

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, a limited liability company,
also d/b/a Point Break Media, Point Break Solutions, and
Kivanni Marketing,

DCP MARKETING, LLC, a limited liability company, also
d/b/a Point Break,

MODERN SPOTLIGHT LLC, a limited liability company,

MODERN SPOTLIGHT GROUP LLC, a limited liability
company, also d/b/a Modern Spotlight,

MODERN INTERNET MARKETING LLC, a limited
liability company,

MODERN SOURCE MEDIA, LLC, a limited liability
company, also d/b/a Modern Source,

PERFECT IMAGE ONLINE LLC, a limited liability
company,

DUSTIN PILLONATO, individually and as an officer of
Pointbreak Media, LLC, DCP Marketing, LLC, and Modern
Source Media, LLC,

JUSTIN RAMSEY, individually and as an officer of
Pointbreak Media, LLC,

AARON MICHAEL JONES, a/k/a Michael Aaron Jones
and Mike Jones, individually and as an officer of Pointbreak
Media, LLC,

RICARDO DIAZ, individually and as an officer of
Pointbreak Media, LLC,

FILED BY _____ D.C.

MAY - 7 2018

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. FT. LAUD.

**PLAINTIFF'S *EX PARTE*
MOTION FOR A
TEMPORARY
RESTRAINING ORDER AND
MEMORANDUM IN
SUPPORT THEREOF**

Filed Under Seal

MICHAEL POCKER, individually and as an officer of
Modern Spotlight LLC and Modern Spotlight Group LLC,

STEFFAN MOLINA, individually and as an officer of
Modern Spotlight Group LLC and Perfect Image Online
LLC,

Defendants.

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INTRODUCTION

Defendants use false and misleading robocalls as well as live sales pitches to convince small business owners to pay hundreds of dollars for otherwise-free Google listing “claiming and verification” services. On these calls, Defendants tell business owners that Defendants are affiliated with Google, threaten them with removal from Google’s search engine, and promise to link certain “keywords” to the owners’ businesses in Google search results. These statements are all false. Defendants also sell their already-defrauded customers a search engine optimization “Citation Program” using false promises of success. Even more egregiously, when Defendants needed cash because their bank stopped processing consumer credit cards due to Defendants’ “predatory” tactics, Defendants simply wrote themselves unauthorized checks from hundreds of their customers’ bank accounts. Defendants have conducted their scam through a maze of interrelated companies managed by the Individual Defendants—a group of six telemarketers, three of whom are violating different federal or state court orders through their conduct in this case. The FTC therefore moves the Court for an *ex parte* temporary restraining order to stop this ongoing fraud, freeze its assets for consumer redress, and preserve evidence.

STATEMENT OF FACTS

I. DEFENDANTS’ BUSINESS PRACTICES

Defendants’ scam proceeds in three steps. First, Defendants find their victims by blasting a high volume of threatening robocalls aimed at small businesses. These calls identify Defendants as “service providers for Google” and urge consumers to speak with a sales agent to avoid removal from Google. Second, Defendants pitch Google “claiming and verification” services to business owners who speak to sales agents. Third, Defendants sell their enrolled customers a “Citation Program” by guaranteeing first-page search results. As explained below, the claims made by Defendants to consumers at each stage of the scam are false or misleading.

Finally, when Defendants lost the ability to charge credit cards, they responded by writing themselves unauthorized checks from their customers' bank accounts.

A. Defendants' Robocalls Claim an Affiliation with Google and Threaten Consumers with Removal from Google.

Defendants initiate their scam by targeting consumers with aggressive robocalls.¹ Some consumers receive multiple calls weekly, or even daily, for months on end.² The robocalls usually claim that the caller is affiliated with Google and that Google intends to remove the business from search results or mark it permanently closed. For example, one robocall states:

Hi, this is Jennifer Taylor, data service provider for Google and Bing. This is an urgent message for the business owner. We have tried numerous times to contact you through mail and now by telephone regarding your Google listing webpage. ***This is your final notice. If you do not act soon, Google will label your business as permanently closed.*** Press one now to speak with me or another Google specialist.

Did you know that 74 percent of your customers search online before making a purchase? If your Google listing is shut down, you will lose on all of those potential customers. It is critical that you, the business owner, take advantage of this rare opportunity to get ahead of your competition. Press one now to find out how to validate your free Google listing.

This message applies to all business owners. If you are the business owner, press one now. Press two if this is not a business or you would like to be removed from our calling list.³

¹ See, e.g., Plaintiff's Exhibit ("PX") 2 (Traylor) ¶¶ 2-3, 6-9, 11 & pp. 6-13, 19-44; PX 6 (Swerdlow) ¶¶ 3-4; PX 7 (Frazier) ¶¶ 3-4; PX 14 (Mollo) ¶¶ 2-4; PX 15 (Gaspar) ¶¶ 3-6, 11-12 & pp. 5-15; PX 18 (Hemphill) ¶¶ 3-4, 6-7 & pp. 4-14; PX 19 (Dobson) ¶¶ 3-4; PX 20 (Mellor) ¶¶ 2-3; PX 23 (Leo) ¶¶ 2-3; PX 24 (Foster) ¶¶ 2-3; PX 25 (Blanton) ¶¶ 2-4; PX 26 (Gallagher) ¶¶ 2-6.

² See PX 20 (Mellor) ¶ 2 (Defendants often called "5 times within an hour"); PX 6 (Swerdlow) ¶ 3; PX 22 (Kemp) ¶ 2; PX 24 (Foster) ¶ 2; PX 25 (Blanton) ¶ 2; PX 26 (Gallagher) ¶ 2.

³ PX 2 (Traylor) ¶¶ 8-9 & pp. 27-44 (emphasis added); see also PX 15 (Gaspar) ¶¶ 3-5 & pp. 5-15. Although this robocall and others from Defendants present an option to be removed from the calling list, Defendants ignore such requests. See, e.g., PX 15 (Gaspar) ¶¶ 6, 9, 11; PX 20 (Mellor) ¶ 4; PX 22 (Kemp) ¶ 6; PX 23 (Leo) ¶ 3; PX 25 (Blanton) ¶ 5; PX 26 (Gallagher) ¶ 3.

On other robocalls, Defendants call themselves “third party service provider[s]” for Google and Bing and tell consumers to press one to “avoid being removed from Google.” Plaintiff’s Exhibit (“PX”) 2 (Traylor) ¶ 7 & pp. 19-26; PX 18 (Hemphill) ¶ 7 & pp. 4-14; PX 27 (Gales) ¶¶ 25, 30.

B. Defendants’ Live Sales Agents Reaffirm the Robocalls’ Content and Add Promises of Unique Google Keywords.

Defendants transfer business owners who press one in response to their robocalls to live sales agents in a Boca Raton or Deerfield Beach call center. Defendants then sell those business owners Google “claiming and verification” services by making three false claims that:

(1) Defendants are affiliated with Google, or authorized to act on Google’s behalf; (2) the owner’s business is at risk of removal from Google search results because the owner has not “claimed and verified” the businesses; and (3) Defendants can provide small businesses with Google “keywords” for which the business will appear prominently in Google search results.

Defendants’ victims and other call recipients have confirmed these claims, as does a sales script provided by a former Point Break employee. *See* PX 1 (Douglas) at pp. 4-12.

1. Claims of Affiliation with Google

On some sales calls, Defendants’ sales agents claim that they work for Google directly. *See, e.g.*, PX 6 (Swerdlow) ¶ 5; PX 11 (Rodgers) ¶ 3; PX 22 (Kemp) ¶ 4; PX 23 (Leo) ¶ 5. On others, they claim that the Corporate Defendants⁴ are Google contractors, a “Google Business Partner,” or an “authorized Google My Business agency.”⁵ During one recorded call, the sales

⁴ The “Corporate Defendants” are Pointbreak Media, LLC, DCP Marketing, LLC, Modern Spotlight LLC, Modern Spotlight Group LLC, Modern Internet Marketing LLC, Modern Source Media, LLC, and Perfect Image Online LLC.

