UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION and PEOPLE OF THE STATE OF NEW YORK, by BARBARA D. UNDERWOOD, Attorney General of the State of New York, Plaintiffs, v. HYLAN ASSET MANAGEMENT, LLC, et al. Defendants.	Case No.:

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

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I. INTRODUCTION

The FTC and the State of New York have brought this case to stop the Defendants from distributing and collecting on "phantom" debts, i.e., debts consumers do not actually owe, and engaging in other unlawful practices. To protect consumers from further harassment and fraudulent debt collection during this litigation, we ask the Court to enter a Temporary Restraining Order ("TRO") stopping the Defendants from further illegal debt collection.

We have named two sets of Defendants. The first, Defendants Hylan Asset Management, LLC, and its owner, Andrew Shaevel (the "Hylan Defendants"), purchase "portfolios" of debts – spreadsheets of consumers' personal information paired with debts they purportedly owe – and "place" them with third parties for collection on their behalf. The Hylan Defendants have obtained portfolios from notorious distributors of phantom debts and, despite receiving repeated notice that they contained bogus debts, have distributed them to collection agencies. The second set of defendants, Worldwide Processing Group and its owner, Frank Ungaro, Jr., ("Worldwide Defendants") run a collection agency that has received phantom debts from the Hylan Defendants. The Worldwide Defendants' collection practices have generated a mountain of phantom-debt complaints from consumers. Indeed, Worldwide Processing has the dubious honor of leading the pack in Better Business Bureau complaints against Buffalo-area debt collectors. Consumers also report that the Worldwide Defendants harass their friends and family, and that Worldwide Processing fails to provide statutorily required information about the debts that would help consumers dispute or verify them.

The Defendants' phantom debt distribution and collection is illegal. Their scheme has violated the Federal Trade Commission Act, the Fair Debt Collection Practices Act ("FDCPA"), New York Executive Law Section 63(12) , and New York General Business Law Sections 349

and 601. Unfortunately, bank records show that the Defendants' operations have taken millions from consumers.

To stop the Defendants' fraudulent debt collection, we request a Temporary Restraining Order enjoining further unlawful conduct and requiring the Defendants to disclose information about their phantom debt portfolios. The Defendants have ignored obvious indications that they were distributing and collecting on phantom debts. Without the proposed relief, they will likely continue collecting fake debts and victimizing consumers.[1]

II. THE DEFENDANTS

A. The Debt Brokers

Hylan Asset Management, LLC is a New York limited liability company formed by Individual Defendant Andrew Shaevel on October 22, 2010. Hylan buys, sells, and places debt portfolios for collection with third parties, including Worldwide Processing. PX 41, Decl. of Kathleen Nolan (Nolan Dec.) ¶ 9 and Att. E at 607-608. By using third parties to collect on phantom debts, Hylan is able to profit while obscuring its role from consumers. Bank records show that from February 2014 through January 2018, Hylan had deposits of $23,769,390 into its main bank account. *Id.* ¶ 13.

Andrew Shaevel is Hylan's founder, CEO, and sole owner. He is the signatory on all of the business's corporate accounts, and is listed variously as the "CEO" and "Chairman & Authorized Member" on Hylan's bank and corporate records. *Id.* ¶¶ 5, 13 and Att. A, G at 594,

[1] This Court has granted similar relief in several FTC and FTC-State of New York actions. *See FTC v. Brace*, No. 1:15-cv-875-RJA (W.D.N.Y. Oct. 6, 2015); *FTC v. Unified Global Grp., 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.*, No. 14-cv-00122 (W.D.N.Y. Feb. 24, 2014.

617, 619. Shaevel has personally arranged for and authorized the purchase, sale, and placement of debt portfolios. *See, e.g., id*., Att. DD, MM, CCC, ZZZZ, MMMMM at 1012, 1085-1096, 1148-1179, 1412-1422, 1494.

B. The Debt Collectors

Worldwide Processing Group, LLC is a New York limited liability company that collects primarily or exclusively on debts owed to third parties. Worldwide has collected most frequently under the trade names "Forward Movement Recovery" or "FMR." *Id.* ¶ 3 and Att. C at 601-602. Worldwide collects on phantom debts, and has regularly transferred funds to Hylan. Decl. of Richard Kaplan (Kaplan Dec.) ¶ 20 and Att. 2 at 392-400; PX 41, Nolan Dec. ¶ 9 and Att. E at 607-608. Worldwide Processing's misconduct has been profitable. Between January 2014 and January 2018, Worldwide Processing had deposits of $10,615,194.54 in its main bank account. PX 41, Nolan Dec. ¶ 8. Correspondingly, between April 28, 2016 and September 29, 2017, it transferred $298,335.44 to Hylan in apparent remittances. *Id.* ¶ 9 and Att. E at 607-608.

Frank A. Ungaro, Jr. is the managing member and owner of Worldwide Processing. *Id.* at ¶ 7, 12, 15 and Att C., F, I at 602, 614, 654. In that capacity, he knew that consumers were denying that they owed the phantom debts on which his business collected. PX 34, Kaplan Dec. ¶ 10 and Ex. 2 at 400. He has signed agreements on Worldwide's behalf to collect on phantom debt portfolios. *Id.* ¶ 10 and Ex. 2 at 392-399. He has also personally arranged for critical third-party services, including merchant accounts to accept consumer payments, telecommunication services that include the use of dozens of phone numbers to allow his collectors to obscure their identities, and skip-tracing software used to locate consumers. PX 41, Nolan Dec. ¶¶ 12, 14-15 and Att. F at 610-615 (merchant account), Att. H at 622-628 (telecom services), Att. I at

657(skip tracing). He is also a signatory on Worldwide Processing's bank accounts. *Id.* ¶ 8 and Att. D at 604.

C. The Defendants' Partners in Phantom Debt Distribution: Joel Tucker and Hirsh Mohindra

The phantom debts at issue in this case originated with **Joel Tucker**. Tucker is a disgraced former operator of a payday lending operation. He used his position in the payday lending industry to acquire sensitive financial information of consumers, some of whom had payday loans and some of whom did not. *See id.* ¶ 21 and Att. DDDDDDD at 1918-1919; *see also FTC v. Tucker*, 2:16-CV-02816 (D. Kan. 2017) ECF No. 69 ¶ 9. He then packaged that information as "debts" for sale to third-party debt collectors, even though many of those debts were not legitimately owed. *Id.*

Tucker is no stranger to the legal system. Most recently, the FTC obtained a $4.2 million judgment against him for distributing fake debts.[2]

Tucker sold at least $3 billion worth of fake debts to **Hirsh Mohindra**, who operated several businesses that distributed and collected on phantom debts, until the FTC and the State of Illinois sued and obtained a ban against him in 2016. PX 41, Nolan Dec. ¶ 21 and Att. DDDDDDD at 1918-1919; *see also FTC v. Stark Law, LLC*, No. 1:16-cv-3463 (N.D. Ill. Mar. 21, 2016), ECF No. 1. As explained below, until March 2016, Mohindra supplied the Hylan defendants will billions in Tucker debt.

[2] Tucker's persistence in fraud has generated a myriad of legal troubles for him. In addition to the Commission's suit, he has incurred a $30 million judgment for accepting fraudulent transfers from defendants in another FTC case and had a warrant for his arrest issued by a bankruptcy court for failing to appear. *See FTC v. CWB Services, LLC et al.*, 4:14-cv-00783-DW (W.D. Mo. Sept. 8, 2014), ECF. N0 309; *In re Atlas Acquisitions, LLC*, No 16-00302 (Bankr. S.D. Tex. Feb. 5, 2016) ECF No. 27.

III. DEFENDANTS' PHANTOM DEBT DISTRIBUTION AND COLLECTION

The Defendants' scheme to profit from phantom debts began at least by 2014 and has evolved since. Below, we first describe how the Hylan Defendants obtained and distributed the fake debts. We then detail the Worldwide Defendants' illegal collection on those debts.

A. The Hylan Defendants' Distribution of Phantom Debts

Since at least 2014, the Hylan Defendants have distributed phantom debt portfolios. To obtain the debts, Defendant Shaevel partnered with two known peddlers of phantom debt, Hirsh Mohindra and Joel Tucker. Shaevel knew the portfolios contained phantom debts, but not only did he continue placing them for collection, he eventually created a shell company with Mohindra to hide his involvement. The Hylan Defendants also worked directly with the Worldwide Defendants to collect and profit from the fake debts.

1. *Shaevel Founds and Operates Hylan to Distribute Payday Debt Portfolios.*

Defendant Hylan Asset Management was founded in 2010. PX 41, Nolan Dec. ¶ 5 and Att. A at 594. Hylan is a debt broker that traffics in consumer debts, including a significant number of debts purportedly originating from online payday lenders. *See, e.g., id.* ¶ 20 and Att. CC, MM, ZZZZ, WWWWW at 1008-1010, 1085-1096, 1412-1422, 1551-1559. Hylan "places" these debts for contingency collection on its behalf or it sells them outright. *See, e.g.*, PX 34, Kaplan Dec. ¶¶ 12-13 and Ex. 4-5 at 412-416, 418-426. Hylan provides third parties with spreadsheets containing information about consumers and the alleged debts to the collector for a specified period of time. *Id.* ¶ 9 and Att. 1 at 333-343. The agency then contacts consumers in the spreadsheet to coerce payment. The agency retains a percentage of what it collects while periodically remitting balances to Hylan. *Id.*

Hylan has farmed debts out to several collectors that have been the subject of numerous consumer complaints for phantom debt collection, including the Worldwide Defendants. *See,*

e.g., PX 14, Decl. of Karen Horner (Horner Dec.) ¶¶ 2-5 (detailing how High Point Asset called her eight to ten times per day and threatened to jail her if she did not pay phantom payday loan debts owned by Hylan); PX 17, Decl. of Marcia Bresnahan (Bresnahan Dec.) ¶¶ 2-3 (detailing how Concord Resolution attempted to collect on two phantom payday loan debts owned by Hylan Debt Fund, a Hylan affiliate). One of Hylan's collectors was run by the notorious phantom debt collector Kelly Brace, whom the Plaintiffs sued in 2015. As set forth in the Plaintiffs' successful memorandum in support of a TRO in that action,[3] Brace's operation pressured consumers to pay phantom debts with illegal collection tactics like threatening to arrest consumers.

