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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DISRUPTION THEORY LLC, a limited liability
company, also d/b/a inmatecall.com and
inmatecallsolutions.com,

EMERGENT TECHNOLOGIES LLC, a limited
liability company, also d/b/a inmatecall.com and
inmatecallsolutions.com,

MARC GRISHAM, a/k/a Mark Grisham,
individually and also d/b/a inmatecall.com and
inmatecallsolutions.com, and as Manager of
Disruption Theory LLC, and

COURTNEY GRISHAM, a/k/a Courtney Brooks,
individually and also d/b/a inmatecall.com and
inmatecallsolutions.com, and as President,
Director, and Ultimate Beneficial Owner of
Disruption Theory LLC,

Defendants.

Case No. _____

FILED UNDER SEAL

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFF'S *EX
PARTE* MOTION FOR
TEMPORARY RESTRAINING
ORDER WITH ASSET FREEZE
AND OTHER EQUITABLE
RELIEF, AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

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TABLE OF AUTHORITIES

Cases

Am. Can Co. v. Mansukhani, 742 F.2d 314 (7th Cir. 1984) 23

Del. Watch Co. v. FTC, 332 F.2d 745 (2d. Cir. 1964)..... 16

Fed. Express Corp. v. Fed Espresso, Inc., 1997 U.S. Dist. LEXIS 19144 (N.D.N.Y. Nov. 24, 1997) 23

FTC v. Affordable Media, LLC, 179 F.3d 1228 (9th Cir. 1999)..... 13, 14

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FTC v. Cyberspace.com LLC, 453 F.3d 1196 (9th Cir. 2006)..... 14, 15, 17

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FTC v. H.N. Singer, Inc., 668 F.2d 1107 (9th Cir. 1982) 2, 13, 20, 21

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FTC v. Nat’l Urological Grp., Inc., 645 F. Supp. 2d 1167 (N.D. Ga 2008)..... 14, 16

FTC v. Network Servs. Depot, Inc., 617 F.3d 1127 (9th Cir. 2010) 16

FTC v. Nolan, 2020 U.S. Dist. LEXIS 33470 (D. Ariz. Feb. 27, 2020)..... 21

FTC v. Pantron I Corp., 33 F.3d 1088 (9th Cir. 1994)..... 15

FTC v. Publ’g Clearing House, Inc., 104 F.3d 1168 (9th Cir. 1997)..... 17

FTC v. Sage Seminars, Inc., 1995 U.S. Dist. LEXIS 21043 (N.D. Cal., Nov. 2, 1995)..... 15

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1 **I. INTRODUCTION**

2 Defendants’ fraudulent scheme exploits people who depend on telephone calls to talk
3 with and support their incarcerated friends and family members. For many, these calls are a
4 lifeline, and in the ongoing COVID-19 pandemic, they are essential. Defendants publish false
5 advertisements on their websites, inmatecall.com and inmatecallsolutions.com, promising prison
6 and jail calling plans with “unlimited” minutes for a set period at a fixed price. Incarcerated
7 individuals’ telephone communications are typically limited to outgoing collect or prepaid calls
8 provided by specialized telecommunications companies that contract with correctional facilities
9 (“Specialized Service Providers”), which charge these calls at per-minute rates set by the Federal
10 Communications Commission or by state or local governments. Per-minute rates are expensive,
11 and Specialized Service Providers have not and do not currently offer unlimited calling plans.
12 To convince consumers to buy their bogus plans, Defendants falsely claim affiliation with the
13 Specialized Service Providers to make their bogus offer seem credible.

14 Consumers discover that Defendants are imposters selling fake calling plans only after
15 they hand over their money. Defendants first charge consumers and then tell them to open and
16 pay for prepaid accounts with Specialized Service Providers, exactly as if they had not purchased
17 Defendants’ plan at all. Consumers don’t receive the promised “unlimited” minutes, or even a
18 single minute, in exchange for their payments to Defendants.

19 Since at least 2015, Defendants’ deceitful tactics have bilked consumers out of over \$1
20 million. Defendants even took advantage of the ongoing COVID-19 pandemic to promote an
21 extended sale of their nonexistent plan when in-person visitation was suspended. To keep the
22 money coming in without being detected by law enforcement, Defendants use an ever-changing
23 network of website domains and corporate entities to hide their true identity and location. The
24 FTC’s evidence of Defendant’s illegal practices demonstrates that their business is permeated by
25 fraud and has caused substantial harm to consumers across the nation.

26 To stop this scam, the FTC hereby moves the Court for an *ex parte* temporary restraining
27 order (“TRO”), pursuant to Fed. R. Civ. P. 65(b), to halt Defendants’ unlawful conduct, freeze
28 Defendants’ assets to prevent dissipation and preserve funds for consumer redress, and require

1 Defendants to show cause why this Court should not issue a preliminary injunction extending
2 such temporary relief pending a final adjudication on the merits.¹

3 **II. THE PARTIES**

4 **A. The Federal Trade Commission**

5 The FTC is the nation’s consumer protection agency. For over 100 years, the FTC has
6 enforced Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive practices in
7 the marketplace. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), the FTC is authorized
8 to initiate federal district court proceedings to enjoin violations of the FTC Act and secure
9 appropriate equitable relief, including consumer restitution.²

10 **B. Defendants**

11 Defendants operate their scam as a common enterprise of two companies controlled by
12 Marc and Courtney Grisham, a husband-and-wife team (collectively, “Individual Defendants”).

13 **1. The Corporate Defendants**

14 Individual Defendants create and cycle through numerous limited liability companies
15 (“LLCs”) to apply for merchant accounts to process consumer payments on inmatecall.com and
16 inmatecallsolutions.com (collectively, “Inmate Call Websites”).³ Their most recent iterations are
17 two Colorado LLCs that are actively being used to collect consumer payments for purchases on
18 the Inmate Call Websites.⁴

19 _____
20 ¹ The FTC files 15 declarations, which are numbered PX01 to PX15, in support of this motion.
21 The exhibits are filed herewith in the Appendix of Exhibits In Support of Plaintiff’s *Ex Parte*
22 Motion for Temporary Restraining Order with Asset Freeze and Other Equitable Relief, and
23 Order to Show Cause Why a Preliminary Injunction Should Not Issue. Citations to exhibits
24 include the exhibit number (“PX”) followed by the paragraph number(s) in which the cited
25 material appears (¶). For example: PX15 ¶ 1. Citations to an attachment to an exhibit include
26 the exhibit number (“PX”), name of the attachment (“Att.”), and the page(s) on which the cited
27 material appears. For example: PX15 Att. A. at p. 40, which indicates that Att. A to PX15
28 appears on p. 40 of PX15.

² See, e.g., *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982).

³ See PX15 ¶¶ 6, 16, 71, Att. F at pp. 109-10.

⁴ PX15 ¶¶ 17-18, 20.

