

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

1
2
3 FEDERAL TRADE COMMISSION,)
4)
5 Plaintiff,)
6 vs.)
7 OMICS GROUP INC., *et al.*,)
8 Defendants.)

Case No.: 2:16-cv-02022-GMN-VCF

ORDER

9 Pending before the Court is the Motion for Preliminary Injunction, (ECF No. 9), filed by
10 Plaintiff Federal Trade Commission (“the FTC”). Defendants OMICS Group Inc. (“OMICS”),
11 iMedPub LLC (“iMedPub”), Conference Series LLC (“Conference Series”), and Srinubabu
12 Gedela (“Gedela”) (collectively “Defendants”) filed a response, (ECF No. 32), and the FTC
13 filed a Reply, (ECF No. 34). Also pending before the Court is Defendants’ Motion to Dismiss.
14 (ECF No. 31). The FTC filed a response, (ECF No. 35), and Defendants filed a reply, (ECF
15 No. 36). For the reasons discussed herein, the FTC’s Motion for Preliminary Injunction is
16 GRANTED and Defendants’ Motion to Dismiss is DENIED.

17 **I. BACKGROUND**

18 The FTC brings this action pursuant to Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
19 alleging that Defendants engaged in unfair and deceptive practices with respect to the
20 publication of online academic journals and organization of scientific conferences. (*See*
21 *Compl.*, ECF No. 1). Defendants claim to operate hundreds of online academic journals on a
22 wide variety of topics, including medicine, chemistry, nursing, engineering, and genetics. (Mot.
23 for Prelim. Inj. 2:1–12, ECF No. 9; *see also* Defs.’ Mot. to Dismiss 4:21–28, ECF No. 31).
24 According to the FTC, Defendants make numerous misrepresentations regarding the nature and
25 reputation of their journals in order to attract consumers. *Id.* Furthermore, Defendants

1 allegedly fail to disclose that they charge significant fees in exchange for their publication
2 service. *Id.* Finally, Defendants allegedly make numerous misrepresentations in connection
3 with the marketing of their scientific conferences. *Id.*

4 The FTC asserts that Defendants OMICS, iMedPub, and Conference Series (collectively
5 “Corporate Defendants”) have operated as a common enterprise in violating Section 5(a) and
6 therefore are jointly and severally liable. (Compl. ¶ 10). The FTC further asserts that Gedela
7 has “formulated, directed, controlled, had the authority to control, or participated in the acts and
8 practices of the Corporate Defendants that constitute the common enterprise.” (*Id.*). Based on
9 these allegations, the FTC initiated the instant action and filed the Motion for Preliminary
10 Injunction. (ECF Nos. 1, 9). Specifically, the FTC seeks a preliminary injunction that: (1)
11 restrains Defendants from engaging in deceptive practices with respect to the marketing and
12 sale of academic journal publishing services and scientific conference services; (2) requires
13 Defendants to identify assets and make an accounting of their present financial condition and
14 certain business information; and (3) requires Defendants to preserve records. (Mot. for Prelim.
15 Inj. 2:14–21).

16 **II. LEGAL STANDARD**

17 **A) Preliminary Injunction**

18 Under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), the Court may
19 grant the FTC a preliminary injunction “[u]pon a proper showing that, weighing the equities
20 and considering the Commission’s likelihood of ultimate success, such action would be in the
21 public interest.” 15 U.S.C. § 53(b). Section 13(b) of the FTC Act, therefore, “places a lighter
22 burden on the Commission than that imposed on private litigants by the traditional equity
23 standard.” *F.T.C. v. Warner Commc’n, Inc.*, 742 F.2d 1156, 1159 (9th Cir. 1984). Under this
24 more lenient standard, the FTC need not show irreparable harm; instead, it must only
25 demonstrate (1) that it is likely to succeed on the merits and (2) that the equities weigh in favor

1 of an injunction. *Id.* at 1160; *see also F.T.C. v. World Wide Factors*, 882 F.2d 344, 346 (9th
2 Cir. 1989).

3 A court’s authority to grant injunctive relief under Section 13(b) includes “all the
4 inherent equitable powers . . . for the proper and complete exercise” of the court’s equity
5 jurisdiction. *F.T.C. v. H.N. Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir. 1982) (citations
6 omitted). One such power is the authority to freeze a defendant’s assets. *Id.* at 1113; *F.T.C. v.*
7 *Evans Prods. Co.*, 775 F.2d 1084, 1088–89 (9th Cir. 1985). As the Ninth Circuit emphasized in
8 *H.N. Singer*, an order freezing assets is a form of “ancillary relief” rather than a primary
9 remedy. *See* 668 F.2d at 1112–13. “Courts have inherent equitable powers to grant ancillary
10 relief, other than a preliminary injunction restraining future violations of the law, when there is
11 no likelihood of recurrence.” *Evans Prods.*, 775 F.2d at 1088. “A party seeking an asset freeze
12 must show a likelihood of dissipation of the claimed assets, or other inability to recover
13 monetary damages, if relief is not granted.” *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th
14 Cir. 2009).

15 **III. DISCUSSION**

16 **A. Likelihood of Success on the Merits**

17 Section 5 of the FTC Act prohibits “unfair or deceptive practices in or affecting
18 commerce.” 15 U.S.C. § 45. An act or practice is deceptive under Section 5 if it involves a
19 material misrepresentation or omission that is likely to mislead consumers acting reasonably
20 under the circumstances. *FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009). A
21 misrepresentation is material if it involves facts that a reasonable person would consider
22 important in choosing a course of action. *See FTC v. Cyberspace.com LLC*, 453 F.3d 1196,
23 1201 (9th Cir. 2006). Express claims are presumed material, so consumers are not required to
24 question their veracity to be deemed reasonable. *See Pantron I*, 33 F.3d 1088, 1095–96 (9th
25 Cir. 1994). Furthermore, the FTC need not prove reliance by each consumer misled by

1 Defendants. *See FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1275 (S.D. Fla. 1999); *FTC v.*
2 *Figgie Int'l, Inc.*, 994 F.2d 595, 605 (9th Cir. 1993).

3 In considering whether a claim is deceptive, the Court must consider the “net
4 impression” created by the representation, even when the solicitation contains some truthful
5 disclosures. *See Cyberspace*, 453 F.3d at 1200. The FTC need not prove that Defendants’
6 misrepresentations were made with an intent to defraud or deceive or in bad faith. *See, e.g.,*
7 *Removatron Int'l Corp. v. FTC*, 884 F.2d 1489, 1495 (1st Cir. 1989); *FTC v. World Travel*
8 *Vacation Brokers*, 861 F.2d 1020, 1029 (7th Cir. 1988). A representation is also deceptive if
9 the maker of the representation lacks a reasonable basis for the claim. *See FTC v. Direct Mktg.*
10 *Concepts, Inc.*, 624 F.3d 1, 8 (1st Cir. 2010). Where the maker lacks adequate substantiation
11 evidence, they necessarily lack any reasonable basis for the claims. *Id.* Furthermore, any
12 disclaimers must be prominent and unambiguous to change the apparent meaning and leave an
13 accurate impression. *See Kraft, Inc. v. FTC*, 970 F.2d 311 (7th Cir. 1992). The FTC Act is
14 violated if a seller “induces the first contact through deception, even if the buyer later becomes
15 fully informed before entering the contract.” *Resort Car Rental Sys., Inc. v. FTC*, 518 F.2d 962,
16 964 (9th Cir. 1975).

17 “[T]he burdens at the preliminary injunction stage track the burdens at trial.” *Gonzales v.*
18 *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006). Thus, the burden
19 is on the FTC to demonstrate that it is likely to prevail on its claims that Defendants engaged
20 in: (1) misrepresentations regarding journal publishing; (2) a deceptive failure to disclose
21 publishing fees; and (3) misrepresentations regarding conferences. “Because irreparable injury
22 must be presumed in a statutory enforcement action, the district court need only . . . find some
23 chance of probable success on the merits.” *World Wide Factors*, 882 F.2d at 347 (internal
24 quotation marks omitted).