Hylan knew Brace was a scofflaw collector. In July 2014, it repeatedly admonished Brace for collecting more than the balance due on its debts, which is illegal.[4] PX 34, Kaplan Dec. ¶ 12 and Ex. 4 at 412-416. Nevertheless, Hylan continued to distribute debt to Brace's operation until at least September 2014. *Id.* ¶ 13 and Ex. 5 at 418-426.

2. *The Hylan Defendants Obtain Phantom Debts from Known Fake Debt Peddlers Joel Tucker and Hirsh Mohindra.*

Starting no later than early 2014, the Hylan Defendants entered into a business relationship with Tucker and Mohindra to obtain and distribute phantom debt portfolios. *See*, *e.g.*, PX 41, Nolan Dec. ¶ 20 and Att. N at 707-715 (March 2014 emails between Hylan and third parties regarding portfolio owned by Hylan that originated from Mohindra; notes that collection agencies are stating that consumers do not recognize the names of the purported lenders); Att. W

[3] *FTC v. Brace*, No. 1:15-cv-875-RJA (W.D.N.Y. Oct. 5, 2015), ECF No. 4, *available at* https://www.ftc.gov/system/files/documents/cases/151104delawaresolmemo.pdf.

[4] *See* 15 U.S.C. § 1692f(1) (prohibiting collection of amounts beyond the amount expressly authorized by the agreement creating the debt or permitted by law).

at 991 (Aug. 18, 2014 email from Stark to Hylan, transmitting counterfeit $33 million 500 FastCash portfolio); ¶ 20; Att. KK at 1079-1080 (October 2014 emails between Shaevel and Mohindra regarding purchase of Tucker debt). Tucker is a former operator of a fraudulent payday lending scheme and a phantom-debt seller.[5] Payday lenders affiliated with Tucker frequently issued loans without the purported borrowers' consent or even knowledge, to which they referred as "autofunded." In September 2014, the FTC and CFPB sued several of these lenders in actions known as *CWB* and *Hydra*.[6] Through his relationship with these and other payday lenders, Tucker had access to extremely sensitive consumer information, like bank account numbers, places of employment, and social security numbers. *Id.* ¶ 20 Att. YYYY at 1401. He used that information to create bogus portfolios of "debts" supposedly owed on autofunded loans or debts that he simply counterfeited out of whole cloth. *Id.* Att. YYYY, DDDDDDD at 1401, 1918-1919. Tucker generally promoted these "debts" under the umbrella name "Bahamas Marketing Group" or "BMG," and sold many of them to former debt broker and collector Hirsh Mohindra, who in turn sold them to the Hylan Defendants. *Id.* Att. CC at 1007-1010, Att. YYYY at 1401. ¶

Tucker sold billions' worth of debt to Mohindra, who then, through his company, Ashton Asset Management, LLC, sold it to the Hylan Defendants. *Id.; see also id.* ¶ 20 Att. MM at 1084-1096 (debt purchase agreement between Hylan and Ashton), Att. BBBB at 1264 (email from Shaevel to customer describing Mohindra as his "partner/intermediary to Graywave," a Tucker entity). Together, the Hylan Defendants and Ashton controlled more than *3 billion*

[5] *See FTC v. Tucker*, 2:16-CV-02816 (D. Kan. 2017), ECF No 69.

[6] *See FTC v. CWB Servs.*, No. 14-00783-CV-W-DW; *CFPB v. Moseley, Sr., et al.*, 4:14-cv-00789-DW (W.D. Mo. Sept. 8, 2014).

dollars' worth in BMG debt. *Id.* As discussed below, sales of BMG debts from Ashton to Hylan occurred periodically starting in early 2014 and continued at least until late 2015, when Defendant Shaevel and Mohindra created a new enterprise through which to launder the BMG portfolios. PX 34, Kaplan Dec. ¶ 9 Att 1 at 313; PX 41, Nolan Dec. ¶ 20 Att AA at 1002, Att. YYYY at 1401, Att. AAAAA at 1424.

3. *The Hylan Defendants Distribute and Profit from the Fake Tucker Debt.*

Faced with a continuous litany of credible, well-documented consumer complaints, facially deceptive actions by their associates, and other evidence demonstrating the debts were autofunded or outright counterfeit, the Hylan Defendants continued to sell the debts and place them for collection. And when confronted with an accusation that he was distributing phantom debts, Shaevel created shell corporations to hide his involvement.

a. Shaevel receives a warning about 500FastCash debt.

In July 2014, Mohindra contacted Shaevel and Shaevel's associate, Jon Purizhansky,[7] about a portfolio of Tucker debts supposedly owed to online payday lender "500fastcash." Mohindra proposed that Shaevel market the portfolio, and later sent the file to Hylan. PX 41, Nolan Dec. ¶ 20 and Att. V at 987-989. The portfolio was a counterfeit; 500FastCash never sold its loans to a third party for collection.

[7] Purizhansky has been involved in many, if not all, of the phantom debt transactions between Hylan and Ashton. Although his official role is not clear, he appears on dozens of emails discussing purchases and sales of Tucker debt, often advising Shaevel on how to proceed. Purizhansky is a convicted felon. In 2006, he pled guilty before this Court for conspiracy to obtain a visa through a false statement. PX 41, Nolan Dec. ¶ 16 and Att J at 679-690.

In August, 500FastCash's general counsel, Jared Marsh,[8] learned about the counterfeit 500FastCash portfolio, and tried to stop brokers—including Hylan—from distributing it. On August 21, he warned Purizhansky on the phone, and reiterated in an email that Shaevel received, that "500FastCash has not sold and is not selling its charged off debts for collection by any third-parties." PX 41, Nolan Dec. ¶ 20 and Att. Z at 999. Marsh then specifically requested "the contact information for the person . . . . who reached out to you with this deal in the first place." *Id.*

Rather than identify Mohindra as the source of the portfolios, Shaevel and his associate misled Marsh in an attempt to keep the 500FastCash portfolio viable for sale. In response to Marsh, neither Shaevel nor Purizhansky identified Mohindra. Instead, Purizhansky dissembled that Mohindra's company, Ashton Asset, had "returned" the file to Tucker and that "Ashton" "was not interested in being part of this mess." *Id.* Three weeks later, Mohindra, through a different shell company, sold the 500FastCash portfolio to Kelly Brace, who, as discussed above, *supra* at III.A.1, collected for Hylan. PX 38, Declaration of Michael Goldstein (Goldstein Dec.) ¶¶ 10-14 and Ex. B at 519-528.

None of this affected Shaevel's relationship with Mohindra. As detailed below, shortly after this incident, the Hylan Defendants began purchasing large amounts of BMG debt from Mohindra.

b. Defendant Shaevel receives notice of the FTC/CFPB action.

In early September 2014, almost immediately after Mohindra unloaded the 500FastCash portfolio, Hylan purchased a large tranche of BMG debt from Mohindra. Around the same time,

[8] Plaintiffs submitted a declaration from Marsh in their action against Brace. We have resubmitted that declaration in this matter. *See* PX 31, Declaration of Jared Marsh (Marsh Dec.).

the FTC and CFPB filed their *CWB* and *Hydra* actions against the Tucker lenders for their role in creating the "autofunded" BMG debt. Shaevel learned of at least the CFPB action almost immediately, and understood its import. Just ten days after the FTC and CFPB filed their cases, Shaevel emailed Mohindra a copy of the CFPB complaint with the subject line "Tucker Deal." PX 41, Nolan Dec. ¶¶ 17-20 and Att. DD at 1012-1037. The first paragraph of the complaint stated that the defendants "originate online payday loans without consumers' consent" and "deposit the payday loans into consumers' bank accounts without their authorization." *Id.* Shaevel was concerned, but not that he was re-victimizing defrauded consumers. His comment, in whole: "Does this concern you in terms of our right to monetize these loans?" *Id.*

c. The Hylan Defendants continue to ignore persistent, repeated warning signs.

Shaevel decided that he could monetize the loans after all. Predictably, collecting on these fake debts generated a flood of complaints and other problems:

- On September 8, 2014, a Hylan employee copied Shaevel on an email stating, "I am currently processing the new file and found 1051 accounts that do not have account numbers (see the attached list). This was an issue on the previous file where **we have heard a great deal of complaints from consumers because we cannot substantiate an account number**." *Id.* Att. AA at 1002.

- On November 7, 2014, Shaevel emailed Mohindra and exclaimed, "There is a MAJOR problem with data on this file. Either there was a data transformation error or there is major FRAUD with this file. [A Hylan employee] discovered that there are debtors with the same name and address that have different SSNs, same bank accounts but different names and/or SSN's. THIS IS NOT KOSHER!" Shortly thereafter, the Hylan employee referenced above copied Shaevel on an email to an Ashton employee in which he asked for an explanation as to how consumers' social security numbers in the portfolio became "scrambled," noting in part that, "we had to resort to sorting by bank account number in order to find the problem because we have not *(sic)* faith in the accuracy of the SSNs. We really need the correct SSNs for these accounts." *Id.* Att. YY at 1133-1134.