1 Disruption Theory LLC (“Disruption Theory”) is a Colorado limited liability company
2 formed by Courtney Grisham on October 2, 2019.⁵ Its principal place of business is listed as
3 2331 W Hampden Ave., Suite 116, Englewood, CO 80110, a location that lists the name of an
4 auto repair company as its occupant.⁶ Prior to its registration in Colorado, Courtney Grisham
5 also registered Disruption Theory LLC as a limited liability company in Texas from April 9,
6 2019 until June 14, 2019 when its certificate of formation was revoked for failure to pay a
7 required fee.⁷ The Texas state records list the business address as 8745 Gary Burns Dr., Suite
8 160, Frisco, TX 75034, which is a UPS store in a commercial plaza.⁸ The Texas state records
9 also list Marc Grisham as the Manager and Courtney Grisham as the registered agent for the
10 Texas Disruption Theory LLC, which suggests it is the same entity now registered in Colorado
11 and used to process consumer payments.⁹

12 Emergent Technologies LLC (“Emergent Technologies”) is a Colorado limited liability
13 company with its principal place of business listed as 2000 S. Colorado Blvd., Tower One, Suite
14 2000, Denver, CO 80222.¹⁰ Emergent Technologies was formed by an acquaintance of Marc
15 Grisham, Andrew Haas, on November 21, 2019,¹¹ just one day after Disruption Theory’s
16 payment processing account was terminated for excessive chargebacks.¹² Teena Garrett,
17 Courtney Grisham’s mother and Marc Grisham’s mother-in-law, is its registered agent.¹³

18 ⁵ *Id.* ¶ 25.

19 ⁶ *Id.*

20 ⁷ *Id.*

21 ⁸ *Id.*

22 ⁹ *Id.* ¶¶ 25, 89.

23 ¹⁰ *Id.*

24 ¹¹ *Id.*

25 ¹² *Id.*, Att. RR at p. 288 (“[Disruption Theory’s] Merchant Agreement will be terminated on
26 November 20, 2019”).

27 ¹³ *Id.* ¶ 26.

owns the Inmate Call Websites. Disruption Theory and Emergent Technologies share a common business purpose and function to process payments for the Inmate Call Websites.²²

III. DEFENDANTS’ UNLAWFUL BUSINESS PRACTICES

Defendants make false claims to entice consumers to purchase their unlimited minutes plans. They falsely claim to provide “unlimited” minutes for a set period for a fixed price, and they also claim to be affiliated with Specialized Service Providers Global Tel*Link Corporation (“GTL”), Inmate Calling Solutions, LLC (“ICS”), and Securus Technologies, Inc. (“Securus”).

A. Defendants Falsely Claim to Provide “Unlimited” Minutes

Defendants advertise their bogus “unlimited” minutes offer on the Inmate Call Websites.²³ Examples of these advertisements are shown below in Figures 1 and 2.

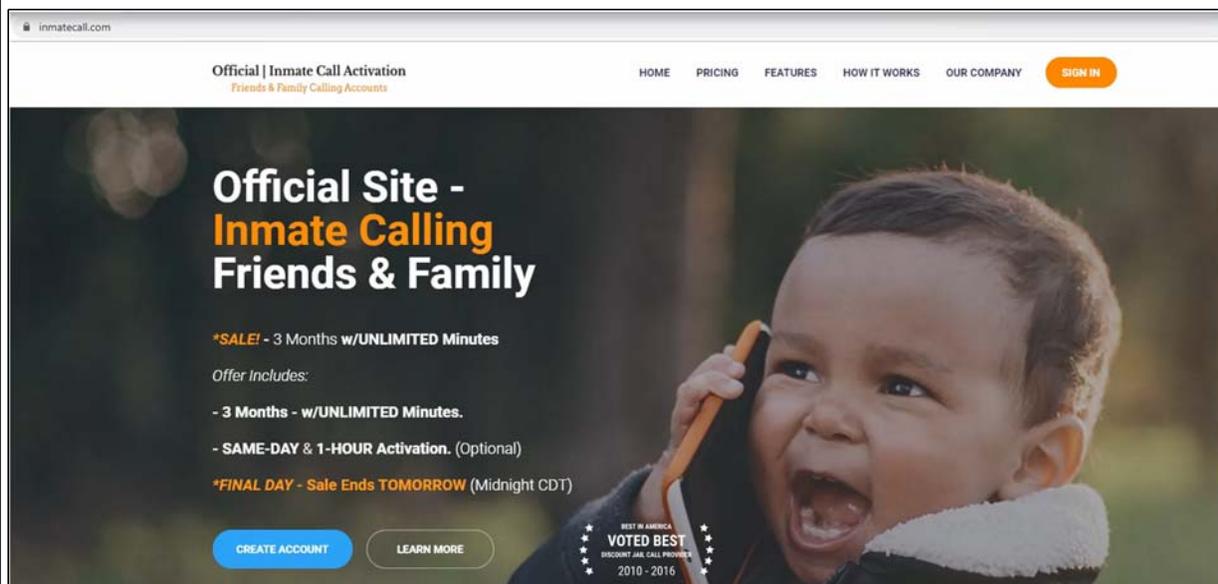


Figure 1²⁴

²² See *id.* ¶¶ 17-18, 20, 60-61, 83-85, Att. BB at pp. 175-76.

²³ Inmatecall.com and inmatecallsolutions.com are nearly identical in form and substance, and both are registered to and paid for by Marc Grisham. *Id.* ¶¶ 32-35.

²⁴ *Id.* ¶ 35.

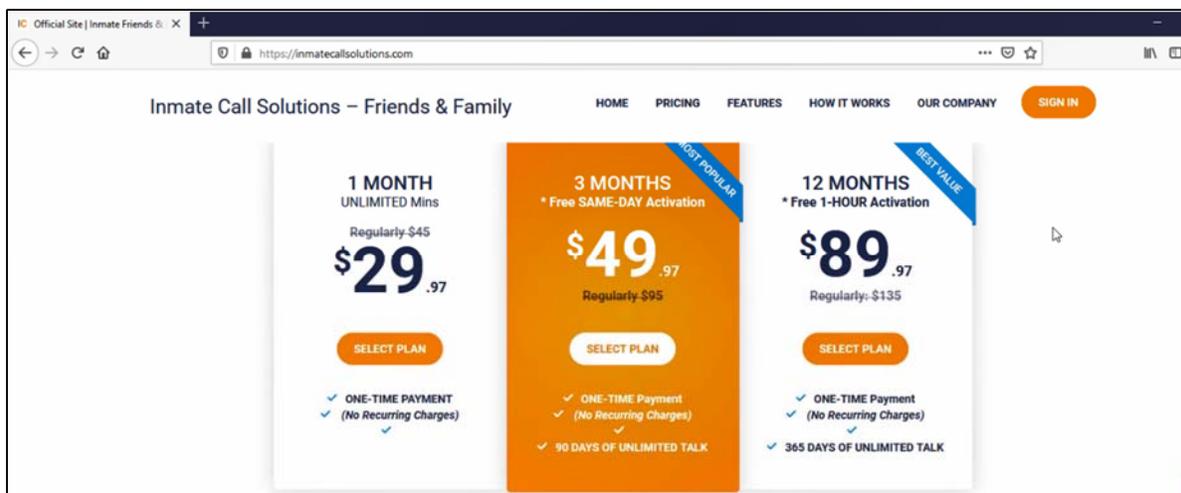


Figure 2²⁵

As shown above in Figure 2, Defendants advertise plans priced from \$29.97 for one month of “unlimited” minutes to \$89.97 for twelve months of “unlimited” minutes.²⁶ The websites include statements like “UNLIMITED TALK” or “UNLIMITED Mins” for “ONE-TIME PAYMENT.”²⁷ Defendants also repeat the false claim of unlimited minutes to consumers as they move through the purchase process on the Inmate Call Websites. Based on the statements Defendants make on the Inmate Call Websites, consumers reasonably expect to receive unlimited minutes for the advertised period for the advertised price.²⁸

