

Nos. 20-10790 (Lead); 20-10859 (Member)

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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FEDERAL TRADE COMMISSION,  
*Plaintiff-Appellee,*

v.

BURTON KATZ, et al.,  
*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the Southern District of Florida  
1:19-cv-25046-RNS (Hon. Robert N. Scola, Jr.)

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**OPPOSITION OF THE FEDERAL TRADE COMMISSION TO  
APPELLANT ROBERT ZANGRILLO'S MOTION FOR A  
STAY PENDING APPEAL**

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### **Eleventh Circuit Rule 26.1 Certificate of Interested Persons**

Pursuant to Eleventh Circuit R. 26.1-1, Plaintiff-Appellee, the Federal Trade Commission, certifies that in addition to the names listed in Appellant's motion, the following attorneys, persons, associations of persons, firms, partnerships, or corporations have an interest in the outcome of this appeal.

Abbott, Alden F. (Former FTC General Counsel).

Bergman, Michael (Counsel for the Federal Trade Commission).

Cartier, Nicholas (Former Counsel for the Federal Trade Commission).

Cohen, Jonathan (Counsel for the Federal Trade Commission).

DiFalco, Fernandez & Kaplan (Counsel for Defendants Arlene Mahon and Waltham Technologies LLC).

Dolan, James Reilly (FTC Acting General Counsel).

Weil, Bruce (Attorney at Boies Schiller Flexner LLP and Manager for Defendant OnPoint Capital Partners LLC).

The Federal Trade Commission further states that, to the best of its knowledge, no publicly traded company or corporation has an interest in the outcome of this case or appeal.

**OPPOSITION OF THE FEDERAL TRADE COMMISSION TO  
APPELLANT ROBERT ZANGRILLO'S MOTION  
FOR A STAY PENDING APPEAL**

The Court should not grant Robert Zangrillo's motion to immediately stay the freeze of his personal assets imposed by the district court. Although the Supreme Court recently struck down the FTC's authority to obtain monetary relief, including an asset freeze, under Section 13(b) of the FTC Act, the district court still retains authority to issue compensatory relief as a contempt remedy in a related, parallel proceeding. In particular, the FTC has moved in a related case called *Acquinity Interactive* to hold Zangrillo in contempt for violating a permanent injunction by committing the same acts that gave rise to this case. In connection with the contempt motion, the FTC has asked the court to freeze the very same assets at issue here in order to preserve the possibility of compensatory contempt sanctions. An immediate release of the assets would seriously interfere with the pending *Acquinity* proceeding and likely deprive consumer victims of meaningful redress.

In the unique circumstances presented here, the balance of equities supports giving the district court a specific timetable to act on the pending matters before the assets are released. Zangrillo has not shown that maintaining the asset freeze for an additional short period of time limited by court order would cause him irreparable harm.

## BACKGROUND

The district court found that Zangrillo and the Dragon Global companies he owns were among 6 individual and 54 corporate defendants doing business as On Point Global, which “deceived consumers by misrepresenting the services they offer, thus inducing consumers to pay money or divulge personal information under false pretenses.” Zangrillo App’x at 120 (ECF No. 126 at 2). The district court imposed a preliminary injunction and asset freeze, which are now before this Court (nearly all the defendants initially appealed, but Zangrillo and Dragon Global are the only remaining appellants).

When the FTC sought the preliminary injunction, it explained that the conduct at issue also violated a 2014 permanent injunction entered against the scheme’s ringleader, Dragon Global partner Burton Katz, in *FTC v. Acquinity Interactive, LLC*, No. 14-cv-60166 (S.D. Fla.). Katz App’x Tab 4 at 23 & n.21. The *On Point* case was assigned to the presiding judge in *Acquinity*, Judge Scola.

In February 2020, shortly after the district court granted the preliminary injunction in *On Point*, the FTC moved for an order to show cause why Katz, Dragon Global, and several other defendants should not be held in contempt in *Acquinity*. See Plaintiff’s Motion for an Order to Show Cause, *Acquinity*, ECF No. 135 (Feb. 12, 2020) (attached as Exhibit A). The FTC explained that the same misconduct the district court found likely to have violated the FTC Act in *On Point*

also violated the *Acquinity* injunction, which forbids Katz and those acting in concert with him from making misrepresentations in the marketing of any goods or services. *Id.* at 1-2. The district court then issued the show-cause order and explained that it would hold a contempt hearing contemporaneously with the trial in *On Point*. See Order to Show Cause, *Acquinity*, ECF No. 136 (Feb. 14, 2020) (attached as Exhibit B).

Zangrillo was not originally named as a respondent to the contempt motion, but discovery in *On Point* revealed that he knew about the 2014 *Acquinity* order when it was entered and was therefore both bound by it and liable for violating it under Fed. R. Civ. P. 65(d)(2). On April 30, 2021, the FTC moved for an order to show cause why Zangrillo should not be held in contempt. See Plaintiff's Motion for an Order to Show Cause, *Acquinity*, ECF No. 137 (Apr. 30, 2021) (attached as Exhibit C).<sup>1</sup> At the same time, the FTC sought a TRO, preliminary injunction, and asset freeze against Zangrillo, Dragon Global, and the other alleged contemnors to preserve funds for a compensatory contempt remedy. See Plaintiff's Motion for a Temporary Restraining Order, *Acquinity*, ECF No. 138 (Apr. 30, 2021) (attached as Exhibit D). Both of these motions remain pending.

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<sup>1</sup> The motion relied on evidence that Zangrillo (1) directly paid Katz's full monetary judgment in *Acquinity*; and (2) spoke with Katz and his defense lawyer about the *Acquinity* judgment and any "legal restrictions" it placed on Katz's ability to run a company going forward. See *Acquinity*, ECF No. 137 at 14-15.

As the FTC explained when seeking the *Acquinity* asset freeze, the district court had authority to “order complete relief in contempt” cases under its “inherent power to police itself,” without reference to the remedies available in the action that gave rise to the injunction the contemnors violated.” *Id.* at 15 (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991)). An asset freeze was necessary “to prevent [the] Contempt Defendants from dissipating th[eir] assets and to preserve the possibility of final monetary compensation to the consumers they harmed.” *Id.* at 2. The FTC noted that Zangrillo and the other contemnors directly cheated consumers out of more than \$87 million and had ill-gotten gains exceeding \$104 million. *Id.* at 21.<sup>2</sup>

While this matter has been pending before both this Court and the district court, the Supreme Court ruled in *AMG Capital Management, LLC v. FTC*, 141 S. Ct. 1341 (2021), that the FTC could not recover monetary remedies under Section 13(b) of the FTC Act. It follows from *AMG* that the district court no longer had authority to issue an asset freeze *under Section 13(b)* in this case. In the wake of that ruling, Zangrillo and the five other individual defendants asked the district court to lift the asset freeze it imposed under Section 13(b). *See* Individual Defendants’ Expedited Motion to Modify the Preliminary Injunction, *On Point*,

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<sup>2</sup> We informed this Court about the pending *Acquinity* motions in a notice dated May 3, 2021.

ECF No. 369 (Apr. 23, 2021). That motion remains pending. Zangrillo and his companies continued to press this appeal, and Zangrillo has now asked this Court to immediately stay the asset freeze with respect to his personal assets. Dragon Global does not request a similar stay.

### **ARGUMENT**

Immediately unfreezing Zangrillo's assets would allow him to place that money beyond judgment even as the FTC has an alternative ground to freeze the same assets and a pending motion to do so. Zangrillo and his associates stand charged with cheating consumers out of \$87 million in violation of the *Acquinity* permanent injunction. Freed of restrictions, the money to compensate defrauded victims could disappear in a flash. As Zangrillo's merits brief shows (at 7-9), he is a sophisticated investor with the ability to move assets through a complex labyrinth of shell companies, trusts, and other vehicles. He has already defied the district court's order to appear at the preliminary injunction hearing and traveled to Mexico instead—notwithstanding the freeze of his assets. *See* Hearing Tr., Jan. 10, 2020, at 29:23-30:19, 40:8-40:11, 228:5-228:12 (Katz App'x Tab 161).

Zangrillo thus has the means to make quick work of the funds needed to compensate the victims of his contempt.<sup>3</sup>

The dissipation of assets that could be used for consumer redress would cause grave injury to “other parties interested in the proceeding”—*i.e.*, Zangrillo’s fraud victims—as well as “the public interest.” *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted). We therefore ask the Court not to take any steps that will threaten or eliminate recovery for consumer victims. Instead, the Court should give the district court the opportunity in the first instance to address the pending motions for contempt in *Acquinity* and for a replacement asset freeze justified by a contempt order. That manner of proceeding will best effectuate efficient judicial administration.

The Court could proceed in several possible ways. For example, it could grant Zangrillo’s motion in part, but instead of immediately staying the freeze the Court could defer the effective date for a defined period of time within which the

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<sup>3</sup> Zangrillo claims that a contempt judgment could “never” reach his personal assets because the On Point corporate assets supposedly have “an enterprise value of \$322.701 million.” Mot. 5 n.3. This is a question for the district court to resolve; Zangrillo here relies on a filing by his own expert outside the appellate record. Besides, it remains to be seen whether On Point will even be worth a small fraction of that sum once the deceptive practices at the heart of its business model are permanently enjoined. The receiver recently reported that the business’s value is “unknown” and that the receivership estate has only \$20 million in cash on hand. *See Receiver’s Seventh Status Report, On Point*, ECF No. 476 at 7 (Jul. 30, 2021).



district court could act. Similarly, the Court could rule on the merits of the appeal and remand the case with instructions to vacate the *On Point* asset freeze by a specific date.

Keeping the *On Point* asset freeze in place for an additional short period of time is not likely to cause irreparable harm to Zangrillo. Indeed, he has not argued that he needs immediate access to the assets and has not provided affidavits or evidence to support such a claim. While asset freezes cause financial hardship, temporarily extending the burden on Zangrillo is far outweighed by the interests of his millions of victims. *See, e.g., FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (when a court “balances the hardships of the public interest against a private interest, the public interest should receive greater weight”); FTC Merits Br. 33 (explaining that over two million people purchased appellants’ “guides” falsely marketed as government services).

Zangrillo’s claims of irreparable harm also rest on two key misstatements about the asset freeze. First, Zangrillo falsely asserts that the freeze “reaches all of [his] assets and allows for no exceptions.” Mot. 1. In fact, the asset freeze does not cover new earnings, gifts, or loans that Zangrillo obtained after December 13, 2019, so long as they are unrelated to the deceptive conduct at issue. *See* Preliminary Injunction § III.D, *On Point*, ECF No. 126 at 6 (attached to Zangrillo’s motion as Exhibit A). Second, Zangrillo suggests that the asset freeze prevents

him from doing his “job as a venture capital investor.” Mot. 9. But the district court’s order provides for the release of assets “held solely for the benefit of individuals or entities other than Defendants or the Receivership Entities,” which means that Zangrillo can keep managing the holdings of his investment clients and earning an income from his work. *See* Preliminary Injunction § III.D, ECF No. 126 at 6.<sup>4</sup>

The equities strongly favor giving the district court a prescribed window of opportunity to rule on the *Acquinity* motions before the *On Point* asset freeze is undone. This resolution would protect the interests of the defrauded consumers while also addressing Zangrillo’s concern of undue delay in the district court.

