the misrepresentations about their identities, the Defendants' collectors have regularly told consumers that, unless they pay, they will face dire consequences, including criminal prosecution or arrest, service of process at their place of employment, or a lawsuit. *See* PX12 ¶ 7, at 77 ("She told me that I had committed fraud and was going to be prosecuted for maliciously stealing money."); PX14 ¶ 3, at 83 ("This woman told me that if I didn't respond today, that I would be convicted of forgery and fraud."); PX15 ¶ 2, at 89 ("My wife's mother reported receiving a voicemail saying that she owed a debt and if she didn't contact Steve Johnson, my wife would be arrested."); PX4 ¶ 6, at 19 ("He told me that there would be a warrant issued for my arrest, and that the police would come to my place of employment or to my home."); PX 5 ¶ 7, at 29 ("He told me that he intended to show up at my place of work with a uniformed officer in order to serve me with court papers."); PX13 ¶ 6, at 81 ("[The collector] threatened that my husband would lose his employment if I forced him to go to his job to serve papers."); PX6 ¶ 2, at 30 ("[H]e would serve me papers at my place of employment" if I did not call back); PX1 ¶ 3, at 1 ("He told me that a complaint would be filed against me for check fraud, stemming from a payday loan from 500FastCash."); PX8 ¶ 3, at 52 ("He told me that there was a claim against me in federal court from an online payday lender called 500FastCash.com."); PX10 ¶7, at 65. ("The representative said that . . . if I didn't pay now, they would take me to court and I would pay thousands."). Consumer complaints indicate that the collectors made these misrepresentations frequently. PX18 ¶¶ 72-73, at 183-84.

The Defendants' threats were entirely false. They could not impose criminal sanctions. Moreover, the Plaintiffs are not aware of any consumers whom the Defendants sued for failure to pay, and a public-records search for any suits by the Defendants against consumers yielded

nothing. PX17 ¶ 4, at 122. Likewise, consumers who refused to pay have not been sued. *See, e.g.*, PX1 ¶¶ 6-7, at 2 (consumer threatened with lawsuit refused to pay and was subject only to more harassing phone calls).

3. *Defendants' Unlawful Disclosure of Purported Debts to Third Parties*

In addition to lying, the Defendants' collectors have coerced consumers into paying by calling, or threatening to call, their friends and family and telling them that the consumer is in trouble over a debt. For example, a collector told a declarant that if he did not pay, the collector would call his brother-in-law and then his mother-in-law, apparently to embarrass him. PX9 ¶ 4, at 56. Another collector contacted a declarant's elderly mother said that her daughter owed a debt, which upset the mother greatly. PX10 ¶¶ 3-4, at 65. Another called several members of a consumer's family and told them that she owed a debt and would be arrested if she did not pay. PX15 ¶ 2, at 89. Consumer complaints indicate that the Defendants frequently engaged in this tactic. PX18 ¶¶ 72-73, at 183-184; *see also id.* ¶ 113, at 196 (collectors harassed consumer's family).

4. *Defendants' Failure to Provide Required Disclosures*

The Defendants have also failed to provide FDCPA-required disclosures. Most troublingly, they have been unwilling or unable to provide documentation showing that consumers actually owe the debts. For example, Declarant Lorraine Ravino disputed her "debt" owed to a *CFPB v. Moseley* defendant and demanded proof, but the Defendants refused to provide it. PX10 ¶¶ 7- 8, at 65-66. In another instance, a consumer requested documentation of her 500FastCash debt, and the collector falsely stated that the Defendants had already mailed it to her. She asked the Defendants to re-send it, but they failed to do so. PX14 ¶¶ 5, 10-11, at 83-84. Finally, a consumer who had once worked for a debt collector specifically asked for the

FDCPA-validation notice, and the collector refused. PX7 ¶ 7, at 47; *see also* PX6 ¶ 13, at 32 (refusal to provide documentation on debt subject to *FTC v. CWB* litigation). Many others have reported similar stories. PX18 ¶ 73, at 184.

The Defendants have also failed to tell consumers during their initial contact that they are debt collectors attempting to collect on a debt (i.e., the "mini-Miranda" disclosure), as required by the FDCPA. One consumer, a former debt collector, only received a mini-Miranda disclosure after asking why she did not receive one. PX12 ¶ 8, at 78. And a former employee of the Defendants admitted that they never provided mini-Miranda disclosures. PX18 ¶ 80, at 186. Most troublingly, the Defendants deliberately and intentionally failed to give mini-Miranda disclosures when they contacted consumers using fake identities.

