

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

OCT 30 2015

JAMES N. HATTEN, Clerk  
By:  Deputy Clerk

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

**NATIONAL PAYMENT  
PROCESSING LLC**, a Georgia  
limited liability company,

**NATIONAL CLIENT SERVICES  
LLC**, also d/b/a **AFS LEGAL  
SERVICES, AFS SERVICES,  
ACCOUNT FINANCIAL  
SERVICES**, and **ACCOUNT  
FINANCIAL SOLUTIONS**, a Georgia  
limited liability company,

**OMAR SMITH**, individually and as  
managing member and officer of  
**NATIONAL PAYMENT  
PROCESSING LLC**, and

**ERNEST SMITH**, individually and as  
manager and owner of **NATIONAL  
CLIENT SERVICES LLC**,

Defendants.

Case No.

**1:15-CV-3811**

**COMPLAINT FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 814 of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692*l*, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, an asset freeze, immediate access to Defendants’ business premises, appointment of a receiver, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FDCPA, 15 U.S.C. §§ 1692-1692*p*, in connection with abusive and deceptive debt collection practices.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), and 1692*l*.
3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2), (c)(1), (c)(2) and (d), and 15 U.S.C. § 53(b).

### **PLAINTIFF**

4. The FTC is an independent agency of the United States Government created

by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the FDCPA, 15 U.S.C. §§ 1692-1692p, which prohibits deceptive, abusive, and unfair debt collection practices.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the FDCPA, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), and 1692l(a). Section 814 of the FDCPA further authorizes the FTC to use all of the functions and powers under the FTC Act to enforce compliance by any person with the FDCPA. 15 U.S.C. § 1692l.

### **DEFENDANTS**

6. Defendant National Payment Processing LLC (“NPP”), is a Georgia limited liability company with its principal place of business at 3482 Lawrenceville Highway, Tucker, Georgia 30084. NPP transacts or has transacted business in this district and throughout the United States.

7. Defendant National Client Services LLC (“NCS”), is a Georgia limited

liability company with its principal place of business at 1005 Virginia Avenue, Suite 310, Hapeville, Georgia 30354. NCS transacts or has transacted business in this district and throughout the United States.

8. Defendant Omar Smith is a signatory on bank accounts for NCS and NPP. He is the owner, manager, CEO, CFO, and organizer of NPP. He is the attorney-in-fact for NCS and signs employee paychecks on behalf of NCS. At all times material to this Complaint, acting alone or in concert with others, Defendant Omar Smith has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of NPP and NCS, including the acts and practices set forth in this Complaint. Defendant Omar Smith resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Defendant Ernest Smith is the owner, manager, and organizer of NCS. He has signatory authority for bank accounts of NCS. He has signed employee paychecks for NCS. At all times material to this Complaint, acting alone or in concert with others, Defendant Ernest Smith has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of NCS, including the acts and practices set forth in this Complaint. Defendant Ernest Smith resides in this district and, in connection with the matters alleged herein,

transacts or has transacted business in this district and throughout the United States.

10. Defendants NCS and NPP (collectively “Corporate Defendants”) have operated as a common enterprise while engaging in the unfair and deceptive acts and practices described below. The Corporate Defendants have conducted the business practices described below through interrelated companies that have common control, business functions, employees and office locations and that have commingled funds. Because Corporate Defendants have operated as a common enterprise, they are jointly and severally liable for the acts and practices alleged below. Defendants Omar Smith and Ernest Smith have formulated, directed, controlled or had the authority to control, or participated in the act and practices of the Corporate Defendants that constitute the common enterprise. The common enterprise has transacted business in this district, and a substantial part of the events or omissions giving rise to the claims asserted herein have occurred in this district.

### **COMMERCE**

11. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANTS' UNLAWFUL BUSINESS PRACTICES**

12. Since at least as early as 2012, Defendants have operated a nationwide debt collection scheme to deceive consumers into paying purported debts through the use of threats of arrest, jail and other legal action.

13. In numerous instances, Defendants have telephoned consumers and demanded payment of a payday loan or other debt allegedly owed.