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<sup>4</sup> Zangrillo accuses the FTC of “contact[ing] financial institutions and cit[ing] the order on appeal to instruct them to cut off Mr. Zangrillo’s access to accounts that have been unfrozen for the last year and a half.” Mot. 10. The FTC does not know what Zangrillo is referring to here, and he has not supported his charge with affidavits or evidence. If any of his bank accounts were outside the scope of the asset freeze, he could have moved the district court for an order to release those accounts.

Zangrillo also charges that the FTC opposed his motion to allow his insurer to pay his legal fees (Mot. 10), but the FTC did so because Zangrillo’s counsel did not respond to the FTC’s request to identify and provide copies of the insurance policy and explain how the fees were calculated. Without such information, the FTC could not determine whether Zangrillo’s motion would reduce the amount available for victim redress.

## CONCLUSION

The Court should not immediately lift the asset freeze pending the disposition of this appeal, but should provide the district court with sufficient time to address the pending contempt proceedings.

Respectfully submitted,

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*Acting General Counsel*

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*Deputy General Counsel*

August 10, 2021

/s/ Bradley Grossman  
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**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(g), I certify that the foregoing opposition complies with the volume limitations of Fed. R. App. P. 27(d)(2)(A) because it contains 1,995 words, as created by Microsoft Word, excluding the items that may be excluded under Fed. R. App. P. 32(f).

August 10, 2021

/s/ Bradley Grossman  
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**CERTIFICATE OF SERVICE**

I certify that on August 10, 2021, I served the foregoing opposition on counsel of record using the Court's electronic case filing system. All counsel of record are registered ECF filers.

Dated: August 10, 2021

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# Exhibit A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 14-60166-Civ-SCOLA/OTAZO-REYES

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ACQUINITY INTERACTIVE, LLC, *et al.*,

Defendants.

**PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANT  
BURTON KATZ AND TWELVE BUSINESS ENTITIES SHOULD NOT BE HELD IN  
CONTEMPT AND MEMORANDUM IN SUPPORT**

Burton Katz runs a sprawling online scheme that deceives consumers into providing money and their personal information. His companies' websites lure consumers by promising a quick and easy government service (*e.g.*, renewing a driver's license or obtaining a fishing license) or eligibility determinations for public benefits (*e.g.*, Section 8 housing vouchers or food stamps). Consumers provide their information based on the scheme's promise to provide these services. Instead, consumers receive only a PDF containing publicly available, general information about the service they sought.<sup>1</sup>

Katz's actions blatantly violate the 2014 stipulated order in this case. Specifically, this Court prohibited Katz from making misrepresentations in the marketing or sale of any goods or services to consumers, Stipulated Final Judgment and Order for Permanent Injunction ("Permanent Injunction" or "Order") (Dkt. 132) entered on October 16, 2014, yet Katz continued to represent that he would deliver services that he never provided. Accordingly, Plaintiff Federal Trade Commission ("FTC" or "Commission") moves for an order to show cause why Defendant

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<sup>1</sup> The FTC also filed a *de novo* complaint against Katz, the businesses named in this motion, and other businesses and individuals involved in the deceptive activity. *See FTC v. On Point Global, LLC, et al.*, Case No. 19-CV-25046-SCOLA (Dkt. 1). A draft of this motion was lodged in that case as an attachment to the FTC's notice of related case. *Id.* (Dkt. 5).

Burton Katz and 12 companies<sup>2</sup> of which he is an officer or agent should not be held in contempt.

## **I. BACKGROUND**

In its 2014 Complaint, the FTC alleged that Katz engaged in deceptive and unfair cramming on mobile phone bills. Amended Compl. (Dkt. 88, June 16, 2014). Katz and his operation tricked consumers into signing up for costly phone bill subscriptions through websites that offered free merchandise in exchange for consumers' phone numbers. Amended Compl. ¶¶44. Katz's operation then enrolled the consumers in unwanted premium text messaging services that charged them monthly, typically for \$9.99. The only mention of the charges appeared in separate hyperlinked pages or in small print and locations where consumers were unlikely to notice it. Amended Compl. ¶¶45-47.

To resolve the matter, Katz stipulated to the Order. Order at 14. It prohibited Katz from, among other things, "making, or assisting others in making, expressly or by implication, any false or misleading representation including representations concerning the cost, performance, efficacy, nature, characteristics, benefits, or safety of any product or service, or concerning any consumer's obligation to pay for charges for any product or service." Order at 2. The Order also subjects Katz to ongoing compliance monitoring. Order at 7-12.

Despite these restrictions, Katz continues to operate deceptive businesses,<sup>3</sup> as detailed below. As in his prior scheme, he uses deceptive websites to lure consumers into giving up money and personal information.<sup>4</sup>

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<sup>2</sup> The companies (collectively, "Corporate Contempt Defendants") are: On Point Global LLC, On Point Employment LLC, and On Point Guides LLC f/k/a Rogue Media Services LLC (collectively, "On Point"); Dragon Global LLC, Dragon Global Management LLC, and Dragon Global Holdings LLC (collectively, "Dragon Global"); Waltham Technologies LLC; Cambridge Media Series LLC f/k/a License America Media Series LLC; Issue Based Media LLC; DG DMV LLC; Direct Market LLC; and Bronco Family Holdings LP a/k/a Bronco Holdings Family LP.

<sup>3</sup> In the FTC's *de novo* case (*see n.1 supra*), the Court appointed a receiver. *See FTC v. On Point Global, LLC, et al.*, Case No. 19-CV-25046-SCOLA, TRO and Preliminary Injunction (Dkts. 17, 126). This motion therefore reflects the Contempt Defendants' activities up to December 16, 2019, when the TRO appointing the receiver was served; since service of the TRO, the receiver has taken over the businesses' and websites' operations and uncovered additional websites. *See id.*, Receiver's Report (Dkt. No. 108).

<sup>4</sup> In addition, Katz violated the Order's compliance monitoring provisions, which required him to submit a sworn report of all of his business activities and any businesses he owned. PX13; Order at 8-9. Katz failed to fully disclose his ownership interests and business activities, and falsely



## II. STATEMENT OF FACTS

### A. Parties to the Current Action: Contempt Defendants

Burton Katz is the architect and leader of the online scheme. He is CEO, owner, partner, or manager of the Corporate Contempt Defendants. PX1 ¶¶143, Atts. E p.5, G p.2, AT p.13, AU p.16-17, BA p.3, BB; PX12 Att. C pp.7, 23, 42, 46, 48, 69, 70-74, 102, 107-08, 115, 125, 132, 144, 147-48, 151-53; PX13 p.2. Specifically, Katz is the CEO of On Point, his operation's umbrella company and hiring department, and one of three venture partners in Dragon Global, its capital-raising arm. PX1 Atts. E pp.5, 11-12, 22, 24-25, G pp.2, 6, AP. His LinkedIn profile describes him as an "Internet Entrepreneur" who leads Waltham Technologies, which handles the operation's payroll. PX1 Att. AU p.16-17; PX4 ¶¶13. In addition, bank documents list Katz as "Key Executive" or "Owner" with "Control of the Entity" for DG DMV, Cambridge Media, and Issue Based Media (PX12 Att. F pp.32, 55, 79); these entities hold domain names, rented mailboxes, leases, and central bank accounts. PX4 ¶¶12; PX9 and attachments; PX12 Att. C pp.17-22, 35-40; PX13 p.2. Katz is the largest shareholder in Direct Market, which touts its abilities in "online marketing" and "building online audiences." PX1 Att. AR; PX12 Att. C pp.46-48. As On Point's CEO, Katz also controls entities that hold the scheme's merchant processing accounts, website portfolio, and revenues in a nested labyrinth of LLCs and bank accounts.<sup>5</sup> Katz's employees' names are on corporate papers for many of these entities,<sup>6</sup> and

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claimed that he did not hold any operational, executive officer, manager, or employee positions with any but the three companies he named, and that he was not involved in the marketing of any products other than practice driving tests through DMV.com. PX13 pp.2-3. In fact, Katz and On Point Global began operating the driver's license websites as early as 2011 (PX1 Atts. AU p.67, AX p.2, BG pp.1-7), and Katz owned and/or managed several other entities at the time. PX1 Atts. BA p.18 (Cambridge Media 2013), BB (Cambridge Media/License America Series 2011); PX8 pp.104, 106-107 (License America Holdings 2014), 107-108 (Blackbird Media 2014); PX11 Atts. B pp.24-25, 84-85, 97-98 (Falcon Media 2014), E pp.7-10 (Falcon Media and Matzoh Media 2015).

<sup>5</sup> The additional entities are defendants in the FTC's recently filed complaint in *FTC v. On Point Global LLC, et al.* They are: Bluebird Media LLC; Borat Media LLC; Bring Back the Magic Media LLC; Chametz Media LLC; Chelsea Media LLC; Coinstar Media LLC; Domain Development Studios LLC; Domain Dividends Media LLC; Eagle Media LLC; Falcon Media LLC; GNR Media LLC; Island Media LLC; Leatherback Media Group LLC; Macau Media LLC; CEG Media LLC f/k/a Matzoh Media LLC; MBL Media; Orange and Blue Media LLC; Orange Grove Media LLC; Panther Media LLC; Pirate Media LLC; Pivot Media Group LLC; PJ Groove Media LLC; Sandman Media Group LLC; Shadow Media LLC; Skylar Media LLC; Slayer Billing LLC; Spartacus Media LLC; Very Busy Media LLC; Wasabi Media LLC;

they applied for the entities' merchant processing accounts<sup>7</sup> and administer its website portfolio.<sup>8</sup> Compare PX1 Atts. E p.5 (On Point leadership), AR (Direct Market leadership), AU (employee LinkedIn pages) with PX1 Att. BB (corporate chart), PX11 (merchant accounts). Finally, Katz received more than \$2.5 million of the operation's proceeds, both directly and through his holding company, Bronco Holdings, PX1 ¶191; see also PX13 p.2, a Bahamian corporation that holds bank accounts in Switzerland and Nevis, as well as Katz's interest in On Point Global LLC and his other companies. PX1 ¶191 (money transfers), Att. BA p.16 (On Point membership); PX8 pp.99-184; PX12 Att. C pp.24, 48, 70-71, 115; PX13 pp. 1-2.

Katz has led the scheme's deceptive marketing since its inception. A third-party website containing Katz's biography states that Katz "started OnPoint in 2011 at a table in Starbucks." PX1 Att. AX p.2. Indeed, in 2011, he exchanged emails with associates about the design of a "driver's license form" and "DriversLicenses.org," discussing changes he wanted the designers

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Yamazaki Media LLC; Bella Vista Media Ltd. d/b/a BV Media; Carganet S.A. d/b/a G8 Labs; On Point Domains LLC; Final Draft Media LLC; Blackbird Media LLC; License America Holdings LLC; and License America Management LLC.

