

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JASJIT GOTRA, individually and as an officer or owner of Alliance Security Inc., formerly known as Versatile Marketing Solutions, Inc., VMS Alarms, VMS, Alliance Security, Alliance Home Protection, and AH Protection,

ALLIANCE SECURITY INC., a Delaware corporation formerly known as Versatile Marketing Solutions, Inc., VMS Alarms, VMS, Alliance Security, Alliance Home Protection, and AH Protection,

JESSICA MERRICK, a/k/a Jessica Bright, a/k/a Jessica Dudlicek, individually and as an officer of Defend America LLC,

DEFEND AMERICA LLC, a Florida Limited Liability Company,

KEVIN KLINK, individually and as an officer or owner of Power Marketing Promotions LLC, also d/b/a J Tele Alarms, and

POWER MARKETING PROMOTIONS LLC, a North Carolina Limited Liability Company, also d/b/a J Tele Alarms.

Defendants.

Case No. 1:18-cv-10548

**PLAINTIFF'S MEMORANDUM
OF LAW IN SUPPORT OF ITS
MOTION FOR A PRELIMINARY
INJUNCTION AGAINST
DEFENDANTS JASJIT GOTRA
AND ALLIANCE SECURITY INC.**

ORAL ARGUMENT REQUESTED

Table of Contents

I. Introduction..... ***1***

II. Statement of Facts..... ***4***

A. The Telemarketing Sales Rule and the Fair Credit Reporting Act 4

B. Defendants 5

C. Defendants’ Business Model Relies On Illegal Calls and Credit Checks 6

D. Defendants Are Recidivists With an Extensive History of Unlawful Telemarketing 8

E. Alliance and Its Co-Defendant Telemarketers Placed at Least 1,058,725 Calls to Numbers on the DNC Registry..... 9

F. Alliance Requires Its Telemarketers to Hide Alliance’s Identity From Consumers 10

G. Defendants Performed More Than 400,000 Unauthorized Credit Checks Between March 2016 and September 2017..... 11

H. Consumer Declarations Confirm the Illegal Dialing and Credit Practices 13

I. Defendants Misrepresent Their Telemarketing Practices to Consumers and the FTC..... 14

III. ARGUMENT..... ***16***

A. This Court has Authority to Grant the Requested Relief 16

B. The FTC Need Only Prove a Likelihood of Success on the Merits and That the Public Equities Outweigh Any Private Interests, As Irreparable Harm Is Presumed 17

C. The FTC Is Likely to Succeed on the Merits 18

1. The Defendants Initiated Calls to Numbers on the DNC Registry (Count II of the Complaint) 18

2. Defendants Are Sellers Who Are Liable for Their Telemarketers’ Illegal Calls to Numbers on the Registry (Count II of the Complaint) 20

3.	Defendants Violated the TSR by Assisting and Facilitating Calls to Numbers on the DNC Registry (Count V(a) of the Complaint).....	22
4.	Defendants Violated the TSR by Assisting and Facilitating Outbound Telemarketing Calls that Failed to Identify the Seller (Count V(b) of the Complaint)	23
5.	Alliance Violated the FCRA by Obtaining Consumer Credit Information from TransUnion Without Any Permissible Purpose.....	24
D.	The Public Equities Far Outweigh the Defendants’ Private Interests.....	27
E.	Jay Gotra Is Personally Liable and Should Be Subject to Injunctive Relief	27
F.	The Requested Relief in the Proposed TRO Is Necessary and Appropriate Given Defendants’ History of Recidivism and Ongoing Violations	29
IV.	CONCLUSION AND REQUEST FOR ORAL ARGUMENT	30

TABLE OF AUTHORITIES

A. Cases	Page(s)
<i>Amadi v. Department of Children & Families</i> , 245 F. Supp. 3d 316 (D. Mass. 2017)	v
<i>Asseo v. Pan American Grain Co.</i> , 805 F.2d 23 (1st Cir. 1986)	v
<i>CCBN.com, Inc. v. c-call.com, Inc.</i> , 73 F. Supp. 2d 106 (D. Mass. 1999)	v
<i>CFTC v. Hunt</i> , 591 F.2d 1211 (7th Cir. 1979).....	17
<i>FTC v. Affordable Media, LLC</i> , 179 F.3d 1228 (9th Cir. 1999).....	17
<i>FTC v. Amy Travel Service, Inc.</i> , 875 F.2d 564 (7th Cir. 1989).....	17
<i>FTC v. Chapman</i> , 714 F.3d 1211 (10th Cir. 2013).....	28
<i>FTC v. Direct Marketing Concepts, Inc.</i> , No. 04-cv-11136, 2004 WL 1399185 (D. Mass. June 23, 2004)	17, 27
<i>FTC v. Direct Mktg. Concepts, Inc.</i> , 569 F. Supp. 2d 285 (D. Mass. 2008).....	28
<i>FTC v. Jones</i> , No. 17-cv-00058 (C.D. Cal. May 31, 2017).....	29
<i>FTC v. Gem Merchandising Corp.</i> , 87 F.3d 466 (11th Cir. 1996)	16
<i>FTC v. H.N. Singer Inc.</i> , 688 F.2d 1107 (9th Cir. 1982)	17
<i>FTC v. IAB Marketing Associates, LP</i> , 746 F.3d 1228 (11th Cir. 2014).....	18, 28
<i>FTC v. J.K. Publications, Inc.</i> , 99 F. Supp. 2d, 1176 (C.D. Cal. 2000)	28
<i>FTC v. Lifewatch</i> , 176 F. Supp. 3d 757 (N.D. Ill. 2016)	21, 22
<i>FTC v. Lifewatch, Inc.</i> , No. 1:15-cv-05781 (N.D. Ill.).....	36
<i>FTC v. Patriot Alcohol Testers, Inc.</i> , No. 91-cv-11812, 1992 WL 27334 (D. Mass. Feb. 13, 1992).....	17, 18
<i>FTC v. Ramsey</i> , No. 9:17-cv-80032-KAM (S.D. Fla. Jan. 13, 2017).....	6, 15

FTC v. Seismic Entertainment Products, Inc., No. 04-cv-377, 2004 WL 2403124
 (D.N.H. Oct. 21, 2004)18, 27

FTC v. Think Achievement Corp., 144 F. Supp. 2d 1013 (N.D. Ind. 2000)17

FTC v. Transnet Wireless Corp., 506 F. Supp. 2d 1247 (S.D. Fla. 2007).....28

FTC v. Univ. Health, Inc., 938 F.2d 1206 (11th Cir. 1991).....18

FTC v. World Travel Vacation Brokers, Inc., 861 F.2d 1020 (7th Cir. 1988).....27

FTC v. World Wide Factors, Ltd., 882 F.2d 344 (9th Cir. 1989)18

In re: Alliance Security, Inc., Case 1:17-bk-11190 (R.I. Bankr.).....27

In re Monitronics International Inc., Telephone Consumer Protection Act Litigation,
 No. 1:13-cv-02493 (N.D. W. Va.)1, 8

SEC v. Mangement Dynamics, Inc., 515 F.2d 801 (2d Cir.1975).....27

United States v. Cox, No. 11-cv-01910 (C.D. Cal. Feb. 4, 2013).....30

United States v. Dish Network, L.L.C., 667 F. Supp. 2d 952 (C.D. Ill. 2009).....17, 20

United States v. Dish Network, LLC, 75 F. Supp. 3d 942 (C.D. Ill. 2014).....20

United States v. Dish Network, LLC, 256 F. Supp. 3d 810 (C.D. Ill. 2017).....21

United States v. Sonkei Communications, Inc., No. 11-cv-01777
 (C.D. Cal. Apr. 15, 2014).....30

U.S. v. W.T. Grant Co., 345 U.S. 629 (1953)17

USA v. Versatile Marketing Solutions, Inc., No. 1:14-cv-10612 (D. Mass. Mar. 10, 2014)1, 2

B. Statutes, Rules, and Other Sources **Page(s)**

15 U.S.C. § 4517

15 U.S.C. § 5316

15 U.S.C. § 57a17

15 U.S.C. § 1681.....	1
15 U.S.C. § 1681a.....	25
15 U.S.C. § 1681b.....	24, 25
15 U.S.C. § 1681s.....	17
15 U.S.C. § 6102.....	17
16 C.F.R. § 310.2.....	17
16 C.F.R. § 310.3.....	4
16 C.F.R. § 310.4.....	3, 4
Local Rule 7.1(d)	