25

1 The Court finds that the FTC has satisfied its burden of demonstrating a likelihood of
2 success on the merits of its claims, and considers each claim in turn.

3 *1) Misrepresentations Regarding Journal Publishing*

4 The evidence produced by the FTC demonstrates that Defendants engaged in probable
5 misrepresentations regarding journal publishing. On the OMICS website, for example, OMICS
6 makes numerous representations indicating that it follows standard peer-review practices. (*See*
7 PX12 Att. L at 657, 773, 748, Ex. 12 to Mot. for Prelim Inj., ECF No. 9-12).¹ Under standard
8 industry practice, the peer review process often takes several weeks or even months and
9 involves multiple rounds of substantive feedback from experts in the related field. (*See* PX13
10 ¶¶ 9–10). In contrast, the FTC has provided evidence that Defendants’ peer review practices, in
11 numerous instances, took a matter of days and contained no comments or substantive feedback.
12 (*See* PX04 ¶ 4; PX07 ¶ 4; PX06 ¶¶ 5–6; PX09 ¶ 5; PX10 ¶ 10).

13 This inadequacy is further demonstrated by statements from purported “editors,” which
14 indicate that they never received manuscripts to review or else even agreed to be listed as an
15 editor. (*See, e.g.*, PX03 ¶¶ 3–4; PX11 ¶ 7). In some instances, individuals listed as “editors”
16 without permission requested removal from the website without success. (*See, e.g.*, PX02 ¶ 4;
17 PX08 ¶¶ 4–7; PX06 ¶ 11). In other instances, Defendants sent out email solicitations on behalf
18 of academics without their permission. (*See* PX11 ¶ 7). With respect to the journals
19 themselves, Defendants use names that are nearly identical to other respected journals, which
20 has led to consumers mistakenly submitting articles to Defendants’ journal. (*See* PX07 ¶ 3).

21 The FTC has also submitted evidence demonstrating that Defendants misrepresent the
22 “impact factor” of their journals (i.e. the number of citations in other reputable journals).
23 Notably, the term impact factor is understood in the community to mean the annual calculation
24 released by Thomson Reuters. (PX13 ¶ 12). Defendants, however, base their impact factor off

25 ¹ Each “PX” exhibit can be found attached to the FTC’s Motion for Preliminary Injunction, (ECF No. 9). The Court will only provide the “PX” citation for the remainder of this Order.

1 of a Google Scholar search. (*See* PX12 Att. L at 770). Additionally, the FTC has submitted
2 evidence that Defendants misleadingly represent that their publications are indexed in well-
3 known, reputable indexing services. (*See, e.g.*, PX12 Att. L at 643, 657; PX13 ¶¶ 17–18, 25–
4 27). In opposition, Defendants have submitted evidence purporting to demonstrate the
5 legitimacy of their businesses. However, the FTC has substantively responded to this evidence
6 and demonstrated the numerous flaws and inaccuracies in Defendants’ representations. The
7 Court therefore finds that the evidence in the record is sufficient to support a preliminary
8 conclusion that Defendants made misrepresentations regarding their journal publishing.

9 *2) Deceptive Failure to Disclose Publishing Fees*

10 The evidence produced by the FTC indicates that Defendants deceptively fail to disclose
11 publishing fees. Notably, the FTC has provided evidence that Defendants send out emails
12 soliciting the submission of articles to their service but make no mention of associated fees.
13 (*See, e.g.*, PX04 Att. A at 6, PX09 Att. A at 4; PX10 Att. D at 16). Furthermore, the fee
14 disclosures that are made on Defendants’ websites are difficult to find. (*See* PX12 Att. L at
15 632). Moreover, as the email solicitations invite consumers to submit articles directly through
16 email, a consumer may end up submitting an article without even viewing the website. (*See*
17 PX04 Att. A at 6). The FTC has also submitted evidence indicating that industry practice when
18 charging publication fees is to clearly disclose the fees before authors submit their articles. (*See*
19 PX13 ¶¶ 4, 6). A consumer could therefore reasonably and mistakenly assume that there is no
20 charge for publishing in Defendants’ journals. (*See, e.g.*, PX04 ¶ 5). Furthermore, when
21 consumers contest Defendants’ publication fees and ask their articles to be withdrawn,
22 Defendants have ignored those requests and continued demanding payment. (*See, e.g.*, PX04 ¶¶
23 6–8; PX06 ¶¶ 6, 8; PX07 ¶¶ 5, 8). In some instances, Defendants only removed the articles
24 after the threat of legal action. (*See, e.g.*, PX07 ¶¶ 9–10). The FTC asserts that these practices
25 not only cause financial harm to consumers, but also prevent consumers from resubmitting

1 articles to more reputable journals. (*See* Mot. for Prelim. Inj. 12:23–27). The Court therefore
2 finds that the evidence in the record is sufficient to support a preliminary conclusion that
3 Defendants deceptively fail to disclose publishing fees.

4 3) *Misrepresentations Regarding Conferences*

5 The evidence produced by the FTC demonstrates that Defendants engaged in probable
6 misrepresentations regarding their conferences. Notably, the FTC has provided evidence
7 indicating that Defendants advertise the attendance and participation of prominent academics
8 and researchers without their permission or actual affiliation. (*See* PX05 ¶¶ 3,5; PX12 Att. U at
9 1045). In numerous instances, individuals have requested unsuccessfully to have their names
10 removed from Defendants’ conference advertising materials. (*See, e.g.*, PX03 ¶¶ 6–12). Often,
11 Defendants do not remove an individuals’ name until the threat of legal action. (*See, e.g.*, PX05
12 ¶ 7). Had consumers known of Defendants’ misrepresentations, they may not have agreed to
13 participate in or be affiliated with Defendants’ conferences. The Court therefore finds that the
14 evidence in the record is sufficient to support a preliminary conclusion that Defendants made
15 misrepresentations regarding their conferences.

16 4) *Defendants Engaged in a Common Enterprise*

17 “[E]ntities constitute a common enterprise when they exhibit either vertical or horizontal
18 commonality—qualities that may be demonstrated by a showing of strongly interdependent
19 economic interests or the pooling of assets and revenues.” *F.T.C. v. Network Servs. Depot, Inc.*,
20 617 F.3d 1127, 1142–43 (9th Cir. 2010). In deciding whether a common enterprise exists,
21 courts may consider such factors as whether the companies were under common ownership and
22 control; whether they pooled resources and staff; whether they shared phone numbers,
23 employees, and email systems; and whether they jointly participated in a “common venture” in
24 which they benefited from a shared business scheme or referred customers to one another. *Id.* at
25 1243. Where the same individuals transact business through a “maze of interrelated

1 companies,” the whole enterprise may be held liable as a joint enterprise. *FTC v. John Beck*
2 *Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1082 (C.D. Cal. 2012).

3 In support of its claim that the Corporate Defendants engaged in a common enterprise,
4 the FTC points out that “the various business entities share common ownership and
5 management and operate from the same principal place of business in India. (Mot. for Prelim.
6 Inj. 12:4–6). Furthermore, the FTC provided evidence showing that the websites belonging to
7 the three corporations use similar language, often link to one another, and advertise some of the
8 same journals. (*Id.* 2:2–3:17). With respect to common ownership, the FTC has demonstrated
9 that Defendant Gedela is the authorized signatory on the financial accounts of the Corporate
10 Defendants, as well as the registrant for each of their websites. (*Id.*). The FTC has also
11 provided evidence that each company is a beneficiary of and participant in the same shared
12 business scheme.