After prompting consumers to select one of the offered plans, Defendants reiterate the promise in no uncertain terms. As shown below in Figure 3, Defendants continue to show consumers advertisements that describe the plans as various monthly plans “w/Unlimited Mins”

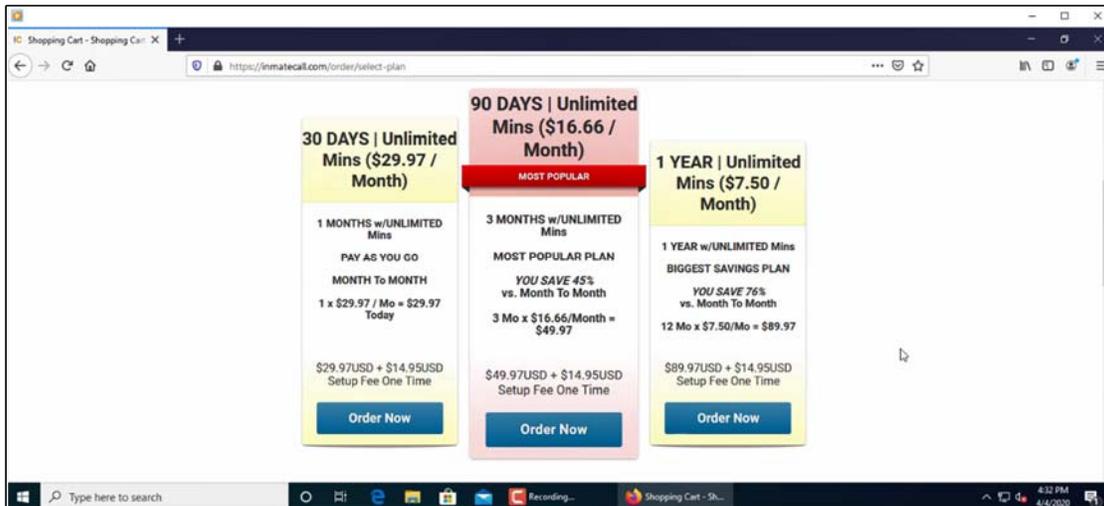
²⁵ *Id.* ¶ 50.

²⁶ *See also, e.g.*, PX03 ¶ 3, Att. A at p. 5 (describing advertisement of one month of unlimited minutes for \$29.97 on inmatecall.com); PX07 ¶¶ 2-3 (describing advertisement of three months of unlimited minutes for \$49.99 on inmatecallsolutions.com).

²⁷ PX15 ¶ 50; *see also* PX14 Att. C at pp. 146-47.

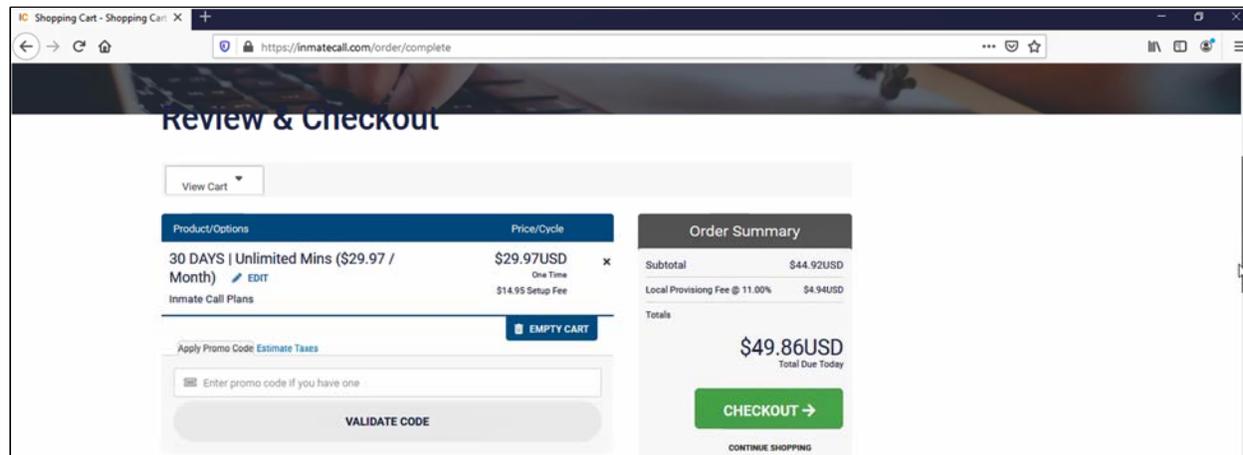
²⁸ *See, e.g.*, PX09 ¶ 4 (“Based on the websites advertisements, I believed InmateCall’s ‘unlimited minutes’ meant my son and his father would be able to talk for an unlimited amount of time for an entire month if I paid a flat fee.”); PX14 ¶ 17 (describing consumers’ expectation of unlimited minutes based on advertisements).

1 for a flat price.



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11 **Figure 3²⁹**

12 Finally, at the checkout stage, Defendants summarize the consumer’s order and confirm
13 that he or she is buying a plan for “unlimited” minutes.³⁰ For example, as shown below in Figure
14 4, Defendants confirm the purchase of an order for “30 DAYS | Unlimited Mins (\$29.97 /
15 Month).”



16
17
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21
22
23 **Figure 4³¹**

24
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26 ²⁹ PX15 ¶ 52.

27 ³⁰ *Id.* ¶ 54.

28 ³¹ *Id.*

1 After entering their billing information and submitting payment, consumers discover that
2 they do not receive the promised unlimited minutes.³² Instead, Defendants instruct consumers to
3 separately open and fund a prepaid account with their correctional facility’s Specialized Service
4 Provider, exactly what they would have to do if they had not purchased Defendants’ fictional
5 calling plan.³³ Defendants do not inform consumers before taking their payment that they will be
6 required to pay a Specialized Service Provider even after purchasing a calling plan from
7 Defendants.³⁴ In the end, Defendants do not provide consumers with the unlimited minutes
8 advertised on the Inmate Call Websites.³⁵

9 Numerous consumers have submitted declarations in support of this motion detailing how
10 Defendants’ advertisements deceived them.³⁶ One California consumer’s account captures the
11 typical experience:

12 Based on the websites advertisements, I believed InmateCall’s “unlimited
13 minutes” meant my friend would be able to call me for an unlimited amount of
14 time for an entire month if I paid a flat fee for the month. . . . Based on the
15 advertisements, I didn’t think I had to pay per minute with the calling plan. I also
16 didn’t think that I had to pay or open an account with a different company to use
17 InmateCall’s unlimited calling plan. . . . The description of the unlimited calling
18 plan never said I would have to pay another company for the service to work. I
19 knew that I could have just gone through the jail to create an account with
20 Securus, so that’s when I realized InmateCall was a scam.³⁷

21 ³² *Id.* ¶¶ 62-64; *see also* PX14 ¶ 17.