TABLE OF EXHIBITS

PX Number	Description	First Page	Last Page
1	Complaint <i>USA v. Versatile Marketing Solutions, et al.</i>	FTC-0000001	FTC-0000010
2	Stipulated Final Order <i>USA v. Versatile Marketing Solutions, et al.</i>	FTC-0000011	FTC-0000030
3	Composite exhibit: settlement agreements between Defendants and states of Pennsylvania, Kentucky, and Wisconsin	FTC-0000031	FTC-0000063
4	Declaration of Stephen Arlinghaus, Consumer	FTC-0000064	FTC-0000067
5	Declaration of John Dolan, Consumer	FTC-0000068	FTC-0000070
6	Declaration of Phillip Hamrick, Consumer	FTC-0000071	FTC-0000074
7	Declaration of Mitchell Hodus, Consumer	FTC-0000075	FTC-0000075
8	Declaration of David Howell, Consumer	FTC-0000076	FTC-0000105
9	Declaration of Tyler Kahler, Consumer	FTC-0000106	FTC-0000110
10	Declaration of David Larson, Consumer	FTC-0000111	FTC-0000116
11	Declaration of Vincent Lucas, Consumer	FTC-0000117	FTC-0000119
12	Declaration of David Pippin, Consumer	FTC-0000120	FTC-0000127
13	Declaration of Kevan Sunderland, Consumer	FTC-0000128	FTC-0000130
14	Declaration of Michael Zimring, Consumer	FTC-0000131	FTC-0000133
15	Declaration of Tyler Hall, Former Employee of an Alliance Telemarketer	FTC-0000134	FTC-0000166
16	Declaration of Nathaniel McDonald, Former Alliance Employee	FTC-0000167	FTC-0000168
17	Declaration of Jeff Hall, Employee of FTC Vendor InterImage, Inc.	FTC-0000169	FTC-0000173
18	Declaration of Patricia Blystone (1), Employee of FTC Vendor InterImage, Inc.	FTC-0000174	FTC-0000178
19	Declaration of Patricia Blystone (2), Employee of FTC Vendor InterImage, Inc.	FTC-0000179	FTC-0000181
20	Declaration of Benjamin Brookhart, CEO of Power Home Technologies, LLC	FTC-0000182	FTC-0000187

PX Number	Description	First Page	Last Page
21	Transcript of Deposition of Anthony Bolognese, Corporate Designee for Defendant Alliance Security Inc. and former Chief Technology Officer	FTC-0000188	FTC-0000218
22	Transcript of Deposition of Barry Crins, Former VP of Sales for Defendant Alliance Security Inc.	FTC-0000219	FTC-0000231
23	Transcript of Deposition of Defendant Jasjit Gotra, CEO of Defendant Defendant Alliance Security Inc.	FTC-0000232	FTC-0000261
24	Transcript of Deposition of Justin Ramsey, former Lead Generator and Telemarketer for Defendant Alliance Security Inc.	FTC-0000262	FTC-0000319
25	Declaration of Lynn Prindes, Employee of TransUnion	FTC-0000320	FTC-0000326
26	Declaration of Lynn Quinn, Employee of TransUnion	FTC-0000327	FTC-0000424
27	Declaration of Darren Wright, FTC Investigator	FTC-0000425	FTC-0000858

Notes on exhibits: In support of this Memorandum, the FTC submits 27 exhibits, including 5 self-authenticating court records (consolidated into 3 exhibits), 4 deposition transcripts (excerpted), and 20 declarations. Many of the declarations contain attachments. All exhibits cited in the Memorandum are referenced as “PX [exhibit number].” References include citations to relevant paragraphs by number, and to relevant attachments by page number. The 858 pages of exhibits are consecutively numbered.

In considering an application for a TRO or preliminary injunction, the Court may rely on affidavits and hearsay materials. *Asseo v. Pan Am. Grain Co.*, 805 F.2d 23, 26 (1st Cir. 1986) (“Affidavits and other hearsay materials are often received in preliminary injunction proceedings. The dispositive question is not their classification as hearsay but whether, weighing all the attendant factors, including the need for expedition, this type of evidence was appropriate given the character and objectives of the injunctive proceeding.”); *see also Amadi v. Dep’t of Children & Families*, 245 F. Supp. 3d 316, 319 (D. Mass. 2017) (“In the preliminary injunction context, however, a court ... may rely on otherwise inadmissible evidence, including hearsay”); *CCBN.com, Inc. v. c-call.com, Inc.*, 73 F. Supp. 2d 106, 113 (D. Mass. 1999) (Saris, J.) (“reliance on hearsay appropriate in the context of an expedited preliminary injunction proceeding”) (citing *Asseo*).

I. Introduction

The FTC asks the Court to immediately halt ongoing abusive and invasive telemarketing and consumer credit checks by recidivist defendants Alliance Security, Inc. (“Alliance”) and Jasjit Gotra (“Gotra”)¹ who willfully defy the law and a 2014 Order by this Court.²

Defendant Alliance installs residential home security systems and solicits sales through illegal telemarketing by its own employees and by its affiliate, third-party telemarketing network. Alliance and its CEO and majority owner, Gotra, (collectively, “Defendants”) are recidivist violators of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310 *et seq.*³ The evidence described below establishes more than 500,000 illegal calls by Alliance, and more than 1 million additional illegal calls by two of Alliance’s third-party telemarketers, defendants Defend America, LLC (“Defend America”) and Power Marketing Promotions, LLC (“Power Marketing”). Many of these calls resulted in multiple violations of the TSR. These calls are just the tip of the iceberg: The records related to Alliance’s third-party telemarketers cover just a short stretch of time in the spring of 2016, and they represent but two out of Alliance’s hundreds of third-party telemarketers.

Alliance has also made at least 424,026 unauthorized and illegal credit inquiries, violating the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*

In 2014, the United States of America sued Defendants in this Court for violating the TSR by calling numbers on the National Do Not Call Registry (“DNC Registry”) and continuing

¹ The FTC has contemporaneously filed two proposed stipulated final orders to settle the FTC’s claims against the four remaining defendants in this case. *See* ECF 2-1 and 3-1.

² *See* PX 2, 2014 Order, ECF 13, *USA v. Versatile Marketing Solutions, Inc.*, No. 1:14-cv-10612 (D. Mass. Mar. 10, 2014).

³ Defendants’ recidivism also includes settling prior telemarketing cases brought by at least three states: Pennsylvania in 2010; Kentucky in 2011; and Wisconsin in 2014. These settlements are attached as a combined exhibit, PX 3. Private lawsuits against Alliance and several affiliated companies for similar telemarketing violations were consolidated into a multi-district class action, *In re Monitronics International Inc., Telephone Consumer Protection Act Litigation*, No. 1:13-cv-02493 (N.D. W. Va.).

to call people who had previously asked Alliance to stop calling.⁴ Defendants agreed to a Stipulated Final Order (the “2014 Order”) to resolve the claims. This Court entered the Order on April 24, 2014.⁵ Among other things, the 2014 Order prohibited Defendants from calling any consumer’s telephone number listed on the DNC Registry, unless Defendants could prove they had express written consent from or a pre-existing business relationship with the consumer. In 2015, Defendants admitted to the FTC that, after entry of the 2014 Order, they had placed 120,000 calls to numbers on the DNC Registry that violated both the TSR and the 2014 Order.⁶ Nevertheless, they kept violating the law and do so to this day.

By way of recent example, on January 10, 2018, a consumer emailed the FTC to complain about an unwanted robocall on his personal cellular telephone number, which is listed on the DNC Registry. He listened to the robocall, which purported to come from “National Home Security.” Having received numerous prior unsolicited calls with similar messages advertising home security systems, he feigned interest to learn who was responsible for the call. He was transferred to a live operator who set an appointment for an installer to visit his home and then was transferred a second time to a validation department where he was asked several more questions. It was during this second transfer to the validation department that he heard a prompt for a telephone menu that mentioned the name Alliance. Hours later, he received an email from his credit monitoring service alerting him that Safe Home Security, which he would later learn is an Alliance affiliate, obtained his credit report without his knowledge or permission.⁷ He subsequently received a call to verify the appointment. During this verification

⁴ See PX 1, Complaint, ECF 1, *USA v. Versatile Marketing Solutions, Inc.*, No. 1:14-cv-10612 (D. Mass. Mar. 10, 2014).

⁵ See PX 2, 2014 Order, ECF 13, *id.*

⁶ See PX 27, Declaration of Darren Wright, Attachment D at FTC-0000459.

⁷ See PX 8, Declaration of Consumer David Howell ¶¶ 5-17.

call, he was told the original caller and the installer were with Alliance. Two days later, an Alliance installer arrived at his home.

The FTC is likely to succeed on the merits of its claims that Defendants are responsible for: (1) violations of the TSR rules related to the DNC Registry; (2) violations of the TSR's requirement to "promptly" identify the "seller" in an outbound sales call; and (3) violations of the FCRA's prohibition on obtaining consumer reports without a permissible purpose.⁸ The conduct is ongoing, abusive, invades consumers' privacy, and is in blatant defiance of this Court's prior 2014 Order. It should be halted immediately.

The FTC requests relief in the form of a preliminary injunction barring Defendants from continuing to engage in telemarketing and continuing to obtain any consumer's credit report or credit score, without prior, written authorization from the consumer.

As discussed in Section III.F below, the requested relief is appropriate and necessary given the evidence presented in this memorandum, the legal precedent, and the fact that Defendants can continue operating using alternative sales channels, beyond telemarketing. On that final point, Gotra owns 62% of Power Home Technologies, LLC, ("PHT") a former competitor of Alliance, through a holding company, and Gotra and other PHT executives have repeatedly told the FTC—under penalty of perjury—that PHT does not engage in any

⁸ In addition to these three claims, the Complaint also alleges that Defendants are liable for: (1) making misrepresentations and/or assisting and facilitating numerous calls in which Alliance's third-party telemarketers misrepresented themselves and Alliance as being affiliated with competing entities, such as ADT, in violation of Section 5 of the FTC Act (Count VI) and 16 C.F.R. § 310.3(a)(2)(vii) (Count IV); (2) assisting and facilitating those misrepresentations in violation of 16 C.F.R. § 310.3(b) (Count V(c)); and (3) assisting and facilitating numerous calls using spoofed caller ID numbers that violate 16 C.F.R. § 310.4(a)(8) (Count V(d)). The requested relief would address these counts as well.

telemarketing.⁹ In light of their experience, Defendants could use of door-to-door sales, or add online sales like other companies, and stop violating telemarketing laws.