5. *Defendants' Tactics Were Unlawful.*

The Defendants have violated a host of federal and New York laws. They have violated Section 5 of the FTC Act, Section 807(10) of the FDCPA, New York Executive Law Section 63 and General Business Law Section 349 because they have made material misrepresentations upon which consumers relied in deciding to pay. They also have violated several specific FDCPA provisions: the prohibition on communicating with third parties (Section 805(b)); the requirement that collectors reasonably identify themselves when placing phone calls (Section 806(6)); the prohibition on certain false representations (Section 807);[7] and the requirement to disclose information about the debt and the consumer's right to dispute it (Section 809(a)). 15 U.S.C. §§ 1692c(b); 1692d(6); 1692e; and 1692g(a). And they violated New York General

[7] The Section 807 violations include misrepresenting affiliations with lawyers or the government; misrepresenting that the consumers will face arrest or lawsuits; misstating a debt's character, amount, or legal status; and communicating without initially disclosing that the Defendants are debt collectors attempting to collect a debt. 15 U.S.C. § 1692e(1), (2), (3), (4), (5), and (11).

Business Law Section 601's prohibitions on false claims of government affiliation, disclosing or threatening to disclose debt information the collector knows or has reason to know is false, disclosing or threatening to disclose the existence of a debt the consumer disputes without disclosing that fact, threatening actions the collector does not take, and threatening actions that the collector knows it cannot take, like having the consumer arrested. N.Y. Gen. Bus. Law § 601(1), (3), (5), (7), and (8). In sum, the Defendants' operation has violated the law in all aspects of its debt collection.

IV. THE COURT SHOULD ISSUE A TEMPORARY RESTRAINING ORDER AGAINST THE DEFENDANTS.

To stop the Defendants from harming more consumers, and to preserve the possibility of meaningful relief, the Court should issue the proposed Temporary Restraining Order ("TRO"). Below, we explain why the Court has the authority to grant the proposed order, why the Court should grant it, and why it should enjoin all the Corporate Defendants and Brace.

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

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to seek, and the Court to issue, temporary, preliminary, and permanent injunctions. *FTC v. Bronson Partners, LLC*, 654 F.3d 359, 365 (2d Cir. 2011). As part of its authority to issue permanent injunctions, this Court has the "broad equitable authority to 'grant any ancillary relief necessary to accomplish complete justice.'" *Five-Star Auto Club*, 97 F. Supp. 2d at 533 (quoting *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107 (9th Cir. 1982)). This includes a TRO, an asset freeze, expedited discovery, and other appropriate remedies. *See, e.g., id.*; *FTC v. Strano*, 528 F. App'x 47, 49 (2d Cir. June 20, 2013) (holding that asset freeze was appropriate ancillary relief); *FTC v. Unified Global Group, LLC*, No. 1:15-cv-00422-EAW (W.D.N.Y. May 12, 2015) (granting TRO, asset freeze, immediate access); *FTC v. Premier Debt Acquisitions*, No. 1:15-cv-00421-FPG

(W.D.N.Y. May 12, 2015) (same); *FTC v. 4 Star Resolution LLC*, 15-cv-112S (W.D.N.Y. Feb 10, 2015) (same); *FTC v. Vantage Point Servs., LLC*, 15-CV-0006S (W.D.N.Y. Jan. 5, 2015) (same); *FTC v. Nat'l Check Registry*, 14-CV-0490A (W.D.N.Y. June 23, 2014) (same); *FTC v. Fed. Check Processing, Inc.*, 14-CV-0122S (W.D.N.Y. Feb. 24, 2014) (same); *FTC v. Navestad*, No. 09-CV-6329T (W.D.N.Y. July 1, 2009) (same). Similarly, New York Executive Law Section 63 and General Business Law Sections 349 and 602 authorize the Office of the New York Attorney General to obtain equitable relief – including a permanent injunction – against persons and businesses who engage in illegal, fraudulent and/or deceptive business practices. N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law §§ 349(b) and 602(2).[8]

B. Plaintiffs Meet the Standard for a TRO and Preliminary Injunction.

The FTC may obtain a preliminary injunction "'[u]pon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest.'" *FTC v. Cuban Exch., Inc.*, No. 12 CV 5890 (NGG)(RML), 2012 WL 6800794, at *1 (E.D.N.Y. Dec. 19, 2012) (quoting 15 U.S.C. § 53(b)).[9] Pursuant to New York