13 In opposition, Defendants point out perceived gaps in the FTC’s evidence and
14 incorrectly assume that the FTC needs to demonstrate each one of the above factors to show a
15 common enterprise. For example, Defendants note that “the FTC [has not] provided evidence
16 which proves the type of address the principal place of business is.” (Defs.’ Resp 11:11–16,
17 ECF No. 32). Defendants theorize, without citing to any evidence, that as internet companies
18 “it is highly likely that the address is simply a common registered agent similar to those based
19 in the United States where companies have no actual relationship to each other” (*Id.*). The
20 Court does not find this theoretical argument sufficient to counter the evidence that Defendants
21 share a principal place of business and have common ownership. Based on the record, the
22 Court finds that the FTC is likely to succeed in proving that the Corporate Defendants engaged
23 in a common enterprise.

1 5) *Gedela's Liability for Injunctive and Monetary Relief*

2 Personal liability for violations of the FTC Act fall into two categories: liability for
3 injunctive relief and liability for monetary relief. Individuals are liable for injunctive relief if
4 they directly participate in the deceptive acts or have the authority to control them. *F.T.C. v.*
5 *Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997); *F.T.C. v. Stefanichik*, 559
6 F.3d 924, 931 (9th Cir. 2009). To subject an individual to monetary liability, the FTC must
7 show that the individual had knowledge of the misrepresentations, was recklessly indifferent to
8 the truth or falsity of the misrepresentation, or was aware of a high probability of fraud and
9 intentionally avoided the truth. *Publ'g Clearing House*, 104 F.3d at 1171; *Stefanichik*, 559 F.3d
10 at 931. “[T]he extent of an individual’s involvement in a fraudulent scheme alone is sufficient
11 to establish the requisite knowledge for personal restitutionary liability.” *F.T.C. v. Affordable*
12 *Media*, 179 F.3d 1228, 1235 (9th Cir. 1999).

13 The evidence produced by the FTC clearly demonstrates that Gedela’s participation and
14 control over the Corporate Defendants meets the liability standard at this stage. As detailed
15 above, Gedela is the founder, principal, and owner of the Corporate Defendants. He has
16 signatory authority over the corporations’ financial accounts and is the billing contact for
17 Defendants’ websites. The OMICS website itself openly proclaims Gedela as the “CEO and
18 Managing Director,” and states that iMedPub LLC and Conference Series LLC are subsidiaries
19 of OMICS International. (PX12 Att. L at 937; PX22 Att. C at 17). Furthermore, Gedela’s own
20 sworn declaration does not dispute his participation in the Corporate Defendants’ business. (*See*
21 *ECF No. 33*).

22 Defendants cite to a number of cases denying individual liability based on an
23 individual’s limited involvement in a company. (Defs.’ Resp 13:24–15:19); *see, e.g., FTC v.*
24 *Swish Mktg.*, 2010 WL 653486, at *5 (N.D. Cal. Feb. 22, 2010) (finding that defendant’s
25 “status as CEO, standing alone” was insufficient to support individual liability). The Court

1 does not find Defendants' cited authority persuasive. Notably, these cases involve individuals
2 with far less involvement than the evidence provides in this case. Based on the record, the
3 Court finds the evidence sufficient to support a preliminary conclusion that Gedela is liable for
4 injunctive and monetary relief.

5 **B. Balancing of the Public and Private Interests**

6 In balancing the equities, public equities receive far greater weight than private equities.
7 *Affordable Media*, 179 F.3d at 1236. Public equities include economic benefits and
8 competitive advantages for consumers, and effective relief for the FTC. *See Warner Commc'n*,
9 742 F.2d at 1165. “[W]hen a district court balances the hardships of the public interest against
10 a private interest, the public interest should receive greater weight.” *World Wide Factors*, 882
11 F.2d at 347. If the FTC demonstrates a likelihood of success on the merits, “a countershowing
12 of private equities alone does not justify denial of a preliminary injunction.” *Warner Commc'n*,
13 742 F.2d at 1165.

14 The Court finds that the public equities are substantial and outweigh the private equities
15 in this case. As discussed above, the FTC has sufficiently demonstrated that Defendants likely
16 engaged in unlawful and deceptive representations regarding their publishing, fee scheme, and
17 conferences. As a result, the evidence clearly demonstrates that the public equities—protection
18 of consumers from Defendants' deceptive practices and effective enforcement of the law—
19 weigh heavily in favor of granting injunctive relief. Absent such an injunction, the Court finds
20 it likely that Defendants will continue to engage in deceptive practices.

21 In contrast, the Court does not find the private equities in this case compelling. As a
22 general rule, compliance with the law is not an unreasonable burden. *See World Wide Factors*,
23 882 F.2d at 347 (“[T]here is no oppressive hardship to defendants in requiring them to comply
24 with the FTC Act [and] refrain from fraudulent misrepresentation . . .”). Here, an injunction is
25 necessary to prevent potential harmful and illegal behavior and will not prohibitively impact

1 any of Defendants' legitimate business activities. Defendants argue in their opposition that
2 "the practical effect of a preliminary injunction in the eyes of the public would be that
3 Defendants are guilty of fraud and other wrongful actions" and therefore an injunction would
4 be "irreparably devastating" to the Defendants. (Defs.' Resp. 16:13–17). Defendants' assertion
5 is hardly unique—the same faulty argument could be made in regard to any preliminary
6 injunction. Defendants argument is therefore unpersuasive.² Based on the foregoing, the Court
7 finds that the balance of hardships favors a preliminary injunction.

8 C. Defendants' Motion to Dismiss

9 Defendants seek dismissal of the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Mot.
10 to Dismiss, ECF No. 31). Rule 12(b)(6) of the Federal Rules of Civil Procedure mandates that
11 a court dismiss a cause of action that fails to state a claim upon which relief can be granted. *See*
12 *North Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a
13 motion to dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only
14 when the complaint does not give the defendant fair notice of a legally cognizable claim and
15 the grounds on which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In
16 considering whether the complaint is sufficient to state a claim, the Court will take all material
17 allegations as true and construe them in the light most favorable to the plaintiff. *See NL Indus.,*
18 *Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). "In alleging fraud or mistake, a party must
19 state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b).
20 To satisfy Rule 9(b) the plaintiff must include "the who, what, when, where, and how" of the
21 fraud. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003).

22 ² Defendants additionally argue that, to the extent a preliminary injunction is granted, the proposed accounting
23 provision is unjustified. (Defs.' Resp 17:19–28). In support of this assertion, Defendants argue that the
24 accounting constitutes mandatory relief and therefore disfavored. (*Id.*). Defendants do not offer any other
25 substantive argument. Here, the Court finds the accounting requirement justified for the FTC to determine the
scope of harm and effectuate potential relief pending the outcome of the case. The Court further notes that such
requirements are frequently granted in FTC matters throughout this circuit. *See, e.g., FTC v. AMG Servs., Inc.*,
2016 WL 1275612, at *9 (D. Nev. May 6, 2015); *FTC v. Vemma Nutrition Co.*, 2015 WL 11118111, at *14 (D.
Ariz. Sept. 18, 2015).

1 Defendants argue that the Complaint fails to adequately allege that Defendants engaged
2 in unfair or deceptive practices. (Defs.’ Mot. to Dismiss 5:8–14). Moreover, Defendants argue
3 that the undisputed facts demonstrate that Defendants, in fact, have not engaged in unfair or
4 deceptive practices. (*Id.* 5:15–22). For the reasons already stated in this Order, Defendants’
5 argument concerning the sufficiency of the evidence against them fails. The issue then turns on
6 whether the Complaint sufficiently states a claim.

7 As a preliminary matter, the Court notes that Defendants’ Motion incorrectly focuses
8 only on the paragraphs explicitly detailing the respective claims. In doing so, Defendants
9 effectively ignore the preceding forty-two paragraphs of allegations concerning the Defendants
10 and accepted industry practice. *See Arthur J. Gallagher & Co. v. Lang*, No. C 14-0909 CW,
11 2014 WL 4354670, at *3 (N.D. Cal. Sept. 2, 2014) (quoting *Braden v. Wal-Mart Stores, Inc.*,
12 588 F.3d 585, 594 (8th Cir. 2009) (“[T]he complaint should be read as a whole, not parsed
13 piece by piece to determine whether each allegation, in isolation, is plausible.”)).