II. Statement of Facts

A. The Telemarketing Sales Rule and the Fair Credit Reporting Act

In 1994, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The FTC subsequently promulgated the TSR. 16 C.F.R. Part 310. The TSR established the DNC Registry, and a provision that prohibits telemarketers from initiating, or sellers from causing telemarketers to initiate, outbound telephone calls to a consumer's telephone number on the DNC Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B). The TSR further prohibits calls that "fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call ... [t]he identity of the seller," *id.* § 310.4(d); calls that used inaccurate caller ID information, *id.* § 310.4(a)(8), commonly known as "spoofed" calls; and calls that deliver prerecorded messages, *id.* § 310.4(b)(v), commonly known as "robocalls." The TSR also prohibits any person from providing material support or assistance to any seller or telemarketer "when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in acts practices that violate these TSR sections." 16 C.F.R. § 310.3(b).

The FTC is authorized to enforce the FCRA, 15 U.S.C. §§ 1681x. Under the FCRA, 15 U.S.C. § 1681b(f), it is unlawful for any "person to use or obtain a consumer report for any purpose unless," that person has a specific permissible purpose enumerated in 15 U.S.C. § 1681b(a). Credit reports and credit scores are types of consumer reports. 15 U.S.C. § 1681a(d).

⁹ See, e.g., PX 20, Declaration of Benjamin Brookhart; see also PX 27, Wright Dec. ¶ 17 and Att. F at FTC-0000547 (Declaration of Ricardo Diaz).

B. Defendants

Alliance is a Delaware corporation, which recently moved its principal place of business from Cranston to Providence, Rhode Island.¹⁰ Alliance initially incorporated in Massachusetts as Versatile Marketing Solutions, Inc.¹¹ In 2013, Versatile Marketing Solutions incorporated in Delaware, and shortly thereafter, changed its name to Alliance.¹² Alliance installs home security systems in this district and throughout most of the United States.¹³ Alliance is a closely held corporation owned by three individuals: Ricardo Diaz (7% owner); Brian Fabiano (31% owner); and Defendant Gotra (62% owner).¹⁴

Gotra lives in Rhode Island.¹⁵ In addition to owning 62% of Alliance, he is the company's founder¹⁶ and Chief Executive Officer.¹⁷ Gotra had authority to control Alliance's telemarketing practices and personally participated in Alliance's telemarketing at all times relevant to this case. For example, Gotra directed a third-party telemarketer to purchase data lists from an Alliance lead generator and arranged for Alliance to pay for the data lists instead of the telemarketer.¹⁸ Gotra also personally corresponded with consumers who sent Alliance complaints about unwanted telemarketing calls, telling them he had personally added their names to Alliance's internal do not call list.¹⁹ Gotra was also the only person at Alliance with the

¹⁰ See ECF 439, *In re: Alliance Security, Inc.*, No. 1:17-bk-11190 (Bankr. R.I. Mar. 8, 2018).

¹¹ PX 27, Wright Dec. ¶ 5 and Att. A (DE Corp. Records).

¹² PX 27, Wright Dec. ¶ 6-7 and Att. A (DE Corp. Records)

¹³ PX. 23, Deposition of Jasjit Gotra, Tr. 44:7-22 at FTC-0000243 ; *see also* <https://www.alliancesecurity.com/security-company/> (last visited Mar. 12, 2018).

¹⁴ PX. 23 , Gotra Tr. 58:25-59:2 at FTC-0000247 .

¹⁵ PX. 23 , Gotra Tr. 5:5-7 at FTC-0000234; *see also* PX 27, Wright Dec. ¶ and Att. B.

¹⁶ PX. 23, Gotra Tr. 40:22-41:6 at FTC-0000242-243.

¹⁷ PX. 23 , Gotra Tr. 44:22-25 at FTC-0000243.

¹⁸ PX 3, Wright Dec. ¶ 46 and Att. T at FTC-0000759.

¹⁹ *See, e.g.*, PX. 27, Wright Dec. ¶ 20 and Att. I at FTC-0000621.

authority to terminate the company’s lead generators, according to the testimony of Alliance’s former Vice President of Sales, Barry Crins.²⁰

C. Defendants’ Business Model Relies On Illegal Calls and Credit Checks

Alliance solicits the sale of its home security systems through telemarketing. Alliance employees place outbound sales calls to consumers.²¹ These salespersons attempt to set an appointment for Alliance’s alarm installation technicians to visit consumers’ homes; they also arrange the general terms of the sale, and obtain consumers’ personal information such as their name, address, telephone number, and date of birth—and on occasion, their full or partial social security numbers.²²

To identify consumers for its salespersons to call, Alliance purchases leads—which contain merely a consumer’s name and telephone number—from lead generators.²³ One of Alliance’s largest lead generators for many years was Justin Ramsey,²⁴ a recidivist unlawful telemarketer who has been sued by the FTC, several states, and private individuals for unlawful telemarketing.²⁵ Alliance provides its lead generators with access to its copy of the DNC Registry and sends them reminders to download the DNC Registry and Alliance’s internal do not call list,²⁶ as well as a list of “people who sue” that Alliance calls its “no fly” list.²⁷ Notwithstanding these gestures, Alliance knows its lead generators place illegal calls to generate leads.

²⁰ PX 22, Deposition of Barry Crins, Tr. 70:11-13 at FTC-0000226.

²¹ PX 27, Wright Dec. ¶ 10 and Att. D at FTC-0000451-52.

²² PX 27, Wright Dec. ¶ 17 and Att. F at FTC-0000555-56; *see also* PX 15, Declaration of Tyler Hall ¶ 18 and Att. C; PX 16, Declaration of Nathaniel McDonald ¶ 4.

²³ Ramsey Tr. 90-91 at FTC-0000285; PX 22, Crins Tr. 78-79 at FTC-0000228.

²⁴ PX 22, Crins Tr. 69:15-70:5 at FTC-0000226.

²⁵ *See, e.g., FTC v. Ramsey*, No. 9:17-cv-80032-KAM (S.D. Fla. Jan 13, 2017).

²⁶ PX 21, Bolognese Tr. 267-268 at FTC-0000213.

²⁷ PX. 24, Ramsey Tr. 139-140 at FTC-0000297; PX 21, Bolognese Tr. 205-213 at FTC-0000196-198.

In addition to having its own employees engage in telemarketing, Alliance also contracts with third-party telemarketing companies that it calls “dealers.” In 2016, Alliance informed the FTC that it had 575 such “dealers.”²⁸ These dealers call consumers, try to persuade consumers to purchase a home alarm system, arrange details of the sale, and set appointments for the installation of alarms by Alliance technicians.²⁹ Alliance provides its dealers with an on-line portal through which the dealers can view Alliance’s calendar to determine when its installation technicians are available to visit consumers’ homes.³⁰ Alliance also provides its dealers with access to its own copy of the DNC Registry and its internal do not call list,³¹ and it contractually requires these dealers to provide Alliance with copies of their do not call policies.³² Settling co-defendants Power Marketing and Defend America were Alliance dealers. Here too, such gestures do not correct the fact that Alliance knew its dealers violated the TSR.

Alliance does not provide a service to monitor the alarms it installs. Instead, Alliance enters into contracts with consumers for monthly alarm monitoring service and then sells those contracts to an alarm monitoring company. From April 2008 until July 2017, Alliance had an agreement with Monitronics International, Inc. (“Monitronics”), an alarm monitoring company, under which Monitronics had a right of first refusal to purchase Alliance’s alarm monitoring contracts.³³ This agreement made Alliance an exclusive telemarketer and seller for Monitronics. In turn, Monitronics paid Alliance a percentage of the total contract value, based primarily on the

²⁸ PX 27, Wright Dec. Att. E. at FTC-0000502.

²⁹ PX 24, Deposition of Justin Ramsey at 91-92.

³⁰ PX 23, Gotra Tr. 201:24-202:9 at FTC-0000255.

³¹ PX 21, Deposition of Alliance 30(b)(6) declarant, Anthony Bolognese, Tr. 270-271 at FTC-0000214. Alliance’s “dealer development department” even sent emails to dealers reminding them to download Alliance’s internal do not call list. *E.g.*, PX 27, Wright Dec. ¶ and Att. U at FTC-0000762.

³² *See* PX 27, Wright Dec. Att. D at FTC-0000452.

³³ *See* ECF 36-2, *In re: Alliance Security, Inc.*, No. 1:17-bk-11190 (R.I. Bankr. July 24, 2017).

length of the contract and the credit score of the consumer.³⁴ When Alliance installed an alarm after one of its dealers had set the appointment, Alliance paid its dealer a portion of the money it received from Monitronics. This payment, too, was based in part on the consumer's credit score.