[8] Executive Law § 63(12) empowers courts to grant wide-ranging equitable relief to redress illegal and deceptive conduct. Such remedial orders are to be broadly fashioned. *See Princess Prestige*, 42 N.Y.2d at 108*; State v. Scottish-Am. Ass'n*, 52 A.D.2d 528 (N.Y. App. Div. 1st Dept. 1976), *reported in full* 39 N.Y.2d 1033 (N.Y. 1976). The Court's power to grant, and the State of New York's standing to seek, broad remedial relief is not simply a matter of statutory authorization but is grounded in general equitable principles. Dobbs, *Remedies* ¶ 222 *et seq*. (1973).

[9] The FTC is not bringing this action under Section 13(b)'s first proviso, which addresses when the FTC can seek preliminary relief before or during an administrative proceeding. Instead, it brings this action under Section 13(b)'s second proviso, which provides that "the Commission may seek, and after proper proof, the court may issue, a permanent injunction" against violations of "any provision of law enforced by the Federal Trade Commission." 15 U.S.C. § 53(b). The FTC's action here, therefore, is not subject to the first proviso's procedural requirements. *H.N. Singer*, 668 F.2d at 1111 (holding that the FTC may bring routine fraud cases under Section 13(b)'s second proviso without holding an administrative proceeding); *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984) (same).

Civil Practice Law and Rules Section 6301, New York Executive Law Section 63(12), and New York General Business Law Sections 349(b) and 602(2), the Attorney General may obtain a preliminary injunction upon a similar showing. Unlike private litigants, the Plaintiffs need not prove irreparable injury because this injury is presumed in a statutory enforcement action.[10] *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1218 (11th Cir. 1991); *FTC v. Verity Int'l, Ltd.* ("*Verity I*"), 124 F. Supp. 2d 193, 199 (S.D.N.Y. 2000); *People v. P.U. Travel, Inc.* 2003 N.Y. Misc. LEXIS 2010, at *7-8, (Sup. Ct. N.Y. Cnty. 2003).

The Plaintiffs will ultimately succeed on their claims, and the balance of equities favors injunctive relief.

1. *Plaintiffs Are Likely to Succeed on the Merits.*

The Plaintiffs meet their burden to show likelihood of ultimate success if they "show[] preliminarily, by affidavits or other proof, that [they have] a fair and tenable chance of ultimate success on the merits." *FTC v. Lancaster Colony Corp., Inc.*, 434 F. Supp. 1088, 1090 (S.D.N.Y. 1977); *see also Verity I*, 124 F. Supp. 2d at 199. The standard for granting injunctive relief under New York Executive Law Section 63 is similar: a "likelihood of success on the merits, and a balancing of the equities in petitioner's favor." *People v. Apple Health & Sports Clubs, Ltd.* ("*Apple Health I*"), 174 A.D.2d 438, 438 (N.Y. App. Div. 1st Dept. 1991). In considering an application for a TRO or preliminary injunction, the Court can consider hearsay evidence. *Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010).

[10] Although not required to do so, the Plaintiffs also meet the Second Circuit's four-part test for private litigants to obtain injunctive relief. Without the requested relief, the public and the Plaintiffs will suffer irreparable harm from the continuation of the Defendants' scheme and the likely destruction of evidence and dissipation of assets.

As detailed above, the Plaintiffs have presented ample evidence that they are likely to prevail. In addition to the 892 complaints against the Defendants (PX18 ¶¶ 67, 69, at 181-82), this evidence includes 15 sworn consumer declarations, voicemail transcripts with deceptive representations, bank records showing payments and movement of funds, and a declaration from the former general counsel of the purported lender on the 500FastCash debts. The evidence shows that the Defendants collected on fake-debts, in violation of the FTC Act, the FDCPA, New York Executive Law Section 63, and New York General Business Law Section 349. The evidence also shows that their typical debt-collection activities routinely violated those same statutes, and General Business Law Section 601, in numerous other ways.