- Not long thereafter, agencies collecting on the Hylan Defendants' portfolios reported to Defendant Shaevel that consumers were claiming that they had never taken out the loans that purportedly gave rise to the debts. For example, on November 20, 2014, in an email that was forwarded to Shaevel, a collection agency reported that a "[c]onsiderable number of people are saying that they never received the loan and we were able to get a

few bank statements showing that there was no deposit matching the loan amount anywhere near the loan date. If this continues, we are looking into taking these accounts off the floor and getting a refund." *Id.* Att. FFF at 1187-1188. Shaevel would continue to receive similar reports. *See, e.g., id.* Att. SSS at 1226, Att. PPPP at 1360-1361.

- On November 20, 2014, a Hylan employee emailed Shaevel regarding the consumer disputes. Referring to the "cfpb case," he stated, "Now, to play the Devils advocate, one could argue there is some potential substantiation to the claims made against certain lenders**. Regardless, the file performs and given the price point, with appropriate rebuttals and insight on the file itself by the agency owners these should have a minimal impact.**" PX 34, Kaplan Dec. ¶ 9 and Ex. 1 at 370-371 (emphasis added). In other words, Hylan could get away with profiting on phantom debt despite warning signs of fraud, as long as the collection agency owners were coached as to how to coax payments from consumers who disputed the debts.

- On February 19, 2015, Shaevel forwarded Mohindra an email chain containing a news article about the CFPB's action against the Hydra lenders and the FTC's action against CWB. The article included an overview of the agencies' "autofunding" allegations. Shaevel simply stated, "FYI. This might be an issue." *Id.* ¶ 9 and Ex. 1 at 316-317.

- On April 7, 2015, Shaevel was forwarded an email sent by another debt broker to a prospective debt purchaser. In it, the broker questioned the legitimacy of Hylan's "BMG debt." The broker stated, "At the end of last nights convo I said if you wanted squeaky clean BMG with legit chain [of title] I said go to Hylan. After speaking with a few companies this morning who have bought this BMG i market and Hylans BMG i hear that it does come with the same issues because the issues lie in the underwriting process from BMG directly and not the companies selling it. The customers cant (*sic*) differentiate between the underwriting and loan process and multiple accounts." PX 41, Nolan Dec. ¶¶ 17-20 and Att. VVV at 1233.

- In April 2015, Hylan settled a lawsuit brought by a collection agency to which it had sold BMG debt. The agency experienced unspecified "issues" with the debts. PX 34, Kaplan Dec. ¶ 9 and Att. 1 at 347-356.

- On May 7, 2015, a Hylan employee emailed Mohindra regarding a portfolio that Hylan had purchased on October 10, 2014. The employee noted that, "recently we have been receiving quite a few complaints on the file" and consumers had provided evidence that the portfolio appears to have been "double sold." PX 41, Nolan Dec. ¶¶ 17-20 and Att. YYY at 1253.

Throughout this period, Hylan continued to buy BMG debts from Mohindra. *See, e.g.,* PX 34, Kaplan Dec. ¶ 9 and Ex. 1 at 373-375 (letter "returning" debts that Hylan purchased from Mohindra); PX 41, Nolan Dec. ¶¶ 17-20 and Att.WWW at 1237-1247 (debt purchase agreement).

d. Shaevel pretends to "return" some autofunded debt, but requests and receives similar debts.

In June of 2015, Hylan sent a letter "returning" BMG debts owed to the lending defendants in the FTC's and CFPB's *CWB* and *Hydra* cases. PX 34, Kaplan Dec. ¶ 9 and Ex. 1 at 373-375. The letter, signed by Shaevel, claimed, "It came to our attention on **June 5, 2015** that certain lenders have been named in one or more actions brought by the FTC or CFPB questioning the validity of accounts originated by such lenders." *Id.* ¶ 9 and Ex. 1 at 374 (emphasis added). On that basis, the letter requested replacements of "like-kind accounts with similar geographic, charge-off year, balance and debtor makeup" - in other words, more BMG debts. *Id.*

The letter was a sham. As noted above, Shaevel learned about the CFPB and FTC actions long before he requested the swap out – by no later than September 2014 for the CFPB action and February 2015 for the FTC action. PX 41, Nolan Dec. ¶¶ 17-20 and Att. DD at 1012-1037 (CFPB action); PX 34, Kaplan Dec. ¶ 9 and Ex. 1 at 316-317 (FTC action). And he knew that the BMG accounts he received as replacements would have the same problems. In July 2015, Shaevel wrote to a prospective BMG buyer,

> In our opinion **all of this debt is the same**. All of it was originated by lenders in the Tucker Network. All of it was serviced by the same servicer. . . . As such the suggestion that one lender in this network is materially different from the others does not seem valid.

PX 41, Nolan Dec. ¶¶ 17-20 and Att. LLLL at 1339. Consistent with Shaevel's characterization, consumer complaints received by the Hylan Defendants indicated that all BMG portfolios contained phantom debts. In January 2016, a Hylan employee circulated an email, copying Shaevel, attaching a list of 74 consumers who had submitted sworn affidavits denying they had received the payday loan that allegedly gave rise to their debts. Less than ten of the consumers

had denied debts allegedly owed to *CWB* and *Hydra* lenders. The remainder denied debts to other BMG "lenders" such as "JD Marketing." PX 34, Kaplan Dec. ¶ 9 and Ex. 1 at 376-378.

Indeed, it appears that many of the "replacement" accounts that Hylan obtained in July 2015 were the same purported debts with renamed lenders. An analysis of certain BMG portfolios controlled by Shaevel after August 2015 shows that 26 percent of the alleged debtors also appeared in the *CWB* files as having loans with the defendants in that FTC action. PX 32, Decl. of Elizabeth Anne Miles (Miles Dec.) ¶ 13 and Ex. A at 190-191 (of the 351,965 "debtors" listed in Hylan-controlled portfolios that were last modified in 2016, 91,205 matched in CWB lender files (91205/351965 = .26)). Notably, these portfolios did not list any CWB defendants as lenders.[9] *Id.*

e. The Court-appointed receiver in *CWB* demands that Hylan stop collecting on fake debts.

The Hylan Defendants' continued distribution of fake debt eventually came to the attention of a receiver appointed by the *CWB* court to take over the fraud-riddled "lenders". In June 2015, the receiver obtained a complaint about collection on an autofunded loan. *See* PX 33, Decl. of Brian M. Holland (Holland Dec.) ¶¶ 8-9 and Ex. C. The receiver's counsel, Brian Holland, contacted the collector, which called itself "NE Processing" or "NE Processors." *Id.* ¶ 10 and Ex. D at 268-270 (referring to "NE Processors"). Holland eventually spoke with the collector's "floor manager," who admitted that "everyone in the debt-collection industry knew

[9] The FTC obtained these portfolios from the court-appointed receiver in the FTC and Illinois Attorney General's action against Mohindra. In an effort to understand the full scope of Mohindra's business, the receiver subpoenaed documents from Shaevel, Hylan, and their associates. To obtain the documents, the receiver had to move for an order from this Court compelling the production. *See Szilagyi v. 6P LLC et al.*, 16-cv-0040-LJW (W.D.N.Y. Dec. 2, 2016), ECF No. 1.

something was wrong with 'BMG'" but thought they could collect because "Hylan Financial had resumed selling BMG debt." *Id.* ¶ 10.

Holland tried to cut off the BMG collection at its source, but ran into a wall of obfuscation from Hylan. Holland first sent a letter demanding that Hylan stop distributing *CWB* "debts" and provide information about how it obtained those debts. *Id.* ¶ 11 and Ex. D at 268-270. The first response came in the form of another call from the collector NE Processors' floor manager. This time, he said that Holland had "misunderstood him" and that his company had not received a BMG portfolio from Hylan. *Id.* ¶ 12. The manager, apparently panicked, exclaimed that Hylan was "[expletive]-ing bricks," and promised to search for the real distributor. *Id.* He never contacted Holland again. *Id.*

Weeks later, Hylan itself responded with a letter from its counsel. The letter first claimed that Hylan "ha[d] no business relationship" with "NE Processors." *Id.* ¶ 13 and Ex. E at 302-303. The letter said nothing, however, about Hylan's pervasive distribution of CWB debts to other collectors or its very recent letter to Mohindra and his company requesting replacement files for CWB debts. *Id.*

Hylan's response to the receiver's request that it stop distributing phantom debts showed that it had no intention of doing so. Rather than promising to stop distributing CWB debts, Hylan challenged the receiver's authority to even make that demand. *See Id.* ¶ 13 and Ex. E at 302 (claiming a "lack of authority for the Receiver's directive"). Hylan even refused to provide basic information about the portfolios, vaguely asserting that responding would be "unduly

burdensome"[10] and that "confidentiality agreements" barred it from providing information about obviously fraudulent activity. *Id.*

After the receiver responded by reiterating his demand for information, Hylan's counsel replied with another nonresponsive letter. Again, Hylan said nothing about its phantom debt distribution, made no promise to avoid doing so in the future, and threatened to "vigorously oppose" any effort to compel it to provide information about the portfolios. *Id.* ¶ 15 and Ex. G.

f. Shaevel schemes with Mohindra to launder phantom debt.