14. In numerous instances, Defendants have continued their collections efforts even after consumers have challenged the legitimacy or accuracy of the purported debt, without investigating and verifying whether the consumer in fact owes the debt or the amount claimed.

15. Defendants often have possessed or claimed to possess the consumers' private information such as Social Security numbers, financial account numbers, or the names and contact information of relatives, leading consumers to believe that the calls are legitimate collection efforts and that consumers must pay the purportedly delinquent debts.

16. In numerous instances, Defendants have impersonated or falsely claimed to be investigators or affiliated with law enforcement authorities, for example, federal and state agents and investigators.

17. In numerous instances, Defendants have threatened consumers with arrest, imprisonment or seizure, garnishment, attachment or sale of consumers' property or wages if consumers do not immediately pay the purported delinquent debt.

Contrary to their representations, Defendants cannot or have not intended to have consumers arrested or imprisoned or to have their property or wages seized, garnished, or attached, or to have their property sold for nonpayment of a private debt.

18. In numerous instances, Defendants have claimed that consumers have committed crimes, such as fraud or check fraud, by failing to repay payday loans or other debts that the consumers allegedly owe. Contrary to Defendants' representations, the consumers have not committed fraud or another criminal act related to the debts that could give rise to criminal sanctions.

19. In numerous instances, Defendants have threatened consumers that legal action is being taken or will be taken for the consumers' failure to pay the alleged debt. Contrary to their representations, Defendants cannot lawfully bring legal actions or do not intend to bring legal actions against the consumers for non-payment of the alleged debt. In fact, Defendants do not bring the threatened legal actions against consumers.

20. In numerous instances, Defendants have disclosed consumers' alleged debts to third parties, such as family members, employers, and co-workers.

21. In numerous instances, in their initial communications with consumers, Defendants have not informed consumers that they are debt collectors who are attempting to collect a debt from consumers and that any information obtained from consumers will be used for that purpose.

22. In numerous instances, Defendants have used profane language when they call consumers.

23. In numerous instances, Defendants have contacted consumers repeatedly on their home, cell and work numbers, as a means of intimidating and harassing consumers to convince them to pay the allege debt. For example, Defendants have (i) called consumers multiple times per day or excessively over an extended period of time and (ii) called consumers' places of employment, even though consumers have told Defendants that such calls are inconvenient or prohibited by consumers' employers.

24. In numerous instances, Defendants have failed to provide consumers, within five days after the initial communication with consumers, a written notice containing: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement that unless the consumer disputes the debt, the debt

will be assumed valid; and (4) a statement that if the consumer disputes the debt in writing, Defendants will obtain verification of the debt.

25. Many consumers have paid the alleged debt that Defendants purported to be collecting because they were afraid of the repercussions threatened by Defendants if they failed to pay, they believed that Defendants were legitimately collecting debt, or they wanted to stop Defendants' harassing collection calls.

26. Through their abusive and deceptive collection practices, Defendants have caused over \$4 million in consumer injury.

### **VIOLATIONS OF THE FTC ACT**

27. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

28. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

### **COUNT I**

#### **False Or Unsubstantiated Claims That Consumers Owe Debts**

29. In numerous instances, in connection with the collection of alleged debts, Defendants have represented, directly or indirectly, expressly or by implication, that the consumer owes a debt;

30. In truth and in fact, in numerous instances in which Defendants have made

the representations set forth in Paragraph 29 of this Complaint, these representations have been false or Defendants have not had a reasonable basis for the representations at the time they were made, including where consumers have already challenged or attempted to challenge the validity or accuracy of the purported debt and Defendants have failed to consider the consumers' challenges or verify the validity or accuracy of the purported debt, prior to continuing to collect.

31. Therefore, Defendants' representations as set forth in Paragraph 29 of this Complaint are false or misleading and constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**COUNT II**  
**Misrepresentations Of Arrest And Other Legal Action**

32. In numerous instances, in connection with the collection of alleged debts, Defendants have represented, directly or indirectly, expressly or by implication that:

- a. Defendants are investigators or are affiliated with governmental entities, including law enforcement agencies;
- b. the consumer has committed check fraud or another type of fraud or another criminal act;

- c. the consumer will be arrested, imprisoned or face seizure, garnishment, attachment or sale of their property or wages for nonpayment of the alleged debt; and
- d. Defendants are bringing or intend to bring a lawsuit or other legal action against the consumers for nonpayment of the alleged debt.