2. *The Equities Weigh in Favor of Granting Injunctive Relief.*

Once the Plaintiffs establish a likelihood of success on the merits, preliminary injunctive relief is warranted if the Court, weighing the equities, finds that relief is in the public interest. In balancing the equities, courts should give public equities far greater weight. *See, e.g.*, *Lancaster Colony Corp.*, 434 F. Supp. at 1096; *Univ. Health*, 938 F.2d at 1225 ("While it is proper to consider private equities in deciding whether to enjoin a particular transaction, we must afford such concerns little weight, lest we undermine section 13(b)'s purpose of protecting the 'public-at-large, rather than individual private competitors.'") (citation omitted).

The evidence here demonstrates that the public equities – protection from the Defendants' deceptive and abusive debt collection practices, effective enforcement of the law, and the preservation of the Defendants' assets for final relief – are significant. This relief is also necessary because the Defendants' conduct indicates that they will likely continue to defraud and deceive the public. *Five-Star Auto Club*, 97 F. Supp. 2d at 536 ("[P]ast illegal conduct is highly suggestive of the likelihood of future violations."). Indeed, the need for injunctive relief is

particularly acute here given the Defendants' attempts to cover up their identities by using the names of front corporations while collecting.

By contrast, any private equities in this case are not compelling. Compliance with the law is not a burden. *See Cuban Exch.*, 2012 WL 6800794, at *2 ("A preliminary injunction would not work any undue hardship on the defendants, as they do not have the right to persist in conduct that violates federal law."). And because the Defendants "'can have no vested interest in business activity found to be illegal,'" the balance of equities tips decidedly toward granting the relief. *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972) (citation omitted).

C. Defendants Are a Common Enterprise and Jointly and Severally Liable for the Law Violations.

The Court should issue the proposed TRO against all Corporate Defendants because they operate as a common enterprise and are jointly and severally liable for their conduct. When determining whether a common enterprise exists, the Second Circuit considers whether "the same individuals were transacting an integrated business through a maze of interrelated companies." *Del. Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964). Defendants in a common enterprise are jointly and severally liable for the injury caused by their violations of the FTC Act. *FTC v. Tax Club, Inc.*, 994 F. Supp. 2d 461, 469 (S.D.N.Y. 2014). Factors that indicate a common enterprise include whether the nominally distinct entities "'(1) maintain officers and employees in common, (2) operate under common control, (3) share offices, (4) commingle funds, and (5) share advertising and marketing.'" *Id.* (Citation Omitted.) All these factors are present here.

The Corporate Defendants are significantly intertwined. Braclaire Management, Credit Clear Solutions, Solidus Group, and Solidus Solutions are controlled by one person: Kelly

Brace. He is an owner, officer, or member of the Corporate Defendants. *See* Section II.A, *supra*. Brace has operated these entities from an office at one of the call centers, arranged for their telecommunications, payroll, and Internet services, and controlled their bank accounts. PX18 ¶¶ 16, 18, 20, 23, 25, 29, 30, 37, 38, 42, 77, at 165-73 and 185; Atts. B, D, E, H, I, K, L, P, Q, U, at 205, 215-23, 225, 240, 244, 250-53, 255, 272-76, 280-82, 299-300. The Defendants also share employees, as reflected in their payroll journals assigning Braclaire employees to the different debt collection names, including "Delaware Solutions," "Clear Credit Solutions," and "CCS." *Id.* ¶ 26, at 168-69.

The companies have also shared addresses and office space. Tellingly, the office directory posted in the lobby of the 295 Main Street location identifies "Solidus Group, LLC" as Suite 1053's occupant – the same suite that Braclaire Management has repeatedly identified in business records and elsewhere as the location of its offices. *See id*. ¶¶ 104 and 108, at 194-95; Atts. RR and SS, at 384, 386-88. Another call center location, 560 Delaware Avenue (likely the inspiration for "Delaware Solutions" and "Delaware Asset Management"), appears on bank and other records for Solidus Group, and on Solidus Group's filings to the States of Connecticut, Florida, and West Virginia. *Id.* ¶¶ 105, at 194-95; Atts. B, E, R, S, at 205, 225, 284-87, 290. The name in the directory for that location is one of Brace's old debt-collection entities: Delaware Asset Management. *See, e.g.*, *Id.* ¶¶ 43 and 103, at 173, 194.