While Hylan was dissembling to the CWB receiver, Shaevel and Mohindra were forming a new venture to keep selling BMG debt while hiding their involvement. On July 10, 2015, the day after Hylan sent its response to the CWB receiver, Shaevel formed Mainbrook Capital, LLC as a joint venture between Hylan and Ashton. PX 41, Nolan Dec. ¶ 20 Att. YYYY at 1399, Att. AAAAA at 1424; Att. TTTTT at 1529. Mainbrook Capital, in turn, formed two wholly owned subsidiaries: "Mainbrook Asset Partners, LLC" and "Mainbrook Asset Partners I, LLC." *Id.* Att. TTTTT at 1529. Despite the convoluted structure, Shaevel and Mohindra ultimately controlled these entities. Shaevel was the CEO of Mainbrook Capital, the sole officer of Mainbrook Asset Partners, and a Managing Partner of Mainbrook Asset Partners I. *Id.* Att. IIIIII at 1678, 1684, and 1690. And emails show that Shaevel and Mohindra determined which portfolios the Mainbrook enterprise bought and sold. *See, e.g,* PX 34, Kaplan Dec. ¶ 9 and Ex. 1 at 345-346; PX 41, Nolan Dec. ¶ 20 and Att. MMMMM at 1478-1500.

Shortly after forming Mainbrook, the Hylan Defendants transferred the BMG portfolios to it. For example, on a single day – September 14, 2015 – Shaevel and Hylan transferred over a

[10] The receiver's "unduly burdensome" demand consisted of *three* requests: 1) information and documentation about the purchase of the portfolios; 2) identities of the sellers; and 3) the number of accounts in the portfolios and the number collected on. *Id.* ¶ 11 and Ex. D at 270.

$800 million in BMG debt to Mainbrook Asset Partners. *See* PX 41, Nolan Dec. ¶ 19-20 and Att. YYYYYY, ZZZZZZ , AAAAAAA, BBBBBBB, CCCCCCC at 1859-1867, 1869-1877, 1879-1887, 1889-1897, 1899-1907.

Shaevel and Mohindra soon began shopping the BMG portfolios to third parties. As part of those efforts, Shaevel distributed a PowerPoint document to potential buyers titled "Opportunity Overview: BMG Warehouse Debt" that promoted an "opportunity" to "acquir[e], manag[e], and liquidat[e]" over three billion dollars in Tucker debt. *Id.* Att. VVVVV at 1539. Notably, the PowerPoint said nothing about the *Hydra* and *CWB* cases or gave any other indication that the portfolios may have contained phantom debt. Indeed, it did not even mention the lenders' names. *Id.* at 1537-1549.

Shaevel and Mohindra were eventually able to sell at least some of the Tucker debts to an overseas corporation, and did so in a way that would let them to continue to profit from collection on them. Through a series of complex transactions, a Brazilian company called "Prudent Investimentos" purchased $200 million in "BMG Warehouse Debt" from Mainbrook at a cost of $2 million.[11] *Id.* Att. MMMMM at 1478-1500. However, the parties also agreed that Shaevel and Mohindra would continue to collect on the debt as before, this time taking a percentage of collections and remitting the remainder to Prudent. *Id.*; *see also id.* Att. NNNNN at 1502-1504. Indeed, Shaevel acknowledged to Prudent that, even after the sale, "our affiliates are servicing the paper so in effect we have control of the debt and the cash." PX 34, Kaplan Dec. ¶ 9 and Ex. 1 at 345-346.

[11] The final deal transferred $167 million in BMG debt to Prudent. *Id.* Att. MMMMM at 1478-1500. The parties had previously executed an agreement that gave Prudent the rights to the proceeds of Ashton's collection on $33 million in BMG debt. *Id.* Att. FFFFFFF 1943-1961. Prudent apparently used that initial deal to test whether the portfolio was still profitable, and decided the returns were lucrative enough to justify purchasing more.

Defendant Shaevel began working with Prudent in December 2015. PX 41, Nolan Dec. ¶ 20 and Att. FFFFFFF at 1943-1961. Until March 2016, when the FTC sued Mohindra, Shaevel and Mohindra coordinated collection on Prudent's behalf, using the same phantom debt collectors they had always used, including the Worldwide Defendants. *Id.* Att. GGGGGGG at 1963-2067.

Not surprisingly, the portfolios the Worldwide Defendants received were riddled with phantom debts. From December 2015 through March 2016, the FTC received 101 complaints alleging that Worldwide Processing was pressuring consumers to pay debts they did not owe. *Id.* ¶ 27. Moreover, an analysis conducted by the FTC shows that 43 percent of the debts that Worldwide collected on Mainbrook's behalf appear to have been CWB debts, even though the CWB lenders' names do not appear in that portfolio. PX 32, Miles Dec. ¶¶ 14-15.

4. *The FTC and Illinois Shut Down Mohindra for Phantom Debt Sales and Collection.*

On March 21, 2016, Hirsh Mohindra's web of deceit finally caught up with him. In an eleven-count complaint filed in federal court in Illinois, the FTC and the State of Illinois charged Mohindra, his businesses, and two associates with violations of state and federal consumer protection laws stemming from their distribution of phantom debt portfolios and their use of abusive debt collection practices to coerce payments from consumers on those debts.[12] In an accompanying *ex parte* motion for a temporary restraining order, the FTC and Illinois detailed how Mohindra disseminated phantom debts.[13]

[12] *See FTC v. Stark Law, LLC*, No. 1:16-cv-3463 (N.D. Ill Mar. 21, 2016), ECF No. 1, *available at* https://www.ftc.gov/system/files/documents/cases/160330starklawcmpt.pdf.

[13] *See, id.*, ECF No. 9, available at https://www.ftc.gov/system/files/documents/cases/160330starklawtromemo.pdf.

On October 27, 2017, the court entered stipulated judgments against all defendants.[14] For his part in disseminating portfolios of fake and "autofunded" debts and subjecting consumers to abusive and harassing debt collection practices, Hirsh Mohindra was banned from the debt collection industry and subject to a $47 million judgment.[15]

None of was a surprise to Defendant Shaevel. In January 2016, Mohindra himself sent Shaevel a link to an investigative news report on phantom debt collection by "Stark Law," which Mohindra owned. PX 41, Nolan Dec. ¶ 20 and Att. FFFFF at 1446.

5. *Even After Mohindra's Unlawful Enterprise Is Halted, the Hylan Defendants Continue to Distribute and Profit from Phantom Debt.*

Despite years of red flags demonstrating that there were widespread and systemic problems with the debt portfolios, and despite seeing their business partner being banned from the debt collection industry and subject to a multi-million dollar judgment for nearly identical practices, the Hylan Defendants continued to distribute and profit from fake debt.

Consumer declarations and other evidence make this clear. For example, as discussed below, one of the third-party collectors with which the Hylan Defendants have placed debts, Worldwide Processing, generates a disproportionately large number of complaints. PX 30, Decl. of Jessica Poleon (Poleon Dec.) ¶¶ 8, 11; PX 41, Nolan Dec. ¶¶ 23-28. And more than 40% of these complaints allege that the consumers did not take out the loans giving rise to the alleged

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[14] *Id.*, ECF No. 354, *available at* https://www.ftc.gov/system/files/documents/cases/stark_doc354stipperminjhirshetal_redacted.pdf; *Id.*, ECF No. 355, *available at* https://www.ftc.gov/system/files/documents/cases/stark_doc355stipperminjgaurav_redacted.pdf; *Id.*, ECF No. 356, *available at* https://www.ftc.gov/system/files/documents/cases/stark_doc356stipperminjpreetesh_redacted.pdf.

[15] *Id.*, ECF No. 354.

debts. PX 41, Nolan Dec. ¶ 28 (58 of the 133 consumer complaints about FMR that the FTC received in the six month period ending May 31, 2018 include statements that the consumers do not owe the alleged debts).

Because the Hylan Defendants have attempted to conceal their involvement, consumers are often unaware that the collection agency attempting to coerce them to pay on debts that they do not owe is actually working for Hylan. However, in at least a handful of instances, the collection agencies did inform the consumers of this fact. In those cases, sworn declaration testimony by consumers demonstrates that Hylan placed phantom debt for collection. Declarant Austin Watkins, for example, testified that he notified the New York Office of Attorney General that Hylan was "conducting a 'phantom' payday loan collection scam." PX 03, Decl. of Austin Watkins (Watkins Dec.) ¶ 11. Similarly, referring to a "loan" that Hylan claimed to own, Estephanie Herrera testified, "I have never heard of Shamrock Holdings Group and have never obtained a loan from them. This is a phantom loan. Empire Mediation Services tried to scam me into making a payment on a debt I do not owe." PX 07, Decl. of Estephanie Herrera (Herrera Dec.) ¶ 5. Additionally, and regarding another purported loan placed by Hylan, declarant Isabel Avello testified, "I did not take out this loan." PX 09, Decl. of Isabel Avello (Avello Dec.) ¶ 4.

Overall, the Hylan Defendants' raked in a staggering amount of money from this scheme. Between February 2014 and January 2018, Hylan Asset Management had deposits of $23,769,389 into its main bank account, at least $309,514 of which was remitted to it by the Worldwide Defendants. PX 41, Nolan Dec. ¶¶ 9, 13.

B. The Worldwide Defendants' Phantom and Unlawful Debt Collection

The Worldwide Defendants have collected on phantom debts supplied by the Hylan Defendants. Like the Hylan Defendants, the Worldwide Defendants ignored a high level of

complaints and other red flags related to their phantom debt practices. They have also used other unlawful collection tactics that violate the FTC Act, the FDCPA, and New York law.