<sup>6</sup> For example, Charles Ohana, an OnPoint software engineer, is on Borat Media's organization papers (PX1 Atts. AU pp.31-34, BB p.1); Tehilla Drori, office manager, is on Island Media's papers (PX10 Att. B p.1; PX12 Att. C pp.86-88); Candice Nestel, OnPoint's "site manager" and "director of vertical markets," is on papers for Very Busy Media (PX1 Atts. AU pp.1-2, 5, 11, BB p.3); Gabriel Penalzoza, OnPoint's director of finance, is on Shadow Media's papers (PX1 Atts. AU pp.35-36, BB p.3); Brent Levison, OnPoint's general counsel and CAO, is on corporate documents for Chametz Media, Chelsea Media, Eagle Media, MBL Media, and Bring Back the Magic Media (PX1 Atts. AU pp.13-14, BB pp.1-2; PX12 Att. C pp.27-29, 76-78); Arlene Mahon, OnPoint's and Waltham's senior vice president of finance, is on PJ Groove Media's papers (PX1 Atts. AU p.15, BB; PX12 Att. C pp.135-137); Christopher Sherman, OnPoint's director of data processing and Direct Market team member, is on papers for Pirate Media and GNR Media (PX1 Atts. AR, AU p.44, BB p.2; PX11 Att. B p.83; PX12 Att. C pp.81-83); and Elisha Rothman, also a director of data processing and Direct Market team member, is on papers for Yamazaki Media (PX1 Atts. AR, AU p.39; PX11 Att. E p.6).

<sup>7</sup> For example, Christopher Sherman sought merchant accounts for GNR Media and Pirate Media; Charles Ohana for Borat Media; Candice Nestel for Very Busy Media; Brent Levison for Chelsea Media, Eagle Media, MBL Media, and Bring Back the Magic Media; Gabriel Penalzoza for Shadow Media; Arlene Mahon for PJ Groove Media and Cambridge Media Series; Elisha Rothman for Orange Grove Media and Yamazaki Media. PX11 and attachments. Additionally, Katz himself sought accounts for Falcon Media and CEG Media (f/k/a Matzoh Media).

<sup>8</sup> For example, On Point VP of Finance Arlene Mahon is listed on 200 website domain records; general counsel and CAO Brent Levison on 177; and director of data processing Chris Sherman on 85. PX1 ¶180, Atts. E p.5, AU pp. 13-14, 28, 44.

to make to the websites. PX1 Att. BG pp.2, 5-7. Tellingly, on one email chain, an associate told Katz, “I eliminated the questions about child support. Why? I believe if someone is filling out this info under the auspices or belief of getting his or her license, the child support could cause them to abandon the registration process. Who wants to admit to being in trouble when all they want is a license?” PX1 Att. BG p.2. The exchange demonstrates that Katz and his partners not only knew their sites misled consumers, as detailed below, but intentionally designed them to do so.

Furthermore, Katz’s social media presence demonstrates his ongoing control of the scheme’s activities. For instance, in January 2019, On Point Global’s Facebook account posted a picture of Katz with the caption “Happy birthday to our fearless leader @burtonkatzmiami.” PX1 Att. AW p.3.

## **B. Contempt Defendants’ Violative Business Practices**

Katz and his operation, including the Corporate Contempt Defendants, operate hundreds of sites employing similar branding, language, and functionality to induce consumers to relinquish their credit-card information, personal data, or both. PX1 Atts. B, C, H, AZ, D p.1 (Katz has “developed, managed and operated over 200 websites”), BH. Their sites fall into two categories: those offering state licensing or motor-vehicle services, and those offering assistance with public benefits. PX1 ¶¶18-25, Att. BH.

### **1. Contempt Defendants’ State Licensing and Motor Vehicle Websites Do Not Provide the Services They Promise**

Contempt Defendants and their employees and subsidiaries use search-engine advertising and optimization to target consumers who search for state motor vehicle or licensing services. PX1 ¶¶42-43, 79-80; PX14 ¶2; PX15 ¶¶2-3; PX16 ¶¶2-3; PX17 ¶¶2-3; PX11 Att. C p.19 (DMV.com document stating, “Our web traffic is predominantly generated through search and email marketing campaigns, meaning users typically find our website via search engines (e.g. Bing)”). For example, an FTC investigator searched “renew Florida drivers license online” in March 2019, and Katz’s websites appeared as the second result. PX1 ¶42, Att. M. The scheme’s sites appear in search results with URLs like californiadrivers.org, floridadriverslicenses.org, and indianadriverslicense.org. PX1 ¶20, Att. BH p.9. They generally include a state name and some variant of “driver” or “drivers license,” and many end in “.org.” *Id.* These sites have an image of the state’s border and the text “Your source for [state] driver’s information” and do not

conduct the transaction sought; they only receive clicks from search ads and SEO, then redirect traffic to sites that accept payment. PX1 Atts. C, M, BH.

Contempt Defendants also operate DMV.com, which offers links for driver's services in all 50 states and presents itself as a clearinghouse for many DMV-related services, from licensing to driving records, under the heading "Online DMV Services." PX1 Att. A. The site's prominent home-page banner promises "The DMV Made Easier" and features links to "Renew your License," "Renew Car Registration," and more. PX1 Att. A p.1. DMV.com's Facebook page is even more explicit, claiming "you can renew you [sic] driver licenses online here!! Skip the lines doing it from you [sic] home" and linking to "dmv.com/drivers-license-renewal," and using the hashtag "#SkipTheLine" while linking to DMV.com. PX1 Att. AW pp.1-2. When an FTC investigator clicked "Renew your License," she reached a page with a large "Get Started Online with Drivers [sic] License Renewal Assistance" hyperlink and a block of text stating, "In most states, you can renew your drivers [sic] license online, by mail or in person ... During an online license renewal, you will be asked to identify yourself and pay the applicable service fees." PX1 ¶28, Att. I; *see also* PX1 Att. A p.13.

Whether from a state-specific site or DMV.com, clicking a link, like the "Get Started Online" link described above, leads consumers to a site where Katz's companies gather consumers' information. PX1 ¶¶28-29, 42-43, 54, Atts. J pp.1-4, N pp.1-4, Q pp.1-3. These include, for example, license-driver.com, licenseguides.org, and registrationtags.com.<sup>9</sup> *Id.* The sites have a bold-font headline reading, for example, "Renew Drivers [sic] License In Your State," and orange text touting, "GET ALL THE INFORMATION TO COMPLETE THE PROCESS NOW." PX1 Atts. B, J p.1, N p.1, Q p.3. Clicking through leads to a page listing services next to check-boxes, including "New Driver's License," "Replace Driver's License," and more; one box is pre-checked depending on which service was selected on prior pages. PX1 ¶¶31, 44, Atts. J p.2, N p.2. The sites include forms for consumers to fill in their contact information and credit-card number. PX 1 Atts. J pp.1-2, 4, N pp.1-2, 4, Q pp.3, 7, 10.

Once consumers pay, they either receive a PDF entitled "[State] Drivers License Guide," which includes general information about state vehicle services and safe-driving tips, or nothing

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<sup>9</sup> It appears Contempt Defendants use only one template for these "transaction" sites; in three investigative purchases on motor-vehicle sites, the transaction sites used identical wording and branding, and captures of the home pages of additional transactions sites show the same format. *Compare* PX1 Atts. J, N, Q; *see also* PX1 ¶19, Att. B.

at all. PX1 ¶¶36-38, 48, 60-61, Att. O. Either way, the sites charge consumers' credit cards a small amount (normally \$3.99 or \$4.99) on the day of the purchase and a larger amount (normally \$19.99 or \$21.99) within a few days. PX1 ¶¶39, 49, 62, Atts. L, P, S; PX14 ¶¶5, 9; PX15 ¶9; *see also* PX17 ¶7. The sites do not provide the promised license or other motor-vehicle transactions.<sup>10</sup> PX1 ¶¶40, 50, 63; PX14 ¶¶13-14; PX15 ¶¶7-8; PX16 ¶6.

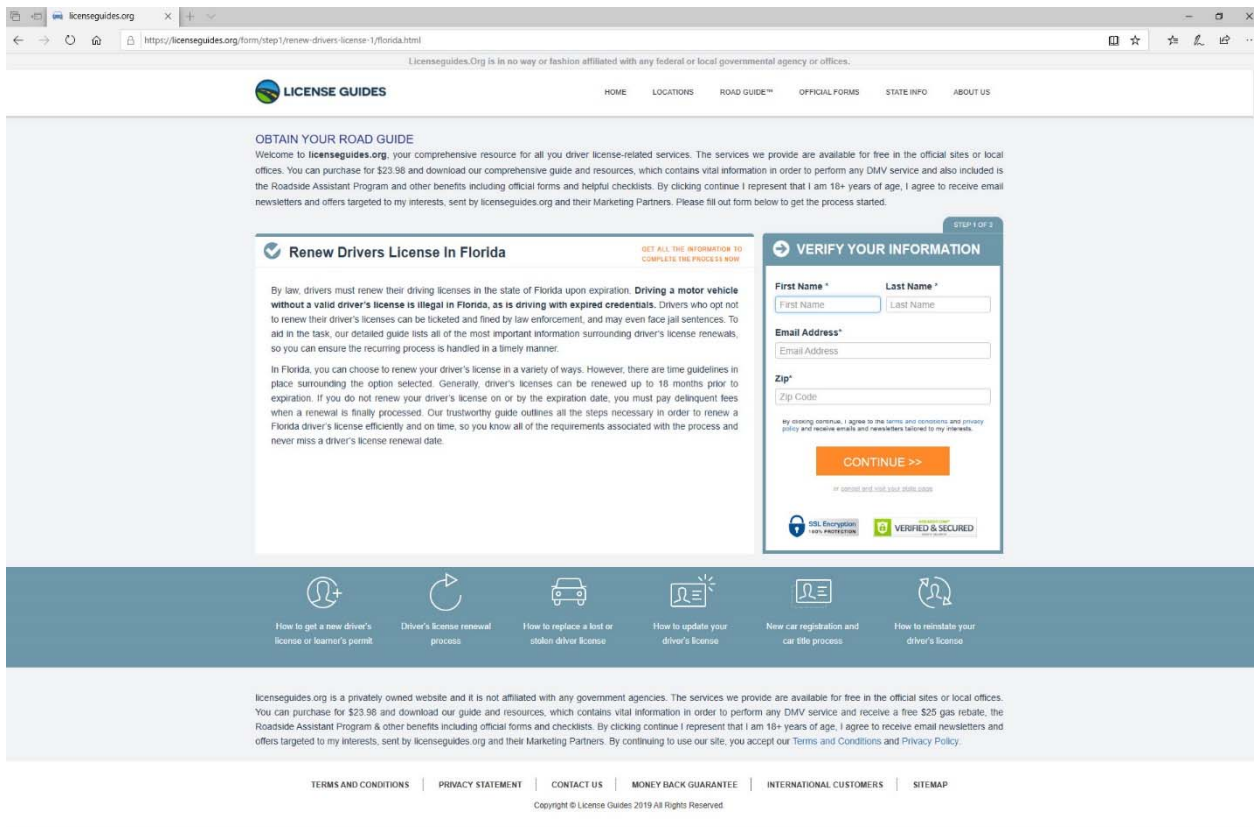
Unsurprisingly, hundreds of consumers have complained to law enforcement and consumer-protection organizations about the scheme's motor vehicle and licensing websites. PX5 ¶ 24, Att. E p.1. As of June 25, 2019, the FTC has received 953 complaints that referenced one of the Contempt Defendants, their subsidiaries, or their licensing and motor-vehicle websites. *Id.* Most such complaints concerned the motor vehicle sites, though some addressed hunting and fishing license sites. *Id.* Consumers complained that the websites misleadingly offered actual state services, and they expected to obtain the selected service – not a guide – when they provided their information. *Id.*, Att. E p.3; PX14 ¶13 (“I would not have paid \$26 for a road guide. This company is scamming people trying to renew their license.”); PX16 Att. A p.2 (consumer's email to company reading, “I was misled to believe your website was a drivers license address change service. The product I received as [sic] a short few lines of text describing already publicly available knowledge, not the full-service address change as expected.”) To make matters worse, consumers who called Katz's operation seeking refunds under the promised “Money-Back Guarantee” often did not receive a full refund. PX5 Att. E p.3. Consistent with these complaints, when the FTC's investigator sought a refund for an undercover purchase, Contempt Defendants offered to refund the \$19.99 charge but not the \$4.99 “processing fee” – even then, she never received the promised partial refund. PX1 ¶¶127-133, Atts. AM, AN. Complaints about Katz's operation's motor vehicle and licensing sites has risen steadily since 2015. PX5 Att. E p.1.