And the companies commingle funds. Nearly all payments tendered by consumers who were "shaken down" by the Defendants – approximately $10.8 million of the at least $11.8 million accounted for to date – were deposited into Braclaire Management accounts, and the remainder into Credit Clear accounts. *Id.* ¶ 90, at 188-90. Credit Clear then sent at least $620,000 back to Braclaire. *Id.* ¶¶ 91 and 94, at 189-90. Braclaire transferred approximately

$2.3 million to Solidus Group and sent another approximately $925,000 to Brace and Leclaire. *Id.* ¶¶ 92 and 100, at 190, 193. Solidus Group also transferred almost $120,000 to Brace and Leclaire and another $75,000 to Leclaire separately. *Id.* ¶ 100, at 193.

Finally, the Defendants share "marketing" because they use the same collectors and the same lies to collect payments that eventually circulate through their various corporate accounts. Put simply, the technically distinct Corporate Defendants operate as a single enterprise to deceive consumers.

D. Brace Is Personally Liable.

Individual Defendant Kelly Brace is liable for the Corporate Defendants' violations. Under the FTC Act, individuals "may be liable for corporate acts or practices if they (1) participated in the acts or had authority to control the corporate defendant and (2) knew of the acts or practices." *Med. Billers Network*, 543 F. Supp. 2d. at 320. The FTC can establish that an individual knew about the acts and practices by showing that the individual had a "reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth." *Id.* (quoting *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 574 (7th Cir. 1989)); *see also FTC v. Consumer Health Benefits Assn.*, 10-civ-3551, 2012 WL 1890242, at *5 (E.D.N.Y. 2012). An individual's participation in business affairs is probative of knowledge. *Med. Billers Network*, 543 F. Supp. 2d at 320; *Consumer Health Benefits*, 2012 WL 1890242, at *5.

New York Executive Law Section 63 also imposes individual liability against "any person" who "engage[s] in repeated fraudulent or illegal acts." N.Y. Exec. Law § 63(12). Further, corporate officers and directors are liable for fraud if they personally participate in the misrepresentation or have actual knowledge of it. *People v. Apple Health and Sports Clubs, Ltd.*

("*Apple Health II*"), 80 N.Y.2d 803, 807 (1992); *People v. Empyre Inground Pools, Inc.*, 227 A.D.2d 731, 734 (N.Y. App. Div. 3d Dept. 1996).

Brace unquestionably has authority to control, and has controlled, the enterprise. "'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.'" *Med. Billers Network*, 543 F. Supp. 2d at 320 (citation omitted). *See also Consumer Health Benefits*, 2012 WL 1890242, at *5 ("[A]n individual's status as a corporate officer on behalf of a corporate defendant can be probative of control."); *Five-Star Auto Club, Inc.*, 97 F. Supp. 2d at 535 ("Assuming the duties of a corporate officer establishes authority to control."). In particular, bank signatory authority or acquiring services on behalf of a corporation evidences authority to control. *FTC v. USA Fin., LLC*, 415 F. App'x 970, 974-75 (11th Cir. 2011). As discussed above, Brace has owned and operated this scheme. In addition, he has controlled all of the money, including payroll. *See* Section II.A, *supra.*

Brace also has the requisite notice of his operation's fraud to meet the standard for monetary relief. As the enterprise's mastermind, Brace has participated in, and has knowledge of, his scheme's fraud. He has set up the entities to obscure his involvement from consumers and regulators. *See* Section II.B, *supra*. Through Braclaire, he has purchased over 200 phone numbers to help his collectors hide their identities. PX18 ¶¶ 16 and 118, at 165 and 198; Atts. B and C, at 205-213. He has personally signed payroll, rent, and utilities checks. *Id.* ¶ 106, at 194-95. Former employees say he has run the enterprise. *Id.* ¶ 77, at 185. And he has directed the funds through a maze of corporate accounts. *See* Section IV.C, *supra*. Most importantly, he has operated the enterprise for years, shepherding it through numerous name changes, formation and dissolution of front entities, and Better Business Bureau inquiries. PX18 ¶¶ 6-7, at 162 (noting

BBB complaints). Brace has more than participated in his fraudulent enterprise; he has created it and directed it. Therefore, he knew, or has been at least recklessly indifferent to, the lies his collectors have told consumers.[11]

V. DEFENDANTS' CONDUCT WARRANTS THE REQUESTED RELIEF.

The Plaintiffs seek a TRO that would enjoin the Defendants from further illegal activity, preserve assets and evidence, and provide for expedited discovery. Below, we show why the Defendants' actions justify each component of the proposed relief: conduct relief, asset freeze, immediate access, record preservation, and expedited discovery. We further show why the Court should grant the TRO on an expedited basis.