22 ³³ PX02 ¶¶ 4-6, Att. A at pp. 8-9; PX09 ¶ 9, Att. D at pp. 14-17, Att. E at pp. 19-22; PX03 ¶ 4;
23 *see also* PX14 ¶ 17.

24 ³⁴ PX15 ¶ 64; *see also, e.g.*, PX03 ¶ 4 (“the description of the unlimited calling plan never said I
25 would have to pay another company for the service to work”); PX09 ¶ 10 (demanding refund
26 after payment because “website promised unlimited calls and did not state that I would also have
27 to pay per-minute”).

28 ³⁵ *See, e.g.*, PX02 ¶ 5; PX03 ¶ 7; PX05 ¶ 6; PX06 ¶ 7.

³⁶ *See* PX01-PX10 (consumer declarations); *see also* PX14 ¶ 17.

³⁷ PX03 ¶¶ 3-4.

1 Over 12,000 consumers paid Defendants for their fake plans,³⁸ and consumer victims
2 have felt the strain of that financial loss on their already limited resources.³⁹ As one consumer
3 put it: “I would like my refund im [*sic*] not a rich person. . . . Inmate Call is a fraud and stole my
4 social security money.”⁴⁰ Yet Defendants ignore consumer calls and online support tickets for
5 refunds,⁴¹ even changing their contact information to confuse customers seeking refunds,⁴² and
6 fail to provide refunds to aggrieved consumers.⁴³

7 **B. Defendants Falsely Claim Affiliation with Specialized Service Providers**

8 To convince consumers to buy their fake calling plans, Defendants pose as GTL, ICS,
9 and Securus, all of which are Specialized Service Providers,⁴⁴ on the Inmate Call Websites.
10 Defendants feature GTL, ICS, and Securus’ names, logos, and websites on the landing pages and
11 various subpages of the Inmate Call Websites to deceive consumers.⁴⁵ Figures 5-6 below are
12 examples of Defendants’ use of GTL’s name, logo, and official website address on
13 inmatecall.com.

14
15
16 ³⁸ PX15 ¶ 12.

17 ³⁹ PX14 ¶ 21.

18 ⁴⁰ PX04 ¶¶ 17-18.

19 ⁴¹ PX03 ¶¶ 5-6 (“I tried to get my money back that same day . . . I tried to call the number on the
20 website, but no one ever picked up. . . . I also emailed InmateCall multiple times to try to cancel
21 my account and get my money back.”).

22 ⁴² PX08 ¶¶ 8-9 (“I waited, but Inmate Call did not send me the promised refund. I visited
23 InmateCall.com to check on the status of my refund but the website was dead.”); PX02 ¶ 8 (“I
24 recently checked Inmate Call’s online customer service portal, but the screen said ‘error 524’ or
something similar and I could not access my account.”).

25 ⁴³ PX02 ¶ 8 (“Inmate Call continued to give me the run around . . . I ultimately submitted at least
26 seven refund requests to Inmate Call. To date, Inmate Call has not retuned any of my money.”);
PX14 ¶ 19 at 5 (describing consumer complaints about lack of promised refunds).

27 ⁴⁴ PX11 ¶¶ 3-4; PX12 ¶¶ 2-3; PX14 ¶¶ 3-4.

28 ⁴⁵ PX15 ¶¶ 43-44.



Figure 5⁴⁶



Figure 6⁴⁷

Defendants similarly display ICS and Securus’ names, logos, and websites on the Inmate Call Websites.⁴⁸

In reality, Defendants are not affiliated with GTL, ICS, or Securus, and any claim of affiliation is false.⁴⁹ Consumers only learn that Defendants are imposters after their money has been stolen.⁵⁰ One consumer’s account describes the typical experience:

This company, InmateCall put the word secure and [S]ecurus in their website name to trick people into paying them for phone time accounts for their loved ones that are in prison. The only company that we can actually get service through is Securus [T]echnologies. So this company ‘Inmate Call’ took \$116.51 from my bank account and gave me no service.⁵¹

C. Defendants Perpetuated their Scam by Hiding Their True Identity and Location

Defendants have maintained this multi-year scam in part by hiding their true identity and location through the use of various iterations of LLCs and website domains. Since 2010, Marc

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ PX11 ¶ 6; PX12 ¶ 5; PX13 ¶ 6.

⁵⁰ PX14 ¶ 18; PX05 ¶¶ 5-6; PX01 ¶¶ 5-6.

⁵¹ PX14 ¶ 18; *see also* PX15 Att. ZZ at p. 406.

1 and Courtney Grisham have formed or served as officers of at least 22 LLCs.⁵² Of these, another
2 four (in addition to Disruption Theory and Emergent Technologies) were also used to conduct
3 business on the Inmate Call Websites.⁵³ Other LLCs, out of the 22 LLCs identified, also shared
4 business addresses, had names resembling Specialized Service Providers, and were registered to
5 do business as “Inmate Call Solutions,” indicating that they, too, conducted business on the
6 Inmate Call Websites.⁵⁴

7 Marc and Courtney Grisham’s friends and family opened LLCs to conduct business on
8 the Inmate Call Websites.⁵⁵ For example, Marc Grisham’s Facebook friend, Andrew Haas,
9 incorporated Emergent Technologies, and Courtney Grisham’s mother, Teena Garrett, is its
10 registered agent.⁵⁶ Another friend of Marc Grisham, Paul Vanzant, formed and/or has been an
11 officer of at least two LLCs used to conduct business through the Inmate Call Websites.⁵⁷ As
12 one consumer stated: “This company operates under various names, and I have received bills
13 under several of these aliases. . . . I ask that Inmate Call Solutions (or whatever name they’re
14 using right now) stop their fraud and leave me alone.”⁵⁸

15 Defendants also cycle through websites to hide their identity. In addition to the Inmate
16 Call Websites, Marc Grisham has also registered 274 currently inactive website domains that
17 appear to be previous iterations of the Inmate Call Websites.⁵⁹ The FTC’s undercover purchase
18 is indicative. The purchase was initiated on inmatecallsolutions.com but was transferred to

19
20 ⁵² PX15 ¶¶ 17-18, Att. F at pp. 109-10 (listing LLCs formed and managed by Individual Defendants).

21 ⁵³ *Id.* ¶ 17.

22 ⁵⁴ *Id.* ¶¶ 21-23, Att. F at pp. 109-10.

23 ⁵⁵ *Id.* ¶¶ 16, 19-22.

24 ⁵⁶ *Id.* ¶¶ 16, 20, 26.

25 ⁵⁷ *Id.* ¶¶ 16, 19, 21.

26 ⁵⁸ PX01 ¶ 9.