⁵ PX 2 (Traylor) ¶ 10 (describing Pointbreak Media, LLC as a “third party basically contracted by Google”); PX 8 (Lewis) ¶¶ 2-3 (describing Point Break as a Google Business Partner); PX 18 (Hemphill) ¶ 7 (describing Modern Spotlight Group LLC as “an authorized Google My Business

agent referred to Defendant Pointbreak Media, LLC (“Point Break”) as “like the umbrella under Google.” PX 14 (Mollo) at p. 16. On another call, a sales agent for Point Break, then doing business as “Kivanni,” said that Point Break “work[s] directly parallel with Google.” PX 15 (Gaspar) ¶ 7. Point Break, in fact, trained employees to identify Point Break as an “affiliate branch” or a “subsidiary that Google hires.” PX 1 (Douglas) ¶ 7. Even when not explicitly claiming a relationship with Google, Defendants’ sales agents fail to correct the affiliation claims from Defendants’ robocalls. If consumers do not ask their identity, for example, Defendants often do not mention their employer’s name at all. *See, e.g.*, PX 2 (Traylor) ¶ 4; *see also* PX 1 (Douglas) at pp. 4-8.⁶ On at least one call, Defendants went further, claiming that their robocall came from “Google Corporate” and that the agent worked for a “third party basically contracted by Google.” PX 2 (Traylor) ¶ 10.

2. Threats of Removal from Google

Defendants frequently start their live calls by threatening business owners with removal from Google: “The reason for the call is that our system shows your Google Listing for (name of company) has not been claimed or verified. Over the next 6-8 months businesses that are not claimed and verified with Google run the risk of possibility [sic] being removed from the search engine or pushed so far down the search engine that no one will find you.” PX 1 (Douglas) at p. 4. Many consumers confirm receiving this message, *see, e.g.*, PX 2 (Traylor) ¶ 10; PX 7 (Frazier) ¶ 5; PX 8 (Lewis) ¶ 2; PX 14 (Mollo) ¶ 9, and an FTC investigator’s undercover call (agency”); PX 27 (Gales) ¶¶ 25, 26 (same); *id.* ¶ 55 (describing Perfect Image Online LLC as an “authorized Google My Business agency”).

⁶ This sales script does not mention “Point Break,” except in the “Rebuttals” section. Specifically, in response to the consumer question “Are you Google?,” Defendants answer, “No we are Point Break, We [sic] are a data management company that helps small to medium size businesses claim and verify their business with google.” PX 1 at p. 9. This answer, even if actually given to a consumer, does not correct Defendants’ Google affiliation claims.

with Defendants started the same way, with the sales agent stating that the investigator's business "could be at risk for being removed" from Google. PX 27 (Gales) at p. 123.

If needed to complete the sale, Defendants' agents resort to these same threats later in their sales calls. For example, when an FTC investigator asked what would happen if she did not pay Defendants, the agent responded, "Well, ma'am then you are going to be running the risk of possibly being removed from the Google. Google did give you a time slot to verify your business with them and you did not meet that." PX 28 (Shiller) at p. 15; *see also* PX 27 (Gales) at p. 136. When the investigator declined, the agent told her to "[h]ave fun being removed from the internet" and hung up. PX 28 (Shiller) at p. 17.

3. Promises of Unique Keywords

Defendants tell consumers that claiming and verifying their businesses will not only prevent removal from Google, but will also allow the business to "register" certain keywords, "so you come up prominently when someone is searching for your goods and services." PX 1 (Douglas) at p. 4. They claim that the business's competitors appear higher on search results "simply because they are claimed, verified and listed as a trusted company." *Id.* at p. 6.

Defendants promise many business owners that they will receive first-place or first-page placement when people in their area search for their keywords. For example, Defendants told one special needs teacher that her company would become the top search result for terms such as "dyslexia" and "homeschooling." PX 6 (Swerdlow) ¶ 5. Similarly, a sales agent told an FTC investigator that "[t]he minute someone types in [a keyword], . . . I'll immediately have them directed to you." PX 27 (Gales) at p. 145. When the investigator asked, "so I'll be the first thing that they'll see?," the agent replied, "You should populate right there and then, correct." *Id.*

Defendants sometimes claim that the assigned keywords will be unique to the owner's business. On one call, Defendants claimed that the business owner would get "a list of keywords

that nobody else can use in the world.” PX 14 (Mollo) at p. 17. Similarly, when an FTC investigator asked whether “the keywords . . . are specifically for my business and no one else can use [them],” the agent confirmed that this was correct. PX 28 (Shiller) at p. 28.

Following the keyword discussion, Defendants reveal that there is a “one-time fee,” PX 1 at p. 7, usually between \$300-700.⁷ They accept payment either by credit card or by generating a remotely created check (“RCC”) from bank account information provided by business owners.⁸

C. Defendants Sell Their Victims an Additional “Citation Program” by Making Guarantees of First-Place or First-Page Placement.

Within days, Defendants call their victims and pitch a “Citation Program” service. A “senior business analyst” emails or calls consumers and claims that he or she “would like to discuss your page in greater detail” or “finalize your Google Business Listing that we manage for you.” PX 8 (Lewis) at p. 14; PX 6 (Swerdlow) at p. 11. On a follow-up call, that “senior business analyst” instead sells the Citation Program. The analyst explains that claiming and verifying a business listing is not, in fact, sufficient to ensure that the consumer’s business will appear prominently, or higher than its competitors, in search results.⁹ Using screen-sharing software, the analyst displays the business’s purported “visibility score.” PX 27 (Gales) ¶ 46;

⁷ See, e.g., PX 6 (Swerdlow) ¶ 6; PX 7 (Frazier) ¶ 5; PX 8 (Lewis) ¶ 4; PX 9 (Blaney) ¶ 7; PX 11 (Rodgers) ¶ 4; PX 27 (Gales) ¶¶ 33, 37. If business owners ask earlier in the call if there is a charge, Defendants deflect, telling them that “I am unaware at this point if there is a cost” and that “[t]his is a customer service call to fix what you currently have.” PX 1 (Douglas) at p. 9.

⁸ A remotely created check is a check that is not created by the paying bank and that does not bear the payer’s signature. See 12 C.F.R. § 229.2(fff). Rather, the payee—here, one of the Corporate Defendants—creates the check.

⁹ This claim is directly contrary to promises made on Defendants’ initial sales calls. For example, on the initial sales call with an FTC investigator, Defendants’ sales agent told the investigator that his business would appear first in search results for a certain keyword. PX 27 (Gales) at p. 145. On the upsell calls, a different agent walked back these claims: “Well, you got to think about this. You being in such a dense market like you are . . . for you to be able to pop up above anyone else in the area, there’s a ton of [competitors].” *Id.* at p. 238.

PX 7 (Frazier) ¶ 8. That score, the agent says, is the key to Google being able to find the business and display it in response to searches. PX 27 (Gales) ¶ 46. The agent proceeds to promise results: “[T]he true beauty of the program, it is something that works every single time. Every client I have signed up for this, it works every time.” *Id.*; *see also* PX 27 at p. 245 (“[W]e have a little over 4,500 clients in this secondary program, and it has worked for every one of them.”). Specifically, the agents promise businesses that they will become the top search result, or at least appear on the first page of search results, if they pay for the Citation Program. *See, e.g.*, PX 6 (Swerdlow) ¶ 10; PX 8 (Lewis) ¶ 8; PX 10 (Davidson) ¶ 6.

D. The Claims Used by Defendants to Sell Their “Claiming and Verification” and “Citation Program” Services Are False or Misleading.

The claims made by Defendants on their robocalls and live sales pitches are all false or misleading. Specifically, (1) Google is not affiliated with any of the Corporate Defendants, (2) Google does not remove unclaimed or unverified businesses from its search results, (3) Defendants do not provide business owners with Google-linked keywords, and (4) Defendants cannot guarantee, and in fact do not provide, first-place or first-page placement to Citation Program enrollees. Google itself has confirmed the falsity of these statements through declarations provided by Bryan Solar, a market development manager at Google who works with small businesses and small business products. *See* PX 3, PX 4, PX 5.