33. In truth and in fact, in numerous instances in which Defendants have made the representations as set forth in Paragraph 32 of this Complaint:

- a. Defendants are not investigators or affiliated with government entities, including law enforcement agencies;
- b. the consumer has not committed check fraud or another type of fraud or another criminal act;
- c. the consumer will not be arrested, imprisoned or have his or her wages garnished for failing to pay Defendants; and
- d. Defendants are not bringing or do not intend to bring legal action against the consumer unless the consumer pays Defendants for the alleged debt.

34. Therefore, Defendants' representations as set forth in Paragraph 32 of this Complaint are false or misleading and constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **VIOLATIONS OF THE FDCPA**

35. In 1977, Congress passed the FDCPA, 15 U.S.C. §§ 1692-1692p, which became effective on March 20, 1978, and has been in force since that date. Section 814 of the FDCPA, 15 U.S.C. § 1692l, provides that a violation of the FDCPA shall be deemed an unfair or deceptive act or practice in violation of the FTC Act.

36. Defendants are “debt collectors” as defined by Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

37. A “consumer,” as defined in Section 803(3) of the FDCPA, 15 U.S.C. § 1692a(3), “means any natural person obligated or allegedly obligated to pay any debt.”

38. A “debt,” as defined in Section 803(5) of the FDCPA, 15 U.S.C. § 1692a(5), “means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.”

### **COUNT III Calling Consumers At Inconvenient Times Or Places**

39. In numerous instances, in connection with the collection of debts, without having obtained directly the prior consent of the consumer or the express

permission of a court of competent jurisdiction, Defendants have communicated with consumers at times or places known, or which should be known, to be inconvenient to consumers or at consumers' places of employment when Defendants knew, or had reason to know, that consumers' employers prohibit consumers from receiving such communications, in violation of Section 805(a) of the FDCPA, 15 U.S.C. § 1692c(a).

**COUNT IV**  
**Unlawful Communications With Third Parties**

40. In numerous instances, in connection with the collection of debts, Defendants have communicated with third parties for purposes other than acquiring location information about a consumer, without having obtained directly the prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a post-judgment judicial remedy, in violation of Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b).

**COUNT V**  
**Harassing and Abusive Collection Practices**

41. In numerous instances, in connection with the collection of debts, Defendants have engaged in conduct the natural consequence of which has been to harass, oppress, or abuse the consumer, in violation of Section 806 of the FDCPA,

15 U.S.C. § 1692d, including, but not limited to, using profane language in violation of 806(2) of the FDCPA, 15 U.S.C. § 1692d(2), and causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass a person at the called number, in violation of Section 806(5) of the FDCPA, 15 U.S.C. § 1692d(5).

### **COUNT VI**

#### **False, Deceptive Or Misleading Representations To Consumers**

42. In numerous instances, in connection with the collection of debts, Defendants have used false, deceptive, or misleading representations or means, in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, including, but not limited to:

- (a) Falsely representing the character, amount, or legal status of any debt, in violation of Section 807(2)(A) of the FDCPA, 15 U.S.C. § 1692e(2)(A);
- (b) Representing or implying that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or the seizure, garnishment or attachment of any consumer's wages when Defendants cannot do this lawfully or do not intend to take such action, in violation of Section 807(4) of the FDCPA, 15 U.S.C. § 1692e(4);

- (c) Threatening to take an action that is not lawful or that Defendants do not intend to take such as bringing a lawsuit for the consumer's non-payment of the alleged debt, in violation of Section 807(5) of the FDCPA, 15 U.S.C. § 1692e(5);
- (d) Falsely representing or implying the consumer has committed a crime or other conduct in order to disgrace the consumer, in violation of Section 807(7) of the FDCPA, 15 U.S.C. § 1692e(7);
- (e) Using false representations or deceptive means such as claiming to be an investigator or affiliated with a government entity, to collect or attempt to collect a debt or to obtain information concerning a consumer, in violation of Section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10); and
- (f) Failing to disclose in the initial oral communication with consumers that Defendants are debt collectors attempting to collect a debt and that any information obtained by Defendants from consumers will be used for the purpose of attempting to collect a debt, and failing to disclose in subsequent communications that the communication is from a debt collector, in violation of Section 807(11) of the FDCPA, 15 U.S.C. § 1692e(11).