27 ⁵⁹ PX15 ¶¶ 45-46.

1 inmatecall.com,⁶⁰ which is now inactive and redirects to a new website called securustel.net.⁶¹
2 Securustel.net, which identifies Emergent Technologies as the website owner, appears to be the
3 newest iteration of Defendants’ enterprise and contains similar claims and images as the Inmate
4 Call Websites.⁶²

5 **D. Defendants Have Caused Significant Consumer Harm**

6 Defendants have pocketed over \$1 million in consumer losses from their fraudulent
7 conduct between 2016 and 2020, according to partial financial records.⁶³ For many consumers,
8 the amount of money Defendants stole from them was significant:

- 9
- 10 • “How can this be legal? . . . I’m disabled & don’t have money to throw
11 away that I can use for food & medication.”⁶⁴
 - 12 • “I am a single working mom who is still recovering from damage done by
13 Hurricane Michael. InmateCall should not be allowed to cheat people and
14 steal their hard earned money.”⁶⁵
 - 15 • “I had \$27 in my [bank] account and needed that to go and get medicine
16 cause I’m sick. Too bad for me you got all of that! I have to live on \$700
17 a month disability. If someone doesn’t put all this money back in my
18 account come the first I’m going to be on the streets.”⁶⁶

19 Defendants’ false claims tricked many consumers, including those who rely on the telephone to
20 talk with loved ones in prison,⁶⁷ those seeking cheaper alternatives to expensive inmate calls,⁶⁸

21 ⁶⁰ *Id.* ¶¶ 49-51.

22 ⁶¹ *Id.* ¶ 66.

23 ⁶² *Id.*; *see also* PX15 Att. EE at pp. 184, 187.

24 ⁶³ PX15 ¶¶ 12, 73-79, 90.

25 ⁶⁴ PX07 ¶ 11.

26 ⁶⁵ PX09 ¶ 16.

27 ⁶⁶ PX06 ¶ 12.

28 ⁶⁷ PX10 ¶ 4 (“I try and talk to my son every day because he needs support from family in order to stay healthy.”); PX06 ¶ 10 (“I am homebound due to health concerns and cannot visit [my son]. Because Inmate Call messed up our communication system, I could not even tell my son that his grandmother passed away.”).

1 and even those who needed telephone calls to stay in touch during the COVID-19 pandemic.⁶⁹
 2 Defendants' conduct has generated over 250 consumer complaints with the FTC, state attorneys
 3 general, and the Better Business Bureau ("BBB").⁷⁰ The BBB gave Defendants' websites an "F"
 4 rating.⁷¹

5 **IV. A TEMPORARY RESTRAINING ORDER IS NECESSARY TO HALT**
 6 **DEFENDANTS' DECEPTIVE CONDUCT**

7 **A. The Court Has the Authority to Grant the Requested Relief**

8 Section 13(b) of the FTC Act authorizes the FTC to seek, and gives the Court the
 9 authority to grant, permanent injunctive relief to enjoin practices that violate any law enforced by
 10 the FTC and "any ancillary relief necessary to accomplish complete justice."⁷² Ancillary relief
 11 may include temporary and preliminary relief necessary to effectuate final relief, including a
 12 TRO, an asset freeze, expedited discovery, a preliminary injunction, and other necessary
 13 remedies.⁷³ To obtain preliminary relief, the FTC must show (1) a likelihood of success on the
 14 merits, and (2) that the equities weigh in the FTC's favor.⁷⁴ To show a likelihood of success on
 15 the merits, the FTC need only present evidence that it has "some chance of probable success."⁷⁵

16 ⁶⁸ PX02 ¶ 2 ("My son is incarcerated in Eastland County Jail in Texas. It's expensive to stay in
 17 touch with him over the phone."); PX07 ¶ 3 ("Inmate Call's website advertised 'unlimited'
 18 minute monthly calling plans. This sounded less expensive than paying per minute, so I
 purchased a [plan].").

19 ⁶⁹ PX08 ¶ 10 ("I have not been able to visit the prison due to COVID-19 concerns . . . I want to
 20 stop Inmate Call from cheating people during these desperate times.").

21 ⁷⁰ PX15 ¶ 118, Att. ZZ at pp. 369-418.

22 ⁷¹ PX14 ¶ 24.

23 ⁷² *H.N. Singer, Inc.*, 668 F.2d at 1113.

24 ⁷³ *Id.* at 1113; *see also* *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1232 & n.2 (9th Cir.
 25 1999).

26 ⁷⁴ *Affordable Media*, 179 F.3d at 1233 (quoting *FTC v. Warner Commc'ns. Inc.*, 742 F.2d 1156
 (9th Cir. 1984)).

27 ⁷⁵ *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (quoting *United States v.*
 28 *Odessa Union Warehouse Co-op*, 833 F.2d 172, 176 (9th Cir. 1987)).

1 Unlike private litigants, the FTC “need not show irreparable harm to obtain a preliminary
2 injunction,” which is presumed in a statutory enforcement action.⁷⁶ In balancing the equities, the
3 public interest receives greater weight than private interests.⁷⁷

4 **B. The FTC is Likely to Succeed on the Merits**

5 **1. Defendants’ False Claims Violate Section 5 of the FTC Act**

6 Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting
7 commerce.⁷⁸ An act or practice is deceptive if Defendants: (1) made a representation; (2) that
8 was likely to mislead consumers acting reasonably under the circumstances; (3) in a way that
9 was material.⁷⁹ In determining whether a claim is deceptive, courts examine its “net impression”
10 on consumers.⁸⁰ “If the advertisement explicitly states or clearly and conspicuously implies a
11 claim, the court need not look to extrinsic evidence to ascertain whether the advertisement made
12 the claim.”⁸¹ A representation is material if it “involves information that is important to
13 consumers and, hence, likely to affect their choice of, or conduct regarding, a product.”⁸²
14 Express claims are presumed material, and consumer reliance upon express claims is
15

16 ⁷⁶ *FTC v. Consumer Def., LLC*, 926 F.3d 1208, 1214 (9th Cir. 2019); *Affordable Media*, 179 F.3d
17 at 1233; *FTC v. Inc21.com Corp.*, 688 F. Supp. 2d 927, 936 (N.D. Cal. 2010).

18 ⁷⁷ *World Wide Factors*, 882 F.2d 344, 347 (citing *Warner Commc’ns*, 742 F.2d at 1165).

19 ⁷⁸ 15 U.S.C. § 45(a).

20 ⁷⁹ *FTC v. Stefanichik*, 559 F.3d 924, 928 (9th Cir. 2009); *FTC v. Cyberspace.com LLC*, 453 F.3d
21 1196, 1199 (9th Cir. 2006).

22 ⁸⁰ *Stefanichik*, 559 F.3d at 928 (citing *Cyberspace.com LLC*, 453 F.3d at 1200).

23 ⁸¹ *FTC v. Nat’l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1189 (N.D. Ga 2008).

24 ⁸² *Cyberspace.com LLC*, 453 F.3d at 1201 (quoting *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110,
25 165 (1984)) (internal quotations omitted).