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<sup>10</sup> Contempt Defendants' other state licensing sites function similarly to their motor vehicle sites. See PX1 ¶¶78-86, PX17. Consumers reach the sites after searching for a way to obtain state hunting or fishing licenses and clicking one of Contempt Defendants' links. PX1 ¶79, Att. Z; PX17 ¶¶2-3. The sites then promise help obtaining a license (for example, headlines reading “New [state] Fishing License Assistance” and “Skip the Hassle & Start Fishing” on fishinglicense.org). PX1 ¶80, Att. Z p.2. The sites do not deliver the promised licenses, instead providing only a PDF with information about fishing skills and fishing licenses. PX1 ¶86; PX17 ¶11.



These complaints underscore the central offense of the sites: Contempt Defendants design their sites to make consumers believe they will actually provide a motor-vehicle or licensing service, not just a “guide.” See PX5 Att. E p.3; PX14 ¶6; PX15 ¶5; PX16 ¶4; PX17 ¶4. The sites’ fine-print “disclaimers” merely serve as a fig leaf to hide, rather than correct, their misrepresentations. Indeed, in a letter to a payment processor, Contempt Defendants themselves admitted their “disclaimers” were ineffective, explaining they “place multiple notices explaining to the user that we are [sic] third party site and not affiliated with the government”<sup>11</sup> but they “still encounter confusion from customers.” PX11 Att. C p.19. For example, the landing pages on the transaction sites appear as follows:

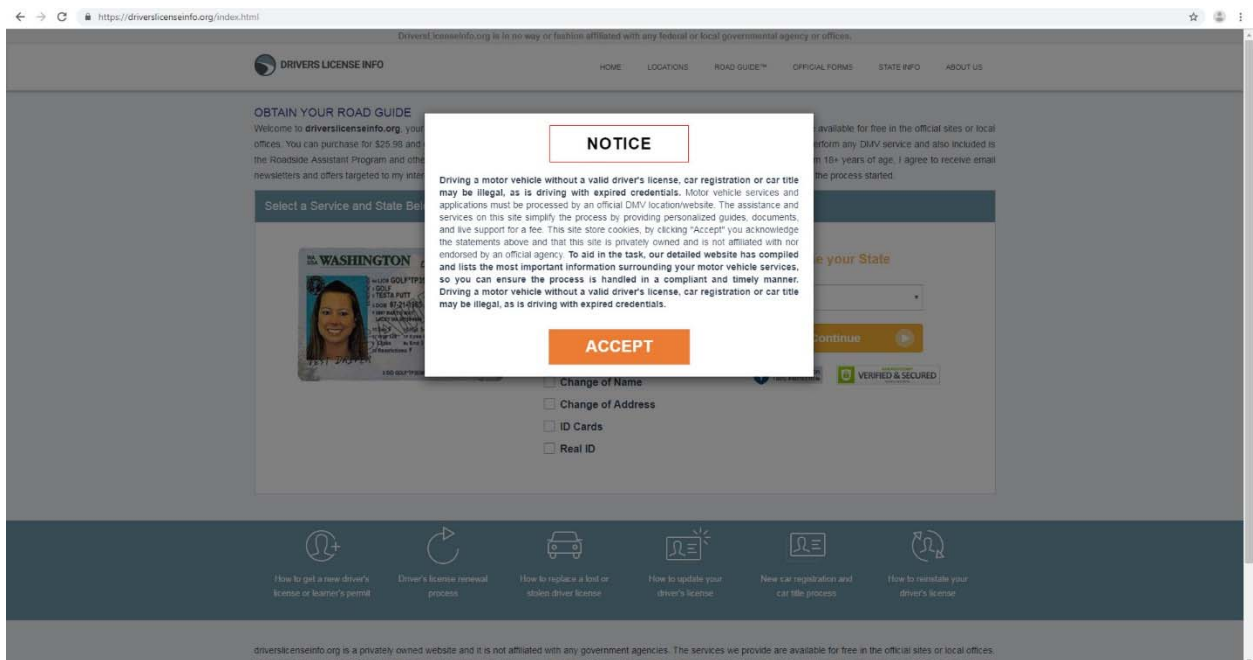


*Licenseguides.org landing page, accessed March 8, 2019*

<sup>11</sup> Katz’s sites include lines of small-font text outside the main section of the site reading, for instance, “DMV.com is a privately owned website that is not affiliated with any government agencies” or “[URL] is in no way or fashion affiliated with any federal or local governmental agency or offices.” PX1 Atts. J, N. Even if consumers saw these inconspicuous “disclaimers,” they have no bearing on the sites’ central promise: that consumers will receive a government service, regardless of whether it is delivered by the government or a third party.

The block of text above the central highlighted area on the transaction site landing pages begins, “Welcome to licenseseinfo.org, your comprehensive resource for all you [sic] driver license-related services.” Both that text and the text below the central area continue, “The services we provide are available for free in the official sites or local offices. You can purchase for \$23.98 and download our comprehensive guide and resources, which contains [sic] vital information in order to perform any DMV service ... .” PX1 Atts. J p.1, N p.1. Katz’s operation thus buried the only reference to the “guide” in the middle of the block and presents it as if it is an optional upsell (“You can purchase ...”), not the sole product the consumer will receive. *Id.*

Similarly, a popup window that appears over the transaction sites’ landing pages appears as follows:



*Driverslicenseinfo.org, accessed July 30, 2019*

The text in the pop-up reads,

**“Driving a motor vehicle without a valid driver’s license, car registration or car title may be illegal, as is driving with expired credentials. Motor vehicle services and applications must be processed by an official DMV location/website. The assistance and services on this site simplify the process by providing personalized guides, documents, and live support for a fee. This site store [sic] cookies, by clicking “Accept” you acknowledge the statements above and that this site is privately owned and is not affiliated with nor endorsed by an official agency. To aid in the task, our detailed website has compiled and lists the most important information surrounding your motor vehicle services, so you can ensure the process is handled in a**

**compliant and timely manner. Driving a motor vehicle without a valid driver’s license, car registration or car title may be illegal, as is driving with expired credentials.”<sup>12</sup>**

PX1 ¶58, Att. Q p.14. Again, the text sandwiches the only vague reference to “guides” between bold-font, threatening language, and never states that consumers will receive only a guide, not a motor-vehicle transaction.<sup>13</sup> *Id.*

**a) Study Confirms Motor Vehicle Sites Mislead Consumers**

Expert consumer-perception testing confirms that Katz’s motor-vehicle sites deceive a large portion of the consumers who encounter them, and nearly all of the consumers who complete transactions. PX3 ¶¶88-89, 102-103. Dr. Michelle Mazurek, a professor of computer science who specializes in an interdisciplinary field combining human-computer interaction and computer security at the University of Maryland, tested one of the motor vehicle transaction paths. PX3 ¶¶2, 15-18. She conducted both preliminary in-person studies and larger online studies to determine how consumers understand the sites. *Id.* The online study recruited 107 participants, who were directed to role-play as a person who wants to renew a driver’s license and asked to interact with Contempt Defendants’ websites. PX3 ¶¶53, 69-70, 85. The study demonstrates that consumers who encounter Katz’s motor vehicle sites – particularly those who completed payment – overwhelmingly believed the site would renew their license, not simply send them a PDF “guide.” PX3 ¶¶88-89, 102-103. Dr. Mazurek used two sample groups, and 50% of one group and 40% of the other completed the transaction and “paid.” PX3 ¶¶85-86. Of those who paid, 87.8% of one sample group and 90% of the other believed the sites had actually renewed their driver’s licenses. PX3 ¶88. Very few participants (6.1% of one sample group and 24% of the other) mentioned the site could not be used for license renewal, was not government-owned, or was generally suspicious. PX3 ¶92.

Dr. Mazurek’s tests also confirmed Katz’s sites’ fine print is ineffective. PX3 ¶¶93-99. Many of Dr. Mazurek’s test subjects never noticed or read the purported “disclaimers,” or read

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<sup>12</sup> As of March and April 2019, a similar pop-up appeared only when the FTC investigator typed in a transaction site URL directly; no pop-up appeared when she clicked a link from a feeder site. PX1 ¶¶29, 43. In July 2019, the investigator visited the car-related transaction sites again and discovered Contempt Defendants had added the pop-up quoted above over the first page regardless of how a consumer reached the site. PX1 ¶58.

<sup>13</sup> The mobile versions of Contempt Defendants’ sites bury all of the “fine print” at the bottom of each screen, so consumers would have to scroll through the entire page to see it. PX1 Att. Q pp.4-6.



only the first few sentences, which did not alert them to the true nature of the site. PX3 ¶¶95-99; *see also* PX15 ¶5 (“When I reached the page, a pop-up window appeared, which I clicked out of right away without reading because it looked like standard information about the site.”) At the end of the study, Dr. Mazurek specifically directed participants to read the disclaimers and explain what they said; even after doing so, only 13.4% of one sample and 40% of the other noted that the site would not renew their driver’s license. PX3 ¶¶99.

**b) Contempt Defendants Seek to Evade Scrutiny Prompted by Chargebacks**

Unsurprisingly, Contempt Defendants and their merchant-processing entities have perpetual problems with chargebacks (*i.e.*, refunds credit card companies issue when consumers successfully dispute transaction). *See* PX5 ¶¶15-18, Atts. A, B; PX7 ¶9. Credit-card networks monitor chargebacks in part because high chargeback rates are a sign the merchant is making unauthorized charges or using deceptive marketing. PX7 ¶¶10-13. If a merchant exceeds set ratios and limits (*e.g.*, Visa’s current chargeback-to-sales threshold of 0.9%), credit-card processors flag their accounts for fraud monitoring, suspension, or termination. PX7 ¶¶10-12.