#### **COUNT VII**

##### **Failing to Provide Statutorily-Required Notice to Consumer**

43. In numerous instances, in connection with the collection of debts,

Defendants have failed to provide consumers, either in the initial communication with a consumer or in a written notice sent within five days after the initial communication, with statutorily required information about the debt and the right to dispute the debt, in violation of Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a).

### **CONSUMER INJURY**

44. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the FDCPA. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

### **THIS COURT'S POWER TO GRANT RELIEF**

45. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), empower this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten

monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, temporary and preliminary injunctions, an order freezing assets, immediate access, and the appointment of a receiver;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the FDCPA by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the FDCPA, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: October 30, 2015

Respectfully submitted,

JONATHAN E. NUECHTERLEIN  
General Counsel



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ROBIN L. ROCK

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Attorneys for Plaintiff

FEDERAL TRADE COMMISSION

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U.S.D.C. Atlanta

OCT 30 2015

**UNITED STATES DISTRICT COURT  
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**NATIONAL CLIENT SERVICES  
LLC,**  
Defendants.

Case No. 1:15-CV-3811

**FILED UNDER SEAL**

**CERTIFICATION AND DECLARATION OF ROBIN L. ROCK,  
COUNSEL FOR THE FEDERAL TRADE COMMISSION,**

**IN SUPPORT OF PLAINTIFF'S MOTIONS FOR AN *EX*  
*PARTETEMPORARY* RESTRAINING ORDER AND  
TO TEMPORARILY SEAL FILE**

1. I, Robin L. Rock, am an attorney for the Plaintiff, the Federal Trade Commission, an independent agency of the United States government. I am an active member in good standing of the State Bar of Georgia and am admitted to practice before the bar of this Court. My business address is 225 Peachtree Street N.E., Suite 1500, Atlanta, Georgia, 30303. I have participated in the investigation of the above-captioned matter. I submit this declaration pursuant to Rule 65 of the Federal Rules of Civil Procedure and Local Rule 65.1 in support of the Federal Trade Commission's motion for an *ex parte* temporary restraining order with an asset freeze, appointment of a receiver, and other equitable relief, and an order to show cause why a preliminary injunction should not issue ("*Ex Parte* TRO Motion") and an *ex parte* motion to temporarily seal the file in this case (*Ex Parte* Motion to Seal).

2. Rule 65(b)(1) of the Federal Rules of Civil Procedure authorizes the Court to issue a temporary restraining order without notice to Defendants or Defendants' attorney or attorneys only if the facts show that immediate and irreparable injury will result to the movant if notice is given; and if Plaintiff's

attorney “certifies in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1).

3. The underlying purpose of Plaintiff’s proposed *ex parte* TRO is to preserve the status quo and to prevent irreparable harm just so long as is necessary to hold a hearing.

4. Plaintiff has not communicated with Defendants or informed Defendants of its investigation into Defendants’ business practices. Plaintiff has no information or belief as to whether Defendants have retained counsel to represent them with respect to Plaintiff’s allegations in this matter.

5. Plaintiff has not provided notice to Defendants of Plaintiff’s *ex parte* TRO Motion or its *ex parte* Motion to Seal , nor should such notice be given due to (1) Defendants’ egregious misconduct in collecting debts, including threats of arrest, jail and lawsuits; (2) Defendants’ numerous misrepresentations that consumer are delinquent on a debts, even when consumers challenge the accuracy or validity of the alleged debts; (2) Defendant Omar Smith’s court order in New York state permanently banning him from engaging in debt collection; and (3) Defendants’ use of aliases, interchanging “doing business as” names, and other corporate names to perpetuate Defendants’ unlawful debt

collection calls and to obtain payments from consumers. Additionally, as described in more detail in the declaration of Michael Liggins, PX 01, Defendants commingle their funds and move large sums of money in between their accounts through wire transfers.