After Alliance filed bankruptcy in July 2017, it asked the court to reject its contract with Monitronics and permit it to enter into a contract to sell alarm monitoring contracts to a different alarm monitoring company, Security Systems, Inc., and its owner, David Roman.³⁵ Mr. Roman and one of his other home security companies, Safe Home Security, are defendants in an FTC action that is pending in the Northern District of Illinois.³⁶

D. Defendants Are Recidivists With an Extensive History of Unlawful Telemarketing

Before this Court entered the 2014 Order, Defendants had already settled cases brought by Pennsylvania and Kentucky alleging unlawful telemarketing.³⁷ After the Court entered the 2014 Order, Defendants settled a similar case with Wisconsin.³⁸

Defendants also have been sued in numerous cases by private individuals alleging violations of the Telephone Consumer Protection Act. Class action claims against Alliance were consolidated into a single action in the Northern District of West Virginia by the United States Judicial Panel on Multidistrict Litigation. That case, *In re Monitronics Int'l Inc., Telephone Consumer Protection Act Litig.*, No. 1:13-cv-02493 (N.D. W. Va.), is now stayed against Alliance due to its bankruptcy. Monitronics is a co-defendant with Alliance in that case. Kevin Klink, a settling co-defendant in this action, also owns a now defunct business sued in that action. Monitronics has agreed to a \$28 million settlement and filed a proof of claim in

³⁴ *Id.* at 36.

³⁵ See ECF 37, *In re: Alliance Security, Inc.*, No. 1:17-bk-11190 (R.I. Bankr. July 24, 2017).

³⁶ See *FTC v. Lifewatch, Inc.*, No. 1:15-cv-05781 (N.D. Ill.).

³⁷ See PX. 3 at FTC-0000039-53 (Pennsylvania) and FTC-0000031-38 (Kentucky).

³⁸ See PX. 3 at FTC-0000054-63.

Alliance's bankruptcy alleging that Alliance was responsible for the conduct attributed to Monitronics in that case.³⁹

E. Alliance and Its Co-Defendant Telemarketers Placed at Least 1,058,725 Calls to Numbers on the DNC Registry

To protect consumers from abusive telemarketing, it is illegal to call consumers who list their numbers on the DNC Registry, absent exceptions not relevant here. Defendants concede, as they must, that their employees placed 120,000 calls to numbers listed on the DNC Registry without any legal basis under the TSR or the 2014 Order.⁴⁰ To the detriment of consumers, they engaged in many more violations. The following table provides snapshots of certain periods showing that more than one in ten of Alliance's calls were illegally placed to numbers listed on the DNC Registry.

530,117 Calls to DNC Registry Initiated by Alliance				
Dialer	Date Range	Calls	DNC Calls	DNC Hit Rate
Alliance's Employees	2014-04-01 – 2015-07-31	2,089,146	155,924	7.5%
Alliance's Employees	2015-01-02 – 2015-07-31	2,169,245	229,497	10.6%
Alliance's Employees	2015-09-01 – 2016-04-18	618,106	52,705	8.53%
Alliance via Dialing Vendor	2016-04-25 – 2016-06-04	3,145,723	91,991	2.92%
528,608 Calls to DNC Registry Initiated by Two Alliance Third-Party Telemarketers (In Spring 2016)				
Dialer	Date Range	Calls	DNC Calls	DNC Hit Rate
Power Marketing via Dialing Vendor	2016-04-27 – 2016-06-27	684,789	125,009	18.26%
Defend America via Dialing Vendor	2016-03-21 – 2016-05-06	492,089	403,599	82.02%
Totals for Alliance and its Telemarketers		Calls 9,199,098	DNC Calls 1,058,725	DNC Hit Rate 11.5%

³⁹ See ECF 53-1, *In re: Alliance Security, Inc.*, No. 1:17-bk-11190 (R.I. Bankr. July 24, 2017).

⁴⁰ See PX 27, Wright Dec. Att. D at FTC-0000459.

Call records and analyses of the calls identified above show that the day after this Court entered the 2014 Order, Alliance placed 622 calls to numbers listed on the DNC Registry,⁴¹ violating both the TSR and the 2014 Order. On the first anniversary of the 2014 Order, Alliance placed at least 1,729 illegal calls to numbers listed on the DNC Registry.⁴²

Defendants' former telemarketers and employees have also confirmed these illegal practices. A former employee of one of Defendants' third-party telemarketers has confirmed that his company used illegal robocalls, used spoofed caller ID numbers, and called consumers without "scrubbing" its list to remove numbers on the DNC Registry.⁴³ A former Alliance employee complained to the FTC that Alliance "did not follow any do not call lists."⁴⁴

F. Alliance Requires Its Telemarketers to Hide Alliance's Identity From Consumers

Alliance prohibits its lead generators and third-party telemarketers from disclosing Alliance's name during telemarketing calls, unless a consumer directly asks who will be installing the alarm. When asked at his deposition whether Alliance's "dealers" are permitted to use Alliance's name, Gotra answered "No. Absolutely not."⁴⁵ Later in the same deposition, after substantial discussion of the topic, Gotra clarified that "if someone says, asks them who is going to do the installation, it is their right to say to the customer Alliance Security will do the installation."⁴⁶ Alliance's lawyer added his own statement for the record at that same deposition, explaining for the FTC that "Jay [Gotra] is right, during telemarketing, they can't identify

⁴¹ See PX. 27, Wright Dec. ¶ 27 and Att. L at FTC-0000646.

⁴² See PX. 27, Wright Dec. ¶ 28 and Att. M at FTC-0000655. The FTC's process for obtaining the call records and having them analyzed by a third-party vendor is set forth in Mr. Wright's Declaration. See PX 27 at ¶¶24-41.

⁴³ PX 15. Declaration of Tyler Hall ¶¶ 4, 22. Mr. Hall formerly worked for a massive robocall enterprise and settled claims with the FTC. See ECF 28, Stipulated Final Order, *FTC v. Jones*, 8:17-cv-00058-DOC-JCG (Jan. 20, 2017).

⁴⁴ PX 27, Wright Dec. ¶ 72 and Att. X

⁴⁵ PX. 23, Gotra Tr. 197:9-13 at FTC-0000254.

⁴⁶ PX. 23, Gotra Tr. 212:9-19 at FTC-0000257.

themselves as Alliance or affiliated with Alliance.”⁴⁷ Alliance also confirmed in writing to the FTC that its third-party telemarketers are not “permitted to represent themselves as Alliance or otherwise affiliated with Alliance during their telemarketing campaigns.”⁴⁸

As a result of this policy, Defendants’ telemarketers have placed countless calls on behalf of Alliance that do not promptly disclose Alliance’s identity. Defendants’ exclusive telemarketer, Defend America, placed at least 492,089 telemarketing calls during less than three months in the spring of 2016 that failed to identify Alliance. During the same period, Power Marketing placed 684,789 calls to solicit the sale of home security systems for Alliance—all of which failed to identify Alliance.

For the calls by Defend America, the FTC has obtained audio copies of the prerecorded messages, which the FTC has transcribed.⁴⁹ None of the recordings disclosed the name of any actual company. Some of the different variations even used a false, generic company name: “Home Security Center.” None of these calls promptly identified Defend America (the calling party), Alliance (the alarm installer), or Monitronics (the alarm monitoring company).⁵⁰

G. Defendants Performed More Than 400,000 Unauthorized Credit Checks Between March 2016 and September 2017

To protect consumers’ privacy and safeguard their financial information, the FCRA prohibits unauthorized access to credit reports and credit scores. The telemarketing sales scripts Alliance produced explicitly show that Alliance’s general practice was not to tell consumers that

⁴⁷ PX. 23, Gotra Tr. 211:22-212:1at FTC-0000257.

⁴⁸ PX. 27, Wright Dec. Att. D at FTC-0000452.

⁴⁹ See PX. 3, Wright Dec. ¶ 43 and Att. S.

⁵⁰ Defend America placed these calls through Alliance’s vendor, Avatar Technologies, which used a technology called “soundboard,” or “avatar” in which live operators played prerecorded messages to consumers.

Alliance was obtaining their credit scores or credit reports.⁵¹ Indeed, the standard sales script does not mention credit inquiries,⁵² and in the sales “rebuttals” script, Alliance instructs its employees to disclose that Alliance obtains their credit reports only if customers persist in asking several times.⁵³ Declarations and complaints from former Alliance telemarketers and employees confirm this flagrant disregard for the FCRA.

For example, former Alliance telemarketer Tyler Hall states that Alliance obtained consumer credit scores for his telemarketing company without consumers’ knowledge or permission.⁵⁴ Another former employee, Nathaniel McDonald, who worked at Alliance as a salesperson in the summer of 2014,⁵⁵ declared that his “manager at Alliance told [him he] should not tell customers that Alliance checked their credit . . . even if a customer directly asked me if Alliance would check his or her credit, I should say no.”⁵⁶ McDonald declared that these practices were pervasive and widely known at Alliance. Another former employee complained to the FTC that, “the lack of concern for customer’s personal information (especially the credit reports and social security numbers obtained without customer’s knowledge or permission) was disturbing.”⁵⁷ Yet another former Alliance employee complained to the FTC that “they do not inform consumers that they are running their credit.”⁵⁸

TransUnion produced documents to the FTC showing that, between March 1, 2016 and September 9, 2017, Alliance initiated at least 715,186 requests to obtain consumer credit reports

⁵¹ PX 27, Wright Dec. ¶ 17 and Att. F at FTC-0000555-56; PX 15, Hall Dec. ¶¶ 5, 12-13 and Att. C; PX 16, McDonald Dec. ¶ 4.