First, Solar confirms that Google “is not affiliated or associated with” any of the Corporate Defendants, nor has Google “contracted with” any of the Corporate Defendants “to provide any services in connection with [Google My Business].” PX 3 ¶ 3; PX 4 ¶ 3; PX 5 ¶ 3. Google My Business is the free service through which business owners can manage their business listings after claiming the listing and verifying their control of the business. PX 3-5 ¶ 1. Google also does not “approve, sponsor, or endorse” the Corporate Defendants or the

Corporate Defendants' services. PX 3-5 ¶ 3. Thus, Defendants' claims of being an "authorized Google My Business agency" or otherwise an affiliate or agent of Google are patently false.

Second, Google does not remove a business from search results, or label a business "permanently closed," simply because the business's owner has not claimed and verified the business. *Id.* ¶ 4. In fact, Google search results often include unclaimed and unverified businesses. *Id.* Additionally, Defendants make their threats of removal even to businesses that have, in fact, already claimed and verified a business listing. For example, an FTC investigator used Google My Business to claim and verify the listing for an undercover business. PX 27 (Gales) ¶¶ 27-29. Defendants nevertheless charged him \$599 to avoid removal from Google. *Id.* ¶¶ 30-37. Similarly, consumers who previously claimed and verified their Google listings also received Defendants' robocalls and sales pitches. *See* PX 13 (Damm) ¶¶ 3-6; PX 24 (Foster) ¶ 3.

Third, Defendants do not provide Google "keywords," much less "unique" keywords, to business owners. In fact, Solar confirms that "claiming" keywords is not a part of the claiming and verification process at all. PX 3-5 ¶ 6. Additionally, consumers who purchase Defendants' services see no change in their search results, even when searching for their claimed keywords. *See* PX 6 (Swerdlow) ¶ 16; PX 8 (Lewis) ¶ 10; PX 13 (Damm) ¶ 7. Some consumers never even receive the "verification code" that is necessary to complete the claiming and verification process. *See* PX 7 (Frazier) ¶ 13; PX 9 (Blaney) ¶ 15.

Fourth, Defendants' guarantees of success to Citation Program enrollees are false. In fact, "[t]hird-party search engine optimization services cannot guarantee that any particular web page or business listing will be shown at the top or on the first page of search results." PX 3-5 ¶ 7. Unsurprisingly, Defendants fail to move consumers who buy the Citation Program to the top of Google search results. *See, e.g.,* PX 6 (Swerdlow) ¶ 16; PX 8 (Lewis) ¶ 12.

E. Defendants Wrote Unauthorized Checks to Themselves from Consumers' Bank Accounts.

Defendants' unlawful conduct also includes unauthorized billing. On October 20, 2017, Bank of America Merchant Services terminated the merchant account through which Point Break had processed credit card payments since March 2017. PX 42 at p. 9. The bank's internal notes reference Point Break's "predatory services, scare tactics and processing history with high chargeback ratios" and state that consumers had "reported this Merchant to be deceptive by representing themselves as Google services." *Id.* at pp. 5-6.

Within days, Defendants began writing unauthorized remotely created checks to themselves from consumers' bank accounts. Specifically, Point Break took \$100 each from at least 270 consumers' accounts, all from October 23-27, 2017. PX 29 (Agarwal) ¶ 42. Defendants deposited these checks into two checking accounts at different banks, one of which they opened at Wells Fargo on October 21, 2017. *See* PX 29 (Agarwal) ¶ 42; PX 34 at pp. 5-8. Significant evidence confirms that Point Break lacked authorization to generate and deposit these checks. First, consumers have affirmed that the \$100 charges were unauthorized. PX 11 (Rodgers) ¶¶ 9-10; PX 12 (Beattie) ¶¶ 11-12; PX 13 (Damm) ¶¶ 10-11. Second, Defendants did not charge exactly \$100 for any of the services that they sold. In fact, prior to depositing the over 270 unauthorized \$100 checks at issue, only three of the over 1,000 checks that Point Break had deposited were for \$100. PX 29 (Agarwal) ¶¶ 43-45. Third, Point Break wrote and deposited all of these checks within days of losing their stream of credit card income.

II. THE EVOLUTION OF DEFENDANTS' SCHEME

Since November 2016, Defendants have used a series of aliases and corporate entities to avoid detection by the public, law enforcement, and banks.

Defendants first conducted their scam through Pointbreak Media, LLC. From November 2016 through March 2017, Point Break did business as “Kivanni Marketing,” and from March 2017 through the end of 2017, Point Break did business as “Point Break Media” and “Point Break Solutions.” PX 29 (Agarwal) ¶ 12; PX 32 at pp. 4, 15; PX 16 (Bach) ¶¶ 4-7; PX 9 (Blaney) ¶ 7. Defendants Dustin Pillonato, Justin Ramsey, Aaron Michael Jones, and Ricardo Diaz are or were all owners and managers of Point Break. PX 27 at pp. 21-22.¹⁰

Throughout the second half of 2017, Defendants encountered a series of problems that led to the creation or involvement of the remaining Corporate Defendants. First, complaints against Point Break mounted. Consumers, for example, littered Point Break’s own Google business listing and a Google “product forum” page with negative reviews. PX 27 (Gales) at pp. 300-314. The FTC also received hundreds of complaints from consumers, primarily about defendants’ robocalls. PX 30 (Thompson) ¶¶ 13-17. Second, two consumers filed Telephone Consumer Protection Act complaints against Point Break. PX 31 (Erickson) at pp. 9-28, 33-49.¹¹ Third, in October 2017, a reporter confronted Ramsey at Point Break’s call center. Ramsey admitted to doing “Google listings” work. PX 27 (Gales) ¶ 59 & pp. 297-298. In November, Boston’s local Fox affiliate aired a story featuring this interview with Ramsey and highlighting Ramsey and Point Break’s robocall operation. *Id.* Fourth, Point Break’s merchant bank stripped the company of its ability to process credit card payments in October 2017. PX 42 at p. 9.

In response to these problems, and, in particular, the public complaints, Point Break told consumers that they were not, in fact, the Florida-based “Point Break Media” that Google search

¹⁰ Although an August 2017 corporate filing “removed” Pillonato and Diaz as Point Break managers, *see* PX 27 at p. 24, bank documents confirm Pillonato’s continued control of the company, *see, e.g.*, PX 34 at p. 11; PX 33 at p. 3.

¹¹ Both plaintiffs voluntarily dismissed their complaints. At least one did so after settling with defendants. PX 31 at p. 30.

results indicated was a scam, but instead were “Point Break Solutions,” a real, but unrelated, Nevada company that resells IT hardware equipment. PX 9 (Blaney) ¶ 6; PX 16 (Bach) ¶¶ 2-3. This lie forced the president of the unrelated, Nevada-based Point Break Solutions to spend three hours per day between June and September 2017 fielding calls from angry consumers. PX 16 (Bach) ¶¶ 5-8.

In late August 2017 and early September 2017, Defendants transferred large sums of money amongst themselves in preparation for the next phase of their scam. Specifically, between August 25 and September 15, 2017, Point Break wired over \$94,000 to Defendant DCP Marketing, LLC (“DCP Marketing”). PX 29 (Agarwal) ¶ 19. At the same time, DCP Marketing transferred over \$61,000 to Defendant Modern Internet Marketing LLC, which transferred that money to Defendant Modern Spotlight LLC. *Id.* ¶¶ 19-23 & Tables 4-7. On August 30, 2017, in the midst of these transactions, Defendant Michael Pocker—also an owner and manager of Modern Spotlight LLC—formed Defendant Modern Spotlight Group LLC (“Modern Spotlight Group”) with Steffan Molina. PX 27 (Gales) at pp. 37-38. By October 2017, Modern Spotlight Group started selling Google listing “claiming and verification” services using the fraudulent practices described above. PX 29 (Agarwal) at p. 5 (Table 2).