A. Conduct Relief

To prevent ongoing consumer injury, the proposed TRO would prohibit the Defendants from making misrepresentations concerning the collection of debts and from collecting, or attempting to collect, amounts not owed. As in previous FTC-State of New York actions, the proposed order would also prohibit the Defendants from engaging in the particular violations alleged in the Complaint: misrepresenting the Defendants' identity; making false or unsubstantiated threats, including false threats that consumers will be sued, arrested, or imprisoned; improperly communicating with third parties regarding consumers' debts; failing to

[11] The Plaintiffs have also named Leclaire as a Relief Defendant because she should not be permitted to keep the $418,789.62 she received from Braclaire and Solidus Group. The Plaintiffs may obtain disgorgement from persons, like Leclaire, who have received ill-gotten gains; knowledge of or participation in the wrongdoing is not required for recovery. *See Tax Club*, 994 F. Supp. 2d at 473. Even though knowledge or participation is not required, Leclaire, at a minimum, knew of the wrongdoing. Tellingly, the name "Braclaire" appears to be a *portmanteau* combining the first three letters of Brace's last name with the last six of Leclaire's. More importantly, until March 24, 2014, she was a signatory on Braclaire's bank accounts, and was repeatedly identified as its "President." *See* Section II, *supra*. It defies credulity that she was oblivious to the operation's nature.

disclose that the caller is a debt collector attempting to collect a debt; failing to provide validation notices regarding consumers' debts; collecting on debts without a reasonable basis for believing that consumers actually owe the debt; and engaging in other conduct that violates the FDCPA.

B. Ancillary Relief

As part of the permanent relief in this case, the Plaintiffs seek equitable monetary relief, including consumer redress or disgorgement of ill-gotten gains. To preserve the availability of monetary relief, the Plaintiffs request that the Court require preservation of assets and evidence. The Court should also order expedited discovery, including allowing the Plaintiffs access to the Corporate Defendants' business premises to inspect and preserve evidence. This Court has ordered immediate access, frozen assets, and allowed expedited discovery in prior FTC debt collection cases.[12] It should do so again here.

1. *Asset Freeze*

The proposed TRO would freeze Brace's assets and restrict the Corporate Defendants' asset transfers to payments for limited, necessary business expenses. This relief is essential to preserve the Court's ability to provide an effective remedy. As the Second Circuit observed, "freezing of assets . . . facilitates monetary recovery by preserving the status quo pending litigation of statutory violations." *Strano*, 528 F. App'x at 49.[13] Where, as here, unlawful

[12] *See, e.g., FTC v. 4 Star Resolution LLC*, No. 15-cv-00112 (W.D.N.Y. Feb. 10, 2015); *FTC v. Vantage Point Servs., LLC*, No. 15-cv-00006 (W.D.N.Y. Jan. 5, 2015); *FTC v. Nat'l Check Registry, LLC*, No. 14-cv-00490 (W.D.N.Y. June 24, 2014); *FTC v. Fed. Check Processing, Inc.*, No. 14-cv-00122 (W.D.N.Y. Feb. 24, 2014); *FTC v. Premier Debt Acquisitions*, No. 15-cv-00421 (W.D.N.Y. May 12, 2015) and *FTC v. Unified Global Group, LLC*, No. 15-cv-00422 (W.D.N.Y. May 12, 2015).

[13] Similarly, New York state courts have regularly used their equitable powers under New York Executive Law Section 63(12) to impose financial restrictions. *See, e.g., Apple Health II*, 80 (continued . . .)

practices permeate a company's operations, courts have found a strong likelihood that defendants will dissipate assets during litigation. *Int'l Controls Corp. v. Vesco*, 490 F.2d 1334, 1347 (2d Cir. 1974); *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972). In such a case, "[t]o allow Defendants to control their frozen assets and to operate their deceptive scheme would create an unreasonable risk that effective relief would be frustrated." *FTC v. Skybiz.com, Inc.*, No. 01-CV-396-K(E), 2001 WL 1673645, at *12 (N.D. Okla. Aug. 31, 2001). Notably, defendants in prior FTC cases who had engaged in similarly unlawful practices have, in the absence of a freeze, secreted assets upon learning of an impending law enforcement action. PX18 ¶ 125, at 200.