Contempt Defendants apparently attempt to avoid chargeback scrutiny by selling through dozens of the operation’s own websites. PX1 ¶¶18-20, Atts. B, BH. This allows them to obtain more processing accounts for an identical product, a dubious practice known as “load balancing.” *See* PX11 (merchant accounts); PX7 ¶¶14-15 (load balancing described). Indeed, several payment processors flagged or shut down the merchant accounts selling Contempt Defendants’ “services” for suspected load balancing. *See* PX11, Att. C p.8 (business “has several accounts on our portfolio and a likely candidate for load balancing.”), Att. C p.30, Att. B p. 119 (prior accounts “declined ... for load balancing” and noting of new application, “It’s clear that since I declined the other account, they just found another signer to board a new one”), Att. B pp.120-123. Furthermore, by breaking charges into two installments and refunding only the larger charge when challenged, PX1 ¶¶128-130, PX5 Att. E p.3, Contempt Defendants inflate their sales counts (the chargeback-ratio denominator), which depresses their chargeback ratio. PX7 ¶¶16-19. Indeed, the operation pays an entity called “Chargeback Help,” which advertises services to help merchants “reduc[e] chargeback rates by up to 40% and recover revenue lost due to disputed transactions.” PX1 ¶203; PX4 ¶13.

Despite the operation's intensive efforts to evade chargeback thresholds, its chargeback rates still hover around 1 to 2%, above the threshold for increased fraud scrutiny. PX5 Atts. A, B; PX7 ¶¶8-12. Their merchant accounts triggered one of Visa's chargeback monitoring thresholds 64 times in just three years. PX5 ¶18, Atts. C, D. Payment processors have closed many of their merchant accounts, often citing chargeback problems. PX11 and Atts. A p.38 (noting applicant "was previously declined for chargebacks"), B p.124, 125-127, C pp.8, 30, 31 (processor email seeking chargeback reduction plan).

## **2. Contempt Defendants' Public Benefits Websites Do Not Provide the Assistance They Promise**

Katz's companies also operate dozens of websites that promise to verify consumers' eligibility for public benefits, such as housing assistance, food stamps, Medicaid, or unemployment benefits. PX1 ¶¶25, 134, Atts. H, U, AD, AF, AH, BH pp.7-8. These sites appear high in search results and sponsored links when consumers search for ways to obtain public benefits. For example, an FTC investigator's search for "section 8 housing apply" on May 6, 2019 returned Katz's site "section-8-housing.org" as the top link. PX1 ¶65, Att. U p.1; *see also* PX1 ¶88, Att. AD p.1.

Clicking through the benefits sites,<sup>14</sup> consumers encounter a prominent headline inviting them to "Find Out If You Are Eligible for [Public Benefit]" or "Find out if you Qualify ..." *E.g.*, PX1 Atts. H p.5 ("Find Out If You Are Eligible for the Medicaid Program"), U p.2, AH p.1 ("Find Out If You Are Eligible For The Food Stamps Program With Our Guide By Completing Your Information Below"). Clicking through this page leads to a series of screens soliciting consumers' contact information, medical and health conditions, employment status, income, and credit-card debt.<sup>15</sup> PX1 ¶¶ 71-72, 116-117, Atts. U, AH. Each data-gathering screen contains a

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<sup>14</sup> Some of the sites tout that they have helped a specific, large number of consumers, which does not appear to change from site to site. *E.g.*, PX1 Att. H p.1 ("We have helped 234,932 with Veterans Benefits"); 3("We have helped 234,932 Texas Residents").

<sup>15</sup> The sites contain lines of small-print text at the top and bottom of the page disclaiming government affiliation (for example, "This site is privately owned and is neither affiliated with, nor endorsed by, nor operated by any government agency. We provide time saving information."). *E.g.*, PX1 Atts. H, U pp.2-3, AH p.1. Similar to Katz's companies' motor vehicle sites, such "disclaimers" are irrelevant to the sites' promise to provide an eligibility determination, regardless of whether they are privately owned, and are inconspicuously placed in small font, where consumers are unlikely to read them. *Id.* As described below, expert testing of the sites confirmed that many consumers do not notice or understand these disclaimers.

bold headline above the form, including, for example, “Confirm Your Date of Birth and Gender to Verify Eligibility,” “Confirm Your Eligibility,” and “Confirm your information to get your Eligibility Guide.” *Id.*<sup>16</sup>

In fact, the sites do not “confirm,” “verify,” or “check” consumers’ eligibility for public benefits. PX1 ¶¶76, 121. Instead, they redirect consumers to a page informing them, for example, “Your guide has been sent to your Email.” PX1 ¶¶72-74, 118, Atts. U p.29, AH p.24. Consumers then sometimes receive an email from the sites with a link to download a PDF guide containing publicly available, general information about the selected public benefit.<sup>17</sup> PX1 ¶¶75, 120, Att. W.

Like Katz’s motor-vehicle and licensing sites, his public benefit sites generate consumer complaints. From September 30, 2014 to October 30, 2019, the FTC’s consumer response database received 66 complaints referencing one of the public benefits websites. PX1 ¶217. Most (25) concerned the website “section-8-housing.org;” and the next-largest groups of complaints related to “food-stamps.com” (19) or “Obamacare-guide.org” (9). PX1 ¶¶218-220. Some complainants found the websites when they sought information about a benefit through an online search engine. *Id.* Some reported they provided their information to determine their eligibility for a benefit, and some of those reported fearing identity theft. *Id.* Many consumers complain they received unsolicited text messages, emails, and phone calls after providing their information. *Id.* The FTC’s undercover buy corroborates these complaints. Immediately after completing transactions on the Section 8 and food stamps sites, the FTC investigator began receiving texts and emails. PX1 ¶¶77, 117, 122-123, Atts. X, AK, AL. These included offers for psychic counseling, job-search assistance, government grants, and more. *Id.* Because the

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<sup>16</sup> Clicking on some screens launches a new window with a third-party website, while the original window navigates consumers to the next question. PX1 ¶71, Att. U pp.13-14, 16-17. For example, on May 6, 2019, when the FTC investigator answered “Yes” to “Are you struggling with over \$10k in debt?” a new window launched with Accredited Debt Relief’s landing page. The page promised to “Reduce Your Debt & See How Much You Can Save.” PX1 ¶71, Att. U pp.13-14.

<sup>17</sup> For example, after the FTC investigator provided information to section-8-housing.com in May 2019, she received a PDF titled “Section 8 Housing” that includes general information about housing vouchers. PX1 ¶75, Att. W. Notably, after completing the questionnaire on Contempt Defendants’ food stamps website in September 2019, the FTC investigator received the same Section 8 guide in her email. PX1 ¶120, Att. AJ. Her undercover identity never received any guide about food stamps, nor any eligibility verification. PX1 ¶¶120-121.

investigator used a fresh email account, this spam is largely, if not wholly, the result of Contempt Defendants selling consumers' information to third parties. This fact is confirmed by bank records demonstrating Contempt Defendants, through their subsidiaries, have received large sums from lead buyers.<sup>18</sup> PX1 ¶¶203-204; PX4 ¶¶10-12.

Katz's sites do not clearly disclose that consumers are entering their information for sale, rather than help with a benefit. *See* PX1 Atts. H, U, AH. Their only reference to data sales is a mention of "Marketing Partners" in two places: a context-free menu of links at the bottom of the page, and in a small block of text on the screen that solicits consumers' phone numbers.<sup>19</sup> PX1 Atts. U p.5, AH p.3. Importantly, this small-print block of text never states that Contempt Defendants will sell the detailed information collected on other screens, or that consumers will not receive the promised eligibility determination. *Id.*

**a) Study Confirms Contempt Defendants' Public Benefits Sites Mislead Consumers**

Dr. Mazurek's consumer-perception testing confirmed consumers believe Katz's operation's public benefits sites will use their information to check their eligibility for benefits, or to apply for those benefits directly. PX3 ¶¶106-107, 120-121. Dr. Mazurek conducted a

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<sup>18</sup> The FTC has sued Katz's operation's client Simple Insurance (also d/b/a Simple Health) for selling sham health insurance plans. *See* PX1 ¶¶221-223, Att. BF (Contempt Defendants and their subsidiaries sold leads to Simple Health Plans LLC); *FTC v. Simple Health Plans LLC*, 379 F. Supp. 3d 1346 (S.D. Fla. 2019) (granting preliminary injunction against defendants based on the FTC's Section 5(a) and Telemarketing Sales Rule claims). The FTC brought suit because Simple Health lured consumers to its bogus plans through deceptive lead generation websites, including Katz's website obamacare-guide.org, that purport to provide information about comprehensive health insurance.

Similarly, the FTC alleged that another Katz client, AdMediary, bought leads it used to enroll financially vulnerable consumers in purported "discount clubs" that charged consumers' bank accounts without their consent. *See* PX1 ¶204; PX4¶10 (AdMediary paid Katz's companies more than \$3 million); Second Amended Complaint, ¶¶43-45, 193, *FTC v. Hornbeam Special Situations LLC*, Case No. 1:17-cv-03094-WMR (N.D. Ga. Nov. 5, 2018).

<sup>19</sup> One site (food-stamps.com) mentions third party offers adjacent to the central form area of the page, saying "We request your email so we can email you our Comprehensive Guide, we also ask a few personal questions so we can customize the third party offers and advertisements, we believe we can assist you, to your specific situation." PX1 Att. AH p.1. The mention is buried in the middle of long small-print block of text. *Id.* Moreover, even consumers who read the text are unlikely to understand that the sites will sell their information, not help them obtain food stamps, as the text states that the site asks questions "so we can customize" the offers consumers receive. *Id.*

preliminary in-person study and an online survey of one of the operation’s Section 8 websites. PX3 ¶¶15-18. The study demonstrates that most consumers who reach the benefits sites, and particularly those who provide their personal information, believe the site will provide an eligibility determination. PX3 ¶¶106-107. Indeed, about half of participants – whether they entered information or not – believed the site was government-operated. PX3 ¶¶109-110.

### **III. ARGUMENT**

#### **A. The FTC Has Met the Legal Standard for Finding Civil Contempt**

This Court has authority to enforce its orders through civil contempt. *See Shillitani v. United States*, 384 U.S. 364, 370 (1966). As a party to the original action, the Commission may invoke the Court’s order enforcement power by initiating a civil contempt proceeding in the same action. *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 444-45 (1911). Contempt is established where there is clear and convincing evidence that the “violated order was valid and lawful; . . . the order was clear and unambiguous; and the . . . alleged violator had the ability to comply.” *FTC v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010) (ellipses original); *McGregor v. Chierico*, 206 F.3d 1378, 1383 (11th Cir. 2000) (citation omitted).<sup>20</sup> Furthermore, injunctions are enforceable against any nonparty with “actual notice” of the order who is “in active concert or participation” with a defendant to violate it. Fed. R. Civ. P. 65(d)(2)(C).

Here, clear and convincing evidence establishes that Katz has failed to comply with clear and unambiguous provisions of the Order. Moreover, Corporate Contempt Defendants have acted in active concert or participation with Katz. *See Leshin*, 618 F.3d at 1235-39. Thus, all Contempt Defendants are liable for contempt.

#### **1. Contempt Defendants Have Violated the Permanent Injunction.**

Section II of the Order prohibits the defendants and “all other persons in active concert or participation” with them who receive actual notice of the Order from “making, or assisting others in making, expressly or by implication, any false or misleading material representation, including representations concerning the cost, performance, efficacy, nature, characteristics, benefits, or safety of any product or service. . . .” Order at 3. The Contempt Defendants’ deceptive websites violate this Order.