Bank of America Merchant Service’s October 2017 termination of Point Break’s merchant bank account spurred further changes to the Defendants’ organization. First, DCP Marketing established a new merchant account, doing business as “Point Break,” to continue Point Break’s recurring charges of consumers who had enrolled in Point Break’s Citation Program. PX 33 at p. 3; PX 29 (Agarwal) ¶ 14. Second, in November 2017, DCP Marketing started depositing RCCs written out to “Point Break Media.” PX 29 (Agarwal) ¶ 49. Third, at around the same time, Dustin Pillonato formed Defendant Modern Source Media, LLC (“Modern

Source”). PX 27 at pp. 46-47. By December, Modern Source began selling the Citation Program to customers who purchased claiming and verification services from Modern Spotlight Group. PX 29 (Agarwal) ¶ 13 & Table 2; PX 27 (Gales) ¶¶ 27-51 (describing interactions with Modern Spotlight Group and then Modern Source). (Previously, Point Break had itself sold both claiming and verification and the Citation Program. *See, e.g.*, PX 6 (Swerdlow) ¶¶ 5-11.) Fourth, by early December 2017, Modern Spotlight Group and DCP Marketing took over paying at least 26 of Point Break’s employees. PX 29 (Agarwal) ¶¶ 47-48.¹²

Shortly after settling in as Modern Spotlight Group and Modern Source, Defendants began planning for the next phase of their scam. On December 30, 2017, Steffan Molina incorporated Defendant Perfect Image Online LLC (“Perfect Image”) and leased office space at 4730 NW 2nd Avenue, Suite 200, Boca Raton, FL. PX 27 (Gales) at pp. 50-51; PX 31 (Erickson) at pp. 313-331. On February 7, 2018, Modern Spotlight Group voluntarily “dissolved” as a corporate entity. PX 27 (Gales) at p. 39. In fact, the company continues to operate, but has relocated to the office space that Molina leased. PX 27 (Gales) ¶¶ 52-54.¹³ By mid-February, Perfect Image, operating from the same office space, also began selling Google “claiming and verification” services. PX 19 (Dobson) ¶¶ 3-7; PX 27 (Gales) at pp. 283-293.

¹² Defendants’ sales agents also confirmed the relationship between Point Break, Modern Spotlight Group, and Modern Source Media. On one December 2017 call, a Modern Spotlight Group sales agent stated that Modern Spotlight Group and Point Break had “merged companies.” PX 27 (Gales) ¶ 26. On a separate December call, a Modern Source Media employee admitted, “[T]he old name it was Pointbreak is what they were going by.” *Id.* ¶ 50.

¹³ Point Break also voluntarily cancelled its Delaware corporate status and withdrew its authority to conduct business in Florida in early January 2018. PX 27 (Gales) at p. 25. As late as January 25, 2018, Point Break, however, was still communicating with its existing customers. PX 9 (Blaney) ¶ 24. As described above, Defendants have continued Point Break’s scam through other corporate entities.

III. THE DEFENDANTS

A. The Corporate Defendants' Roles

As described above, the Corporate Defendants fall into four overlapping categories: (1) companies that sell “claiming and verification” services (Point Break, Modern Spotlight Group, and Perfect Image Online), (2) companies that sell the Citation Program (Point Break and Modern Source), (3) companies that bill consumers for services purchased from other defendants (DCP Marketing), and (4) companies that funnel money between the other Corporate Defendants (DCP Marketing, Modern Internet Marketing LLC, and Modern Spotlight LLC).

B. The Individual Defendants' Roles

The Individual Defendants have owned and managed the Corporate Defendants at various times throughout the scam's existence.

Justin Ramsey, Dustin Pillonato, Ricardo Diaz, and Aaron Michael Jones all are or were managers and owners of Point Break, the company that originated Defendants' scam. PX 27 (Gales) at pp. 21-22. Ramsey and Pillonato drafted Point Break's sales scripts, PX 31 (Erickson) at p. 5, and are signatories on its bank accounts, PX 34 at pp. 9-10; PX 36 at pp. 4-5. Ramsey also opened Point Break's merchant accounts, PX 32 at pp. 4-21, and endorsed the unauthorized \$100 checks that Point Break used to take money from consumers' bank accounts, PX 12 (Beattie) at p. 6; PX 13 (Damm) at p. 7.¹⁴ Pillonato, on behalf of Point Break, signed a “Cloud Contact Center” contract with a telecommunications company. PX 31 (Erickson) at pp. 333-342. Diaz was Point Break's treasurer, PX 27 (Gales) at p. 22, and leased the office space at 951 Broken Sound Parkway, Suite 188 in Boca Raton used by Defendants, PX 41 at pp. 3-26.

¹⁴ The signatures on these checks match Ramsey's signature on bank signature cards and account opening documents. See PX 34 at pp. 7, 10, 15; PX 36 at pp. 5-7, 9-10, 12-13.

He also worked from this office space. *See id.* at pp. 28-40. Jones was responsible for Point Break’s “compliance” with the National Do Not Call Registry.¹⁵ PX 31 (Erickson) at p. 90. Jones also co-founded and co-owned “Local Lighthouse,” a company that, like Defendants, used robocalls to find customers for its search engine optimization business. *Id.* at pp. 164-165. Jones admitted that the robocalls “were kind of misleading” because although it “didn’t say they were Google, but if you weren’t with it, you could . . . think that [they] were.” *Id.* at p. 168.¹⁶

In addition to his role at Point Break, Pillonato is also the sole officer and bank signatory for both DCP Marketing and Modern Source. PX 27 (Gales) at pp. 28-29, 46-47; PX 38 at pp. 3-7. He used his control of both companies to continue Defendants’ scam. Specifically, Pillonato used DCP Marketing to continue billing Citation Program enrollees, and he used Modern Source to continue selling the Citation Program to new customers. PX 29 (Agarwal) ¶¶ 13-14; PX 27 (Gales) ¶¶ 27-51 (describing interactions with Modern Spotlight Group and Modern Source).

Michael Pocker and Steffan Molina are the sole officers and bank signatories for Modern Spotlight Group. PX 27 (Gales) at pp. 37-38; PX 38 at pp. 9-11. Pocker and Molina formed Modern Spotlight Group at the same time that Point Break sent \$61,000 to Modern Spotlight LLC, of which Pocker is also an officer. PX 29 (Agarwal) ¶¶ 19-23; PX 27 (Gales) at

¹⁵ Point Break, in fact, routinely placed calls to phone numbers on the National Do Not Call Registry. *See* PX 30 (Thompson) ¶¶ 13-17; *see also* PX 20-24; PX 26. Jones’s failed compliance efforts are unsurprising. The FTC previously sued Jones for violating the Telemarketing Sales Rule by, *inter alia*, running a robocalling operation responsible for making 40.3 million calls to phone numbers on the National Do Not Call Registry in the first quarter of 2015 alone. PX 31 (Erickson) at p. 141. The Court in that case entered a default judgment of \$2.7 million against Jones, in addition to banning him from telemarketing. *Id.* at pp. 149-158.

¹⁶ To settle a lawsuit filed by Google, Local Lighthouse also admitted to making “false and misleading claims during . . . telemarketing calls that were likely to confuse the purchasing public regarding the true source or nature of [Local Lighthouse’s] services and the relationship between Google and [Local Lighthouse].” PX 31 (Erickson) at p. 172.

pp. 32-33. Pocker leased the Defendants' shared office space at 550 Fairway Drive. PX 31 (Erickson) at pp. 297-311. Pocker also signed Modern Spotlight Group employees' paychecks. Compare PX 39 at pp. 3-42 (Pocker signature), with PX 37 at pp. 3-4, PX 38 at pp. 9-11 (same). Molina is the sole officer and bank signatory for Perfect Image. PX 27 (Gales) at pp. 50-51; PX 40 at p. 3. Molina leased the Defendants' shared office space at 4730 NW 2nd Avenue. PX 31 (Erickson) at pp. 313-331. Molina also provides his email address to consumers on the Perfect Image website. PX 27 (Gales) at pp. 290, 293.