Here, there is evidence that substantial dissipation has already occurred and, absent an asset freeze, will continue to occur. A freeze would ensure that funds are available not only to redress victims of the Defendants' deceptive and abusive debt collection practices, but also to serve as the *res* for disgorgement of the Defendants' ill-gotten gains. Any hardship on the Defendants caused by an asset freeze would be temporary, and the public's interest in preserving assets obtained through fraud outweighs it.

Freezing the Defendants' assets here is justified by their conduct. First, there is the extraordinarily egregious nature of their violations: falsely representing that consumers owe debts they do not owe; threatening to arrest and imprison consumers to coerce payments on these fake debts; using fake identities; and making high-pressure threats to consumers' friends,

---

N.Y.2d 803 (upholding trial court's grant of a TRO freezing respondents' bank accounts); *People v. 21st Century Leisure Spa, Int'l*, 153 Misc. 2d 938 (Sup. Ct. N.Y. Co. 1991) (enjoining owner of company from transferring, withdrawing, or otherwise disposing of funds in any bank account in New York State except for ordinary living expenses); *State v. Abortion Info. Agency*, 69 Misc. 2d 825, 830 (Sup. Ct. N.Y. Co. 1971), *aff'd*, 37 A.D.2d 142 (1st Dept. 1971) (enjoining respondents "from transferring or otherwise disposing of corporate assets or property").

relatives, and coworkers. The Defendants' systemic fraudulent conduct, attempts to mask their identities, use of multiple corporate fronts, and dissipation of their unlawful proceeds demonstrates the need for an asset freeze. This is especially true considering Brace's history of committing criminal fraud against consumers. *See* PX18 ¶¶ 64-65, at 180-81. Therefore, there is a particularly strong basis to take the unlawful proceeds of the Defendants' operation out of their hands and preserve them for consumer redress. *See Skybiz.com*, 2001 WL 1673645, at *12.

Second, the Defendants have attempted to mask the flow of money into the enterprise by creating multiple corporate fronts, thus creating a circuitous route for the money they extracted from their victims. Payments into Braclaire's and Credit Clear's bank accounts have sluiced through bank accounts held by the other Corporate Defendants, including over $2.3 million to Solidus Group. *See* PX18 ¶ 92, at 190. And Brace and Leclaire have siphoned off over $1.1 million from the corporate accounts, on top of the approximately $90,000 salary he paid himself. *Id.* ¶ 96, at 191. The circuitous route of the Defendants' unlawful proceeds, and the rapid dissipation of funds from the Corporate Defendants' accounts, reinforces the need for an asset freeze on Brace's assets and a restriction on the Corporate Defendants' transfer of assets to preserve the possibility of full monetary relief.[14]

2. *Immediate Access*

As shown above, the Defendants have engaged in a slew of conduct indicating a high likelihood that they will destroy evidence they control during the litigation. They have gone to great lengths to evade detection and regulatory and legal scrutiny, hiding behind shells and

[14] To maintain the status quo until the preliminary injunction hearing, the proposed TRO would allow the Corporate Defendants to pay certain necessary business expenses: salary, rent, utilities, telecommunications services, internet service, electronic data hosting services, and taxes due to the United States and New York.

fictitious entities, frequently changing names, misrepresentating their addresses to consumers and third parties, and omitting mention of their actual offices. The Defendants have given no indication that they will stop, and common sense dictates that they will have no qualms about destroying records to cover their tracks. Put simply, they cannot be trusted to preserve evidence. Under these circumstances, giving the Plaintiffs immediate access to the Defendants' business premises is necessary to locate, identify, and preserve relevant evidence.

The Plaintiffs request access to the business premises as soon as reasonably possible. To ensure the integrity of the evidence, the proposed TRO would allow the Plaintiffs to exclude the Defendants and their employees from the premises. In addition, the TRO would direct the Defendants to instruct third parties to turn over to the Plaintiffs any documents related to the business or corporate finances. This will ensure that the Plaintiffs have access to crucial buisness records, including emails, even if housed offsite.

3. *Preservation of Records and Limited Expedited Discovery*

The proposed TRO would direct the Defendants and third parties, like banks and electronic data hosts, to preserve records and evidence. The Second Circuit has held that it is appropriate to enjoin defendants charged with deception from destroying evidence and doing so imposes no significant burden. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990) (characterizing such orders as "innocuous").