Further, in cases where Defendants have been engaged in similar deceptive misconduct and have received notice of law enforcement action, such Defendants have confounded the Court's ability to maintain the status quo by moving or dissipating assets or destroying business records.

#### **DEFENDANTS' DECEPTIVE CONDUCT**

6. The evidence described in Plaintiff's TRO application, including the accompanying Volumes I & II of declarations and exhibits, shows that Defendants are engaged in an ongoing deceptive, misleading and abusive debt collection scheme. As alleged in the Complaint, Defendants misrepresent that: (a) consumers are delinquent on debts or lack the substantiation for making their claims the debts are owed; (b) Defendants are law enforcement or otherwise affiliated with a government agency; (c) Defendants are attorneys or are associated with a law firm; (d) consumers have committed crimes; (e)

consumers will be arrested or imprisoned if they fail to pay Defendants; and (f) consumers will face lawsuits if they do not pay the alleged debts.

7. In addition, Defendants unlawfully call consumers at inconvenient times and at consumers' places of employment; unlawfully disclose consumers' purported debts to third parties, including family members and employers; use profane, obscene, or abusive language; and fail to provide consumers with debt validation notices concerning purported debts.

8. Defendants' business practices demonstrate a complete disregard for the law and violate Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, and multiple provisions of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692(a)-1692(p).

9. As described in the Declaration of Michael Liggins, PX 01 and evident from the bank records of Chesapeake Bank, PX 05, Defendants were aware of their high chargeback rate in their collections business. Defendant Ernest Smith was notified in 2013 that the processing agreement for Defendant National Credit Services LLC was being terminated due to the chargeback ratio. Such awareness has certainly not improved their business practices, and Defendants

have continued to pursue their collections by frightening consumers with false tales of arrest, jail and legal actions, among other things.

10. Despite Omar Smith's ban from debt collecting in the State of New York, Defendants continue to operate their business in the same manner. Defendants have sought to obscure their location from consumers and law enforcement by using a series of phony names and avoiding telling consumers where they are really located.

11. Based on information and belief, it has been Plaintiff Federal Trade Commission's experience that FTC defendants who have engaged in deceptive schemes and have received notice of the FTC's filing or its intent to file an action, undermine the Court's efforts to preserve the status quo by dissipating and concealing assets. The following case citations illustrate a pattern in which similarly situated defendants have upset the status quo and caused irreparable harm to the FTC's ability to obtain effective final relief, including monetary redress or restitution and disgorgement of ill-gotten funds. For example, in this in the Eleventh Circuit, the following has occurred just since the year 2000:

a. In *FTC v. Hargrave & Associates*, No. 09-0006 (M.D. Fla. 2012), the FTC sought and obtained an *ex parte* TRO with an asset freeze in

conjunction with a motion to show cause why the defendants should not be held in contempt. After being personally served with the TRO, one defendant withdrew \$17,800 from a frozen bank account the same day. To avoid being held in contempt of the TRO, the defendant returned all but a few thousand dollars.

b. In *FTC v. Fereidoun "Fred" Khalilian*, No. 10-21788 (S.D. Fla. 2010), the FTC sought and obtained an *ex parte* TRO with an asset freeze. Before the asset freeze could be processed by the banks, one of the defendant's employees withdrew large amounts of money from the company's bank accounts. The defendant eventually returned some, but not all, of the money. Additionally, the defendant attempted to remove assets located in his personal residence. The receiver, however, was monitoring the defendant's residence, and, after observing people taking a number of items from the defendant's residence at night, was able to halt the defendant's activities;

c. In *FTC v. Global Mktg. Group, Inc.*, No. 06-2272 (M.D. Fla. 2006), the court granted the FTC's *ex parte* motion for a TRO with an asset freeze, which the FTC served on banks known to hold accounts of defendants. After being served with the order, one of the defendants successfully withdrew

over \$500,000 from accounts previously unknown to the FTC. Most of these funds were wired to offshore bank accounts. This defendant was ultimately held in contempt of court and fled the country after failing to appear at a show cause hearing;