1. *Phantom Debt Collection*

Worldwide Processing was formed in December 2010 and is owned entirely by Frank Ungaro. *Id.* ¶¶ 6, 15 and Att. B, I at 598-599, 654. Beginning no later than 2014, the Worldwide Defendants have operated as a third party debt collector, often using the names FMR and Forward Movement Recovery. *Id.* ¶ 7 and Att. C at 602. In addition to personally arranging for critical third-party services, including merchant processing services used to collect payments from consumers, telecommunications services used to contact consumers, and skip-tracing services used to locate consumers, *Id.* ¶ 12 and Att. F at 610-615 (merchant processing), ¶ 14 and Att. H at 622-628 (telecom services), ¶ 15 and Att. I at 657 (skip tracing), Ungaro also has acquired debt portfolios from the Hylan Defendants and other debt brokers. PX 34, Kaplan Dec. at ¶ 10 and Ex. 2 at 380-399;PX 41, Nolan Dec. at ¶¶ 9, 20 and Att. E, DDDDDDD at 607-608, 1922. During that time, the Worldwide Defendants' collectors have contacted consumers demanding payment on these alleged debts. Many of these debts were autofunded or counterfeit.

In collecting on the bogus debts, the Worldwide Defendants used consumers' personal information to make them appear legitimate. For example, consumer declarant Melissa Jones received a call from an FMR collector in June 2017 attempting to collect on a payday loan debt that Jones's husband, a soldier who had been deployed to Iraq, had allegedly incurred. "[The FMR collector] had highly personal information on [my husband], including his address and social security number so I thought the call was legitimate. I thought it was possible that [he] had taken out the loan and had forgotten about it. I agreed to make an initial payment of $25."

PX 19, Decl. of Melissa Jones (Jones Dec.) ¶ 5. Later, Jones's husband informed her that he had never taken out a payday loan. *Id.* ¶ 7.

Likewise, Stephen Cordz also received a call from an FMR collector seeking to collect on a phantom debt. Cordz testified that an FMR collector knew the name of his former credit union and had "pieces of my personal information." PX 26, Decl. of Stephen Cordz (Cordz Dec.) ¶ 6. However, Cordz had closed the credit union account five years prior to the date on which the proceeds of the purported payday loan were allegedly deposited into his account. *Id.* As Cordz explained, "the details [the FMR collector] provided about this payday loan did not make any sense." *Id.* After researching FMR on the internet, Cordz realized that they were a fraudulent operation and did not make a payment on the fake debt. *Id.* ¶ 8. However, 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, threatening to harass – or in many cases, actually harassing – family members, coworkers, and other third parties associated with the consumers.

A representative of the BBB explained that the Worldwide Defendants, using the name "Forward Movement Recovery," "ha[ve] consistently produced the highest volume of complaints for a collection agency in the Buffalo area of the BBB for non-accredited businesses for the past 12 months." PX 30, Poleon Dec ¶ 11. FMR also generated 15,000 inquiries to the BBB by consumers in the past 12 months – again, the highest volume for a collection agency in the Buffalo area. *Id.* The company began generating complaints by consumers very early on, and the Buffalo area BBB opened a file on FMR on April 30, 2014. *Id.* ¶ 8. Immediately thereafter, the BBB began forwarding consumer complaints to the company. *Id.* ¶¶ 8-10.

The problems with the debts had not gone unnoticed by Worldwide's owner, Defendant Frank Ungaro, who was closely involved in addressing consumer complaints. In September

2015, he contacted the Buffalo area BBB seeking information as to how Worldwide Processing could obtain accreditation from the BBB, and later completed and returned the pertinent paperwork to the BBB. *Id.* ¶ 8. Notably, the New York Office of Attorney General, which also received consumer complaints separate and apart from those lodged with the BBB, forwarded complaints it received to the company. PX 40, Decl. of Karen Davis (Davis Dec.) ¶ 9. Investigators in the Attorney General's office also reached out to company officials personally on multiple occasions to discuss the complaints. *Id.* ¶¶ 3-4, 6, 8. In addition, on March 18, 2016, a Mohindra employee emailed Ungaro and stated, "What i really wanted to ask is what are some of complaints that you are hearing on the floor in regards to the new placement, I know Rod had mentioned that people are disputing more heavily and such, just want to know some of your concerns . . . ." PX 34, Kaplan Dec. ¶ 10 and Ex. 2 at 400. Ungaro confirmed that disputes had spiked, replying simply "Yes more disputes." *Id.*

An analysis of complaints received by the FTC from consumers about the Worldwide Defendants shows their egregious misconduct. Of the 574 fraud complaints filed against "Forward Movement Recovery" from December 2014 through February 2018, 385 consumers disputed that they owed the alleged debt. PX 41, Nolan Dec. ¶ 25 and Ex EEEEEEE at 1940. And 192 of them reported that Defendants improperly had contacted third-parties. *Id.* The import of this analysis is clear: the Worldwide Defendants attempt to collect on phantom debts, and use harassing and abusive collection tactics to coerce payments.

2. *Unlawful Debt Collection*

To coerce payments from consumers on debts that the consumers do not owe, the Worldwide Defendants have employed a variety of egregious debt collection practices, including threatening to harass consumers' friends, family members, and coworkers, and in a disturbing

number of cases, making good on those threats. To cover their tracks, they failed to provide important, statutorily required oral and written disclosures that would have helped consumers verify and challenge the bogus debts.

a. The Worldwide Defendants Unlawfully Misrepresent That the Law Allows Them to Contact Consumers' Friends, Family, and Other Third Parties with Impunity.

The Worldwide Defendants have frequently tried to pressure consumers into paying by unlawfully threatening to contact the consumers' friends, family, and coworkers. In many of these instances, the Worldwide Defendants have sent pre-recorded messages claiming that "if we cannot verify this information through you, the law allows us to contact all references on file." *See, e.g.*, PX 24, Decl. of Robert Melson (Melson Dec.) ¶ 3. In fact, the FDCPA strictly curtails the circumstances under which a debt collector may contact a third party, and prohibits collectors from communicating with third parties to coerce payment on a debt. 15 U.S.C. § 1692c(b).

The experience of consumer Stephen Cordz is illustrative. In early 2017, Cordz began receiving robocalls from the Worldwide Defendants who, using the company's trade name FMR, stated that they were trying to locate him. PX 26, Cordz Dec. ¶ 2. Cordz called them on multiple occasions and spoke to FMR collectors, who stated that he owed $510 on a delinquent payday loan. *Id.* ¶¶ 3,6. Cordz, who stated in his declaration that he had never obtained a payday loan, told the collector that he did not owe the debt. *Id.* ¶ 5. He also filed written complaints with the BBB and the Washington State Attorney General. *Id.* ¶¶ 9-10 and Att. B-C. FMR responded in writing to the Washington State Attorney General, stating that it had "discontinued collection activity" on Cordz's purported loan. *Id.* ¶ 11 and Att. D. In fact, FMR did not cease collection attempts. Shortly thereafter, FMR *again* called Cordz and left a voicemail stating that they were trying to locate him and if they were unable to do so, would contact his other references. *Id.* ¶ 14. FMR's threat was illegal: because FMR had already located Cordz, the FDCPA prohibits FMR from contacting his

"references" absent Cordz's consent or a court order. Fearful that FMR would make good on its unlawful threat to harass his family and friends, Cordz placed yet *another* call to FMR. *Id.* ¶¶ 14-15. Far from "discontinue[ing] collection activity" and while acknowledging that Cordz had disputed the loan with the Washington State Attorney General, the FMR collector nevertheless again insisted that Cordz owed a delinquent payday loan. *Id.* ¶¶ 16-17.

Many other consumers report receiving similar threats. *See, e.g.,* PX 24, Melson Dec. ¶ 3; PX 22, Decl. of Pierre Sooklall (Sooklall Dec.) ¶¶ 2-3; PX 27, Decl. of Steven Riera (Riera Dec.) ¶ 2; PX 23, Decl. of Richard Waite (Waite Dec.) ¶ 2. As discussed below, *infra* at section IV.B.1.b., the Worldwide Defendants' misrepresentations regarding their right to contact the consumers' friends, family, and coworkers violates the FTC Act, the FDCPA, and New York law.

b. <u>The Worldwide Defendants Unlawfully Harass Consumers' Friends, Family Members, and Other Third Parties to Coerce Payments on Their Bogus Debts.</u>

Given the Worldwide Defendants' willingness to make unlawful threats to contact consumers' friends, family, and coworkers, it is not surprising that they frequently made good on those threats. In sworn declarations, consumers report that Worldwide Defendants' collectors have contacted a variety of these third parties, again generally using the company's FMR trade name.

Indeed, the Worldwide Defendants unlawfully contact third parties for impermissible purposes in an attempt to frighten, embarrass, and pressure consumers – or the third parties – into paying purported debts. Consumer Jason Green testified that his mother-in-law received calls from an FMR collector stating that FMR was trying to reach him. PX 11, Decl. of Jason Green (Green Dec.) ¶ 2. After Green called FMR back, the collector told him that he owed debts on payday loans originally obtained from GTI Holdings and Pack Management Group. *Id.* ¶ 3. Green told the collector that he did not owe the loans. *Id.* ¶ 5. And after Green asked how FMR

had obtained his mother-in-law's contact information, the FMR collector insisted that she was in a database of "references" – even though Green had never used her as a reference for a loan. *Id.* ¶ 6. Although Green instructed the collector not to contact his mother-in-law, over the course of the following week FMR continued to make harassing phone calls to her. *Id.* ¶¶ 6, 8. The calls only stopped after Green's wife helped her block them on her phone. *Id.* ¶ 8.