To locate assets wrongfully obtained from consumers and ensure that the fullest information is available for the preliminary injunction hearing, the FTC also asks the Court to order financial reporting by the Defendants and permit limited expedited discovery. Rules 1, 26, 33, and 34 of the Federal Rules of Civil Procedure allow courts to depart from normal discovery procedures in particular cases. A narrow, expedited discovery order reflects the Court's broad

and flexible authority in equity to grant preliminary emergency relief in cases involving the public interest. *Fed. Express Corp. v. Fed. Expresso, Inc.*, Civ.A.97CV1219RSPGJD, 1997 WL 736530, at *2 (N.D.N.Y. Nov. 24, 1997) (noting that expedited discovery "will be appropriate in some cases, such as those involving requests for a preliminary injunction") (quoting commentary to Fed. R. Civ. P. 26(d)); *see also Ayyash v. Bank Al-Madina*, 233 F.R.D. 325, 327 (S.D.N.Y. 2005) ("reasonableness and good cause" warrant expedited discovery where defendants have the "incentive and capacity to hide their assets."). Because the Defendants' business operations are permeated by fraud, expedited discovery is warranted.

Along with providing the Plaintiffs immediate access to the Defendants' business premises, expedited discovery is necessary to ensure that the Court is fully advised regarding: (1) the full scope of the Defendants' law violations; (2) the total amount of consumer injury; (3) the extent of the Defendants' ill-gotten gains; and (4) the nature, extent, and location of the Defendants' assets. For these reasons, the proposed TRO would also require the Defendants to produce certain records and information, and appear for depositions regarding the business' records and assets on short notice. The request for expedited discovery is limited, and is necessary to prevent irreparable harm from dissipation or concealment of assets or documents.

C. The Court Should Issue the TRO on an Expedited Basis.

As discussed above, the Defendants' business operations are permeated by, and reliant upon, unlawful practices. Absent expeditious relief, there is a substantial risk of asset dissipation and document destruction in this case. To preserve the possibility of meaningful relief for the victims of the scheme, the Court should enter the proposed TRO immediately following a hearing within 24 hours of filing this motion.

Both Federal Rule of Civil Procedure 65(b) and Local Rule 65(b) grant the Court broad latitude when issuing a TRO. Local Rule 65(b) further provides that a court may issue a TRO following an expedited hearing. A party seeking a TRO need only provide notice to the adverse party and an opportunity to be heard. L.R. 65(b).

Here, the Defendants have raked in millions by shaking down consumers for payments on debts they do not owe. The Defendants' conduct – including a fraudulent debt collection scheme and movement of large sums of money out of their corporate accounts – demonstrates that they will likely conceal or dissipate assets if given sufficient time to do so. Balancing the requirement for notice and an opportunity to be heard against the severity of the Defendants' fraudulent debt collection scheme, the Plaintiffs respectfully request that the Court schedule a hearing on this matter within 24 hours of filing the Complaint and the Motions for a TRO and expedited hearing.[15]

VI. CONCLUSION

Brace and his Corporate Defendants have operated a scheme designed to collect debts through lies, regardless of whether consumers actually owe them. Even for a deceptive debt-collection enterprise, the Defendants' conduct shows a brazen contempt for the law. Brace has designed the enterprise to collect under the names of various corporate fronts in an attempt to obscure his and the other Defendants' involvement. His companies routinely used misrepresentations to collect on debts. And even when a purported creditor repeatedly told the operation it was collecting on bogus debts, the Defendants shrugged and kept on collecting. The

[15] Consistent with Local Rule 7(d)(1), a motion setting forth the reasons why an expedited hearing is needed is filed concurrently herewith.

enterprise has taken in almost $12 million in just two short years, and Brace and his ex-wife have taken at least $1 million of that for themselves.

The Defendants' operation to "shake down America" has victimized thousands of consumers. To stop them, and preserve the possibility of meaningful relief for consumers, the Court should issue the attached proposed TRO with asset freeze, immediate access, and other equitable relief.

Dated: October 5, 2015

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York

MATTHEW WILSHIRE
MICHAEL WHITE
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Telephone: (202) 326-2976 (Wilshire)
Telephone: (202) 326-3196 (White)
Facsimile: 202-326-3768
Email: mwilshire@ftc.gov;
mwhite1@ftc.gov;

Attorneys for Plaintiff Federal Trade Commission

JAMES M. MORRISSEY
Assistant Attorney General
350 Main Street, Suite 300A
Buffalo, NY 14202
Telephone: (716) 853-8471
Email: james.morrissey@ny.ag.gov

Attorneys for Plaintiff the People of the State of New York