⁵² PX 27, Wright Dec. Att. F at FTC-0000555-56; PX 15, Hall Dec. ¶¶ 5, 11-13 and Att. C.

⁵³ PX 27, Wright Dec. Att. F at FTC-0000555-56; PX 15, Hall Dec. ¶¶ 14-15 and Att. D.

⁵⁴ PX 15, Hall Dec. ¶¶ 5, 12-13.

⁵⁵ PX 16, McDonald Dec. ¶ 2.

⁵⁶ PX 16, *id.* ¶ 6.

⁵⁷ PX 27, Wright Dec. ¶ 73 and Att. Y.

⁵⁸ PX 27, Wright Dec. ¶ 72 and Att. X.

or credit scores.⁵⁹ Of those 715,186 requests, TransUnion explained that 2,897 were blocked because the consumer account belonged to a minor or was frozen.⁶⁰ The requests that were blocked included inquiries about the following individuals' credit:⁶¹

- August 9, 2016—"Bill Clinton, [redacted private residential address], Washington, DC"
- October 18, 2016—"Joe Biden, 1600 Pennsylvania Ave, Washington, DC."
- October 19, 2016—"Barrack [sic] Obama, 1600 Pennsylvania Ave, Washington, DC"
- March 15, 2017—"Mike Pence, 3450 Massachusetts Ave NW, Washington, DC." [This is the address of the United States Naval Observatory and the Vice President's residence.]
- August 17, 2017—"Donald Trump, 1600 Pennsylvania Ave NW, Washington, DC"

In addition to the blocked inquiries, Alliance initiated 291,161 consumer credit inquiries for which TransUnion was unable to locate a consumer with a credit score or credit report.⁶² As a result, during the eighteen-month time span from March 1, 2016 through September 9, 2017, Alliance's 715,186 consumer credit inquiries submitted to TransUnion system resulted in Alliance obtaining 424,026 consumer credit reports or credit scores on actual consumers.⁶³

Among those 424,026 illegal credit inquiries was an inquiry by Alliance to obtain the credit report of Mitchell Hodus.⁶⁴ As noted in Mr. Hodus' declaration, he had never heard of Alliance, let alone given Alliance permission to obtain his credit report or credit score. Moreover, he had no interest in obtaining a new home security system.⁶⁵

H. Consumer Declarations Confirm the Illegal Dialing and Credit Practices

The FTC submits eleven consumer declarations confirming Defendants' TSR and FCRA violations. Many of these consumers personally confirmed that Alliance was responsible for the

⁵⁹ PX 25, Prindes Dec. ¶ 8 at FTC.

⁶⁰ PX 25, *id.*

⁶¹ PX 25, *id.*

⁶² PX 25, *id.*

⁶³ PX 25, *id.* at ¶ 9.

⁶⁴ PX 7, Declaration of Mitchell Hodus.

⁶⁵ PX 7, *id.*, Hodus Dec. ¶¶ 3-5.

unwanted, illegal calls by having Alliance installers come to their home. None of these consumers actually wanted Alliance to install an alarm. Rather, feeling outraged by the abusive calls, they wanted to learn the identity of who was responsible for the calls or wanted a face-to-face opportunity to ask them to stop calling. A chart⁶⁶ within the declaration of FTC investigator Darren Wright summarizes these eleven consumer declarations and, in almost every instance, independently confirms the contents of the consumers' declarations through evidence produced by Defendants, Kevin Klink (the owner of Power Marketing), or other third parties.

I. Defendants Misrepresent Their Telemarketing Practices to Consumers and the FTC

After this Court entered the 2014 Order, Defendants—including Gotra, personally—have made numerous false or contradictory statements to consumers and the FTC about their telemarketing and business practices. This conduct buttresses the need for preliminary relief and demonstrates why any lesser form of relief reliant upon Alliance's truthful and forthright answers would be difficult, if not impossible, to monitor and enforce. Below are three of the most egregious instances concerning: (1) calls to the DNC Registry; (2) Alliance's relationship with its dealers aka telemarketers; and (3) Alliance's purported termination of lead generators as required under 2014 Order.

First, Defendants have made numerous false statements to consumers and the FTC about their practice of removing numbers on the DNC Registry from their call lists. On July 9, 2015, Gotra emailed a consumer who had filed a DNC complaint with legal@alliancesecurity.com, telling the consumer that: (1) Alliance does not call numbers on the DNC Registry; and (2) Alliance's system will not even accept a sales lead containing a number listed on the DNC

⁶⁶ PX 27, Wright Dec. ¶ 67.

Registry.⁶⁷ Alliance’s sales scripts, produced to the FTC, also instruct Alliance’s salespersons to tell consumers the same thing.⁶⁸ However, internal emails exchanged between Alliance employees show this is not true, and that their lead generators did in fact submit leads with numbers listed on the DNC Registry, and Alliance then called those numbers,⁶⁹

Second, as part of their effort to distance themselves from their third-party telemarketers, Defendants, on December 14, 2015, informed the FTC that “Alliance does not provide calling lists, advertisements or marketing materials, or telemarketing scripts to” its dealers or lead generators.⁷⁰ In fact, Gotra had personally arranged the provision of calling lists for Alliance’s third-party telemarketer, Power Marketing.⁷¹ In addition, in January 2016, Alliance employee Jeremy Valentino (who worked in the company’s business development department) sent emails to Alliance’s third-party telemarketer, Trensaf Home Security, aka F.S.P. Home Security, with Alliance’s sales scripts for Trensaf to use in telemarketing.”⁷²

Third, the 2014 Order required Defendants to terminate their relationship with any lead generator that failed to comply with the TSR or the 2014 Order. Defendants misled the FTC about their compliance with this provision of the 2014 Order. In July 2014, Alliance sent the FTC an email—copying Gotra—stating that Defendants had terminated their relationship with “Data Guru” and “Armor All Protection” based on a high volume of complaints from consumers.⁷³ Data Guru was a company owned and operated by Justin Ramsey.⁷⁴ Defendants did

⁶⁷ See PX 27, Wright Dec. Att. I at FTC-0000598.

⁶⁸ PX 27, Wright Dec. Att. F at FTC-0000552-54.

⁶⁹ PX 27, Wright Dec. Att. I at FTC-0000614.

⁷⁰ PX 27, Wright Dec. Att. D at FTC-0000454.

⁷¹ PX 27, Wright Dec. Att. T at FTC-0000759.

⁷² PX 15, Hall Dec. ¶ 10 and Atts. A and B.

⁷³ PX 27, Wright Dec. ¶ 10 and Attachment C.

⁷⁴ See *e.g.*, ECF 1, Complaint, *FTC v. Ramsey*, No. 9:17-cv-80032-KAM (S.D. Fla. Jan. 10, 2017).

not tell the FTC that they continued working with Ramsey through other companies and actually increased their dealings with him.⁷⁵ Another lead generator Alliance claimed it had terminated, “Armor All Protection,” was owned by Maroon Deek.⁷⁶ After facing questions at its deposition about why Alliance had called “Armor All” more than 360 times in 2015, after it had purportedly terminated “Armor All,”⁷⁷ Defendants admitted to the FTC that Mr. Deek had continued to own another Alliance “dealer” (i.e., telemarketer) called “The Alarm Group.”⁷⁸

III. ARGUMENT

To halt ongoing and persistent violations of the TSR and FCRA, to prevent future violations, and to protect consumers’ privacy, the FTC respectfully requests that the Court issue a preliminary injunction that: (1) bans Defendants from engaging in telemarketing; and (2) bans Defendants from obtaining or using consumer credit reports or scores without consumers’ prior, written authorization. The Court has the authority to order the requested relief, the evidence demonstrates that the FTC is likely to succeed on the merits, the equities weigh in favor of the requested relief, Gotra is personally liable and must be subject to the injunction, and the requested relief is necessary to protect consumers.

A. This Court has Authority to Grant the Requested Relief

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to seek, and this Court to grant, preliminary and permanent injunctions against any practices that violate any law enforced by the FTC. *See FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996); *accord*

⁷⁵ As noted above, in December 2015, Gotra arranged for Alliance to pay Ramsey to provide consumer phone number lists to one of Alliance’s telemarketers, Power Marketing. *See* PX 27, Wright Dec. ¶ 45 and Att. T at FTC-0000759. Then, in the spring of 2016, Alliance began letting Ramsey directly transfer telephone calls to Alliance’s employees in Alliance’s headquarters in Rhode Island. *See* PX 27, Wright Dec. ¶ and Att. H at FTC-0000578.

⁷⁶ PX 27, Wright Dec. ¶ 10 and Attachment C.

⁷⁷ PX 21, Bolognese Tr. 255-259 at FTC-0000210-211.

⁷⁸ PX 27, Wright Dec. ¶ 11 and Att. E at FTC-0000504.