Other consumers reported similar harassing conduct by FMR collectors. Jackie Coward stated in a sworn declaration that an FMR collector repeatedly called and harassed her coworkers and supervisor at her place of employment, even after being instructed to cease contact. PX 10, Decl. of Jackie Coward (Coward Dec.) ¶ 4. The collector also threatened Coward with arrest, even though Coward told her that she did not owe the purported loan. *Id.* ¶ 6. "But [the FMR collector] continued to threaten me, insisting that FMR did not make a mistake because they had my social security number." *Id.* Coward was so concerned that she contacted her local police, who told her she may have been the victim of a scam. *Id.* ¶ 8. She also contacted the FTC and the New York Attorney General. *Id.* In response to the complaint filed with the New York Office of the Attorney General, a Worldwide Processing employee stated that after reviewing Ms. Coward's file, "we believe *she at least applied* for a payday loan," suggesting that the Worldwide Defendants knew these "debts" were likely unauthorized loans. *Id.* ¶ 8 and Att. A. (Emphasis added.)

Similarly, consumer Ginger Russell for a year regularly received calls from FMR collectors, even though Russell told them that she did not owe the loan. PX 08, Decl. of Ginger Russell (Russell Dec.) ¶¶ 2, 11. The collectors, who initially screamed at Russell, have also made harassing phone calls to Russell's daughter and mother even though the collectors had already spoken to Russell. *Id.* ¶¶ 3, 10. Consumer Amanda Lamb reported that FMR collectors

contacted her son, even after they had already spoken to her. PX 01, Decl. of Amanda Lamb (Lamb Dec.) ¶ 6. The calls became so frequent that Lamb felt compelled to file a complaint with the BBB. *Id.* ¶¶ 6-7. FMR responded to Lamb's BBB complaint promising to "discontinue all contact," but within a handful of weeks, the company resumed making the harassing phone calls to her. *Id.* ¶¶ 8-9. As Lamb stated, "I have no idea how to get them to stop calling." *Id.* ¶ 9.

As with their unlawful threats to contact consumers' friends, family members, and coworkers, the Worldwide Defendants' collectors do not feel confined by the FDCPA when considering whether to contact those third parties. These unlawful contacts are a powerful tool to coerce payments from consumers who may otherwise be reluctant to pay on debts that they do not owe. These improper contacts with third parties violate the FDCPA and New York law, as discussed *infra* at section IV.B.1.b.

c. <u>The Worldwide Defendants Unlawfully Fail to Disclose in Communications with Consumers That They Are a Debt Collector.</u>

The FDCPA requires debt collectors to disclose in their initial communication with consumers "that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose," and "to disclose in subsequent communications that the communication is from a debt collector." 15 U.S.C. § 1692e(11). Yet the Worldwide Defendants routinely fail to make these basic required disclosures. *See, e.g.*, PX 10, Coward Dec. ¶ 7; PX 20, Decl. of Melissa Shepler (Shepler Dec.) ¶ 6. Their failure to disclose that they are a debt collector violates the FDCPA and deprives consumers of important information that would assist them in avoiding Defendants' fraudulent scheme.

d. The Worldwide Defendants Unlawfully Fail to Provide Required Notices to Consumers.

The FDCPA also requires that, unless provided in the initial communication with the consumer, a debt collector must, within five days of the initial communication, provide the consumer with a written notice containing the amount of the debt and the name of the creditor. 15 U.S.C. § 1692g. This notice also must contain statements that the collector will assume the debt to be valid unless the consumer disputes the debt within 30 days, and that the debt collector will send a verification of the debt or a copy of the judgment if the consumer disputes the debt in writing within the 30-day period. *Id*. The notice requirement is intended to minimize instances of mistaken identity or mistakes regarding the amount or existence of a debt. *See* S. Rep. No. 382, 9th Cong., 1st Sess. 4, at 4, *reprinted in* 1977 U.S.C.C.A.N. 1695, 1696.

The Worldwide Defendants routinely disregard the FDCPA's notice requirement and fail to provide information about how to dispute a debt to consumers even after repeated requests.[16] *See, e.g.*, PX 18, Gray Dec. ¶ 4; PX 20, Shepler Dec. ¶ 7; PX 22, Sooklall Dec. ¶¶ 5, 8-9; PX 24, Melson Dec. ¶ 11.

The Worldwide Defendants' persistent unlawful and deceptive conduct was lucrative. Between January 2014 and January 2018, Worldwide Processing had deposits of $10,615,194 into its main bank account. PX 21, Nolan Dec. ¶ 8. As the sheer volume of consumer complaints and consumers' consistent narratives describing the Worldwide Defendants' unlawful conduct makes clear, much of this lucre was derived from their systemic unlawful conduct.

[16] Because they have ample notice that they frequently are attempting to collect on debts that consumers do not owe, FMR's collectors are routinely cagey with consumers when contacting them. They are often vague and non-committal when discussing the alleged debts. Not infrequently, FMR's collectors even refuse to disclose the names of the alleged lenders in their initial telephone conversations with consumers. *See, e.g.,* PX 18, Decl. of Mark Gray (Gray Dec.) ¶ 3; PX 22, Sooklall Dec. ¶¶ 2-4.

IV. THE COURT SHOULD ISSUE A TEMPORARY RESTRAINING ORDER HALTING THE DEFENDANTS' PHANTOM DEBT DISTRIBUTION AND COLLECTION.

To stop the Defendants' dissemination of and collection on phantom debts, the Court should issue the proposed 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 include the relief requested.

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 Court to issue temporary, preliminary, and permanent injunctions to stop FTC Act violations. *FTC v. Bronson Partners, LLC*, 654 F.3d 359, 365 (2d Cir. 2011). And "[t]he authority to grant an injunction under the FTC Act 'carries with it the full range of equitable remedies.'" *FTC v. Federal Check Processing, Inc.*, No. 14-CV-122, 2016 WL 59560737, at *14 (W.D.N.Y. Feb. 24, 2016) quoting *Bronson Partners*, 654 F.3d at 365; *see also FTC v. Strano*, 528 F. App'x 47, 49 (2d Cir. June 20, 2013). Similarly, New York Executive Law Section 63(12) and General Business Law Sections 349 and 602 authorize the Office of the New York Attorney General to obtain equitable relief against persons and businesses who engage in illegal, fraudulent, or deceptive business practices. N.Y. Exec. Law § 63(12) ; N.Y. Gen. Bus. Law §§ 349(b) and 602(2) .[17] Accordingly, courts in this District have frequently issued temporary restraining orders in similar cases brought by the FTC and the State of New York.[18]

[17] 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 State v. Princess Prestige*, 42 N.Y.2d 104, 108 (N.Y. 1977); *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).

[18] *See FTC v. Brace*, No. 1:15-cv-875-RJA (W.D.N.Y. Oct. 6, 2015); *FTC v. Unified Global Group, LLC*, No. 1:15-cv-00422-EAW (W.D.N.Y. May 12, 2015); *FTC v. Premier Debt* (continued . . .)

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)). The State of New York can obtain a preliminary injunction upon a similar showing. N.Y. Civ. Prac. Law and Rules § 6301; N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law §§ 349(b) and 602(2). Unlike private litigants, the Plaintiffs need not prove irreparable injury, which is presumed in statutory enforcement actions.[19] *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 substantial evidence supporting this motion shows that the Plaintiffs will ultimately succeed on their claims, and the balance of equities favors injunctive relief.

1. *The Plaintiffs Will Likely Succeed on the Merits.*

The Plaintiffs can establish likelihood of success by showing that they merely 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(12) is similar:

Acquisitions, No. 1:15-cv-00421-FPG (W.D.N.Y. May 12, 2015); *FTC v. 4 Star Resolution LLC*, 15-cv-112S (W.D.N.Y. Feb 10, 2015); *FTC v. Nat'l Check Registry*, 14-CV-0490A (W.D.N.Y. June 23, 2014); *FTC v. Fed. Check Processing, Inc.*, No. 14-CV-0122S, 2016 WL 59560737 (W.D.N.Y. Feb. 24, 2014); *FTC v. Navestad*, No. 09-CV-6329T (W.D.N.Y. July 1, 2009).

[19] Although not required to do so, the Plaintiffs also meet the Second Circuit's test for private litigants to obtain injunctive relief. Without the requested relief, the public and the Plaintiffs will suffer irreparable harm from the Defendants' fraudulent conduct, including harassment of consumers to pay debts they do not actually owe.

a "likelihood of success on the merits." *People v. Apple Health & Sports Clubs, Ltd.* ("*Apple Health I*"), 174 A.D.2d 438, 438 (N.Y. App. Div. 1st Dept. 1991). In assessing whether the Plaintiffs will likely prevail, the Court can consider hearsay evidence. *Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010).

Here, the Plaintiffs are likely to prevail on the merits because Hylan's phantom debt distribution violates the FTC Act and New York law; the Worldwide Defendants' phantom debt collection and abusive tactics violate the FTC Act, the FDCPA, and New York law; and Shaevel's and Ungaro's knowledge and control of their businesses make them individually liable.

a. The Hylan Defendants' distribution of phantom debts violated the FTC Act and New York Law.

Distributing phantom debt portfolios violates Section 5 of the FTC Act, which prohibits "unfair or deceptive practices in or affecting commerce." 15 U.S.C. § 45. Here, Hylan and Shaevel's distribution of phantom debt portfolios is both deceptive and unfair.

Deception: Under Section 5, a 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) ("*Verity II*"); *FTC v. Navestad*, No. 09-CV-6329T, 2012 WL 1014818, at *4 (W.D.N.Y. Mar. 23, 2012). 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). In determining whether a representation is likely to mislead consumers under the FTC Act, courts apply the perspective of "the least sophisticated consumer." *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 532 (S.D.N.Y. 2000).