ARGUMENT

The FTC seeks *ex parte* preliminary injunctive relief, including an asset freeze, appointment of a temporary receiver, and immediate access to Defendants' business premises, to prevent the defendants from dissipating assets and destroying evidence. As set forth below, the evidence overwhelmingly supports entry of the proposed TRO.

I. THIS COURT HAS THE AUTHORITY TO GRANT THE REQUESTED RELIEF.

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to seek, and this Court to grant, preliminary and permanent relief enjoining violations of the FTC Act. *See FTC v. Gem Merch. Corp.*, 87 F.3d 466, 469 (11th Cir. 1996) (“[A] district court may order preliminary relief, including an asset freeze, that may be needed to make permanent relief possible.”). With that authority comes the power to grant “ancillary relief, including freezing assets and appointing a Receiver.” *FTC v. USA Fin., LLC*, 415 F. App'x 970, 976 (11th Cir. 2011) (quoting *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432 (11th Cir. 1984)). Courts in this District have frequently granted the same ancillary relief that the FTC seeks here.¹⁷

¹⁷ *See, e.g., FTC v. Student Debt Doctor, LLC*, No. 17-cv-61937-WPD, Dkt. No. 9 (S.D. Fla. Oct. 3, 2017) (entering *ex parte* TRO granting asset freeze, immediate access, expedited discovery, and appointment of receiver); *FTC v. Strategic Student Solutions LLC*, No. 17-cv-

II. THE EVIDENCE JUSTIFIES ENTRY OF A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION.

“[I]n determining whether to grant a preliminary injunction under section 13(b), a district court must (1) determine the likelihood that the FTC will ultimately succeed on the merits and (2) balance the equities.” *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1217-18 (11th Cir. 1991); *see also FTC v. IAB Mktg. Assoc., LP*, 746 F.3d 1228, 1232 (11th Cir. 2014). The FTC, unlike private plaintiffs, need not establish irreparable harm. *IAB Mktg. Assoc.*, 746 F.3d at 1232. The FTC satisfies both prongs of the preliminary injunction standard. First, the FTC is overwhelmingly likely to prove its deception and unfairness counts against the Defendants. Second, the equities favor issuing a temporary restraining order in order to protect the public from ongoing harm and to preserve the Court’s ability to provide complete redress to consumers.

A. The FTC Is Likely to Prevail on the Merits.

The FTC need only present evidence that it “likely will prevail,” rather than evidence that would justify a “final determination.” *Univ. Health*, 938 F.2d at 1218. The FTC satisfies this standard by establishing “some chance of probable success on the merits.” *FTC v. World Wide*

80619-WPD, Dkt. No. 10 (S.D. Fla. May 15, 2017) (same); *FTC v. DOTAuthority.com, Inc.*, No. 16-cv-62186-WJZ, Dkt. No. 29 (S.D. Fla. Sept. 19, 2016) (same); *FTC v. World Patent Marketing*, No. 17-cv-20848-DPG, Dkt. No. 11 (S.D. Fla. Mar. 8, 2017) (same); *FTC v. Mail Tree Inc.*, No. 15-cv-61034-JIC, Dkt. No. 16 (S.D. Fla. May 19, 2015) (same); *FTC v. Centro Natural Corp.*, No. 14-cv-23879-CMA, Dkt. No. 10 (S.D. Fla. Oct. 21, 2014) (same); *FTC v. Partners in Health Care Ass’n, Inc.*, No. 14-cv-23109-RNS, Dkt. No. 9 (S.D. Fla. Aug. 25, 2014) (same); *FTC v. FMC Counseling Serv., Inc.*, No. 14-cv-61545-WJZ, Dkt. No. 15 (S.D. Fla. July 7, 2014) (same); *FTC v. Marcus*, No. 17-cv-60907-FAM, Dkt. No. 13 (S.D. Fla. May 9, 2017) (entering *ex parte* TRO granting asset freeze, immediate access, and appointment of receiver); *FTC v. Consumer Collection Advocates Corp.*, No. 14-cv-62491-BB, Dkt. No. 10 (S.D. Fla. Nov. 4, 2014) (same); *FTC v. Diversified Educational Resources, LLC*, No. 14-cv-62116-JIC, Dkt. No. 14 (S.D. Fla. Sept. 16, 2014) (entering *ex parte* TRO granting asset freeze, immediate access, and expedited discovery); *FTC v. Regency Fin. Serv., LLC*, No. 15-cv-20270-DPG, Dkt. No. 9 (S.D. Fla. Jan. 28, 2015) (same); *FTC v. 7051620 Canada, Inc.*, No. 14-cv-22132-FAM, Dkt. No. 8 (S.D. Fla. June 12, 2014) (same); *FTC v. Dluca*, No. 18-cv-60379-KMM, Dkt. Nos. 17, 23 (S.D. Fla. Feb. 28, 2018 & Mar. 12, 2018) (same).

Factors, Ltd., 882 F.2d 344, 347 (9th Cir. 1989). The evidence used to support such a showing can include “affidavits and hearsay materials.” *FTC v. Primary Group Inc.*, 2015 WL 12976115, at *4 (N.D. Ga. June 8, 2015) (quoting *Levi Strauss & Co. v. Sunrise Int’l Trading*, 51 F.3d 982, 985 (11th Cir. 1995)).

Here, the evidence unequivocally establishes that the Defendants violated the FTC Act both through their deceptive sale of Google “claiming and verification” and search engine optimization services and by their unauthorized charges to consumers’ bank accounts. Additionally, the Corporate Defendants are all jointly and severally liable because they operated as a common enterprise, and the Individual Defendants are liable because they had authority to control the enterprise and knowledge of its unlawful acts.

1. Defendants Violated the FTC Act Through Their Deceptive Sale of Claiming and Verification and Citation Program Services.

Defendants’ deceptive conduct violates the FTC Act, which prohibits “deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a)(1). Deception occurs when: (1) defendants make a representation or omission; (2) that is likely to mislead consumers acting reasonably; and (3) that representation or omission is material to consumers’ decisions. *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1266-67 (S.D. Fla. 2007). The evidence establishes all three elements.

First, Defendants made a series of false representations to consumers on robocalls and scripted sales pitches. Specifically, to sell Google listing “claiming and verification” services, Defendants falsely represented that they were Google affiliates, that businesses were at risk of removal from Google, and that Defendants would provide businesses with Google “keywords.” To sell their Citation Program, Defendants falsely represented that they could guarantee first-place or first-page search placement. *See supra* Statement of Facts (“SOF”) Section I.A-D.

Second, these representations are likely to mislead consumers because they are false. *See, e.g., FTC v. Nat'l Urological Group*, 645 F. Supp. 2d 1167, 1190 (N.D. Ga. June 4, 2008) (“To demonstrate that a claim is likely to mislead a reasonable customer, the FTC may . . . demonstrate . . . that the express or implied message conveyed by the ad is false.” (internal quotation marks omitted)). As confirmed by Google and by Defendants’ customers, Defendants have no affiliation with Google, falsely threaten consumers with removal from Google, do not provide Google-linked keywords, and do not place their customers on the first page of Google search results. *See supra* SOF Section I.D. Consumers have confirmed that Defendants’ false claims misled them. *See, e.g.,* PX 6 (Swerdlow) ¶¶ 4, 6; PX 7 (Frazier) ¶¶ 4, 9, 10; PX 8 (Lewis) ¶ 4; PX 10 (Davidson) ¶¶ 4-5; PX 11 (Rodgers) ¶ 4.