FTC v. Amy Travel Service, Inc., 875 F.2d 564, 572 (7th Cir. 1989); *FTC v. H.N. Singer Inc.*, 688 F.2d 1107, 1113 (9th Cir. 1982); *FTC v. Direct Marketing Concepts, Inc.*, 2004 WL 1399185, at *4-5 (D. Mass. June 23, 2004); *FTC v. Patriot Alcohol Testers, Inc.*, 1992 WL 27334, at *3 (D. Mass. Feb. 13, 1992). Here, Defendants’ telemarketing activities are in flagrant violation of the law and this Court’s 2014 Order, and have been for many years. Moreover, consumer harm is ongoing and significant. Under such circumstances, injunctive relief is warranted. *See Direct Marketing Concepts, Inc.*, 2004 WL 1399185, at *6 (holding “immediate and irreparable harm to consumers will result from ongoing violations”).⁷⁹ The laws enforced by the FTC, for which the FTC may obtain injunctive relief under this Court’s authority, include both the TSR and the FCRA. “Any violation of the TSR constitute[s] an unfair and deceptive act or practice in or affecting commerce in violation of § 5(a) of the FTC Act.” *United States v. Dish Network, L.L.C.*, 667 F. Supp. 2d 952, 955 (C.D. Ill. 2009) (citing 15 U.S.C. §§ 45(a), 57a(d)(3), 6102(c)). Violations of the FCRA also constitute violations of Section 5(a) the FTC Act, 15 U.S.C. § 45(a). *See* 15 U.S.C. § 1681s(a).

B. The FTC Need Only Prove a Likelihood of Success on the Merits and That the Public Equities Outweigh Any Private Interests, As Irreparable Harm Is Presumed

In determining whether to grant preliminary relief under Section 13(b), a court must consider two factors: (1) the FTC’s likelihood of ultimate success, and (2) whether the public equities outweigh any private equities. *See Patriot Alcohol Testers, Inc.*, 1992 WL 27334, at *3; *see also FTC v. Affordable Media*, 179 F.3d 1228, 1233 (9th Cir. 1999); *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1217 (11th Cir. 1991). “Under the public interest standard, the FTC need

⁷⁹ Injunctive relief is appropriate even in less serious circumstances when a defendant has ceased its illegal activities if there is a “cognizable danger of recurrent violation,” *U.S. v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), and the commission of past illegal conduct is “highly suggestive of the likelihood of future violations.” *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979); *see also Direct Mktg. Concepts*, 648 F. Supp. 2d at 202; *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1017 (N.D. Ind. 2000).

not prove irreparable harm” in order to obtain injunctive relief. *FTC v. Seismic Entertainment Productions, Inc.*, 2004 WL 2403124, at *2 (D.N.H. Apr. 9, 2004); *see also FTC v. IAB Mktg. Assoc., LP*, 746 F.3d 1228, 1232 (11th Cir. 2014) (citing *Univ. Health, Inc.*, 938 F.2d at 1218); *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989). Because irreparable injury is presumed, the burden of establishing success on the merits is decreased, and the district court “need only find some chance of probable success on the merits” in order to award preliminary relief. *Patriot Alcohol Testers, Inc.*, 1992 WL 27334, at *3 (citing *World Wide Factors, Ltd.*, 882 F.2d at 347) (further citation omitted)).

C. The FTC Is Likely to Succeed on the Merits

The voluminous evidence attached to this Motion proves more than two million violations of the TSR by Defendants’ employees and their third-party telemarketers, including more than 1 million calls to numbers on the DNC Registry and more than 1 million calls that fail to identify the seller of the product or service at issue. Each call violates the 2014 Order. Defendants’ further violated the privacy of American consumers and the FCRA, at least 424,026 times, when they pulled credit reports and credit scores on consumers without a permissible purpose or consumers’ consent.

1. The Defendants Initiated Calls to Numbers on the DNC Registry (Count II of the Complaint)

As noted above, Alliance admits that it placed 120,000 calls that violate both the TSR and the 2014 Order. However, as shown below, Alliance’s own employees have placed at least 438,126 illegal calls to numbers on the DNC Registry, and Alliance initiated an additional 91,991 calls to numbers on the DNC through its dialing vendor. Alliance has explicitly

disclaimed its affirmative defenses that it had express written consent or an established business relationship that would permit it to call numbers on the DNC Registry.⁸⁰

Under the TSR, Alliance is both a seller and a telemarketer subject to the prohibitions on calls to numbers on the DNC Registry. Alliance is a seller because, in connection with telemarketing calls, it offers goods and services to customers in exchange for consideration—it charges customers for the first month of alarm monitoring services.⁸¹ In addition, Alliance arranges for others to provide goods or services to the customer in exchange for consideration—it arranges for customers to pay third-party alarm monitoring companies, like Monitronics, to monitor their alarms. Alliance is a telemarketer because it initiates outbound calls to customers.⁸²

Defendants' employee dialed at least 438,126 calls to numbers on the DNC Registry.⁸³ Defendants are responsible for all of those calls. Alliance is also responsible for at least 91,991 calls to numbers listed on the DNC Registry by Alliance's dialing vendor, Avatar Outsourcing ("Avatar"). Alliance sent Avatar the list of consumer phone numbers to dial, among other acts.⁸⁴ For the calls by Avatar, the number of violations is particularly significant given the small sample size of call data produced to the FTC. The records produced by this vendor spanned just a short period from April through June of 2016. Those calls dialed by Avatar resulted in 546 consumer complaints filed with the FTC.⁸⁵

⁸⁰ PX 27, Wright Decl. ¶ and Att. D at FTC-0000451.

⁸¹ The TSR defines a "seller" as any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. *Id.* § 301.2(dd).

⁸² Under the TSR, a "telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. *Id.* § 310.2(ff).

⁸³ PX 27, Wright Dec. ¶ 24-28, 44.

⁸⁴ PX 27, Wright Dec. ¶ 42 and Att. R.

⁸⁵ PX 27, Wright Dec. ¶ 44.

In addition, the FTC has received numerous other complaints from consumers about calls from or on behalf of Alliance, even though the consumers' numbers were listed on the DNC Registry.⁸⁶ As recently as January 2018, consumer David Howell contacted the FTC about repeated unwanted calls from Alliance, even though his number had been listed on the DNC Registry for years.⁸⁷ As former Alliance employee Kyle Conlan reported to the FTC in December 2015, "the company did not follow any do not call lists."⁸⁸

2. Defendants Are Sellers Who Are Liable for Their Telemarketers' Illegal Calls to Numbers on the Registry (Count II of the Complaint)

Defendants also are liable for the abusive practices of their telemarketers Defend America and Power Marketing under the TSR. As a seller under the TSR, Alliance is legally responsible for its telemarketers' abusive telemarketing calls to telephone numbers on the DNC Registry by causing the telemarketers to engage in the prohibited conduct. *See* 16 C.F.R. § 310.4(b)(1)(iii)(B), *see also United States v. Dish Network, LLC*, 667 F. Supp. 2d 952, 958-59 (C.D. Ill. 2009). In *Dish*, the court held that a seller "causes" the telemarketing activity of a telemarketer by retaining the telemarketer and authorizing the telemarketer to market the seller's products and services. *Id.* at 959. The *Dish* Court explained, "[a] person may cause an outcome intentionally, unintentionally, recklessly, negligently, innocently, accidentally or otherwise. The relevant section of the TSR, § 310.4(b)(1), contains no additional language that would either limit the degree of connection between the action and the outcome, or add an intent or motive requirement." *Id.* The *Dish* Court reiterated this standard in two subsequent opinions. *United States v. Dish Network, LLC*, 75 F. Supp. 3d 942, 1007 (C.D. Ill. 2014); *United States v. Dish*

⁸⁶ PX 27, Wright Dec. ¶¶ 44, 67; *see also* PX 4, Arlinghaus Dec. (complaint about calls during August 2017); PX 8, Howell Dec. (complaint about calls during January 2018); PX 6, Hamrick Dec. (complaint about calls during May 2017); PX 11, Lucas Dec. (complaint about calls from October 2016 through May 2017).

⁸⁷ PX 8, Howell Dec. ¶4.

⁸⁸ PX 27, Wright Dec. ¶ 72.

Network, LLC, 256 F. Supp. 3d 810, 932-933 (C.D. Ill. June 5, 2017); *see also FTC v. Lifewatch*, 176 F. Supp. 3d 757, 783 (N.D. Ill. 2016) (adopting and applying the standard set forth in *Dish*). Thus, to establish Alliance’s liability for its telemarketers Defend America and Power Marketing’s violations of the TSR’s do not call provisions, the FTC must show that: (1) Alliance retained Defend America and Power Marketing; (2) Alliance authorized them to market its products and services; and (3) Defend America and Power Marketing violated the TSR. *Id.* The FTC has met that standard.

For the reasons set forth above, Defendants are “sellers” under the TSR. As sellers, the Defendants are liable for “causing” their third-party telemarketers Defend America and Power Marketing to initiate 528,608 calls to numbers on the DNC Registry, in violation of 16 C.F.R. § 310.4(b)(1)(iii)(B). First, there is overwhelming evidence that Alliance retained and authorized Defendants Defend America and Power Marketing to telemarket home security systems on their behalf. Defend America had an exclusive agreement to telemarket on behalf of Alliance.⁸⁹ Power Marketing was formed specifically to become an Alliance dealer.⁹⁰ Alliance also provided these telemarketers with access to Alliance’s copy of the DNC Registry, Alliance’s own internal do not call list, and Alliance’s calendar so the telemarketers could determine the availability of Alliance’s alarm installation technicians.⁹¹

Moreover, prior to the illegal calls at issue here by Defend America, which were placed from March 21, 2016 through May 6, 2016, Alliance had previously received complaints about Defend America but continued its relationship with the company.⁹² Similarly, before it even

⁸⁹ PX 27, Wright Dec. ¶ 21 and Att. J at FTC-0000623.