d. In *FTC v. American Entertainment Distribs., Inc.*, No. 04-22431 (S.D. Fla. 2004), the Court entered an asset freeze that froze assets of ten corporate and individual defendants. Within hours of receiving notice of the asset freeze, one of the individual defendants withdrew \$39,500 from his bank. Because the asset freeze had been in place, the FTC was able to compel the individual defendant to return the money;

e. In *FTC v. Access Res. Servs., Inc.*, No. 02-60226 (S.D. Fla. 2002), a defendant who learned about the FTC's action attempted to dissipate \$579,600 by paying off the mortgage on his residence, which was protected by Florida's homestead protection laws; and

2. In *FTC v. Leisure Time Mktg., Inc. et al.*, Civ. No. 00-1057 (M.D. Fla. 2000), the court entered a TRO against the defendants with immediate access to the business premises. After an individual defendant was served and acknowledged his understanding that he was to preserve all assets and documents, that defendant ordered individuals to remove boxes of documents from one of the business premises. Fortunately, a police officer assisting the FTC in the immediate access saw this activity, and the FTC was able to contact the defendant's counsel and have the documents returned. That individual defendant also attempted to hide certain documents on the business premises in a room where FTC staff was informed that no business records were stored. Because the FTC had immediate access to the business premises, the FTC found these documents. Examples from other Circuits include the following:

a. In *FTC v. Asset & Capital Management Group*, No. 8:13-cv-01107-DSF-JC (C.D. Calif. 2013), fully one week after the Court granted, and the FTC served upon all defendants, an *ex parte* TRO that froze defendants' assets and appointed a Receiver, the Receiver identified an additional business site that defendants had failed to disclose. The undisclosed site turned out to be the defendants' headquarters and contained extensive business records, including corporate and tax records, bank statements, and

personnel files for dozens of defendants' entities. The Receiver arrived at the site unannounced, after receiving repeated assurances from defendants that they had disclosed all of their business locations. He found a defendant and his colleague carrying folded bankers boxes from their car to the site, clearly intent on removing materials from the premises. When the Receiver gained entry to the site, he found evidence that desktop computers and records recently had been removed. The FTC subsequently learned that more than 60 servers and extensive records had been taken.

b. In *FTC v. E.M.A. Nationwide, Inc.*, Case No. 1:12-cv-02394 (N.D. Ohio September 28, 2012), the court denied the FTC's motion for an *ex parte* TRO and corporate asset freeze. The Judge required notice to the defendants, which was done on September 28th. By October 4th, the individual defendants had withdrawn more than \$152,000 from a corporate bank account.

c. In *FTC v. Data Med. Capital, Inc.*, No. 99-1266 (C.D. Cal. 2009), the FTC moved for contempt and obtained an *ex parte* TRO and asset freeze against certain defendants. The defendants learned of the FTC's contempt investigation and one of the defendants transferred approximately \$1 million to a personal bank account prior to the FTC's filing. The receiver, who was

appointed pursuant to the *ex parte* TRO, traced these assets and returned them to the receivership estate. The receiver's compensation for these tasks, however, reduced the amount available for redress to the defendants' victims.

d. In *FTC v. Transcon. Warranty, Inc.*, No. 09-2927 (N.D. Ill. 2009), the FTC moved for a TRO with notice to the Defendants. The notice was given, and then the Court granted the FTC's motion for a TRO, freezing Defendants' assets and appointing a receiver. However, when the receiver and counsel for the FTC arrived at the corporate defendant's premises pursuant to the court's order, hundreds of folders with labels indicating that they contained records of defendants' most recent transactions were found empty. In addition, five computers, including that of the corporate defendant's CFO, were allegedly stolen the night before the receiver and counsel for the FTC arrived at the premises, and various third-party trade debtors of the corporate defendant froze payments due to the corporate defendant, which resulted in extensive litigation over these assets and ultimately cost the receivership estate tens of thousands of dollars;

e. On August 9, 2006, in *FTC v. Connelly*, SACV-06-701 DOC (RNBx) (C.D. Cal. 2006), the court issued an *ex parte* TRO with an asset freeze