1 presumptively reasonable.⁸³ Proof of actual deception, while not required, is “highly probative
 2 to show that a practice is likely to mislead consumers acting reasonably under the
 3 circumstances.”⁸⁴

4 **a. Defendants’ False “Unlimited” Minutes Claim Violates Section 5**

5 As set forth in Section III above, the FTC has presented ample evidence showing that
 6 Defendants make express claims that they provide unlimited minutes for a set period for a set
 7 price in marketing their bogus calling plans, and that the claim is false. While the presumptions
 8 of materiality and reliance apply, the FTC has also provided consumer declarations confirming
 9 that the false claim of unlimited minutes induced purchases and actually deceived consumers.⁸⁵

10 **b. Defendants’ False Claims of Affiliation Violate Section 5**

11 Defendants also falsely claim affiliations with Specialized Service Providers GTL, ICS,
 12 and Securus, as set forth in Section III.B above, to trick consumers into buying their fake calling
 13 plans. Here, too, the FTC has set forth ample evidence that Defendants make these express
 14 claims and that they are false. While the presumption of materiality and reliance apply, the FTC
 15 has also provided consumer declarations confirming that the false claims induced purchase and
 16 actually deceived consumers.⁸⁶

17 **2. Defendants are Jointly and Severally Liable Because They Operate as a**
 18 **Common Enterprise**

19 The evidence pulls the curtain back on this scam to reveal Defendants engaged in a
 20 common enterprise. To determine the existence of a common enterprise, a court may consider a
 21 variety of factors including: common ownership, management, and control; whether the
 22 companies were jointly engaged in a “common venture” that benefitted from a shared business

23 ⁸³ *FTC v. Sage Seminars, Inc.*, 1995 U.S. Dist. LEXIS 21043, at *7 (N.D. Cal., Nov. 2, 1995)
 24 (citing *Cliffdale Assocs.*, 103 F.T.C. at 168); *see also FTC v. Pantron I Corp.*, 33 F.3d 1088,
 25 1095, 1097 (9th Cir. 1994).

26 ⁸⁴ *Cyberspace.com LLC*, 453 F.3d at 1201.

27 ⁸⁵ *See supra* Section III.A; *see also* PX14 ¶ 17.

28 ⁸⁶ *See supra* Section III.B; *see also* PX14 ¶ 18.

1 scheme; and the commingling of corporate funds.⁸⁷ No single factor is dispositive, and not all
2 factors are required to justify finding of a common enterprise.⁸⁸ Rather, the “pattern and frame-
3 work of the whole enterprise must be taken into consideration.”⁸⁹ As discussed in Section II.B
4 above, husband and wife team Marc and Courtney Grisham control Disruption Theory.
5 Emergent Technologies was formed by Marc Grisham’s friend one day after Disruption Theory’s
6 payment processing account was terminated for excessive chargebacks,⁹⁰ and Courtney
7 Grisham’s mother is its registered agent.⁹¹ Emergent Technologies, like Disruption Theory, then
8 collected funds from consumers.⁹² Corporate Defendants’ common purpose is to serve as
9 payment processing conduits for the Inmate Call Websites, both of which are owned by Marc
10 Grisham.⁹³ Indeed, they have blurred any distinction between them in serving this purpose. For
11 example, the Inmate Call Websites represent Disruption Theory as the merchant for transactions
12 but process those payments through Emergent Technologies.⁹⁴ “Most importantly, if one of
13 these companies escaped liability, it would afford all [of them] a means for continuing their
14 operations,” which provides a compelling basis to find common enterprise and hold each
15 Defendant liable for actions of the whole.⁹⁵

16 ⁸⁷ *FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1142-43 (9th Cir. 2010) (common
17 enterprise where companies participated in common venture to sell Internet kiosks and were all
18 owned and managed by husband and wife defendants).

19 ⁸⁸ *FTC v. Kennedy*, 574 F. Supp. 2d 714, 722 (S.D. Tex. 2008).

20 ⁸⁹ *Del. Watch Co. v. FTC*, 332 F.2d 745, 746 (2d. Cir. 1964) (citation omitted).

21 ⁹⁰ PX15 ¶¶ 93 (Disruption Theory merchant account terminated in November 20, 2019), 26
22 (Emergent Technologies formed November 21, 2019), Att. RR at p. 288.

23 ⁹¹ PX15 ¶ 26.

24 ⁹² PX15 ¶¶ 61, 90; PX08 ¶ 3, Att. A at p. 5.

25 ⁹³ PX15 ¶¶ 32-35.

26 ⁹⁴ PX15 ¶¶ 53, 60-61.

27 ⁹⁵ *Nat’l Urological Grp.*, 645 F. Supp. 2d 1167, 1184 (N.D. Ga 2008. Moreover, “separate bank,
28 merchant, and UPS accounts” are “superficial” distinctions and would not provide a reasonable
basis to reject a finding of common enterprise. *Id.*

1 **3. Individual Defendants are Individually Liable for Monetary and**
 2 **Injunctive Relief**

3 Individual defendants can be found liable for injunctive relief for corporate acts or
 4 practices if they “participated directly in the acts or practices or had authority to control them.”⁹⁶
 5 An individual’s status as a corporate officer and their “authority to sign documents on behalf of
 6 the corporation” are sufficient to demonstrate “requisite control over the corporation.”⁹⁷ Bank
 7 signatory authority or acquiring services on behalf of a corporation also evidences authority to
 8 control.⁹⁸ Individual defendants can also be found liable for monetary relief if they had, or
 9 should have had, knowledge of the corporate acts or practices.⁹⁹ To establish knowledge, the
 10 FTC may show that the defendant “had actual knowledge of material misrepresentations, [was]
 11 recklessly indifferent to the truth or falsity of a misrepresentation, or had an awareness of a high
 12 probability of fraud along with an intentional avoidance of the truth.”¹⁰⁰ The FTC need not show
 13 the individual’s subjective intent to defraud.¹⁰¹ Here, both Marc and Courtney Grisham are
 14 individually liable for injunctive and monetary relief.

15 **a. Marc Grisham is Individually Liable**

16 Marc Grisham had a position of authority with one or more Corporate Defendants,
 17 including ownership of the Inmate Call Websites¹⁰² and serving as a corporate officer of
 18 Disruption Theory.¹⁰³ He also possessed signatory authority on Disruption Theory’s bank

19 ⁹⁶ *FTC v. Marshall*, 781 F.App’x. 599, 602 (9th Cir. 2019) (quoting *FTC v. Publ’g Clearing*
 20 *House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997)) (internal quotation omitted).

21 ⁹⁷ *Id.* at 602.

22 ⁹⁸ *FTC v. USA Fin., LLC*, 415 F.App’x. 970, 974-75 (11th Cir. 2011).

23 ⁹⁹ *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1101-02 (9th Cir. 2014).

24 ¹⁰⁰ *Id.* (alteration in original) (citation omitted); *see also Stefanichik*, 559 F.3d at 931;
 25 *Cyberspace.com, LLC*, 453 F.3d at 1202.

26 ¹⁰¹ *Grant Connect*, 763 F.3d at 1102.