⁹⁰ PX 27, Wright Dec. ¶¶ and Att U at FTC-000772-774.

⁹¹ *See above* notes 28-30.

⁹² PX 27, Wright Dec. ¶ 20 and Att. I at FTC-0000598.

began transacting business with Power Marketing, Alliance was aware of the history of complaints about unlawful telemarketing by the company's owner, Defendant Kevin Klink.⁹³

These 528,608 do not call violations are based on a few months of records by just two of Alliance's hundreds of telemarketers. Indeed, Tyler Hall, who ran an autodialer for one of Alliance's other telemarketers, Trensaf Security, confirmed that his company intentionally called numbers on the DNC Registry, despite having the ability to avoid doing so.⁹⁴

3. Defendants Violated the TSR by Assisting and Facilitating Calls to Numbers on the DNC Registry (Count V(a) of the Complaint)

In addition to Defendants' liability for causing the initiation of illegal calls by Defendant America and Power Marketing, both Alliance and Gotra are also liable under the TSR's assisting and facilitating provision. *See FTC v. Chapman*, 714 F.3d 1211, 1216–17 (10th Cir. 2013) (affirming liability under the TSR's assisting and facilitating provision where the defendant “was the one who provided the services and products [that were] marketed to consumers in misleading ways”); *see also Lifewatch Inc.*, 176 F. Supp. 3d at 782.

Both entities received directions from Alliance—such as periodic emails instructing them to use Alliance's copy of the DNC Registry and Alliance's internal do not call list. Both entities also placed calls on Alliance's behalf, used Alliance's calendar to schedule installations for consumers to the benefit of both Alliance and the telemarketer responsible for telemarketing Alliance's installation services and the products and services that Alliance was selling, and received payment from Alliance.

⁹³ Klink was a co-defendant with Alliance and Gotra in the multi-district class action lawsuit and two of his prior companies—competitors of Alliance—were also co-defendants. Gotra purchased one of those competitors and received a schedule of pending telemarketing litigation.

⁹⁴ PX 15, Hall Dec. ¶ 4.

4. Defendants Violated the TSR by Assisting and Facilitating Outbound Telemarketing Calls that Failed to Identify the Seller (Count V(b) of the Complaint)

Alliance has assisted and facilitated its telemarketers, including Defend America and Power Marketing, in violating the TSR's requirement, under 16 C.F.R. § 310.4(d), to "promptly" identify the seller. Prompt identification of either Alliance or Monitronics would satisfy this requirement. Alliance installs the alarms, collects the pre-payment from consumers, and provides consumers with the contracts to sign, and Monitronics monitored the alarms and collected the remaining payments from consumers. Thus, all of Alliance's telemarketing calls, and those by its third-party telemarketers must promptly disclose Alliance or Monitronics' identity.

Defendants have knowingly provided material assistance or support to their telemarketers and sellers, including Power Marketing and Defend America, whom they knew or consciously avoided knowing were engaged in telemarketing calls that used fake company names and otherwise failed to promptly disclose Alliance or Monitronic's identity.

But Defendants did not merely assist and facilitate their telemarketers' failure to promptly identify Alliance, they contractually required it. Alliance repeatedly reminds its telemarketers that they must not identify Alliance or Monitronics in any of their outbound sales calls and even threatens them with termination for failing to comply with this requirement.⁹⁵

Operating under those contractual requirements and threats, Power Marketing placed at least 684,789⁹⁶ telemarketing calls through their vendor, all of which failed to identify the seller from March through June of 2016. During the same general period, and operating under an exclusive agreement with Alliance, Defend America placed at least 492,089 telemarketing calls through the same vendor to solicit the sale of home security systems for Alliance, all of which

⁹⁵ See PX. 21, Bolognese Tr. 287-288 at FTC-0000215.

⁹⁶ PX 27, Wright Dec. ¶ 41.

failed to identify the seller.⁹⁷ Some of Defend America’s calls even used a false, generic company name: “Home Security Center.”⁹⁸

Thus, combining the calls by Power Marketing and those by Defend America, Alliance assisted and facilitated at least 1,176,878 calls that failed to promptly identify the seller. This violation of the TSR—and this intentional policy of not permitting telemarketers to identify Alliance or Monitronics—undermines consumers’ and the FTC’s ability to trace unlawful calls to the responsible parties. This is the reason so many consumers resorted to feigning interest in an alarm just to learn who was responsible for the unwanted sales calls pitching home security systems in order to stop them.⁹⁹ In each instance, these consumers learned Alliance was responsible for the calls.

5. Alliance Violated the FCRA by Obtaining Consumer Credit Information from TransUnion Without Any Permissible Purpose.

Alliance simply has no legal basis for obtaining consumer credit scores and credit reports, and none of the permissible purposes set forth in Section 1681b(a) is applicable here.¹⁰⁰

Even the purported permissible purposes that Alliance told TransUnion for obtaining consumer credit scores and credit reports are plainly inapplicable. For example, on December 28, 2016, Alliance asserted to TransUnion that its permissible purpose for obtaining consumer

⁹⁷ *Id.*, Wright Dec. ¶ 43 and Att. S.

⁹⁸ *Id.*

⁹⁹ *See* PX 4, Arlinghaus Dec. ¶ 3; PX 5, Dolan Dec. ¶ 5; PX 6, Hamrick Dec. ¶ 4; PX 8, Howell Dec. ¶ 6; PX 10, Larson Dec. ¶¶ 3-4; PX 11, Lucas Dec. ¶4; PX 13, Sunderland Dec. ¶¶ 4, 8; PX 14, Zimring Dec. ¶ 5.

¹⁰⁰ Many of the permissible purposes set forth in Section 1681b(a) are inapplicable. *E.g.*, pursuant to a court order or grand jury subpoena (15 U.S.C. § 1681b(a)(1)); for employment purposes (15 U.S.C. § 1681b(a)(3)(B)); for purpose of underwriting insurance (15 U.S.C. § 1681b(a)(3)(C)); in connection with issuance of government issued credit card (15 U.S.C. § 1681b(a)(3)(G)); in connection with child support payment issues (15 U.S.C. § 1681b(a)(4)-(5)); or in response to a request from the Federal Deposit Insurance Corporation or the National Credit Union Administration (15 U.S.C. § 1681b(a)(6)).

reports was “account review,”¹⁰¹ which authorizes businesses to obtain credit information about their current or past customers for purposes of collecting on an account or monitoring their current customers’ ongoing credit worthiness pursuant to 15 U.S.C. §§ 1681(a)(3)(A) and (a)(3)(F). Then, on January 12, 2017, Alliance’s Chief Financial Officer, Douglas Anderson, certified that Alliance would request “Consumer Report Information *solely*” for its legitimate business need “in connection with a business transaction that is *initiated* by the consumer.”¹⁰² (emphasis added.) This is a permissible purpose set forth under 15 U.S.C. § 1681b(a)(3)(F)(i). Yet, neither justification was true. Alliance and its third-party telemarketers cold call consumers who have never even heard of Alliance, and then obtain their credit reports without their knowledge or permission. Alliance, not the consumer, initiates these transactions.¹⁰³ Moreover, Alliance had no relationship with those consumers, and therefore was not obtaining their credit information for purposes of “account review.”¹⁰⁴

Alliance also obtains credit reports on individuals who are not even potential customers. For example, one consumer, Mitchell Hodus, informed the FTC that he never spoke with Alliance, has never heard of Alliance, had not been shopping for a new home security system in at least three years, and had no idea why Alliance would have obtained his credit report or credit score under the auspices of “account review.”¹⁰⁵

¹⁰¹ See PX 26, Quinn Dec. ¶18 ant Att. H at FTC-0000418.

¹⁰² See PX 26, Quinn Dec. ¶18 ant Att. I at FTC-0000420.

¹⁰³ See PX 4, Arlinghaus Dec. at ¶ 6; PX 5, Dolan Dec. at ¶ 3; PX 6, Hamrick Dec. at ¶7; PX 7, Hodus Dec. at ¶5; PX 10, Larson Dec. at ¶19.

¹⁰⁴ Several consumers have informed the FTC that their credit reports showed inquiries by Alliance under the “account review” section of their credit report, despite never having any account with Alliance. See PX 4, Arlinghaus Dec. at ¶ 7; PX 6, Hamrick Dec. at ¶¶6- 7; PX 7, Hodus Dec. at ¶¶ 2-3; PX 9, Kahler Dec. at ¶¶ 7-8; PX 11, Lucas Dec. at ¶¶ 7-8; PX 12, Pippin Dec. at ¶ 4.

¹⁰⁵ PX 7, Hodus Dec. ¶¶ 2-5.