Third, the misrepresentations are material. “A claim is considered material if it involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding a product.” *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992) (internal quotation marks omitted). Furthermore, express claims and deliberately made implied claims “are presumed to be material.” *Transnet*, 506 F. Supp. 2d at 1267; *see also FTC v. NPB Advertising, Inc.*, 218 F. Supp. 3d 1352, 1358 (M.D. Fla. 2016) (“Because an express claim inherently misleads a consumer, an express claim is presumptively material.”). Express claims are those that “directly represent the fact at issue,” while implied claims “do so in an oblique or indirect way.” *Kraft*, 970 F.2d at 318 n.4.

Here, the defendants’ misrepresentations are all express claims or, at least, deliberately made implied claims. For example, Defendants expressly represent that they are an “authorized Google My Business Agency” and that businesses “run the risk of [possibly] being removed from Google.” *See supra* SOF Section I.A-B. As a result, Defendants’ false claims are

presumed to be material. Even absent this presumption, Defendants' claims clearly are important to consumers' purchasing decisions and, therefore, are material. Indeed, in the absence of Defendants' threats and promises, it is unlikely that business owners would pay hundreds of dollars to Defendants for otherwise-free services.

2. Defendants Violated the FTC Act by Taking Money from Consumers' Bank Accounts Without Authorization.

In addition to barring deception, the FTC Act also prohibits "unfair" "acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(1). An act or practice is unfair if it (1) causes or is likely to cause substantial injury, (2) that consumers could not reasonably avoid, and (3) the injury is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n); *see also Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354, 1364-65 (11th Cir. 1988). Unsurprisingly, courts routinely find that taking money from consumers without authorization is an unfair act or practice.¹⁸ Here, Defendants wrote a series of unauthorized checks to themselves from their customers' bank accounts. *See supra* SOF Section I.E. As in other cases of unauthorized billing, the evidence satisfies all three elements of unfairness.

First, Defendants' unauthorized billing caused "substantial injury" to consumers. "An injury may be sufficiently substantial . . . if it does a small harm to a large number of people, or if it raises a significant risk of concrete harm." *Am. Fin. Serv. Ass'n v. FTC*, 767 F.2d 957, 972 (D.C. Cir. 1985) (quoting FTC, *Policy Statement on Unfairness* (Dec. 17, 1980),

¹⁸ *See, e.g., FTC v. Direct Benefits Group, LLC*, 2013 WL 3771322, at *13-14 (M.D. Fla. July 18, 2013) (agreeing that Defendants' had engaged in unfair practice by "obtaining consumers' bank account information and debiting those accounts without the consumers' consent"); *FTC v. Windward Marketing, Ltd.*, 1997 WL 33642380, at *13 (N.D. Ga. Sept. 30, 1997) ("Defendant . . . engaged in the unfair practice of issuing bank drafts on consumers' accounts without the consumers' authorization . . ."); *FTC v. Ideal Fin. Solutions, Inc.*, 2015 WL 4032103, at *8 (D. Nev. June 30, 2015) ("Courts regularly find unauthorized billing to be unfair."); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 1003-05 (N.D. Cal. 2010).

<http://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>). In this case, Defendants caused “substantial injury” by stealing \$100 from at least 270 consumers.

Second, consumers could not reasonably avoid Defendants’ unauthorized billing because they did not know about it in advance. “In determining whether consumers’ injuries were reasonably avoidable, courts look to whether the consumers had a free and informed choice.” *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1158 (9th Cir. 2010). Here, consumers had no choice at all and no opportunity to avoid the injury.

Third, there was no countervailing benefit to consumers or competition from Defendants’ unauthorized billing. “[W]hen a practice produces clear adverse consequences for consumers that are not accompanied by an increase in services or benefits to consumers or by benefits to competition, the unfairness of the practice is not outweighed.” *FTC v. Windward Marketing, Ltd.*, 1997 WL 33642380, at *11 (N.D. Ga. Sept. 30, 1997). In this case, consumers received nothing in exchange for the money that Defendants took from them, and Defendants’ theft created no benefit to competition.

3. The Corporate Defendants Have Operated as a Common Enterprise and Are Jointly and Severally Liable.

“[A] corporate entity can be held liable for the conduct of other entities where the structure, organization, and pattern of a business venture reveal a common enterprise or a maze of integrated business entities.” *FTC v. Lanier Law, LLC*, 715 F. App’x 970, 979 (11th Cir. 2017) (internal quotation marks omitted). To determine whether a common enterprise exists, courts consider, *inter alia*, whether the businesses “share office spaces and employees, commingle funds, coordinate advertising efforts, and operate under common control.” *Id.* “If the structure, organization, and pattern of a business venture reveal a ‘common enterprise’ or a ‘maze’ of integrated business entities, the FTC Act disregards corporateness.” *FTC v.*

Washington Data Res., 856 F. Supp. 2d 1247, 1271 (M.D. Fla. 2012). In this case, many factors confirm that the Corporate Defendants have operated as a common enterprise.

First, the Corporate Defendants have shared three separate office spaces. Point Break, Modern Spotlight Group, and DCP Marketing have operated from or paid rent at 951 Broken Sound Parkway, Suite 188, Boca Raton, FL. *See, e.g.*, PX 27 at pp. 21-25 (Point Break); *id.* ¶¶ 38, 58 (Modern Spotlight Group); PX 38 at p. 16 (DCP Marketing rent payment). Modern Spotlight LLC, Modern Spotlight Group, Modern Source, and Modern Internet Marketing LLC have leased space or incorporated at 550 Fairway Drive, Suite 104, Deerfield Beach, FL. PX 27 (Gales) at pp. 37, 42, 46 (Modern Spotlight Group, Modern Internet Marketing, and Modern Source); PX 31 (Erickson) at pp. 297-311 (Modern Spotlight LLC). Modern Spotlight Group and Perfect Image Online have shared office space, leased by Molina, at 4730 NW 2nd Avenue, Suite 200, Boca Raton, FL. PX 27 (Gales) ¶¶ 54, 57.

Second, the Corporate Defendants have commingled funds. For example, at the same time the Defendants formed Modern Spotlight Group, Point Break transferred over \$61,000 through DCP Marketing and Modern Internet Marketing and ultimately to Modern Spotlight LLC. *See supra* SOF Section II. Additionally, after Point Break lost its merchant bank account, DCP Marketing continued billing consumers for recurring charges previously processed by Point Break, and also deposited into its own account remotely created checks that Defendants wrote out to Point Break Media. *See supra* SOF Section II.

Third, the Corporate Defendants have shared employees. As Point Break slowed and then ceased operations, Modern Spotlight Group and DCP Marketing began paying at least 26 employees whom Point Break had paid within the previous two weeks. PX 29 (Agarwal) ¶¶ 47-48. One of those employees, Dustin Lynch, declared on a December 2017 call on behalf of

Modern Source that he had “been with these guys for almost two years now,” despite the fact that Modern Source had formed less than two months prior. PX 27 at pp. 46-47, 244. Lynch added, “[T]he old name, it was Pointbreak” *Id.* at p. 248. In fact, DCP Marketing—not Modern Source or Point Break—paid Lynch’s salary at this time. PX 39 at pp. 44-47.

Fourth, the Corporate Defendants are under common control. According to corporate filings, Pillonato is an officer of Point Break, Modern Source, and DCP Marketing; Pocker is an officer of Modern Spotlight LLC and Modern Spotlight Group; and Molina is an officer of Modern Spotlight Group and Perfect Image. PX 27 (Gales) at pp. 19-51.

Fifth, the Corporate Defendants’ business practices have been continuous and nearly identical. Modern Spotlight Group, Point Break, and Perfect Image have used the same misrepresentations to sell claiming and verification services. *See supra* SOF Sections I.A-D, II. Modern Source Media and Point Break have used the same misrepresentations to sell the Citation Program. *See supra* SOF Sections I.C-D, II. Modern Spotlight Group, Point Break, and Modern Source also have used nearly identical consumer contracts and welcome emails.¹⁹

Sixth, Defendants’ own employees have confirmed the relationship between the members of the common enterprise. On one December 2017 call, a Modern Spotlight Group sales agent stated that Modern Spotlight Group and Point Break had “merged companies.” PX 27 (Gales) ¶ 26. On another call, Dustin Lynch described Modern Source and Modern Spotlight Group as “sister compan[ies].” PX 27 ¶ 50.