14 Nonetheless, Defendants argue that the FTC fails to meet the pleading standard under
15 both Rule 8 and Rule 9(b), which requires heightened pleading for allegations of fraud. (Defs.’
16 Mot to Dismiss 8:22–13:21). Specifically, Defendants assert that the Complaint fails to allege
17 the “who, what, when, where, and how” for each Defendant. (*Id.* 12:18–20). The Ninth Circuit,
18 however, has relaxed Rule 9(b)’s particularity requirements in circumstances “where it may be
19 difficult for the plaintiff to identify the specific actions that a corporate officer took in causing
20 the harm.” *F.T.C. v. AMG Servs.*, 2012 WL 6800778, at *4 (D. Nev. Dec. 28, 2012) (citing
21 *Moore v. Kayport Package Express*, 885 F.2d 531, 540 (9th Cir. 1989)). The *Moore* standard is
22 particularly appropriate where the plaintiff is reasonably unable to obtain specific knowledge at
23 the pleading stage regarding “the particularized conduct of each defendant in the alleged
24 corporate fraud.” *Id.* at *4. In such instances, it is sufficient for the plaintiff to categorize
25

1 defendants based on their function in a scheme and then give sufficient detail of the alleged
2 scheme. *Id.* at *5.

3 Here, given the nature of the allegations, the Court finds that the relaxed *Moore* standard
4 applies. The allegations in the Complaint span across multiple years and involve a substantial
5 number of allegedly wronged consumers. Moreover, the facts concerning Gedela's specific
6 actions in the scheme were reasonably unattainable at the initial pleading stage. With respect to
7 the Corporate Defendants, the Complaint meets the 9(b) standard by establishing that all
8 allegations apply to each Defendant as part of an alleged joint scheme. Notably, the Complaint
9 sufficiently alleges the same "common enterprise" theory as discussed above. (*See* Compl. ¶¶
10 6–10). Under the common enterprise theory, Defendants' contention that the Complaint fails
11 for not particularizing allegations to each Corporate Defendant is misplaced, as each are liable
12 for the scheme as a whole. *See John Beck*, 865 F. Supp. 2d at 1082.

13 Accordingly, and upon review, the Court finds that the Complaint provides Defendants
14 sufficient detail to prepare an adequate answer to the allegations and complies with the
15 pleading requirements. *Moore*, 885 F.2d at 540. Furthermore, the allegations in the Complaint
16 clearly establish the requisite elements for the FTC's claims under Section 5(a). Based on the
17 foregoing, the Court denies Defendants' Motion to Dismiss and grants the FTC's Motion for
18 Preliminary Injunction. The Court shall issue a preliminary injunction consistent with the
19 definitions set forth below.

20 **IV. DEFINITIONS**

21 1. "**Clearly and Conspicuously**" means that a required disclosure is difficult to miss
22 (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the
23 following ways:

- 24 a. In any communication that is solely visual or solely audible, the disclosure
25 must be made through the same means through which the communication is

1 presented. In any communication made through both visual and audible means,
2 such as a television advertisement, the disclosure must be presented
3 simultaneously in both the visual and audible portions of the communication even
4 if the representation requiring the disclosure is made in only one means.

5 b. A visual disclosure, by its size, contrast, location, the length of time it
6 appears, and other characteristics, must stand out from any accompanying text or
7 other visual elements so that it is easily noticed, read, and understood.

8 c. An audible disclosure, including by telephone or streaming video, must be
9 delivered in a volume, speed, and cadence sufficient for ordinary consumers to
10 easily hear and understand it.

11 d. In any communication using an interactive electronic medium, such as the
12 Internet or software, the disclosure must be unavoidable.

13 e. The disclosure must use diction and syntax understandable to ordinary
14 consumers and must appear in each language in which the representation that
15 requires the disclosure appears.

16 f. The disclosure must comply with these requirements in each medium
17 through which it is received, including all electronic devices and face-to-face
18 communications.

19 g. The disclosure must not be contradicted or mitigated by, or inconsistent
20 with, anything else in the communication.

21 h. When the representation or sales practice targets a specific audience, such
22 as children, the elderly, or the terminally ill, “ordinary consumers” includes
23 reasonable members of that group.

24 2. “**Defendants**” means the Individual Defendant and the Corporate Defendants,
25 individually, collectively, or in any combination. “Corporate Defendants” means OMICS

1 Group Inc., also doing business as OMICS Publishing Group, iMedPub LLC, and Conference
2 Series LLC, and their successors and assigns. “Individual Defendant” means Srinubabu Gedela,
3 and any other name by which he might be known.

4 3. “**Impact Factor**” or “**Impact Score**” means, with respect to any journal or other
5 publication, any measure reflecting the number or average number of citations (whether
6 weighted or not) to articles published in that journal or publication during a certain period of
7 time, including, but not limited to, the score assigned to a journal by Thomson Reuters and
8 published in Thomson Reuters’ Journal Citation Reports, a journal’s Eigenfactor, or SCImago
9 Journal Rank.

10 4. “**Person**” means a natural person, organization, or other legal entity, including a
11 corporation, partnership, proprietorship, association, cooperative, or any other group or
12 combination acting as an entity.

13 **V. CONCLUSION**

14 **IT IS HEREBY ORDERED** that Defendants’ Motion to Dismiss, (ECF No. 31), is
15 **DENIED**.

16 **IT IS FURTHER ORDERED** that the FTC’s Motion for Preliminary Injunction (ECF
17 No. 9) is **GRANTED** pursuant to the following terms:

18
19 **PROHIBITED MISREPRESENTATIONS REGARDING PUBLISHING SERVICES**

20 **I. IT IS HEREBY ORDERED** that Defendants, Defendants’ officers, agents, employees,
21 and attorneys, and all other Persons in active concert or participation with any of them, who
22 receive actual notice of this Order, whether acting directly or indirectly, in connection with
23 promoting or offering for sale any publishing good or service are hereby preliminarily
24 restrained and enjoined from:

25 1. misrepresenting or assisting others in misrepresenting, expressly or by implication:

- 1 a. the nature, credibility, legitimacy, or reputation of any journal or other
2 publication;
- 3 b. that any journal or other publication follows or otherwise engages in peer
4 review or any other process by which work product submitted to that journal
5 or publication is reviewed;
- 6 c. that any Person is an editor of, a member of an editorial board for, or
7 otherwise associated or affiliated with any journal or other publication;
- 8 d. that any Person is involved in the selection or review of any article,
9 manuscript, or other work product submitted for publishing in any journal or
10 other publication;
- 11 e. the Impact Factor or Impact Score of any journal or other publication, or that
12 any journal or other publication has a high Impact Factor or Impact Score;
- 13 f. the inclusion of any journal or other publication in any academic journal
14 indexing service, including but not limited to PubMed, PubMed Central, or
15 MEDLINE;
- 16 g. any costs or fees associated with publishing an article, manuscript, or other
17 work product;
- 18 h. any material restrictions, limitations, or conditions on publishing an article,
19 manuscript, or other work product; or
- 20 i. any other fact material to a consumer's decision to submit an article,
21 manuscript, or other work product for publishing in any journal or other
22 publication;
- 23 2. making any representation, or assisting others in making any representation,
24 expressly or by implication, that any journal or other publication is peer-reviewed
25 unless any work product submitted to that journal or publication is reviewed by peers

1 who are subject matter experts, who are not journal employees, and who evaluate the
2 quality and credibility of the work product, and the representation is otherwise non-
3 misleading;

- 4 3. making, or assisting others in making, expressly or by implication, any
5 representation covered by this Section I, unless the representation is non-misleading
6 and, at the time such representation is made, Defendants possess and rely upon
7 competent and reliable evidence that is sufficient to substantiate that the
8 representation is true.