against one defendant, but issued a noticed Order to Show Cause to two other defendants, ordering them to show cause as to why their assets should not be frozen. Having notice that the FTC sought to freeze their assets, the defendants nevertheless withdrew at least \$800,000, some of which was subject to the asset freeze, and most of which was never recovered;

f. In *FTC v. Universal Premium Servs., Inc.*, No. 06-849 (C.D. Cal. 2006), a defendant and his wife withdrew over \$45,000 from their joint personal bank account, which the bank had not yet frozen, hours after he was personally served with an *ex parte* TRO that included an asset freeze. Subsequently, the defendant withdrew over \$4,700 via electronic debit or check, also in violation of the TRO;

g. In *FTC v. World Traders Ass'n*, No. 05-591 (C.D. Cal. 2005), notwithstanding an *ex parte* TRO, including an asset freeze, the lead defendants appropriated \$90,459 from a frozen bank account within one day of being served with the TRO. Although the contempt resulted in subsequent criminal indictments, the money was never recovered;

h. In *FTC v. Nat'l Consumer Counsel*, No. 04-0474 (C.D. Cal. 2004), the court granted the FTC's *ex parte* application for a TRO with asset freeze and the appointment of a temporary receiver against all but one of the corporate

defendants. One of the individual defendants then deleted key electronic files on defendants' shared network server by accessing his account through a computer under the control of the corporate defendant that was not under the receivership;

i. In *FTC v. Unicyber Tech. Inc.*, CV-04-1569 LGB (C.D. Cal. 2004), the FTC obtained an *ex parte* TRO with asset freeze and appointment of a receiver. Shortly after the defendant was served with the TRO, he directed his wife to violate the asset freeze by transferring \$405,000 of corporate funds to her father. With the assistance of the receiver, the FTC was able to recover these funds;

j. In *FTC v. 4049705 Canada Inc.*, No. 04-4694 (N.D. Ill. 2004), Canadian authorities executed a search warrant on the business premises of Canadian defendants who were engaged in telemarketing fraud. Thereafter, the FTC filed a complaint and motion for a TRO with an asset freeze, providing notice to defendants. The FTC subsequently discovered that the defendants had made several substantial money transfers after receiving notice of the FTC's action, but before the asset freeze was imposed;

k. In *FTC v. Assail Inc.*, No. 03-007 (W.D. Tex. 2003), the court issued an *ex parte* TRO, including an asset freeze. The lead defendant nonetheless

transferred \$200,000 within hours of being served with the TRO, which, after contempt proceedings and a lengthy appeal, the defendant was required to repay;

l. In *FTC v. QT, Inc.*, No. 03-3578 (N.D. Ill. 2003), defendants, after notice of a TRO with an asset freeze, withdrew and transferred more than \$2 million dollars from banks that had not yet received notice of the asset freeze;

m. In *FTC v. Physicians Healthcare Dev., Inc.*, CV-02-2936 RMT (JWJx) (C.D. Cal. 2002), after the court issued the TRO and served it on all counsel, including defense counsel, Commission staff served it on defendants by facsimile. The next day, when Commission staff went to the defendants' offices to review the business records, staff found that documents had been shredded and that the computer and other business records had been removed from the premises. Witnesses advised Commission staff that, on the day of the hearing, they observed defendants' employees removing computers and other items from the business premises. The removed records were never recovered;

n. In *FTC v. Hanson Publ'ns, Inc.*, Civ. No. 02-2205 (N.D. Ohio 2002), Canadian respondents transferred \$105,000 from a U.S. account to a