Significantly, liability for deceptive misrepresentations extends to "[t]hose who put into the hands of others the means by which they may mislead the public." *Waltham Watch Co. v. FTC*, 318 F.2d 28, 32 (7th Cir. 1963); *accord Regina Corp. v. FTC*, 322 F.2d 765, 768 (3rd Cir. 1963). Indeed, liability attaches not only to those who create deceptive materials but also to anyone who participates in distributing the representations or has authority to control them. *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 168 (2d Cir. 2016). And there is no "good faith" defense; whether the person or entity engaging in deceptive conduct intended to mislead consumers is irrelevant. *Id.* citing *Verity II*, 443 F.3d 48 at 63.

Hylan and Shaevel have distributed means to mislead consumers by placing for collection and selling phantom debt portfolios. The portfolios include detailed personal information that consumers would not generally expect a third party to have: bank account numbers, places of employment, and social security numbers. The portfolios weaponized this personal information by combining it with plausible-sounding details about the fake loans: the purported lender, amount, date deposited into the consumers' account, and amount owed. For example, the Worldwide Defendants' collectors told debtors that they took out a payday loan for a specific amount from a particular lender, and that it was deposited into an account in the consumer's name. *See, e.g.*, PX 15, Decl. of Kelly Molder (Molder Dec.) ¶ 8 ("[The collector] knew my social security number and my Chase bank account information."); PX 05, Decl. of Brittany Brown (Brown Dec.) ¶ 7 (collector "provided an old address that I did not live at in 2011, a job that I had but that I did not work at in 2011, and the last four digits of my social security number"); PX 06, Decl. of Cheryl Winfield (Winfield Dec.) ¶ 4 (collector "recited the last four digits of my social security number, and my current address"); PX 10, Coward Dec. ¶ 3 (collector had "the last four digits of my social security number and my home address.").

The express misrepresentations in the portfolios are material because they are likely to persuade consumers to pay the phantom debts. Indeed, consumers report that this information made them more likely to pay either because it convinced them that they owed the debts or that the collectors could make them pay through legal process or even outright theft. For example, some reported that the information convinced them that, despite not recalling the debts, they or their spouse must have taken out the purported loan. *See, e.g.*, PX 19, Jones Dec. ¶ 5 (because collector had "highly personal information," consumer thought husband possibly "had taken out the loan and forgotten about it" and agreed to make payment). Significantly, the purported loans dated back several years, making it difficult for consumers to immediately recall whether they were legitimate. And because these portfolios were derived from payday loan leads, many of the targeted consumers had a payday loan at some time in the past. PX 15, Molder Dec. ¶ 2; PX 13, Decl. of John Gerstner (Gerstner Dec.) ¶ 5; PX 11, Green Dec. ¶ 4.

Just as importantly, other consumers report knowing they did not owe the debts but believing that the collectors had a right to collect on them through legal process. *See* PX 02, Decl. of Amy Snyder (Snyder Dec.) ¶ 4 (consumer decided to pay debt she did not recognize because she thought the collector could sue her). Thus, the misrepresentations were likely to deceive—and did deceive—consumers acting reasonably under the circumstances.

Unfairness: Hylan and Shaevel's distribution of these portfolios is also an unfair practice. A practice is unfair under the FTC Act if (1) it is likely to cause substantial injury, (2) which is not reasonably avoidable, and (3) is not outweighed by any countervailing benefits. *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1155 (9th Cir. 2010). Moreover, whether Hylan and Shaevel intended to cause collection on phantom debts is irrelevant: "Courts have long held that consumers are injured for purposes of the [FTC] Act not solely through the machinations of

those with ill intentions, but also through the actions of those whose practices facilitate, or contribute to, ill intentioned schemes if the injury was a predictable consequence of those actions." *Id.* at 1156. Accordingly, courts have repeatedly found that the practice of forcing payments on consumers without authorization is an unfair practice. *See, e.g., id.; FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010); *FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176 (C.D. Cal. 2000); *see also FTC v. Tucker*, 2:16-CV-02816 (D. Kan. 2017) Dkt. 69 at ¶ 9 (default judgment finding that causing collection on phantom debts is an unfair practice under the FTC Act).

Here, the Hylan Defendants' distribution of phantom debts satisfies all three elements of the unfairness test. First, as discussed above, it substantially injured consumers by causing debt collectors to pressure and harass consumers into paying debts they did not owe. And even when they could not convince consumers that they actually owed the debts, the detailed financial information in the portfolios intimidated consumers into paying. *See, e.g.*, PX 02, Snyder Dec. ¶ 4 (paid in part out of fear that collector would harm her credit). Second, consumers could not prevent the Hylan Defendants from distributing the phantom portfolios. Finally, counterfeit debt portfolios do not generate any benefits to consumers or competition.

New York Law: The Hylan Defendants' phantom debt distribution also violates New York law. 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); *Princess Prestige*, 42 N.Y.2d at 107; *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. Elec. 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).

New York General Business Law Section 601 defines certain prohibited practices that "[n]o principal creditor . . . or his agent" shall engage in. Among these prohibitions are that a principal creditor or his agent, shall not "[c]laim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist." The Hylan Defendants, as principal, acting through their agents—the Worldwide Defendants and other collectors—knew, or had reason to know, that they had no right to repayment on fictitious BMG debts. *See, e.g., Gomez v. Resurgent Capital Servs., LP*, 129 F. Supp. 3d 147, 158-59 (S.D.N.Y. 2015) (holding that GBL §

601(8) "covers [defendant's] attempts to collect on a debt that it should have known was invalid").

The distribution of phantom debts violates Section 63(12) because it is fraudulent and illegal conduct. It is fraudulent because the portfolios are devices to defraud consumers through pressuring them to pay phantom debts. And it is illegal because, among other things, it violates Section 5 of the FTC Act and Sections 349 and 601 of the New York General Business Law. The Hylan Defendants have violated Section 349 by engaging in fraudulent conduct: distributing phantom debt portfolios through which collectors defrauded consumers. The Hylan Defendants violated Section 601 by acting through their agents to attempt to enforce a right to repayment on bogus debts, when they had reason to know that no such right to repayment existed.

b. <u>The Worldwide Defendants' phantom debt collection and illegal collection tactics violate the FTC Act, the FDCPA, and New York Law.</u>

The Worldwide Defendants have violated federal and New York law in two ways. First, they have collected on phantom debt portfolios, including portfolios that they received from the Hylan Defendants. Second, they have engaged in abusive collection tactics designed to pressure consumers to pay the debts, regardless of whether they are legitimate.

Phantom Debt Collection: Misrepresenting fake debts as real in order to pressure consumers to pay a debt they do not owe violates the FTC Act, the FDCPA, and New York law. As explained above, the Worldwide Defendants' misrepresentations that consumers owe debts that they do not owe, or that the Worldwide Defendants could make them pay regardless, were likely to mislead consumers acting reasonably under the circumstances and therefore violated the FTC Act. *Verity II*, 443 F.3d at 63. In addition, the Worldwide Defendants violated the FTC

Act by representing that they had a reasonable basis for believing that consumers owed those debts. *POM Wonderful, LLC v. FTC*, 777 F.3d 478, 490 (D.C. Cir. 2015).

For the same reasons, the Worldwide Defendants' phantom debt collection violated the FDCPA. The FDCPA prohibits deceptive, unfair, and abusive practices in debt collection. 15 U.S.C. §§ 1692-1692p.[20] 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 807, courts ask whether the representation would deceive the "least sophisticated consumer" 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).

By using the detailed consumer information in the portfolios – including social security numbers, bank account number, and known employers – to persuade consumers that they owed phantom debts, the Worldwide Defendants' misrepresentations likely would – and, in fact, did – deceive consumers. The Worldwide Defendants' phantom debt collection, therefore, violates Section 807.

The phantom debt collection also violates several provisions of New York law. First, it violates New York Executive Law § 63(12) because the collection demonstrates persistent fraud and illegality – the Worldwide Defendants have generated high levels of phantom debt complaints for years. Second, phantom debt collection violates New York General Business Law Section 349 because it is a deceptive practice. Finally, it violates New York General Business Law Section 601(8), which prohibits debt collectors from attempting or threatening to

[20] 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).

enforce a right that they know, or have reason to know, does not exist: in this case, a "right" to collect on debts that they knew to be fake and unenforceable.

Deceptive and unlawful collection tactics: In addition to collecting on phantom debt, the Worldwide Defendants engaged in other deceptive and unlawful tactics that violate the FTC Act, FDCPA, and New York law. The FDCPA bars debt collectors from communicating with third parties—such as a consumer's friends or non-spouse family members—other than to obtain a consumer's contact information, unless the consumer consents to the third-party communication or the communication is reasonably necessary to effectuate a post-judgment judicial remedy. 15 U.S.C. § 1692c(b); *see, e.g. Bonafede v. Advanced Credit Sols., LLC*, No. 10-cv-956S, 2012 WL 400789 (W.D.N.Y. Feb. 7, 2012) (debt collector's contact with consumer's mother violated the FDCPA); *Engler v. Atl. Res. Mgmt., LLC*, No. 10-CV-9688, 2012 WL 464728 (W.D.N.Y. Feb. 13, 2013) (debt collector's contact with work supervisor violated the FDCPA); *Twarozek v. Midpoint Resolution Grp., LLC*, No. 09-cv-731S, 2011 WL 3440096 (W.D.N.Y. Aug. 8, 2011) (debt collector's contact with consumer's daughter violated the FDCPA). Moreover, Section 807 of the FDCPA prohibits making false representations to convince consumers to pay debts. 15 U.S.C. § 1692e. In addition, Section 809 requires debt collectors to provide consumers information about the alleged debt and their rights to dispute it, which gives consumers tools to determine the debt's legitimacy. 15 U.S.C. § 1692g.