9
10 **PROHIBITED MISREPRESENTATIONS REGARDING SCIENTIFIC**
11 **CONFERENCES**

12 **II. IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,
13 employees, and attorneys, and all other Persons in active concert or participation with any of
14 them, who receive actual notice of this Order, whether acting directly or indirectly, in
15 connection with promoting, registering, or accepting fees for any scientific or academic
16 conference are hereby preliminarily restrained and enjoined from:

- 17 1. misrepresenting or assisting others in misrepresenting, expressly or by implication:
18 a. the nature, credibility, legitimacy, or reputation of any conference,
19 symposium, forum, workshop, or other meeting of professionals;
20 b. that any Person will attend, participate in, or is otherwise associated or
21 affiliated with any conference, symposium, forum, workshop, or other
22 meeting of professionals;
23 c. the panels, forums, schedule, agenda, or other presentations of any
24 conference, symposium, forum, workshop, or other meeting of professionals;
25

- d. any costs or fees to register or attend any conference, symposium, forum, workshop, or other meeting of professionals;
 - e. any material restrictions, limitations, or conditions on registering or attending any conference, symposium, forum, workshop, or other meeting of professionals; or
 - f. any other fact material to a consumer's decision to register for or attend any conference, symposium, forum, workshop, or other meeting of professionals;
2. making, or assisting others in making, expressly or by implication, any representation covered by this Section II, unless the representation is non-misleading and, at the time such representation is made, Defendants possess and rely upon competent and reliable evidence that is sufficient to substantiate that the representation is true.

REQUIRED DISCLOSURES REGARDING PUBLISHING PRACTICES

III. IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby preliminarily restrained and enjoined from soliciting from a consumer or publishing articles, manuscripts, or other work product for publication, without disclosing Clearly and conspicuously:

1. all costs to the consumer associated with submission or publication of such work product;
2. if Defendants will not have such work product reviewed by peers who are subject matter experts, who are not journal employees, and who evaluate the quality and credibility of the work product, a statement informing consumers of such fact; and

- 1 3. if Defendants will not allow consumers to withdraw such work product from
2 publication after it has been submitted, a statement informing consumers of such fact.

3
4 **REQUIRED DISCLOSURES REGARDING JOURNAL IMPACT FACTORS**

5 **IV. IT IS FURTHER ORDERED** that Defendants, Defendants’ officers, agents,
6 employees, and attorneys, and all other Persons in active concert or participation with any of
7 them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby
8 preliminarily restrained and enjoined from making any representation, expressly or by
9 implication, regarding the Impact Factor or Impact Score of any journal or publication, (a)
10 unless the representation is non-misleading and (b) without disclosing clearly and
11 conspicuously: (1) whether the Impact Factor or Impact Score is calculated by Thomson
12 Reuters; and (2) if the Impact Factor or Impact Score is not calculated by Thomson Reuters,
13 who calculated that Impact Factor or Impact Score and how that Impact Factor or Impact Score
14 is calculated.

15
16 **FINANCIAL AND BUSINESS ACCOUNTING**

17 **V. IT IS FURTHER ORDERED** that each Defendant, within ten (10) calendar days of
18 service of this Order, shall prepare and deliver to counsel for the FTC:

- 19 1. For the Individual Defendant, a completed financial statement accurate as of the date
20 of service of this Order upon such Defendant (unless otherwise agreed upon with
21 FTC counsel) on the form of Attachment A to this Order captioned, “Form Re:
22 Financial Statement for Individual Defendant.”
23 2. For the Corporate Defendants, a completed financial statement accurate as of the date
24 of service of this Order upon such Defendant (unless otherwise agreed upon with
25

1 FTC counsel) in the form of Attachment B to this Order captioned, “Form Re:
2 Financial Statement for Business Entity Defendant.”

3 3. For Defendants, the following information concerning their journal publication and
4 conference organization operation:

- 5 a. total gross revenues on a monthly basis from 2009 to date, derived from (a)
6 article publication fees paid by consumers for Defendants’ publication
7 services; (b) registration fees paid by consumers to attend Defendants’
8 conferences;
- 9 b. total gross operating expenses on a monthly basis for 2009 to date allocated to
10 (a) Defendants’ journal publication operation; (b) Defendants’ conference
11 organization operation;
- 12 c. gross operating expenditures on a monthly basis per category for 2009 to date,
13 including but not limited to payroll, advertising, marketing, utilities, and
14 property leases;
- 15 d. gross capital expenditures for 2009 to date;
- 16 e. the name, email address, and affiliation of each individual listed on
17 Defendants’ websites or other marketing materials, including direct
18 solicitations to consumers, as an editor or a member of an editorial board for
19 one or more of Defendants’ journals; and
- 20 f. the name, email address, and affiliation of each individual listed on
21 Defendants’ websites or other marketing materials, including direct
22 solicitations to consumers, as speakers or organizers for Defendants’
23 conferences.
- 24
25

1 those persons' activities relate to the publication of online journals or the organization of
2 scientific conferences. Within five (5) calendar days following service of this Order,
3 Defendants shall provide the FTC with an affidavit identifying the names, titles, addresses, and
4 telephone numbers of the persons and entities that Defendants have served with a copy of this
5 Order in compliance with this provision.

6
7 **CORRESPONDENCE WITH PLAINTIFF**

8 **IX. IT IS FURTHER ORDERED** that for the purposes of this Order, all service on and
9 correspondence to the FTC shall be sent via U.S. Express Mail or Federal Express and be
10 addressed to: Ioana Rusu, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail
11 Stop CC-10232, Washington, DC 20580. Telephone: (202) 326-2077; Facsimile: (202) 326-
12 3768.

13
14 **SERVICE OF THIS ORDER**

15 **X. IT IS FURTHER ORDERED** that copies of this Order may be served by facsimile
16 transmission, personal or overnight delivery, or U.S. Express Mail, by agents and employees of
17 the FTC or any state or federal law enforcement agency or by private process server, on
18 Defendants, or any other person or entity that may be subject to any provision of this Order.


19
20 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

21 **XI. IT IS FURTHER ORDERED** that Defendants, within three (3) business days of
22 receipt of this Order, shall submit to counsel for the FTC a truthful sworn statement
23 acknowledging receipt of this Order.

RETENTION OF JURISDICTION

XII. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

DATED this 29 day of September, 2017.



Gloria M. Navarro, Chief Judge
United States District Judge

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ATTACHMENT A

FINANCIAL STATEMENT OF INDIVIDUAL DEFENDANT**Definitions and Instructions:**

1. Complete all items. Enter "None" or "N/A" ("Not Applicable") in the first field only of any item that does not apply to you. If you cannot fully answer a question, explain why.
2. "Dependents" include your spouse, live-in companion, dependent children, or any other person, whom you or your spouse (or your children's other parent) claimed or could have claimed as a dependent for tax purposes at any time during the past five years.
3. "Assets" and "Liabilities" include ALL assets and liabilities, located within the United States or any foreign country or territory, whether held individually or jointly and whether held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.
4. Attach continuation pages as needed. On the financial statement, state next to the Item number that the Item is being continued. On the continuation page(s), identify the Item number(s) being continued.
5. Type or print legibly.
6. Initial each page in the space provided in the lower right corner.
7. Sign and date the completed financial statement on the last page.

Penalty for False Information:

Federal law provides that any person may be imprisoned for not more than five years, fined, or both, if such person:

(1) "in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or devise a material fact; makes any materially false, fictitious or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry" (18 U.S.C. § 1001);

(2) "in any . . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true" (18 U.S.C. § 1621); or

(3) "in any (. . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information . . . knowing the same to contain any false material declaration" (18 U.S.C. § 1623).