¹⁹ PX 6 (Swerdlow) at p. 7 (Point Break welcome email); PX 27 (Gales) at p. 163 (Modern Spotlight Group welcome email); PX 8 (Lewis) at p. 6 (Point Break “Google listing [sic] Agreement”); PX 27 at p. 167 (Modern Spotlight Group “Google Business Listing Agreement”); PX 6 (Swerdlow) at p. 17 (Point Break “Citation Services and Reporting Agreement”); PX 27 (Gales) at p. 260 (Modern Source “Citation Services and Reporting Agreement”).

4. The Individual Defendants Are Liable for Monetary and Injunctive Relief.

An individual defendant is personally subject to injunctive and equitable monetary relief if he (1) “participated directly in the practices or acts or had the authority to control them” and (2) “had some knowledge of the practices.” *Gem Merch. Corp.*, 87 F.3d at 470 (quoting *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989)). The evidence establishes that each Individual Defendant had both authority to control and knowledge of the common enterprise’s unlawful practices.

When determining “participation or control,” “[a]n individual’s status as a corporate officer gives rise to a presumption of ability to control a small, closely-held corporation.” *Transnet*, 506 F. Supp. 2d at 1270; *see also Nat’l Urological Group*, 645 F. Supp. 2d at 1207 (same). Bank signatory authority or acquiring services on behalf of a corporation are also evidence of authority to control. *See, e.g., USA Fin. LLC*, 415 Fed. App’x at 974-75. Because each Individual Defendants served as both an officer and owner of at least one Corporate Defendant, *see supra* SOF Section III.B, they presumptively had the authority to control the Corporate Defendants. Furthermore, each Individual Defendant has played an active role in the management and/or operation of one or more Corporate Defendants. Among other things, they have acted as signatories on corporate bank accounts, entered into contracts with telecommunications companies, and leased office spaces. *See supra* SOF Section III.B.

Individual Defendants have “knowledge” of unlawful practices if they (1) “had actual knowledge of material misrepresentations,” (2) were “reckless[ly] indifferen[t] to the truth or falsity of such misrepresentations,” or (3) had an “awareness of a high probability of fraud” and intentionally avoided knowing the truth. *See FTC v. Wilcox*, 926 F. Supp. 1091, 1104 (S.D. Fla. 1995). “An individual’s degree of participation in the business is probative of knowledge.” *FTC*

v. Partners in Health Care Ass'n, 189 F. Supp. 3d 1356, 1367 (S.D. Fla. 2016). In particular, an individual's "pervasive role and authority" for a corporate defendant can create a "strong inference" that the individual had the requisite knowledge. See *FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1082 (C.D. Cal. 2012), *aff'd in part and vacated in part on other grounds*, 815 F.3d 593 (9th Cir. 2016). Evidence of a "pervasive role" includes serving as principal owners and officers, drafting telemarketing scripts, controlling the businesses' finances, and overseeing its activities. *Amy Travel Serv.*, 875 F.2d at 574-75.

Here, as more fully described in Section III.B of the Statement of Facts, the Individual Defendants all had pervasive roles in the common enterprise. The Individual Defendants are the sole owners and officers of the Corporate Defendants that took money from consumers: Point Break, Modern Spotlight Group, Modern Source, Perfect Image, and DCP Marketing. PX 27 (Gales) at pp. 22, 28-29, 37-38, 46-47, 50-51. See *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.D.C. 1973) (inferring that individual knew of deceptive practices where he was "the chief executive and primary shareholder of a closely held corporation whose stock-in-trade is overreaching and deception"). Ramsey, Pillonato, Pocker, and Molina are the sole signatories on these Defendants' bank accounts. PX 34 at pp. 9-10; PX 36 at pp. 4-7; PX 38 at pp. 3-11; PX 40 at p. 3. Ramsey and Pillonato drafted the sales scripts containing Defendants' misrepresentations. PX 31 at p. 95. Ramsey endorsed the RCCs that Point Break used to steal money from its customers. PX 12 (Beattie) at p. 6; PX 13 (Damm) at p. 7. Diaz was Point Break's treasurer, leased the office space from which Point Break and other Defendants operated, and regularly worked from this location. PX 27 (Gales) at p. 22; PX 41 at pp. 3-40. Jones, aside from partially owning Point Break, was responsible for its Do Not Call "compliance." PX 31 (Erickson) at p. 90. Pocker signed Modern Spotlight Group's checks and

leased the office space at 550 Fairway Drive from which multiple defendants have operated. PX 39 at pp. 3-42; PX 31 at pp. 297-311. Molina leased the office space at 4730 NW 2nd Avenue from which Modern Spotlight Group and Perfect Image Online operate. PX 31 at pp. 313-331. He also provides his email address on Perfect Image's website. PX 27 (Gales) at pp. 287, 290.

In short, the Individual Defendants have served as the sole officers for the Corporate Defendants that made sales, signed the checks that the Corporate Defendants used to pay employees, endorsed checks that the Corporate Defendants unlawfully drew from consumers' bank accounts, leased all three offices from which the Corporate Defendants operated, and drafted the Corporate Defendants' sales script.

Because all of the Individual Defendants have controlled and known of the common enterprise's unlawful acts, and will therefore be personally liable for any monetary judgment, all six are named in the proposed TRO and are subject to its prohibitions.

B. The Balance of Equities Favors Entering the TRO.

"[W]hen a district court balances the hardships of the public interest against a private interest, the public interest should receive greater weight." *World Wide Factors, Ltd.*, 882 F.2d at 347; *see also FTC v. USA Beverages, Inc.*, 2005 WL 5654219, at *5 (S.D. Fla. Dec. 6, 2005) ("In balancing the equities, private concerns may be considered, but public equities must receive far greater weight."). Here, the balance of equities mandates entry of a TRO because the public interest in preventing more consumers from falling victim to Defendants' unfair and deceptive practices far outweighs any possible interest Defendants may have in continuing these practices. Indeed, it is likely that only the entry of the requested injunctive relief will prevent the Defendants from continuing to deceive and harm the public during the pendency of the litigation.

III. THE REQUESTED *EX PARTE* RELIEF IS NECESSARY TO PREVENT DEFENDANTS FROM DISSIPATING ASSETS AND DESTROYING EVIDENCE.

The FTC asks the Court to issue the proposed TRO *ex parte* because, as discussed below, Defendants have shown themselves unwilling to comply with court orders or the law, and the defendants are likely to conceal assets or destroy evidence if they receive advance notice of this filing. In addition to injunctive relief to halt the deceptive conduct, the proposed TRO includes an asset freeze, receivership, immediate access to Defendants' business premises, and other expedited discovery. This relief also is necessary to prevent Defendants' likely dissipation of assets and destruction of evidence.

A. *Ex Parte* Relief Is Necessary to Ensure That the Court Will Be Able to Grant Effective Relief.

Federal Rule of Civil Procedure 65(b) permits this Court to enter *ex parte* orders upon a clear showing that "immediate and irreparable injury, loss, or damage will result" if notice is given. *Ex parte* orders are proper in cases where "notice to the defendant would render fruitless the further prosecution of the action." *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322 (7th Cir. 1984); *see also Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974); *In re Vuitton et Fils, S.A.*, 606 F.2d 1, 4-5 (2d Cir. 1979). Courts in this District have regularly granted FTC requests for *ex parte* TROs in Section 13(b) cases. *See cases cited supra* note 17.

Here, giving notice of the TRO would almost certainly defeat its purpose. As discussed above in Section II, Defendants' business operations are permeated by, and reliant upon, deceptive practices. Experience has shown that defendants engaged in fraudulent schemes often dissipate assets and destroy records if they receive notice of an impending FTC action. *See Rule 65(b)(1) Certification and Declaration of Plaintiff's Counsel Evan Mendelson*, ¶¶ 19-20.