Canadian account within two days of receiving service of the TRO with asset freeze. This money was later returned as a precondition to the release of attorney's fees;

o. In *FTC v. The Tungsten Group*, No. 2:01-CV-00773 RAJ (E.D. Va. 2001), the FTC obtained an *ex parte* TRO with an asset freeze. One defendant wired money out of a frozen account before the freeze could be imposed by the bank, but later returned it on advice of counsel. Another defendant tried to withdraw cash from a frozen account immediately after being served with the TRO, but he was blocked by the asset freeze;

p. In *FTC v. SkyBiz.com, Inc.*, No. 01-CV-396(K) (N.D. Okla. 2001), within days of the service of the TRO with an asset freeze provision, one of the primary defendants convinced an overseas trustee to withdraw \$1 million from the offshore account of a foreign affiliate. Because a domestic correspondent bank had been served with the TRO, it refused to transfer the funds. The money in the offshore account was preserved, and ultimately used to help provide \$20 million for consumer redress;

q. In *FTC v. Consumer Repair Servs., Inc.*, CV-00-11218 CM (C.D. Cal. 2000), the FTC obtained an *ex parte* TRO with asset freeze. Although all three individual defendants had been served with the TRO and were aware

of the asset freeze, they all violated this order by withdrawing over \$17,000 from accounts that were subject to the TRO, but had not yet been frozen by the banks. None of this money was ever recovered; and

r. In *FTC v. Mediworks, Inc.*, CV-00-01079 CAS (MANx) (C.D. Cal. 2000), the FTC obtained an *ex parte* TRO with asset freeze. Even after being served with the TRO, defendants violated the order by withdrawing \$31,000 from a bank account. The full amount removed by the defendants was not recovered.

11. For the above reasons, there is good cause to believe that immediate and irreparable harm will result to consumers, including the destruction of Defendants' records and the dissipation or concealment of defendants' assets, if Defendants receive advance notice of the FTC's TRO Motion.

12. Courts in the Eleventh Circuit regularly issue *ex parte* temporary restraining orders in actions brought under Section 5(a) of the FTC Act. See, *FTC v. Williams, Scott & Associates*, No. 1:14-cv-1599 (N.D. Ga. May 28, 2014) (phantom debt collection); *FTC v. Pinnacle Mktg*, No. 1:13-cv-03455 (N.D. Ga. Oct. 21, 2013) (phantom debt collection); *FTC v. Direct Connection Consulting, Inc.*, No. 08-1739 (N.D. Ga. May 14, 2008); *FTC v. Prophet 3H, Inc.*, No. 06-1692 (N.D. Ga. July 18, 2006); *FTC v. Amn. Urological Corp.*, No. 98-2199 (N.D. Ga. Aug. 3,

1998); and *FTC v. MJS Fin. Servs., Inc.*, No. 97-3087 (N.D. Ga. Oct. 9, 1997); *FTC v. VGC Corp.*, No. 1-11-cv-21757 (S.D. Fla. May 17, 2011); *FTC v. U.S. Mortgage Funding, Inc.*, No. 9:11-cv-80155-JIC (S.D. Fla. Feb. 9, 2011); *FTC v. 1st Guaranty Mortgage Corp.*, No. 0.09-61840-Civ-Seitz (S.D. Fla. Nov. 25, 2009); *FTC v. Kirkland Young, LLC*, No. 09-23507-Civ-Gold (S.D. Fla. Nov. 19, 2009); *FTC v. Direct Connection Counseling, Inc.*, No. 08-1739 (N.D. ga. May 14, 2008); *FTC v. Integrity Marketing Team, Inc.*, No. 07-61152-Civ-Huck (S.D. Fla. Aug. 29, 2007); *FTC v. Fidelity ATM, Inc.*, No. 06-81101-Civ-Hurley (S.D. Fla. Dec. 6, 2006); *FTC v. USA Beverages*, No. 05-61682-Civ-Lenard (S.D. Fla. Nov. 18, 2005); *FTC v. Transnet Wireless Corp.*, No. 05-61559-Civ-Marra (S.D. Fla. Oct. 20, 2005); *FTC v. Sun Ray Trading, Inc.*, No. 05-20402-Civ-Seitz (S.D. Fla. Feb. 24, 2005).

12. For the same reasons, there is good cause to believe that immediate and irreparable harm will result to consumers if any of the Defendants receive premature notice of the filing of this action, as more fully set forth in the Plaintiff's *Ex Parte* Motion for Temporary Restraining Order and Plaintiff's *Ex Parte* Motion to Temporarily Seal File.

I declare under penalty of perjury that the statements in this declaration are true and correct.

Executed in Atlanta, GA, on October 30, 2015.

  
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ROBIN L. ROCK  
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