For a felony conviction under the provisions cited above, federal law provides that the fine may be not more than the greater of (i) \$250,000 for an individual or \$500,000 for a corporation, or (ii) if the felony results in pecuniary gain to any person or pecuniary loss to any person other than the defendant, the greater of twice the gross gain or twice the gross loss. 18 U.S.C. § 3571.

BACKGROUND INFORMATION**Item 1. Information About You**

Full Name	Social Security No.		
Current Address of Primary Residence	Driver's License No.		State Issued
	Phone Numbers Home: () Fax: ()	Date of Birth: / / (mm/dd/yyyy)	
	Place of Birth		
<input type="checkbox"/> Rent <input type="checkbox"/> Own From (Date): / / (mm/dd/yyyy)	E-Mail Address		
Internet Home Page			

Previous Addresses for past five years (if required, use additional pages at end of form)

Address	From: / / (mm/dd/yyyy)	Until: / / (mm/dd/yyyy)
	<input type="checkbox"/> Rent <input type="checkbox"/> Own	
Address	From: / /	Until: / /
	<input type="checkbox"/> Rent <input type="checkbox"/> Own	
Address	From: / /	Until: / /
	<input type="checkbox"/> Rent <input type="checkbox"/> Own	
Identify any other name(s) and/or social security number(s) you have used, and the time period(s) during which they were used:		

Item 2. Information About Your Spouse or Live-In Companion

Spouse/Companion's Name	Social Security No.	Date of Birth / / (mm/dd/yyyy)
Address (if different from yours)	Phone Number ()	Place of Birth
	<input type="checkbox"/> Rent <input type="checkbox"/> Own From (Date): / / (mm/dd/yyyy)	
Identify any other name(s) and/or social security number(s) you have used, and the time period(s) during which they were used:		

Employer's Name and Address	Job Title	
	Years in Present Job	Annual Gross Salary/Wages \$

Item 3. Information About Your Previous Spouse

Name and Address	Social Security No.
	Date of Birth / / (mm/dd/yyyy)

Item 4. Contact Information (name and address of closest living relative other than your spouse)

Name and Address	Phone Number ()
------------------	---------------------

Initials: _____

Item 5. Information About Dependents (whether or not they reside with you)		
Name and Address	Social Security No.	Date of Birth / / (mm/dd/yyyy)
	Relationship	
Name and Address	Social Security No.	Date of Birth / / (mm/dd/yyyy)
	Relationship	
Name and Address	Social Security No.	Date of Birth / / (mm/dd/yyyy)
	Relationship	
Name and Address	Social Security No.	Date of Birth / / (mm/dd/yyyy)
	Relationship	

Item 6. Employment Information/Employment Income
 Provide the following information for this year-to-date and for each of the previous five full years, for each business entity of which you were a director, officer, member, partner, employee (including self-employment), agent, owner, shareholder, contractor, participant or consultant at any time during that period. "Income" includes, but is not limited to, any salary, commissions, distributions, draws, consulting fees, loans, loan payments, dividends, royalties, and benefits for which you did not pay (e.g., health insurance premiums, automobile lease or loan payments) received by you or anyone else on your behalf.

Company Name and Address	Dates Employed		Income Received: Y-T-D & 5 Prior Yrs.	
	From (Month/Year) /	To (Month/Year) /	Year	Income
Ownership Interest? <input type="checkbox"/> Yes <input type="checkbox"/> No			20	\$
Positions Held	From (Month/Year)	To (Month/Year)		\$
	/	/		\$
	/	/		\$
	/	/		\$
	/	/		\$
	/	/		\$

Company Name and Address	Dates Employed		Income Received: Y-T-D & 5 Prior Yrs.	
	From (Month/Year) /	To (Month/Year) /	Year	Income
Ownership Interest? <input type="checkbox"/> Yes <input type="checkbox"/> No			20	\$
Positions Held	From (Month/Year)	To (Month/Year)		\$
	/	/		\$
	/	/		\$
	/	/		\$
	/	/		\$

Company Name and Address	Dates Employed		Income Received: Y-T-D & 5 Prior Yrs.	
	From (Month/Year) /	To (Month/Year) /	Year	Income
Ownership Interest? <input type="checkbox"/> Yes <input type="checkbox"/> No			20	\$
Positions Held	From (Month/Year)	To (Month/Year)		\$
	/	/		\$
	/	/		\$
	/	/		\$

Initials: _____

Item 7. Pending Lawsuits Filed By or Against You or Your Spouse

List all pending lawsuits that have been filed by or against you or your spouse in any court or before an administrative agency in the United States or in any foreign country or territory. **Note:** At Item 12, list lawsuits that resulted in final judgments or settlements in your favor. At Item 21, list lawsuits that resulted in final judgments or settlements against you.

Caption of Proceeding	Court or Agency and Location	Case No.	Nature of Proceeding	Relief Requested	Status or Disposition

Item 8. Safe Deposit Boxes

List all safe deposit boxes, located within the United States or in any foreign country or territory, whether held individually or jointly and whether held by you, your spouse, or any of your dependents, or held by others for the benefit of you, your spouse, or any of your dependents.

Name of Owner(s)	Name & Address of Depository Institution	Box No.	Contents

Initials: _____

FINANCIAL INFORMATION

REMINDER: When an item asks for information regarding your “assets” and “liabilities” include ALL assets and liabilities, located within the United States or in any foreign country or territory, or institution, whether held individually or jointly, and whether held by you, your spouse, or any of your dependents, or held by others for the benefit of you, your spouse, or any of your dependents. In addition, provide all documents requested in Item 24 with your completed Financial Statement.

ASSETS

Item 9. Cash, Bank, and Money Market Accounts

List cash on hand (as opposed to cash in bank accounts or other financial accounts) and all bank accounts, money market accounts, or other financial accounts, including but not limited to checking accounts, savings accounts, and certificates of deposit. The term “cash on hand” includes but is not limited to cash in the form of currency, uncashed checks, and money orders.

a. Amount of Cash on Hand \$		Form of Cash on Hand	
b. Name on Account	Name & Address of Financial Institution	Account No.	Current Balance
			\$
			\$
			\$
			\$
			\$

Item 10. Publicly Traded Securities

List all publicly traded securities, including but not limited to, stocks, stock options, corporate bonds, mutual funds, U.S. government securities (including but not limited to treasury bills and treasury notes), and state and municipal bonds. Also list any U.S. savings bonds.

Owner of Security	Issuer	Type of Security	No. of Units Owned
Broker House, Address	Broker Account No.		
	Current Fair Market Value \$	Loan(s) Against Security \$	
Owner of Security	Issuer	Type of Security	No. of Units Owned
Broker House, Address	Broker Account No.		
	Current Fair Market Value \$	Loan(s) Against Security \$	
Owner of Security	Issuer	Type of Security	No. of Units Owned
Broker House, Address	Broker Account No.		
	Current Fair Market Value \$	Loan(s) Against Security \$	

Initials: _____

Item 11. Non-Public Business and Financial Interests

List all non-public business and financial interests, including but not limited to any interest in a non-public corporation, subchapter-S corporation, limited liability corporation ("LLC"), general or limited partnership, joint venture, sole proprietorship, international business corporation or personal investment corporation, and oil or mineral lease.

Entity's Name & Address	Type of Business or Financial Interest (e.g., LLC, partnership)	Owner (e.g., self, spouse)	Ownership %	If Officer, Director, Member or Partner, Exact Title

Item 12. Amounts Owed to You, Your Spouse, or Your Dependents

Debtor's Name & Address	Date Obligation Incurred (Month/Year) /	Original Amount Owed \$	Nature of Obligation (if the result of a final court judgment or settlement, provide court name and docket number)
	Current Amount Owed \$	Payment Schedule \$	
Debtor's Telephone	Debtor's Relationship to You		
Debtor's Name & Address	Date Obligation Incurred (Month/Year) /	Original Amount Owed \$	Nature of Obligation (if the result of a final court judgment or settlement, provide court name and docket number)
	Current Amount Owed \$	Payment Schedule \$	
Debtor's Telephone	Debtor's Relationship to You		

Item 13. Life Insurance Policies

List all life insurance policies (including endowment policies) with any cash surrender value.