Such a risk is particularly high here because three Individual Defendants—Ramsey, Jones, and Pillonato—are violating Court orders through their role in Defendants' common

enterprise. Just over one year ago, Ramsey stipulated to a permanent injunction resolving an FTC lawsuit against him. PX 31 (Erickson) at pp. 51-84. Ramsey agreed to order provisions that, *inter alia*, (1) barred him from calling numbers on the National Do Not Call Registry and (2) required him to truthfully and clearly and conspicuously disclose the identity of the seller in any outbound call. *Id.* at pp. 55, 57. At the time that Ramsey agreed to these provisions, he already was violating them through Point Break. Specifically, Point Break routinely called numbers on the National Do Not Call Registry, *see* PX 30 (Thompson) ¶¶ 13-17, and did not identify itself on outbound telephone calls, instead claiming to be Google or an affiliate of Google, *see supra* SOF Section I.A. Ramsey's disregard for this Order is unsurprising. The Indiana Attorney General previously sued him for unlawful telemarketing, and the Mississippi Public Service Commission sued Tailbone Security, LLC, a company that he controlled, for similar practices. Both parties obtained default judgments and injunctions. PX 31 (Erickson) at pp. 106-111, 113-114; *see also id.* at p. 51 (identifying Ramsey as officer of Tailbone Security). Ramsey told the FTC that he knew nothing about the Mississippi case because, upon receiving a document that said "Attorney General of Mississippi," he "threw it in the garbage." *Id.* at p. 101.

Jones has also violated a federal court order through his ownership and control of Point Break. Specifically, on May 31, 2017, a Central District of California court barred Jones from all telemarketing, including owning a company engaged in telemarketing. PX 31 at pp. 149-158. The FTC served Jones with a copy of this Order, but he nevertheless maintained his status as an owner and manager of Point Break.²⁰ PX 31 at p. 160 (June 6, 2017 proof of service); PX 27 at pp. 21-24 (July and August 2017 corporate filings). Again, Jones's disregard for the law is

²⁰ The FTC is not currently seeking to hold Ramsey and Jones in contempt of the prior court Orders against them, but reserves the right to do so.

unsurprising. In connection with another robocalling operation, Jones admitted that “obviously, the underlying issue is the calls are illegal. We know that already.” PX 31 (Erickson) at p. 167.

Pillonato is in violation of a Florida state court order. PX 31 (Erickson) at pp. 178-195. That order settled a case in which the Florida Office of the Attorney General accused Pillonato of “actively control[ing] and direct[ing]” a technical support scam. *Id.* at p. 179. The order bars Pillonato from, among other things, “using any false or misleading statement to induce any person to pay for goods and services.” *Id.* at p. 182. As demonstrated above, Defendants regularly use false or misleading statements to induce small business owners to pay them.²¹

B. An Asset Freeze is Necessary to Preserve the Possibility of Providing Restitution to Defendants’ Victims.

Courts have authority under Section 13(b) of the FTC Act to impose an asset freeze to preserve the possibility of restitution to victimized consumers. *See, e.g., Gem Merch. Corp.*, 87 F.3d at 469; *U.S. Oil & Gas Corp.*, 748 F.2d at 1433-34. Courts in this District, moreover, have frequently frozen defendants’ assets in FTC enforcement actions to halt fraudulent business practices. *See* cases cited *supra* note 17.

In the Eleventh Circuit, “[t]here does not need to be evidence that assets will likely be dissipated in order to impose an asset freeze.” *IAB Mktg. Assocs., LP*, 972 F. Supp. 2d at 1313 n.3 (S.D. Fla. 2013). That is because the “asset freeze is justified as a means of preserving funds for the equitable remedy of disgorgement.” *See SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734

²¹ Ricardo Diaz and Michael Pocker, while not subject to any relevant court order of which the FTC is aware, are also not strangers to consumer protection cases. Diaz is a 7% owner and the CFO of Alliance Security Inc. *See* PX 31 (Erickson) at pp. 257-258. The FTC recently sued Alliance for, *inter alia*, violating the FTC Act by falsely claiming to be affiliated or associated with home-alarm company ADT. *Id.* at pp. 197-253. Pocker is a manager of Telcom Experts, LLC. PX 27 (Gales) at pp. 316-318. The Florida Attorney General recently sued Telcom Experts for its role in a tech support scam. PX 31 (Erickson) at pp. 261-295.

(11th Cir. 2005). The Eleventh Circuit has recognized that the “FTC’s burden of proof in the asset-freeze context is relatively light.” *IAB Mktg. Assocs.*, 746 F.3d at 1234.

An asset freeze is necessary to preserve the Defendants’ assets for consumer redress and disgorgement. If the FTC ultimately prevails, the defendants will be “liable to the extent of their ill-gotten gains,” the proper measure of which is their revenues from the scam. *IAB Mktg. Assocs.*, 972 F. Supp. 2d at 1312. Defendants’ revenues are approximately \$3 million, and, as of February 2018, they had less than \$50,000 in their corporate accounts. PX 29 (Agarwal) ¶ 15 & p. 7 (Table 3). Thus, the asset freeze is necessary to preserve the remaining funds for redress.

Although not necessary to order an asset freeze, the risk of further dissipation in the absence of an asset freeze is also high. The Individual Defendants have shown a propensity to use corporate funds for personal expenses. PX 29 (Agarwal) ¶¶ 40-41, Tables 8-9. Furthermore, Defendants’ common enterprise is permeated by fraud, and the FTC’s experience in prior cases confirms that defendants engaging in similar unlawful practices frequently dissipate assets upon learning of an impending law enforcement action. *See* Rule 65(b)(1) Certification and Declaration of Plaintiff’s Counsel Evan Mendelson, ¶¶ 19-20.

C. A Temporary Receiver Is Necessary to Preserve the Status Quo.

The FTC Act’s statutory authority permits a district court to appoint a receiver to oversee a business. *See U.S. Oil & Gas Corp.*, 748 F.2d at 1432; *see also* cases cited *supra* note 17. When a corporate defendant has used deception to obtain money from consumers, “it is likely that, in the absence of the appointment of a receiver to maintain the status quo, the corporate assets will be subject to diversion and waste” to the detriment of victims. *SEC v. First Fin. Group of Texas*, 645 F.2d 429, 438 (5th Cir. 1981).

Appointment of a receiver is particularly appropriate here. Defendants’ deceptive and unfair business practices, history of violating court orders, and extensive efforts to prolong the

life of their scam reflect such indifference to the law that Defendants are likely to destroy evidence and dissipate assets. The receiver would help prevent this misconduct by identifying, securing, and controlling the use of Defendants' assets, as well as marshaling and preserving their records. The receiver will also assist the Court in determining the full extent of the fraud and identifying additional victims of the Corporate Defendants' scheme.

D. Immediate Access and Expedited Discovery Is Necessary to Preserve Evidence.

In order to facilitate the FTC's and the receiver's efforts to locate documents and assets related to the Defendants' scam, it is appropriate to authorize the FTC to engage in expedited discovery and allow the FTC and the temporary receiver immediate access to the Corporate Defendants' business premises and records. Immediate access is critical to protecting evidence against destruction and ensuring that the Court can ultimately determine: (1) the full scope of Defendants' law violations; (2) the identities of injured consumers; (3) the total amount of consumer injury; and (4) the nature, extent, and location of Defendants' assets. Courts in this district have frequently granted this relief in similar cases. *See* cases cited *supra* note 17.

In this case, Defendants have shown that they are likely to destroy evidence unless the FTC moves swiftly to obtain and preserve it. They have repeatedly changed business names, legal entities, and banks in order to continue their scam, indicating that they are unlikely to be forthcoming in regular discovery. In light of their violations of courts orders, they are unlikely to take seriously their obligation to preserve records relevant to this case.

CONCLUSION

For the reasons set forth above, the FTC moves his Court to enter the attached proposed *ex parte* temporary restraining order.

Respectfully submitted,



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