27 ¹⁰² PX15 ¶¶ 32-34.

28 ¹⁰³ *Id.* ¶ 25.

1 account.¹⁰⁴ Because he served as a corporate officer and controlled the enterprise’s websites and
 2 bank accounts, he is individually liable for injunctive relief.

3 Mr. Grisham also has the requisite knowledge to be held accountable for monetary relief.
 4 Many consumers filed complaints with the BBB regarding his websites,¹⁰⁵ and in April 2019, the
 5 BBB sent correspondence to his website, inmatecall.com, regarding those consumer
 6 complaints.”¹⁰⁶ Several months later, in November 2019, Disruption Theory’s merchant account
 7 was terminated due to “excessive chargebacks.”¹⁰⁷ The most common chargeback reason was
 8 “Service Not Provided.”¹⁰⁸ Moreover, ICS, GTL, and Securus have each contacted Mr. Grisham
 9 demanding that his companies cease using their registered trademarks.¹⁰⁹ One of Mr. Grisham’s
 10 companies has previously been sued by GTL for trademark infringement, and yet he has not
 11 changed his practices.¹¹⁰ ICS has notified Mr. Grisham that the use of ICS’s trademark on
 12 inmatecallsolutions.com “creates a strong likelihood of consumer confusion” and that ICS “has
 13 evidence of *actual confusion* having already occurred among the public.”¹¹¹ This evidence of
 14 knowledge, or at a minimum of intentional avoidance of the truth, shows that Mr. Grisham is
 15 liable for monetary relief.

16 **b. Courtney Grisham is Individually Liable**

17 Courtney Grisham, Mr. Grisham’s wife, also controlled and directed the misconduct at
 18 issue, including acting as the founder and registered agent of Disruption Theory¹¹² and signing

19 ¹⁰⁴ *Id.* ¶¶ 100, 112.

20 ¹⁰⁵ PX14 ¶¶ 14-15.

21 ¹⁰⁶ PX14 ¶¶ 25-27, Att. C at pp. 146-150, Att. D at p. 152, Att. E at p. 154.

22 ¹⁰⁷ PX15 ¶ 93, Att. RR at p. 288.

23 ¹⁰⁸ *Id.* ¶ 92.

24 ¹⁰⁹ PX11 ¶¶ 10-12, 14; PX12 ¶ 6; PX13 ¶¶ 10-11, Att. A at pp. 106-09.

25 ¹¹⁰ PX11 ¶¶ 10-12.

26 ¹¹¹ PX13 Att. A at p. 106 (emphasis in original).

27 ¹¹² PX15 ¶ 25.

1 documents representing herself as its President, Director, and Beneficial Owner to open a
 2 payment processing account for Disruption Theory.¹¹³ Moreover, Ms. Grisham possessed joint
 3 signatory authority on Disruption Theory’s bank account and represented herself as both a
 4 Member and a Manager with respect to that account.¹¹⁴ Because she served as a corporate
 5 officer and controlled Disruption Theory’s bank accounts, she is also individually liable for
 6 injunctive relief.

7 Like Mr. Grisham, Courtney Grisham also has the requisite knowledge to be held
 8 accountable for monetary relief. In April 2020, GTL sent Ms. Grisham a letter regarding
 9 Disruption Theory’s improper use of GTL trademarks.¹¹⁵ Several months later, in October 2019,
 10 payment processor Skrill USA, Inc. sent a letter to Ms. Grisham informing her that Disruption
 11 Theory’s account would be terminated due to “excessive chargebacks,” and terminated the
 12 account the next month.¹¹⁶ This evidence of knowledge, or at a minimum of intentional
 13 avoidance of the truth, shows that Ms. Grisham is also individually liable for monetary relief.

14 **C. Protecting the Public Interest Outweighs Any Interest in Continuing the**
 15 **Deceptive Practices**

16 The balance of the equities weighs heavily in favor of the FTC’s proposed preliminary
 17 relief. Defendants have stolen \$1 million from thousands of consumers.¹¹⁷ Absent injunctive
 18 relief, it is likely that future violations will occur.¹¹⁸ The public’s overwhelming interest in
 19 halting this conduct and preventing victimization of additional consumers far outweighs any
 20 interest Defendants may have in continuing to operate their fraudulent business.¹¹⁹

21 _____
 22 ¹¹³ PX15 ¶¶ 84-87, Att. NN at pp. 260-70.

23 ¹¹⁴ *Id.* ¶ 103, Att. VV at pp. 347-52.

24 ¹¹⁵ PX11 ¶ 14, Att. G at pp. 69-70.

25 ¹¹⁶ PX15 ¶ 93, Att. RR at p. 288.

26 ¹¹⁷ PX15 ¶¶ 12, 77-79, 90.

27 ¹¹⁸ *See supra* Section III.C; *see also* PX15 ¶ 66.

28 ¹¹⁹ *World Wide Factors*, 882 F.2d at 347 (affirming that “there is no oppressive hardship to

B. An Asset Freeze is Necessary to Preserve the Possibility of Final Relief

As part of the permanent relief in this case, the FTC will seek equitable monetary relief, including consumer redress. To preserve the availability of funds to allow for the possibility of monetary relief, the FTC requests that this Court issue an order requiring the preservation of assets and evidence.¹²⁶ Such an order is well within the Court's authority.¹²⁷ Courts have found that an asset freeze is justified where a business is permeated with fraud and thus likely to dissipate assets during litigation.¹²⁸ An asset freeze is also justified where defendants hide their identities behind numerous interrelated companies, attempt to hide their true locations, or use company assets for personal expenses.¹²⁹

Without an asset freeze, it is likely that Defendants will dissipate and misuse their assets while the matter is pending. Individual Defendants have a history of spending corporate funds on personal expenses.¹³⁰ In addition, as discussed in Section III.C above, the evidence shows that Defendants hide their identity behind numerous LLCs and different website domains.¹³¹ Evidence also suggests that Defendants are recruiting their friends and family to front their companies because payment processors will no longer approve their merchant applications due to prior consumer complaints.¹³² Defendants' deceptive activity also extends to hiding their true

¹²⁶ See Proposed TRO Sections V-X.

¹²⁷ *World Wide Factors*, 882 F.2d at 347 (affirming asset freeze because FTC showed probability of success on the merits); *H.N. Singer*, 668 F.2d at 1113 (holding that "13(b) provides a basis for an order freezing assets").

¹²⁸ See, e.g., *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972) ("Because of the fraudulent nature of appellants' violations, the court could not be assured that appellants would not waste their assets prior to refunding public investors' money."); see also *H.N. Singer*, 668 F.2d at 1113 (recognizing necessity of asset freeze where defendants were engaged in fraud).

¹²⁹ *FTC v. Lead Express*, 2020 U.S. Dist. LEXIS 90803, at *7-8 (D. Nev. May 19, 2020); see *FTC v. Nolan*, 2020 U.S. Dist. LEXIS 33470, *42-43 (D. Ariz. Feb. 27, 2020) (stating that defendant's use of company as "personal piggy bank" supported asset freeze).

¹³⁰ PX15 ¶¶ 107, 110, 113, 116.