Insurance Company's Name, Address, & Telephone No.	Beneficiary	Policy No.	Face Value \$
	Insured	Loans Against Policy \$	Surrender Value \$
Insurance Company's Name, Address, & Telephone No.	Beneficiary	Policy No.	Face Value \$
	Insured	Loans Against Policy \$	Surrender Value \$

Item 14. Deferred Income Arrangements

List all deferred income arrangements, including but not limited to, deferred annuities, pensions plans, profit-sharing plans, 401(k) plans, IRAs, Keoghs, other retirement accounts, and college savings plans (e.g., 529 Plans).

Trustee or Administrator's Name, Address & Telephone No.	Name on Account		Account No.
	Date Established / / (mm/dd/yyyy)	Type of Plan	Surrender Value before Taxes and Penalties \$
Trustee or Administrator's Name, Address & Telephone No.	Name on Account		Account No.
	Date Established / /	Type of Plan	Surrender Value before Taxes and Penalties \$

Initials: _____

Item 15. Pending Insurance Payments or Inheritances

List any pending insurance payments or inheritances owed to you.

Type	Amount Expected	Date Expected (mm/dd/yyyy)
	\$	/ /
	\$	/ /
	\$	/ /

Item 16. Vehicles

List all cars, trucks, motorcycles, boats, airplanes, and other vehicles.

Vehicle Type	Year	Registered Owner's Name	Purchase Price	Original Loan Amount	Current Balance
Make		Registration State & No.	Account/Loan No.	Current Value	Monthly Payment
Model		Address of Vehicle's Location	Lender's Name and Address		
Vehicle Type	Year	Registered Owner's Name	Purchase Price	Original Loan Amount	Current Balance
Make		Registration State & No.	Account/Loan No.	Current Value	Monthly Payment
Model		Address of Vehicle's Location	Lender's Name and Address		
Vehicle Type	Year	Registered Owner's Name	Purchase Price	Original Loan Amount	Current Balance
Make		Registration State & No.	Account/Loan No.	Current Value	Monthly Payment
Model		Address of Vehicle's Location	Lender's Name and Address		
Vehicle Type	Year	Registered Owner's Name	Purchase Price	Original Loan Amount	Current Balance
Make		Registration State & No.	Account/Loan No.	Current Value	Monthly Payment
Model		Address of Vehicle's Location	Lender's Name and Address		
Vehicle Type	Year	Registered Owner's Name	Purchase Price	Original Loan Amount	Current Balance
Make		Registration State & No.	Account/Loan No.	Current Value	Monthly Payment
Model		Address of Vehicle's Location	Lender's Name and Address		

Item 17. Other Personal Property

List all other personal property not listed in Items 9-16 by category, whether held for personal use, investment or any other reason, including but not limited to coins, stamps, artwork, gemstones, jewelry, bullion, other collectibles, copyrights, patents, and other intellectual property.

Property Category (e.g., artwork, jewelry)	Name of Owner	Property Location	Acquisition Cost	Current Value
			\$	\$
			\$	\$
			\$	\$

Initials: _____

Item 18. Real Property			
List all real property interests (including any land contract)			
Property's Location	Type of Property	Name(s) on Title or Contract and Ownership Percentages	
Acquisition Date (mm/dd/yyyy) / /	Purchase Price \$	Current Value \$	Basis of Valuation
Lender's Name and Address		Loan or Account No.	Current Balance On First Mortgage or Contract \$
			Monthly Payment \$
Other Mortgage Loan(s) (describe)		Monthly Payment \$	<input type="checkbox"/> Rental Unit Monthly Rent Received \$
		Current Balance \$	
Property's Location	Type of Property	Name(s) on Title or Contract and Ownership Percentages	
Acquisition Date (mm/dd/yyyy) / /	Purchase Price \$	Current Value \$	Basis of Valuation
Lender's Name and Address		Loan or Account No.	Current Balance On First Mortgage or Contract \$
			Monthly Payment \$
Other Mortgage Loan(s) (describe)		Monthly Payment \$	<input type="checkbox"/> Rental Unit Monthly Rent Received \$
		Current Balance \$	

LIABILITIES

Item 19. Credit Cards			
List each credit card account held by you, your spouse, or your dependents, and any other credit cards that you, your spouse, or your dependents use, whether issued by a United States or foreign financial institution.			
Name of Credit Card (e.g., Visa, MasterCard, Department Store)	Account No.	Name(s) on Account	Current Balance
			\$
			\$
			\$
			\$
			\$

Item 20. Taxes Payable		
List all taxes, such as income taxes or real estate taxes, owed by you, your spouse, or your dependents.		
Type of Tax	Amount Owed	Year Incurred
	\$	
	\$	
	\$	

Initials: _____

Item 21. Other Amounts Owed by You, Your Spouse, or Your Dependents

List all other amounts, not listed elsewhere in this financial statement, owed by you, your spouse, or your dependents.

Lender/Creditor's Name, Address, and Telephone No.		Nature of Debt (if the result of a court judgment or settlement, provide court name and docket number)	
		Lender/Creditor's Relationship to You	
Date Liability Was Incurred / / (mm/dd/yyyy)	Original Amount Owed \$	Current Amount Owed \$	Payment Schedule
Lender/Creditor's Name, Address, and Telephone No.		Nature of Debt (if the result of a court judgment or settlement, provide court name and docket number)	
		Lender/Creditor's Relationship to You	
Date Liability Was Incurred / / (mm/dd/yyyy)	Original Amount Owed \$	Current Amount Owed \$	Payment Schedule

OTHER FINANCIAL INFORMATION

Item 22. Trusts and Escrows

List all funds and other assets that are being held in trust or escrow by any person or entity for you, your spouse, or your dependents. Include any legal retainers being held on your behalf by legal counsel. Also list all funds or other assets that are being held in trust or escrow by you, your spouse, or your dependents, for any person or entity.

Trustee or Escrow Agent's Name & Address	Date Established (mm/dd/yyyy)	Grantor	Beneficiaries	Present Market Value of Assets*
	/ /			\$
	/ /			\$
	/ /			\$

*If the market value of any asset is unknown, descr be the asset and state its cost, if you know it.

Item 23. Transfers of Assets

List each person or entity to whom you have transferred, in the aggregate, more than \$5,000 in funds or other assets during the previous five years by loan, gift, sale, or other transfer (exclude ordinary and necessary living and business expenses paid to unrelated third parties). For each such person or entity, state the total amount transferred during that period.

Transferee's Name, Address, & Relationship	Property Transferred	Aggregate Value*	Transfer Date (mm/dd/yyyy)	Type of Transfer (e.g., Loan, Gift)
		\$	/ /	
		\$	/ /	
		\$	/ /	

*If the market value of any asset is unknown, descr be the asset and state its cost, if you know it.

Initials: _____

Item 24. Document Requests

Provide copies of the following documents with your completed Financial Statement.

	Federal tax returns filed during the last three years by or on behalf of you, your spouse, or your dependents.
	All applications for bank loans or other extensions of credit (other than credit cards) that you, your spouse, or your dependents have submitted within the last two years, including by obtaining copies from lenders if necessary.
Item 9	For each bank account listed in Item 9, all account statements for the past 3 years.
Item 11	For each business entity listed in Item 11, provide (including by causing to be generated from accounting records) the most recent balance sheet, tax return, annual income statement, the most recent year-to-date income statement, and all general ledger files from account records.
Item 17	All appraisals that have been prepared for any property listed in Item 17, including appraisals done for insurance purposes. You may exclude any category of property where the total appraised value of all property in that category is less than \$2,000.
Item 18	All appraisals that have been prepared for real property listed in Item 18.
Item 21	Documentation for all debts listed in Item 21.
Item 22	All executed documents for any trust or escrow listed in Item 22. Also provide any appraisals, including insurance appraisals that have been done for any assets held by any such trust or in any such escrow.