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<sup>20</sup> Once this *prima facie* showing of a violation is made, the burden then shifts to the alleged contemnor to produce evidence explaining its noncompliance. *See Chairs v. Burgess*, 143 F.3d 1432, 1436 (11th Cir. 1998) (quoting *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991)).

**a) Deceptive Motor Vehicle and Other State Licensing Websites**

As described above, Contempt Defendants' licensing and motor-vehicle sites represent they will provide state services – *e.g.*, renewing a driver's license or providing a fishing license. Via search-engine advertising, they place their sites high in search results, and those results link to official-looking, often “.org” feeder websites, leading consumers to trust the sites. The sites prominently claim consumers can “Renew your License,” “Renew Car Registration,” and “Skip the Line” to conduct DMV transactions or get other state licenses online. Throughout the transaction, the websites solicit information consumers would expect to provide to a state licensing or motor vehicle website. However, Katz's operation never provides the promised services, instead sending only a PDF of general, publicly available information. Indeed, the very nature and cost of Contempt Defendants' “services” demonstrates their deception; consumers are unlikely to knowingly pay nearly \$30 for public information they can obtain for free.

The evidence shows that Katz's companies' licensing and motor vehicle sites overwhelmingly mislead consumers. As described in Section II.B.1.a above, an expert's study demonstrated that nearly half of test subjects paid for Contempt Defendants' services, and of them, more than 85% expected to receive a renewed license, not a PDF “guide.” None of the “fine print” remedied this misrepresentation because consumers did not notice it, and many failed to understand it even when specifically directed to read it. PX3 ¶¶93-99, 116-119. The sites thus exemplify longstanding law that disclosures are ineffective if the net impression of the marketing is nevertheless misleading. *FTC v. World Patent Mktg., Inc.*, Case No. 17-CV-20848, 2017 WL 3508639, at \*13 (S.D. Fla. Aug. 16, 2017) (quoting *FTC v. Cyberspace.Com LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006)). Indeed, as described in Section II.B.1 above, the FTC received more than 900 complaints from consumers that Katz's companies did not provide the services consumers expected. Even more consumers complained to their banks and credit-card companies, causing Katz's operation to face increased fraud monitoring and, in many instances, have merchant accounts terminated. *See* Section II.B.1.b *supra*.

A claim is material if it “address[es] the central characteristics of the product or service offered.” *World Patent Mktg.*, 2017 WL 3508639, at \*11 (claim is material if it “address[es] the central characteristics of the product or service offered”). Here, Contempt Defendants' misrepresentations concerned the essential nature of the services consumers sought. Thus, the misrepresentations on their operation's licensing and motor vehicle sites are material. *See*



*Transnet Wireless Corp.*, 506 F. Supp. 2d at 1266. Because the Contempt Defendants made material misrepresentations about the “nature, characteristics, [and] benefits” of their services on their operation’s licensing and motor-vehicle websites, they are in contempt of the Order.

**b) Deceptive Public Benefits Websites**

As described above, Contempt Defendants’ public benefits websites claim they will verify or confirm consumers’ eligibility for public benefits. The sites appear high in search results and often use “.org” domain names that appear trustworthy to consumers. The sites contain a brightly-colored “Eligibility” button under a headline “SELECT THE SERVICE YOU ARE LOOKING FOR” or a bold headline stating, for example, “Find Out If You Are Eligible for [Public Benefit].” Importantly, consumers who click through the websites’ form see a representation on nearly every screen that instructs consumer to provide information to, for example, “verify eligibility.” However, Contempt Defendants do not verify consumers’ eligibility, instead emailing consumers a PDF of general, publicly available information.

Katz’s companies’ public benefits websites mislead consumers. As described above in Section II.B.2.a, despite the sites’ small-print “disclosures,” many consumers believe the sites will check their eligibility for public benefits and do not understand that their information will instead be sold to marketers. PX3 ¶¶120-121. Consumers’ complaints confirm these findings. Specifically, consumers state they thought the benefits sites would check their eligibility for public benefits. After visiting Contempt Defendants’ public benefits websites, many consumers reported fearing identity theft.

Contempt Defendants’ misrepresentations are material because they concern the core characteristics of the services Contempt Defendants purport to offer – a central element of consumers’ decision to provide their information. *In re Southwest Sunsites, Inc.*, 105 F.T.C. 7, 149 (FTC 1985) (“A material representation or practice is one that is likely to affect a consumer’s choice of or conduct regarding a product or service.”); *see also World Patent Mktg.*, 2017 WL 3508639, at \*11. Thus, Contempt Defendant’s benefits-related representations also place them in contempt of the Order.

**2. The Permanent Injunction Is Valid, Lawful, Clear, Definite, and Unambiguous.**

There is no question that the Order is valid and lawful. The parties jointly moved the Court to enter the stipulated Order, and the Court did so after finding it had jurisdiction over the

matter. Order at 2. Importantly, the Order reflects the negotiated agreement of the parties. In addition, the Order's provision prohibiting misrepresentations is clear, definite, and unambiguous. *See FTC v. EDebitPay LLC*, 695 F.3d 938, 943-44 (9th Cir. 2012) (holding provision prohibiting all misrepresentations in the sale of any product or service specific and definite).

### **3. The Contempt Defendants Had Notice and the Ability to Comply.**

As a party who signed the Order, Katz has notice of the Order and is bound by it. Fed. R. Civ. P. 65(d)(2)(A) (binding parties). Moreover, Katz had the ability to comply with the Order. To satisfy an inability defense, Katz must demonstrate that "he has made 'in good faith all reasonable efforts' to meet the terms of the court order he is seeking to avoid." *CFTC v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1529 (11th Cir. 1992) (per curiam) (citations omitted). Indeed, it is insufficient to make efforts that are merely "substantial," "diligent," or in "good faith." *Id.* Here, Katz simply could have refrained from making the deceptive claims.<sup>21</sup>

The Corporate Contempt Defendants also had notice and the ability to comply. Katz is an officer for each of these corporate entities, and his knowledge of the Order is thus imputed to them. *FTC v. Neiswonger*, 494 F. Supp. 2d 1067, n.18 (E.D. Mo. 2007); *see also Chang v. JPMorgan Chase Bank, N.A.*, 845 F.3d 1087, 1095 (11th Cir. 2017) (knowledge of corporate officer is imputed to corporation under agency law). Moreover, where a corporate officer or control person is named in an order, that order also binds the officer's companies. *See Leshin*, 618 F.3d at 1235-36 (binding entity owned by named corporate defendant whose officers and control persons were individual defendants). The Order is thus binding on Corporate Contempt Defendants. Moreover, similar to Katz, Corporate Contempt Defendants did not lack the ability to comply, because they could have simply avoided making misrepresentations.

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<sup>21</sup> Defendants who believe that there are extenuating circumstances or that the decree is too burdensome can petition the court for clarification or modification. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949); *Combs v. Ryan's Coal Company, Inc.*, 785 F.2d 970, 979 (11th Cir. 1986). "If a defendant acquiesces in a decree and undertakes to make his own determination of its meaning, having been alerted by it he acts at his own peril." *Wirtz v. Ocala Gas Company, Inc.*, 336 F.2d 236, 240 (5th Cir. 1964). Katz did not seek clarification whether his conduct complied with the permanent injunction. Indeed, he failed to disclose his activities to the FTC in his sworn compliance report to shield them from law enforcement scrutiny.



**B. Contempt Defendants Should Compensate Consumers For the Harm Their Contumacious Conduct Caused.**

Courts may impose sanctions for civil contempt to “coerce the contemnor to comply with a court order, or [to] compensate a party for losses suffered as a result of the contemnor’s act.” *See McGregor v. Chierico*, 206 F.3d 1378, 1385 n.5 (11th Cir. 2000).

Here, Contempt Defendants should be ordered to pay compensatory monetary relief to the victims of their contempt for the harm caused by their contumacious misrepresentations. *See McComb v. Jacksonville*, 336 U.S. 187, 193 (1949) (“The measure of the court’s power in civil contempt proceedings is determined by the requirements of full remedial relief.”) Because Contempt Defendants’ material misrepresentations were widespread, it is presumed that all consumers relied upon, and were therefore injured by, Contempt Defendants’ misrepresentations. *See McGregor*, 206 F.3d at 1388-89; *FTC v. Trudeau*, 579 F.3d 754, 773 n.15 (7th Cir. 2009). Accordingly, should the Court find the Contempt Defendants violated the Order, the Commission will seek a compensatory award in the amount consumers paid for services the Contempt Defendants never provided. *Leshin*, 618 F.3d at 1237; *McGregor*, 206 F.3d at 1388-89 (“The fraud is in the selling, not the value of the thing sold, [which] is what entitles consumers in this case to full refunds . . . .”) (quoting *FTC v. Figgie, Int’l.*, 994 F.2d 595, 606 (9th Cir. 1993)).<sup>22</sup>

**IV. CONCLUSION**

Given Contempt Defendants’ blatant violations of the Order, the FTC respectfully requests that the Court grant the FTC’s motion, enter the proposed Order to Show Cause, and set a hearing in this matter.<sup>23</sup>

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<sup>22</sup> Moreover, monetary relief should be entered jointly and severally because the Contempt Defendants acted as a unified operation to carry out the Order violations. *Leshin*, 618 F.3d at 1237 (“Where . . . parties join together to evade a judgment, they become jointly and severally liable for the amount of damages resulting from the contumacious conduct.”) (quoting *NLRB v. AFL-CIO*, 882 F.2d 949, 955 (5th Cir. 1989)).

<sup>23</sup> As the FTC noted during the preliminary injunction hearing held in the *On Point Global* case, the FTC proposes that the Court hold one set of factual proceedings relating to this contempt motion and the *On Point Global* action. (Hearing Tr. vol. 1, 221:11-23, Jan. 10, 2020.) There are common questions of law and fact in these cases, including that acts violating the FTC Act in *On Point Global* also violate the *Acquinity* permanent injunction. *See On Point Global, LLC*, Case No. 19-CV-25046-SCOLA (Dkt. 5 at 2). In addition, the FTC’s evidence establishing violations of the FTC Act will also satisfy the clear and convincing standard to hold the

**V. LOCAL RULE 7.1.A.3 CERTIFICATE OF COUNSEL**

The FTC conferred with counsel for Burton Katz, On Point Global LLC, On Point Employment LLC, On Point Guides LLC, Cambridge Media Series LLC, Issue Based Media LLC, DG DMV LLC, Direct Market LLC, and Bronco Family Holdings LP by telephone on January 22 and 23, 2020, and in-person on January 28, 2020. The FTC conferred with counsel for Waltham Technologies LLC by telephone on January 27, 2020. The FTC conferred with counsel for Dragon Global LLC, Dragon Global Management LLC, and Dragon Global Holdings LLC by email on January 29, February 5, and February 6, 2020, and by telephone on February 7, 2020. Counsel for the affected parties were unable to resolve the issues raised in this motion by conference; all Defendants and Contempt Defendants oppose this motion.