¹³¹ See also PX15 ¶¶ 16-23, 32-34.

¹³² See *supra* Section III.C; see also PX15 ¶¶ 16, 19-22, 26.

1 location. They list fake business addresses, use mail drops, ignore calls to customer service
2 phone lines, take down online customer service portals, and decline to issue promised refunds.¹³³
3 Defendants’ refusal to honor their own refund policy does not bode well for their voluntary
4 preservation of assets and evidence.

5 Moreover, Defendants ignored prior attempts by the BBB and Specialized Service
6 Providers to halt their misconduct. The BBB contacted Defendants numerous times regarding
7 their deceptive advertising of unlimited minute plans to no avail.¹³⁴ Defendants have turned a
8 blind eye to cease and desist letters, and even lawsuits, from Specialized Service Providers
9 demanding that Defendants cease using their names and logos.¹³⁵ Despite these warnings and
10 legal actions, Defendants continue to impersonate the Specialized Service Providers by
11 mimicking their names and including their trademarks on the Inmate Call Websites.

12 The pervasive nature of this deceptive conduct shows a strong likelihood of asset
13 dissipation and misuse absent temporary relief of an asset freeze, which is warranted to preserve
14 the status quo and ensure that funds do not disappear during the course of this action.

15 **C. The Preservation of Records and Expedited Discovery are Appropriate to**
16 **Preserve Possibility of Final Relief**

17 The Proposed Order contains a provision directing Defendants to preserve records,
18 including electronic records, and evidence.¹³⁶ It is appropriate to enjoin Defendants charged
19 with deception from destroying evidence, and doing so places no significant burden on them.¹³⁷

20 The FTC also seeks leave of Court for limited expedited discovery to locate and identify
21
22

23 ¹³³ PX02 ¶¶ 6-8; PX08 ¶¶ 8-9; PX03 ¶ 5; PX15 ¶¶ 13, 25, 70.

24 ¹³⁴ PX14 ¶¶ 25-27.

25 ¹³⁵ PX11 ¶¶ 10-12, 14; PX12 ¶ 6; PX13 ¶ 10, Att. A at pp. 106-09.

26 ¹³⁶ Proposed TRO Section X.

27 ¹³⁷ See *SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990) (characterizing such orders
28 as “innocuous”).

1 documents and assets pertaining to Defendants’ fraudulent scheme.¹³⁸ District Courts are
 2 authorized to fashion discovery to meet the needs of a particular case. Federal Rules of Civil
 3 Procedure 26(d), 33(a), and 34(b) authorize the Court to alter default provisions, including
 4 applicable time frames, that govern depositions and production of documents. Narrow expedited
 5 discovery provisions reflect the Court’s broad and flexible authority in equity to grant
 6 preliminary emergency relief in cases involving the public interest.¹³⁹ Here, expedited discovery
 7 is warranted to locate assets, identify documents, and ensure compliance with other provisions of
 8 the order. This is particularly true given Defendants’ efforts to hide their true identity and
 9 location, which pose a danger that Defendants will likely attempt to circumvent any emergency
 10 relief this Court grants.

11 **D. An *Ex Parte* TRO is Necessary to Preserve the Court’s Ability to Fashion**
 12 **Meaningful Relief**

13 The likelihood of asset dissipation and document destruction, combined with Defendants’
 14 ongoing and deliberate violations of the law, justifies *ex parte* relief without notice. Federal
 15 Rule of Civil Procedure 65(b) permits this Court to enter an *ex parte* TRO upon a clear showing
 16 that “immediate and irreparable injury, loss, or damage will result,” if notice is given.¹⁴⁰ An *ex*
 17 *parte* order is appropriate where “notice to the defendant would render fruitless the further
 18 prosecution of the action.”¹⁴¹ “[T]he possibility that a defendant will dissipate assets which
 19 could satisfy a judgment can constitute irreparable harm” that supports granting a TRO without

20 _____
 21 ¹³⁸ Proposed TRO Section XIII.

22 ¹³⁹ See, e.g. *Semitoil, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002)
 23 (applying “good cause” standard in permitting expedited discovery, and noting “that courts have
 24 recognized that good cause is frequently found in cases involving claims of infringement and
 25 unfair competition”); *Fed. Express Corp. v. Fed Espresso, Inc.*, 1997 U.S. Dist. LEXIS 19144, at
 26 *6 (N.D.N.Y. Nov. 24, 1997) (quoting Fed. R. Civ. P. 26(d) commentary that early discovery
 27 “will be appropriate in some cases, such as those involving requests for a preliminary
 28 injunction”).

¹⁴⁰ Fed. R. of Civ. P. 65(b).

¹⁴¹ *Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) (citing *Am. Can Co.*
v. Mansukhani, 742 F.2d 314, 322 (7th Cir. 1984)) (internal quotations omitted).

1 notice.¹⁴² Recognizing this problem, courts in this district have entered *ex parte* TROs similar to
2 the one requested in this matter in numerous 13(b) cases.¹⁴³

3 There is compelling evidence to establish a likelihood that Defendants will dissipate
4 assets and destroy evidence if given notice. As discussed above in Sections III.A-C, Defendants
5 deceive consumers and evade detection through the use of numerous corporate entities and
6 websites, hide their identity from consumers, divert corporate assets for personal use, and ignore
7 prior warnings to halt their unlawful conduct. The deceptive and pervasive nature of this
8 conduct demonstrates that they will go to great lengths to continue their illegal practices and
9 steal from consumers. In addition, the FTC's prior experiences have shown that individuals and
10 companies engaged in fraudulent conduct, such as Defendants, often attempt to undermine the
11 FTC's case by concealing assets or destroying evidence if given notice.¹⁴⁴ Thus, this case fits
12 squarely within the narrow category of situations where *ex parte* relief is appropriate to make full
13 and effective final relief.

14 VI. CONCLUSION

15 For the reasons set forth above, the FTC respectfully requests that the Court grant its
16 motion for an *ex parte* TRO and require Defendants to show cause why a preliminary injunction
17 should not issue.

22 ¹⁴² *Harley-Davidson Credit Corp. v. Monterey Motorcycles, Inc.*, 2012 U.S. Dist. LEXIS 53192,
23 *7 (N.D. Cal. April 16, 2012); *see also M/A-COM Tech. Solutions, Inc. v. Integrated*
24 *Semiconductor Serv.*, 2015 U.S. Dist. LEXIS 73353, at *2 (N.D. Cal. June 5, 2015); *FTC v. Lead*
25 *Express*, 2020 U.S. Dist. LEXIS 90803, at *9 (D. Nev. May 19, 2020).

26 ¹⁴³ *See* Certification and Declaration of Counsel In Support of Plaintiff's *Ex Parte* Motion for
Temporary Restraining Order and Order Waiving Notice Requirement ("Decl. of Counsel") ¶ 36.

27 ¹⁴⁴ *See Reno Air Racing Ass'n*, 452 F.3d at 1131 (evidence of past experience can support *ex*
28 *parte* TRO); *see also* Decl. of Counsel ¶ 35.

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Respectfully submitted,

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