The Worldwide Defendants systematically violate these provisions. They violate the FDCPA's prohibition on communicating with third parties (Section 805(b)) by contacting consumers' family members without a permissible purpose (*see* PX 11, Green Dec. ¶¶ 6-8); the statute's prohibition on making false representations (Section 807) by, among other things,

misrepresenting that they can force consumers to pay phantom debts;[21] and the FDCPA's requirement to disclose information about the debt and the consumer's right to dispute it (Section 809(a)) (*see, e.g.*, PX 19, Jones Dec. ¶ 10). 15 U.S.C. §§ 1692c(b); 1692d(6); 1692e; and 1692g(a). Moreover, the Worldwide Defendants' claims that they can lawfully contact consumers' friends and families with impunity is false (*see* 15 U.S.C. § 1692c(b) (placing limits on those contacts)) and, therefore, violates Section 5 of the FTC Act.

Defendants also violate several of New York General Business Law Section 601's provisions, including, *inter alia*, prohibitions on: threatening to disclose information affecting the consumer's reputation for credit worthiness with knowledge or reason to know that the information is false, 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. N.Y. Gen. Bus. Law § 601(3), (5), and (8).

c. Because they controlled the corporate defendants, Shaevel and Ungaro are individually liable for injunctive and monetary relief.

Under the FTC Act, individuals are liable for corporate acts if they "(1) participated in acts or had authority to control the corporate defendant and (2) knew of the acts or practices." *FTC v. Med. Billers Network, Inc.*, 543 F. Supp. 2d 283, 320 (S.D.N.Y. 2008) (citation omitted). "Similarly, a defendant who knows of another's deceptive practices and has the authority to control those deceptive acts or practices, but allows the deception to proceed, may be held liable for engaging in a deceptive practice injurious to consumers." *LeadClick*, 838 F.3d at 170. Thus,

[21] The Worldwide Defendants have also violated Section 807 by misstating the character, amount, or legal status of debts; threatening actions they cannot legally take, such as contacting the consumers' friends and family; using false or deceptive means to collect on debts or obtain information about a consumer; and communicating without initially disclosing that the Defendants are debt collectors attempting to collect a debt. 15 U.S.C. § 1692e(2), (5), (10), and (11).

"a defendant acting with knowledge of deception who either directly participates in that deception or has the authority to control the deceptive practice of another, but allows the deception to proceed, engages, *through its own actions*, in a deceptive act or practice that causes harm to consumers." *Id*.

"'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 FTC v. Consumer Health Benefits Ass'n*, No. 10 Civ 3551(ILG)(RLM), 2012 WL 1890242, at *5 (E.D.N.Y. May 23, 2012) ("[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).

An individual is liable for monetary relief where the FTC can establish that the 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, 573 (7th Cir. 1989)); *see also Consumer Health Benefits Assn.*, 2012 WL 1890242, at *5. 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(12) 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).

Shaevel and Ungaro are liable under these standards because they have controlled and participated in the violations, and they have done so while, at the very least, being aware of a high probability that their enterprises were engaged in fraud. Shaevel has solely owned Hylan since 2010, giving him the authority to determine which portfolios Hylan has bought and distributed. And not only has Shaevel failed to object to his company's phantom debt distribution, he directed it. Indeed, he sought out, purchased, and directed the distribution of Tucker portfolios despite repeated notice that they were tainted.

Ungaro, like Shaevel, is Worldwide Processing's sole owner, giving him absolute control over the portfolios on which his businesses collect. And his participation in the scheme shows that he was well aware of the phantom debt collection. He personally arranged for Worldwide's telecommunication services, which he used to purchase dozens of phone numbers with area codes throughout the country to obscure his business' true location and fool consumers into thinking that collection calls were local. He signed contracts on Worldwide Processing's behalf to collect on Tucker portfolios. And he has personally received consumers' complaints that they do not owe debts, at one point confirming to an Ashton employee that he was hearing "more disputes" from consumers. At the very least, he knows that it is highly probable that his company collects on phantom debt and, if he does not know that for certain, it is only because he has consciously avoided discovering it.

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

Once 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' phantom debt collection – are significant. This relief is also necessary because the Defendants' conduct indicates that, absent an injunction, 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 egregiousness of the misconduct - profiting from collection of debts that the Defendants knew consumers did not owe.

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. The Defendants' Conduct Warrants the Requested Relief.

This Court should enter a TRO that will stop the Defendants from continuing to engage in or profit from their phantom debt collection practices. The Plaintiffs' proposed TRO would accomplish this by enjoining the Defendants from any further illegal activity; provide an immediate accounting of debt portfolios that they currently possess, have sold, or on which they have collected; and preserve evidence. Below, we explain why the Defendants' actions justify each component of the proposed relief and why the Court should grant the TRO on an expedited basis.

1. *Conduct Relief*

To prevent ongoing consumer injury, the proposed TRO would halt the Defendants' illegal conduct. Specifically, it would forbid the Defendants from distributing and collecting on phantom debts. As in previous FTC-State of New York actions,[22] the proposed order would also prohibit the Defendants from engaging in other violations of the FDCPA and New York law: misrepresenting their 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 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 and New York law.

[22] *FTC v. Brace*, No. 1:15-cv-875-RJA (W.D.N.Y. Oct. 6, 2015); *FTC v. Unified Global Grp., LLC*, No. 1:15-cv-00422-EAW (W.D.N.Y. May 12, 2015); *FTC v. Premier Debt Acquisitions*, No. 1:15-cv-00421-FPG (W.D.N.Y. May 12, 2015); *FTC v. 4 Star Resolution LLC*, 15-cv-112S (W.D.N.Y. Feb 10, 2015); *FTC v. Nat'l Check Registry*, 14-CV-0490A (W.D.N.Y. June 23, 2014); *FTC v. Fed. Check Processing, Inc.*, No. 14-CV-0122S (W.D.N.Y. Feb. 24, 2014); *FTC v. Navestad*, No. 09-CV-6329T (W.D.N.Y. July 1, 2009).

This proposed relief is necessary to stop the Defendants' phantom debt distribution, collection, and other unlawful conduct. The Hylan Defendants have shown that they are willing to distribute illegitimate debts for collection even after receiving evidence that the debts are bogus. The Worldwide Defendants have engaged in aggressive phantom debt collection for years now, including using tactics that the FDCPA specifically proscribes. This court should protect consumers by enjoining this illegal conduct.

2. *Ancillary Relief*

The proposed TRO would include ancillary relief ordering an accounting, preservation of records, and expedited discovery. This Court has ordered similar relief in prior FTC-State of New York debt collection cases.[23]

To reveal the scope of the Defendants' phantom debt collection activities, and the extent to which the Defendants have sent phantom portfolios to other collectors, the proposed order would require the Defendants to provide an expedited accounting of debt portfolios that they own, collect on, or have distributed. This accounting would allow Plaintiffs to discover other portfolios containing phantom debt and protect the public from further harassment and intimidation pressuring them to pay debts they do not owe.

The order would also require the Defendants and their agents to preserve evidence. The Second Circuit has held that it is appropriate to enjoin defendants charged with deception from

[23] *See, e.g.*, *FTC v. Brace*, No. 1:15-cv-875-RJA (W.D.N.Y. Oct. 6, 2015); *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). Unlike in those cases, Plaintiffs are not seeking an asset freeze or immediate access to business premises.

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").

The Defendants' prior evasiveness when confronted about their fraudulent conduct shows that this relief is necessary to prevent spoliation, particularly when many crucial documents are likely held by third parties that would otherwise not be subject to court supervision. Hylan's uncooperative and misleading response to the *CWB* Receiver's basic request for information about BMG portfolios shows that it and Shaevel cannot be trusted to comply with ordinary discovery requests. The Worldwide Defendants have shown a similar contumacious character by attempting to mislead law enforcement about the legitimacy of debts on which it collected. For example, in response to Jackie Coward's complaint, the Worldwide Defendants misleadingly insinuated to the New York Attorney General's office that they had verified the debt by stating, "we believe she at least applied for a payday loan." PX 10, Coward Dec ¶ 8 and Att. A.

Finally, the requested TRO would provide for expedited discovery to locate assets wrongfully obtained from consumers and ensure that the fullest information is available for the preliminary injunction hearing. 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. As discussed above, the Defendants have previously responded to requests for information with obstruction and obfuscation. With additional time, they may attempt to dispose of incriminating portfolios and delay production of adverse documents for months.

3. *The Court Should Issue the TRO on an Expedited Basis.*

As shown by thousands of complaints, including complaints about misconduct occurring as recently as last month, the Worldwide Defendants continue to harass and pressure consumers to pay phantom debts. And bank records indicate that the Worldwide Defendants have continued to work with Hylan. Balancing the requirement for notice and an opportunity to be heard against the severity of the Defendants' phantom debt collection, we respectfully request that the Court issue an order setting a hearing on this matter within 24 hours of filing the Complaint.[24]

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. W.D.N.Y. L.R. Civ. P. 65(b).

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

Here, entering the TRO expeditiously will not only stop the Defendants' ongoing collection on phantom debt portfolios, but also prevent future distribution and collection on any other phantom portfolios that the Defendants currently possess. It would also limit the time that the Defendants, who have engaged in egregious fraud, would have to destroy relevant documents.

V. CONCLUSION

For the reasons discussed above, Plaintiffs request that the Court entered the proposed TRO and such other and further relief as is just and proper.

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Respectfully submitted,

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