Dated: February 12, 2020

Respectfully submitted,

/s/ Sarah Waldrop

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FEDERAL TRADE COMMISSION

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defendants in contempt of the *Acquinity* Order, *see id.*; upon receiving this evidence, the Court can make separate findings under the two standards without the need to receive the same evidence in separate proceedings. It is thus in the interest of judicial economy to hold one set of factual proceedings.

### **CERTIFICATE OF SERVICE**

I hereby certify that, on February 12, 2020, a true and correct copy of the foregoing was served on all counsel via email and mail.

**Counsel for Defendants Burton Katz, Brent Levison, Elisha Rothman, Christopher Sherman, On Point Global LLC, On Point Employment LLC, On Point Guides LLC, DG DMV LLC, On Point Domains LLC, Final Draft Media LLC, Cambridge Media Series LLC, Issue Based Media LLC, Bella Vista Media Ltd., Carganet S.A., Direct Market LLC, Bluebird Media LLC, Borat Media LLC, Bring Back the Magic Media LLC, Chametz Media LLC, Chelsea Media LLC, Coinstar Media LLC, Domain Development Studios LLC, Domain Dividends Media LLC, Eagle Media LLC, Falcon Media LLC, GNR Media LLC, Island Media LLC, Leatherback Media Group LLC, Macau Media LLC, CEG Media LLC, MBL Media Ltd. Inc., Orange and Blue Media LLC, Orange Grove Media LLC, Panther Media LLC, Pirate Media LLC, Pivot Media Group LLC, PJ Groove Media LLC, Sandman Media Group LLC, Shadow Media LLC, Skylar Media LLC, Slayer Billing LLC, Spartacus Media LLC, Very Busy Media LLC, Wasabi Media LLC, Yamazaki Media LLC, Bronco Family Holdings LP, BAL Family LP, Cardozo Holdings LLC, 714 Media Ltd., Mac Media Ltd., License America Management LLC, License America Holdings LLC, and Blackbird Media LLC:**

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/s/ Sarah Waldrop  
Sarah Waldrop

# Exhibit B

United States District Court  
for the  
Southern District of Florida

Federal Trade Commission, Plaintiff )  
 )  
v. ) Civil Action No. 14-60166-Civ-Scola  
 )  
Acquinity Interactive, LLC, and )  
others, Defendants )

**Order to Show Cause**

Now before the Court is the Plaintiff Federal Trade Commission's motion for an order to show cause why the Defendant Burton Katz and twelve other Corporate Defendants, of which he is an officer or agent, should not be held in contempt. After careful consideration of the motion, the record, and relevant legal authorities, the Court **grants** the FTC's motion (**ECF No. 135**) and **orders** as follows:

- (1) The Court will hold a show cause hearing contemporaneously with the trial, if any, in the *FTC v. On Point Global, LLC, et al.*, Case No. 19-CV-25046-SCOLA (S.D. Fla.) case.
- (2) Burton Katz; On Point Global LLC; On Point Employment LLC; On Point Guides LLC f/k/a Rogue Media Services LLC; Dragon Global LLC; Dragon Global Management LLC; Dragon Global Holdings LLC; Waltham Technologies LLC; Cambridge Media Series LLC f/k/a License America Media Series LLC; Issue Based Media LLC; DG DMV LLC; Direct Market LLC; and Bronco Family Holdings LP a/k/a Bronco Holdings Family LP ("Contempt Defendants") shall appear before this Court on the day of the hearing to show cause, if any there be, why this Court should not find them in civil contempt for failing to comply with the requirements of this Court's Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief as to Defendants Burton Katz and Jonathan Smyth, and impose any such relief as it deems appropriate.
- (3) If the parties intend to rely on any evidence or witnesses at the hearing, they shall comply with the deadlines and obligations for pretrial disclosures and joint pretrial stipulation the Court sets in the *On Point Global* case.

**Done and Ordered** in chambers, at Miami, Florida February 14, 2020.

A handwritten signature in blue ink, appearing to read "R. N. Scola, Jr.", written over a horizontal line.

Robert N. Scola, Jr.  
United States District Judge

# Exhibit C



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 14-60166-Civ-SCOLA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ACQUINITY INTERACTIVE, LLC, *et al.*,

Defendants.

**PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY  
ROBERT ZANGRILLO, BRENT LEVISON, AND ELISHA ROTHMAN  
SHOULD NOT BE HELD IN CONTEMPT**

The Federal Trade Commission (“FTC” or “Commission”) moves for an order to show cause why Robert Zangrillo, Brent Levison, and Elisha Rothman should not be held in contempt for violating this Court’s 2014 stipulated order against defendant Burton Katz. Specifically, this Court prohibited Katz and those acting in concert with him from making misrepresentations in the marketing or sale of any product or service to consumers. *See* Stipulated Final Judgment and Order for Permanent Injunction, ECF No. 132 (“Order” or “2014 Order”) entered on October 16, 2014. Yet, from the time the Court entered the injunction, Katz and his associates Zangrillo, Levison, and Rothman (collectively, “New Contempt Defendants”) were violating its restrictions. As the FTC alleged in a related action filed in December 2019, Katz, 54 corporate entities, New Contempt Defendants, and two other individuals violated Section 5 of the FTC Act, 15 U.S.C. § 45, by engaging in deceptive practices in connection with an online marketing scheme, falsely offering consumers government services but delivering only worthless “guides.” *FTC v. On Point Global LLC, et al.*, No. 16-cv-25046-Scola/Torres (S.D. Fla.) (“*On Point*”). On January 14, 2020, the Court found the FTC was likely to succeed on the merits of that *de novo* action and found the defendants’ websites were “patently misleading.” The FTC subsequently filed a contempt motion in this case, alleging Katz’s scheme also violated the 2014 Order. In

recent weeks, discovery in the *de novo* action – including the sworn testimony of the New Contempt Defendants – has confirmed each of these individuals knew about the 2014 Order at or near the time of its entry, making them liable for contempt of that order pursuant to Federal Rule of Civil Procedure 65(d)(2)(C).

## **I. BACKGROUND**

### **A. The 2014 *Acquinity* Lawsuit and Order**

In its 2014 complaint in this case, the FTC alleged that Burton Katz engaged in the deceptive and unfair practice of cramming charges on consumers’ mobile phone bills. ECF No. 88 (“Amended Compl.”).<sup>1</sup> To resolve the matter, Katz stipulated to an Order. Order at 14. That Order prohibits Katz and persons in “active concert or participation” with him from, among other things, “making, or assisting others in making, expressly or by implication, any false or misleading material representation including representations concerning the cost, performance, efficacy, nature, characteristics, benefits, or safety of any product or service, or concerning any consumer’s obligation to pay for charges for any product or service.” Order at 3 (Section II).

### **B. The 2019 *De Novo* Lawsuit and Preliminary Injunction**

Despite the *Acquinity* injunction, Katz continued to operate deceptive businesses he failed to disclose to the FTC in violation of the Order’s compliance monitoring provisions. PX13; Order at 8-9. After learning about Katz’s additional deceptive scheme, in December 2019, the FTC filed a complaint and *ex parte* motion for temporary restraining order against Burton Katz, five individual defendants (including Robert Zangrillo, Brent Levison, and Elisha Rothman), and 54 corporate entities. *FTC v. On Point Global LLC, et al.*, No. 19-cv-25046-Scola, ECF Nos. 1 (“*On Point* Complaint”) & 4 (“*On Point* TRO Motion”) (S.D. Fla. filed Dec. 9, 2019). The FTC’s complaint alleged “more than 200” of the defendants’ websites violated Section 5(a) of the FTC Act by falsely promising to provide government services. *On Point* Compl. ¶¶112-168. The complaint further alleged that defendants are jointly and severally liable because the corporate defendants acted as a common enterprise and the individual defendants participated in, controlled, and knew of the deceptive practices. *Id.* ¶¶61-77, 80-107.

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<sup>1</sup> Katz’s operation ran websites that offered free merchandise in exchange for consumers’ phone numbers, and enrolled consumers who provided their information in unwanted premium text messaging services that charged them monthly. *See* Amended Compl. ¶¶45-47.

On December 13, 2019, the Court granted the Commission's motion for temporary restraining order, finding the FTC had "established a likelihood of success in showing that the Defendants have deceived consumers by misrepresenting the services they offer, thus inducing consumers to pay money or divulge personal information under false pretenses." *On Point*, ECF No. 17 at 3-4 ("*On Point* TRO"). The Court further granted the FTC's request to, among other things, appoint a receiver and freeze defendants' assets to preserve funds for consumer redress.

Subsequently, at a two-day preliminary injunction hearing, the FTC presented documents, expert testimony, surveys, and consumer complaints showing defendants' deception. At the close of the hearing, the Court ruled the FTC had met its burden to show that the corporate entities acted as a "common enterprise" and that the individuals had sufficient "control and knowledge" to support joint and several liability. PX46 (Prelim. Inj. Hr'g Tr. vol. 2), 314:8-18. The district court entered a preliminary injunction the following day and found that Katz and his co-defendants' websites were "patently misleading." *On Point*, ECF No. 126 at 2 ("*On Point* Preliminary Injunction").

### **C. The First Contempt Motion**

On February 12, 2020, the FTC initiated contempt proceedings in this case against Katz and twelve Corporate Contempt Defendants<sup>2</sup> for violating the Order. *Acquinity*, ECF No. 135 ("First Contempt Motion"). The FTC moved that Katz should be held in contempt because the same misrepresentations described in its *de novo* action also violate the Order's injunction against misrepresentations. The FTC also sought to hold the 12 named corporate entities liable for contempt because they had "actual notice" of the Order and violated it "in active concert or participation" with Katz. *Id.* at 15-18 (citing Fed. R. Civ. P. 65(d)(2)(C)). The FTC's motion further asked that the Court consolidate the factual proceedings relating to the contempt and *de novo* actions in light of the common questions of law and fact in these cases. *Id.* at 19 n.23. On

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<sup>2</sup> The Corporate Contempt Defendants are: On Point Global LLC, On Point Employment LLC, and On Point Guides LLC f/k/a Rogue Media Services LLC (collectively, "On Point"); Dragon Global LLC, Dragon Global Management LLC, and Dragon Global Holdings LLC (collectively, "Dragon Global"); Waltham Technologies LLC; Cambridge Media Series LLC f/k/a License America Media Series LLC; Issue Based Media LLC; DG DMV LLC; Direct Market LLC; and Bronco Family Holdings LP a/k/a Bronco Holdings Family LP. *See* First Contempt Mot. at 2 n.2. The Corporate Contempt Defendants are a subset of the 54 entities named in the FTC's *de novo* action.

February 14, 2020, the Court granted the FTC's motion. *Acquinity*, ECF No. 136 ("Order to Show Cause").<sup>3</sup>

At the time the FTC moved for contempt against Katz, it was not aware that his co-defendants in the related *de novo* action had notice of the Order. Evidence obtained through discovery, however, now shows Zangrillo, Levison, and Rothman each had notice of the Order around the time of its entry and acted with Katz to violate it while carrying out the deceptive practices that gave rise to the related action. Based on this new evidence, the FTC now moves for contempt against these three individuals in addition to Katz.