Alliance also obtained consumer credit information for thousands of consumers who lived in areas where Alliance did not conduct sales. For example, in 2016, Alliance obtained 3,024 consumer reports from TransUnion for consumers living in the states of Colorado, Maine, and Oregon,¹⁰⁶ even though Alliance does not conduct sales there.¹⁰⁷

The pervasiveness of these illegal practices are explained in declarations and complaints submitted to the FTC by former Alliance employees and telemarketers. The company has a policy of not informing consumers about credit checks, and Alliance's sales representatives are instructed to deny to consumers that Alliance obtained their credit.¹⁰⁸ Even Alliance's sales scripts that it produced to the FTC state that consumers should not be told about credit checks unless they persist in asking several times.¹⁰⁹

Finally, Alliance has not instituted controls to ensure that employees do not abuse TransUnion's system to obtain—or attempt to obtain—credit reports without any permissible purpose for obtaining the reports. As a result, Alliance employees have used TransUnion's system in an attempt to obtain credit scores or credit reports of public figures, including Presidents Clinton, Obama, and Trump, and Vice Presidents Biden and Pence. Records produced by TransUnion show that all of these inquiries were unsuccessful and therefore did not violate the FCRA, because no consumer information was unlawfully *obtained*; however, these inquiries show, in addition to the evidence of hundreds of thousands of FCRA violations, that Alliance failed to exercise any control over its employees accessing consumer credit reports. Indeed, the

¹⁰⁶ PX 27, Wright Dec. ¶¶ 74.

¹⁰⁷ <https://www.alliancesecurity.com/security-company/> (last visited Mar. 12, 2018).

¹⁰⁸ PX 15, Hall Declaration ¶¶ 12-15 ; PX 16, McDonald Declaration ¶ 6; PX 27, Wright Declaration, ¶¶ 72-73 and Attachments X and Y (complaints from former Alliance employees).

¹⁰⁹ PX 27, Wright Dec. ¶¶ 17 and Att. F at FTC-0000563.

attempt to obtain President Trump’s credit information occurred *after* Alliance knew that the FTC was examining Alliance’s FCRA compliance.

D. The Public Equities Far Outweigh the Defendants’ Private Interests.

When the court balances the equities, the public interest “must receive far greater weight” than any private concerns. *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988); *see also World Wide Factors, Ltd.*, 882 F.2d at 347. “In such statutory enforcement cases, the government proceeds ‘not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the ... laws.’” *Direct Mktg. Concepts, Inc.*, No. 04-cv-11136-GAO, 2004 WL 1399185, at *6 (D. Mass. June 23, 2004) (quoting *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir.1975)). Thus, “[w]hen, as here, the FTC demonstrates a likelihood of success, a showing of private concerns implicated by the proposed injunction is not enough to deny injunctive relief.” *Seismic Entm’t Prods., Inc.*, 2004 WL 2403124, at *4 (consumer declarations describing violations of the FTC Act outweigh defendants’ “individual interests in ... business activities and profit [which] are of little weight”).

Here, in the face of ongoing and persistent law violations, the FTC has a strong interest in protecting consumers from unwanted and abusive telemarketing calls, as well as unlawful, and unauthorized credit inquiries. Defendants have no valid or legitimate interest in continuing their unlawful telemarketing in violation of the TSR and continuing to obtain credit reports without a permissible purpose in violation of the FCRA.

E. Jay Gotra Is Personally Liable and Should Be Subject to Injunctive Relief

Under the FTC Act, an individual defendant is liable and subject to injunctive relief for violations committed by a corporate entity if he “either directly participated in the [unlawful] acts or practices or had authority to control them; it is not necessary to show that the individual

personally” engaged in the unlawful conduct. *FTC v. Direct Mktg. Concepts, Inc.*, 569 F. Supp. 2d 285, 310 (D. Mass. 2008), *aff’d*, 624 F.3d 1 (1st Cir. 2010); *see also FTC v. IAB Mktg. Assocs., LP*, 746 F.3d 1228, 1233 (11th Cir. 2014). Authority to control “may be demonstrated by active participation in the corporation’s affairs as a corporate officer” *Direct Mktg. Concepts, Inc.* at 310 (citing *Amy Travel Serv., Inc.*, 875 F.2d at 573). “An individual’s status as a corporate officer gives rise to a presumption of ability to control a small, closely-held corporation.” *FTC v. Transnet Wireless*, 506 F. Supp. 2d 1247, 1270 (S.D. Fla. 2007); *see also J.K. Publ’ns, Inc.*, 99 F. Supp. 2d at 1176, 1204 (C.D. Cal. 2000) (holding “status as a corporate officer and authority to sign documents on behalf of the corporate defendant can be sufficient to demonstrate the requisite control” for individual liability).

As shown in Section II.B above, Gotra is the CEO, founder, and majority shareholder of Alliance. At all relevant times, he has exercised his authority as CEO and actively participated in Alliance’s corporate affairs, including signing the 2014 Order on behalf of Alliance, signing contracts on behalf of Alliance, and terminating lead generators.¹¹⁰ Gotra has also controlled, participated in, and had knowledge of the unlawful acts. For example, Gotra personally communicated with consumers who complained about unlawful telemarketing calls,¹¹¹ directed an Alliance telemarketer to purchase data lists from Alliance’s lead generator (Justin Ramsey), and arranged for Alliance to pay for the data lists instead of the telemarketer.¹¹² In addition, Alliance’s unlawful telemarketing¹¹³ and FCRA violations¹¹⁴ continued even after the FTC made Gotra aware of them.

¹¹⁰ PX 22, Crins, Tr. 70:11-13 at FTC-0000226.

¹¹¹ *See, e.g.*, PX. 27, Wright Dec. ¶ 20 and Att. I at FTC-0000598 and FTC-0000621.

¹¹² PX. 27, Wright Dec. ¶ 45 and Att. T at FTC-0000759.

¹¹³ *Compare* PX 23, Gotra Tr. (Dec. 2015 Deposition), with, *e.g.*, PX 27, Wright Dec. ¶41; PX 8. Howell Dec (unwanted calls to number on DNC Registry on Jan. 10, 2018).

F. The Requested Relief in the Proposed TRO Is Necessary and Appropriate Given Defendants' History of Recidivism and Ongoing Violations

Based on the Defendants extensive history of recidivism, and their continued violations of the TSR—even after agreeing to the 2014 Order and even while knowing they were being investigated by the FTC for violating that Order—the requested relief is needed and appropriate to stop ongoing violations and prevent future violations by these Defendants.

Through their unwillingness to comply with the TSR, Defendants have shown that a clear, bright-line ban on all telemarketing is necessary to prevent future violations of the TSR. An equally clear, bright-line is needed to ensure Defendants stop violating the FCRA; the FTC therefore requests that, as a matter of preliminary relief, Defendants be banned from obtaining consumers credit reports or credit scores, without prior written authorization from the consumer.

The requested relief will prevent Defendants from continuing to engage in the illegal conduct at issue while still allowing them to continue in business. Although they would not be able to continue advertising and selling their products and services using their current primary method (telemarketing), they could continue selling home security systems through on-line sales or door to door sales. Indeed, Gotra's other home security sales company (Power Home Technologies) has told the FTC—under penalty of perjury—that it does not engage in any telemarketing. Accordingly, the Defendants could continue in business without telemarketing. And their door to door or on-line sales would provide opportunities for prior-written authorization to obtain consumer credit reports or credit scores.

Although not litigated, the FTC has previously obtained full telemarketing bans in three cases based solely on egregious violations of the TSR's prohibitions on abusive telemarketing. *See* ECF 88, Entry of Default Judgment and Final Order for Permanent Injunction, *FTC v. Jones*,

¹¹⁴ PX 8, Howell Dec. ¶¶ 10-11(credit report obtained illegally on Jan. 10, 2018).

No. 17-cv-00058 (C.D. Cal. May 31, 2017) (permanent ban on telemarketing based on DNC Registry violations and illegal robocalls); ECF 22, Stipulated Judgment and Order for Permanent Injunction, *United States v. Cox*, No. 11-cv-01910 (C.D. Cal. Feb. 4 2013) (permanent ban on telemarketing for DNC Registry violations, illegal robocalls, and spoofed caller ID numbers); ECF 63, Stipulated Final Judgment and Order for Permanent Injunction, *United States v. Sonkei Communications, Inc.*, No. 11-cv-01777 (C.D. Cal. Apr. 15, 2014) (permanent ban on telemarketing and robocalling for assisting and facilitating DNC Registry violations, illegal robocalls, and spoofed caller ID numbers).

The facts of the present case are particularly egregious because Alliance is also alleged to have violated the FCRA, Section 5 of the FTC Act, and is a recidivist TSR violator. Moreover, it is uncontested that Defendants have engaged in prior violations of the TSR. Indeed, Defendants admitted that they placed 120,000 calls that violate both the TSR and the 2014 Order. Moreover, as shown above, Defendants' violations of the law have continued well after Defendants learned they were being investigated. And their violations are ongoing.

IV. CONCLUSION AND REQUEST FOR ORAL ARGUMENT

The FTC filed this action to stop ongoing violations of laws and regulations designed to protect consumers' privacy rights. The FTC respectfully requests that the Court grant the FTC's Motion and issue the requested preliminary injunction against Defendants Alliance Security, Inc. and Jasjit Gotra. Pursuant to Local Rule 7.1(d), the FTC respectfully requests oral argument. Given the nature, importance, and urgency of the requested relief, the FTC believes that the Court's deliberations would be significantly aided by oral argument.

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Respectfully submitted,

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