SUMMARY FINANCIAL SCHEDULES**Item 25. Combined Balance Sheet for You, Your Spouse, and Your Dependents**

Assets		Liabilities	
Cash on Hand (Item 9)	\$	Loans Against Publicly Traded Securities (Item 10)	\$
Funds Held in Financial Institutions (Item 9)	\$	Vehicles - Liens (Item 16)	\$
U.S. Government Securities (Item 10)	\$	Real Property – Encumbrances (Item 18)	\$
Publicly Traded Securities (Item 10)	\$	Credit Cards (Item 19)	\$
Non-Public Business and Financial Interests (Item 11)	\$	Taxes Payable (Item 20)	\$
Amounts Owed to You (Item 12)	\$	Amounts Owed by You (Item 21)	\$
Life Insurance Policies (Item 13)	\$	Other Liabilities (Itemize)	
Deferred Income Arrangements (Item 14)	\$		\$
Vehicles (Item 16)	\$		\$
Other Personal Property (Item 17)	\$		\$
Real Property (Item 18)	\$		\$
Other Assets (Itemize)			\$
	\$		\$
	\$		\$
	\$		\$
Total Assets	\$	Total Liabilities	\$

Item 26. Combined Current Monthly Income and Expenses for You, Your Spouse, and Your Dependents

Provide the current monthly income and expenses for you, your spouse, and your dependents. Do not include credit card payments separately; rather, include credit card expenditures in the appropriate categories.

Income (State source of each item)		Expenses	
Salary - After Taxes Source:	\$	Mortgage or Rental Payments for Residence(s)	\$
Fees, Commissions, and Royalties Source:	\$	Property Taxes for Residence(s)	\$
Interest Source:	\$	Rental Property Expenses, Including Mortgage Payments, Taxes, and Insurance	\$
Dividends and Capital Gains Source:	\$	Car or Other Vehicle Lease or Loan Payments	\$
Gross Rental Income Source:	\$	Food Expenses	\$
Profits from Sole Proprietorships Source:	\$	Clothing Expenses	\$
Distributions from Partnerships, S-Corporations, and LLCs Source:	\$	Utilities	\$

Initials: _____

Item 26. Combined Current Monthly Income and Expenses for You, Your Spouse, and Your Dependents (cont.)			
Distributions from Trusts and Estates Source:	\$	Medical Expenses, Including Insurance	\$
Distributions from Deferred Income Arrangements Source:	\$	Other Insurance Premiums	\$
Social Security Payments	\$	Other Transportation Expenses	\$
Alimony/Child Support Received	\$	Other Expenses (Itemize)	
Gambling Income	\$		\$
Other Income (Itemize)			\$
	\$		\$
	\$		\$
	\$		\$
Total Income	\$	Total Expenses	\$

ATTACHMENTS

Item 27. Documents Attached to this Financial Statement	
List all documents that are being submitted with this financial statement. For any Item 24 documents that are not attached, explain why.	
Item No. Document Relates To	Description of Document

I am submitting this financial statement with the understanding that it may affect action by the Federal Trade Commission or a federal court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I know of the penalties for false statements under 18 U.S.C. § 1001, 18 U.S.C. § 1621, and 18 U.S.C. § 1623 (five years imprisonment and/or fines). I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on:

(Date)

Signature

ATTACHMENT B

FEDERAL TRADE COMMISSION
FINANCIAL STATEMENT OF CORPORATE DEFENDANT

Instructions:

1. Complete all items. Enter “None” or “N/A” (“Not Applicable”) where appropriate. If you cannot fully answer a question, explain why.
2. The font size within each field will adjust automatically as you type to accommodate longer responses.
3. In completing this financial statement, “the corporation” refers not only to this corporation but also to each of its predecessors that are not named defendants in this action.
4. When an Item asks for information about assets or liabilities “held by the corporation,” include ALL such assets and liabilities, located within the United States or elsewhere, held by the corporation or held by others for the benefit of the corporation.
5. Attach continuation pages as needed. On the financial statement, state next to the Item number that the Item is being continued. On the continuation page(s), identify the Item number being continued.
6. Type or print legibly.
7. An officer of the corporation must sign and date the completed financial statement on the last page and initial each page in the space provided in the lower right corner.

Penalty for False Information:

Federal law provides that any person may be imprisoned for not more than five years, fined, or both, if such person:

- (1) “in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry” (18 U.S.C. § 1001);
- (2) “in any . . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true” (18 U.S.C. § 1621); or
- (3) “in any (. . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information . . . knowing the same to contain any false material declaration.” (18 U.S.C. § 1623)

For a felony conviction under the provisions cited above, federal law provides that the fine may be not more than the greater of (i) \$250,000 for an individual or \$500,000 for a corporation, or (ii) if the felony results in pecuniary gain to any person or pecuniary loss to any person other than the defendant, the greater of twice the gross gain or twice the gross loss. 18 U.S.C. § 3571.

BACKGROUND INFORMATION

Item 1. General Information

Corporation's Full Name _____

Primary Business Address _____ From (Date) _____

Telephone No. _____ Fax No. _____

E-Mail Address _____ Internet Home Page _____

All other current addresses & previous addresses for past five years, including post office boxes and mail drops:

Address _____ From/Until _____

Address _____ From/Until _____

Address _____ From/Until _____

All predecessor companies for past five years:

Name & Address _____ From/Until _____

Name & Address _____ From/Until _____

Name & Address _____ From/Until _____

Item 2. Legal Information

Federal Taxpayer ID No. _____ State & Date of Incorporation _____

State Tax ID No. _____ State _____ Profit or Not For Profit _____

Corporation's Present Status: Active _____ Inactive _____ Dissolved _____

If Dissolved: Date dissolved _____ By Whom _____

Reasons _____

Fiscal Year-End (Mo./Day) _____ Corporation's Business Activities _____

Item 3. Registered Agent

Name of Registered Agent _____

Address _____ Telephone No. _____

Item 4. Principal Stockholders

List all persons and entities that own at least 5% of the corporation's stock.

<u>Name & Address</u>	<u>% Owned</u>
_____	_____
_____	_____
_____	_____
_____	_____

Item 5. Board Members

List all members of the corporation's Board of Directors.

<u>Name & Address</u>	<u>% Owned</u>	<u>Term (From/Until)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Item 6. Officers

List all of the corporation's officers, including *de facto* officers (individuals with significant management responsibility whose titles do not reflect the nature of their positions).

<u>Name & Address</u>	<u>% Owned</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Item 7. Businesses Related to the Corporation

List all corporations, partnerships, and other business entities in which this corporation has an ownership interest.

<u>Name & Address</u>	<u>Business Activities</u>	<u>% Owned</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

State which of these businesses, if any, has ever transacted business with the corporation _____

Item 8. Businesses Related to Individuals

List all corporations, partnerships, and other business entities in which the corporation’s principal stockholders, board members, or officers (i.e., the individuals listed in Items 4 - 6 above) have an ownership interest.

<u>Individual’s Name</u>	<u>Business Name & Address</u>	<u>Business Activities</u>	<u>% Owned</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

State which of these businesses, if any, have ever transacted business with the corporation _____

Item 9. Related Individuals

List all related individuals with whom the corporation has had any business transactions during the three previous fiscal years and current fiscal year-to-date. A “related individual” is a spouse, sibling, parent, or child of the principal stockholders, board members, and officers (i.e., the individuals listed in Items 4 - 6 above).

<u>Name and Address</u>	<u>Relationship</u>	<u>Business Activities</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