## II. STATEMENT OF FACTS

From the moment the Court entered the 2014 Order, Katz and his associates have violated its restrictions. As the FTC previously showed, Katz employed a network of companies and individuals to operate hundreds of deceptive websites, and the New Contempt Defendants co-owned and co-managed the deceptive operation with Katz. The following briefly summarizes the evidence previously presented to the Court regarding the Contempt Defendants' scheme and the representations on their websites. *See* First Contempt Mot. For a full discussion of the factual background of the relevant conduct, the Commission respectfully refers the Court to its First Contempt Motion in this case (ECF No. 35 with accompanying exhibits) and the *On Point*

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<sup>3</sup> Like the original contempt motion, the FTC respectfully requests that the Court consolidate any evidentiary hearing on this matter with any trial in *FTC v. On Point Global* because there are common questions of law and fact in these cases. *See* Order to Show Cause. The FTC's evidence establishing the Contempt Defendants' violations of the FTC Act will also satisfy the clear and convincing standard to hold these defendants in contempt of the 2014 Order. Upon receiving this evidence, the Court can make separate findings under the two standards without the need to receive the same evidence in separate proceedings.

Further, if the Court enters the FTC's requested show-cause order, the FTC anticipates seeking a ruling on its contempt motion without an evidentiary hearing. Both the preliminary injunction hearing and ensuing discovery in the *de novo* matter revealed that the material facts in this matter are not in dispute – only the legal conclusions to be drawn from them. *See Mercer v. Mitchell*, 908 F.2d 763, 769 n.11 (11th Cir. 1990) (“[W]hen there are no disputed factual matters that require an evidentiary hearing, the court might properly dispense with the hearing prior to finding the defendant in contempt and sanctioning him.”); *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1324 (9th Cir. 1998) (no evidentiary hearing required where facts supporting civil contempt are uncontroverted). Should the show-cause order be granted, the FTC will file a further motion for summary ruling as to all Contempt Defendants, to which the Contempt Defendants may respond with their own affidavits and evidence, if any.

TRO Motion.<sup>4</sup> In the interests of economy, the FTC also refers herein to the exhibits originally filed in support of the First Contempt Motion (ECF No. 135)<sup>5</sup>. Finally, the FTC sets forth facts and evidence that supplement the First Contempt Motion and pertain to the New Contempt Defendants' actions in contempt of the Order, with knowledge thereof.

**A. New Contempt Defendants' Active Concert and Participation in Katz's Violative Business Practices**

As set forth in the First Contempt Motion and *On Point* TRO Motion Katz, Zangrillo, Levison, Rothman, and their co-defendants operated hundreds of websites that misled consumers into providing money and personal information in exchange for government services. Defendants' websites falsely offered to perform government services in two categories: (1) state licensing or motor vehicle services for a fee ("e-commerce sites"), and (2) determinations of eligibility for public benefits in return for personal information ("freemium sites"). First Contempt Mot. at 5-15; PX1 ¶¶18-25, Att. BH; *see also On Point* TRO Mot. at 1-13.

First, defendants operated "e-commerce" sites that targeted customers seeking government services, such as renewing a driver's license, through misleading search-engine advertising. First Contempt Mot. at 5-12. In some instances, customers who clicked on defendants' search results were directed to websites that used misleading language and branding to induce consumers to enter payment information in hopes of obtaining the promised services ("transaction sites"). In other instances, search results led customers to intermediate websites ("feeder sites"), such as DMV.com, which also used misleading language and design to lead consumers to the transaction websites seeking payment information. *Id.* Consumers who paid never received the promised services; instead, they received only a PDF of general information about those services. *Id.*

Second, defendants operated "freemium" sites targeting indigent, unemployed, and elderly people with fake offers to determine their eligibility for public benefits, such as housing

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<sup>4</sup> As reflected in the certificate of service, the FTC is serving the instant motion and accompanying exhibits on counsel for the New Contempt Defendants by email. In addition, the FTC is re-serving its First Contempt Motion and accompanying exhibits on the same sets of counsel. The FTC further notes that some evidence filed with this motion was produced with requests for confidentiality; pursuant to the FTC's regulations, the Commission therefore concurrently files a motion to file those materials under a temporary seal to permit the producing parties the opportunity to seek further protection for their documents.

<sup>5</sup> *See On Point*, ECF No. 132.

assistance, food stamps, and unemployment benefits (“public benefits sites”). First Contempt Mot. at 12-15. Defendants similarly used search-engine advertising and misleading language and branding to induce consumers into relinquishing their personal and sensitive data, including their name, email address, zip code, phone number, birth date, gender, employment status, health insurance coverage status, medical diagnoses, disability status, and debt. *Id.* Consumers who provided their information did not receive the promised eligibility determination; instead, they received only a PDF document with publicly available information untailored to the sensitive data consumers provided. Moreover, consumers who provided their information on defendants’ websites were bombarded with spam emails and text messages containing additional marketing “offers.” *Id.*

Both types of websites were “patently misleading”: they were “cleverly designed so that even though “disclosures” appeared on many or most of the pages, consumers[’] attention would be drawn to links and language in larger, more colorful font that directed them to the service they were seeking.” *On Point* Prelim. Inj. at 2. As a result, consumers “would likely ignore the disclosures written in relatively smaller and pale colored font.” *Id.* Indeed, even if consumers did read the disclosures, they were not “clearly informed” that the sites did not provide the promised government services. *Id.* Defendants reaped over \$87 million in three years from the deceptive sale of paid guides and over \$17 million in one year from using or selling personal information harvested from consumers who visited the public-benefits sites. *See* PX43 ¶7; PX44 at 22-23 (Receiver’s report regarding freemium revenues).

Katz and the New Contempt Defendants controlled the 54 corporate defendants in the *de novo* action that ran the websites. Katz was the operation’s CEO, one of its two largest shareholders, and one of three “Venture Team” members in its capital-raising arm, Dragon Global. The New Contempt Defendants worked alongside Katz to operate the deceptive scheme.

**Robert Zangrillo** has been Katz’s business partner in the deceptive operation since at least October 22, 2014.<sup>6</sup> On that date, Zangrillo created DG DMV LLC and the next day, as described below, he paid Katz’s *Acquinity* judgment. PX34 Att. C at 5, 8; PX35 Att. A; PX37

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<sup>6</sup> Zangrillo is also the Chairman, CEO, and a “Venture Team” member of Dragon Global. PX1 Att. G; PX37 (Zangrillo Dep.) 19:6-9.

(Zangrillo Dep Tr.) at 30:12-15. *See infra* at 14.<sup>7</sup> In or around June 2015, Katz and Zangrillo negotiated and Zangrillo funded DG DMV's acquisition of the domain DMV.com, which was central to their deceptive scheme. PX35 Atts. T, X, J, Y; *see also* First Contempt Mot. at 2-3. Zangrillo remained DG DMV's majority shareholder, and Katz its minority shareholder, until January 1, 2018, when he and Katz contributed their respective interests in DG DMV to On Point Global LLC. PX34 Atts. B at 26-27 (Katz and Zangrillo were members), 35 (Zangrillo's company held 80% interest); I at 1, 18 (chart of assets contributed by Zangrillo's and Katz's holding companies).<sup>8</sup> Zangrillo provided Katz with funding for both DG DMV and On Point, helped formulate their business plan<sup>9</sup> and corporate structure, and worked with Katz to design On Point's logo and corporate website. PX35 Atts. J and Y (DGDMV funding), U (OPG LLC corporate structure), M (logo); PX33 Atts. B, AT (website), A (OPG LLC corporate structure); PX37 (Zangrillo Dep.) 30:7-22, 207:3-20 (investment in DG DMV and On Point Global).

Zangrillo and Katz were the largest shareholders of On Point, each holding a 35% interest in the company at its inception. PX12 Att. C p.115; PX34 Att. E at 65 (Schedule 3.1 to 2018 agreement). Zangrillo was the company's chairman, and Zangrillo and Katz wielded "special approval rights" over all company decisions, were initially the sole members of the Board of Managers, and had the authority to hire and fire key personnel, including the CEO and CFO. PX18 Att. A at 64-135; PX34 Atts. E at 17-20 (Sec. 3.8, special approval rights and hiring/firing authority), D (consulting agreement); PX36 (Katz Dep.) 20:17-22:5. As chairman, Zangrillo

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<sup>7</sup> Katz also testified that Zangrillo loaned him the funds to pay his judgment. PX36 (Katz Dep.) 99:13-100:16. The same day Zangrillo created DG DMV, the company and Katz signed agreements relating to the loan and establishing Katz's business partnership with Zangrillo. PX35 Att. L at 2-10 (option purchase agreement), 11-13 (side letter), 14-21 (security agreement), 22-29 (option purchase agreement), 30-37 (guarantee), and 38-45 (promissory note). For instance, one such agreement gave Zangrillo the option to purchase assets of Cambridge Media Series LLC, a defendant in both the *de novo* and contempt actions. *Id.* at 2, 4-5, 9.

<sup>8</sup> Zangrillo held his interest in both DG DMV and On Point Global through his holding company and *de novo* defendant OnPoint Capital Partners LLC. PX34 Att. E at 65; PX37 (Zangrillo Dep.) 30:7-22, 226:12-227:4; *see also* PX12 Att. C p.115 (On Point ownership). Katz's holding company is Bronco Family Holdings LP. PX13 at 1-2; First Contempt Mot. at 4.

<sup>9</sup> For example, Katz consulted with Zangrillo to develop DG DMV's business plan, including its data monetization and e-commerce products, under "Dragon Global" branding. PX35 Att. D.



approved and consulted with Katz on both major decisions affecting the business<sup>10</sup> and its day-to-day operations.<sup>11</sup> Zangrillo was the lead recruiter for new investors and assured them that as chairman, he had “been very active in [his] role.” PX33 Att. AI; PX36 (Katz Dep.) 26:5-22. He and Katz spoke every other week, *id.* at 131:17-132:8, and drafted materials for and worked with third parties, such as auditors, PX33 Atts. AC, AB; PX35 Att. N; public relations firms, PX33 Att. AW (setting up meeting), PX35 Att. R (identifying PR firm); and investors, PX35 Atts. H (draft investor response for Zangrillo’s review), I (investor response sent), G (investor presentation), O, Q (Zangrillo’s comments on draft presentation); PX33 Atts. AK, AP.

Zangrillo’s investor presentations prominently promoted On Point’s “Free Guides,” “Paid Guides,” “Services,” and acquisition of “Third Party Data.” *See, e.g.*, PX25 Att. Z at 5-6; PX33 Att. AP.<sup>12</sup> Zangrillo and Katz recruited members to join On Point’s advisory board (*see, e.g.*, PX33 Atts. AS (Zangrillo’s goals include: “Support recruiting of senior executives, board members and advisors. [] Leverage DG to attract advisor for CTO, VP People Operations, VP of

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<sup>10</sup> Zangrillo was closely involved in recruiting the company’s CFO Robert Bellack, PX44 at 30, PX33 Atts. Z at 1, 3, AA, AH, who upon joining also became an Operating Partner at Dragon Global and reported to Katz and Zangrillo. PX34 Att. A (Bellack’s offer letter), PX1 Att. G; *see, e.g.*, PX33 Atts. BW at 1-2, BT, BQ, BH.

<sup>11</sup> Zangrillo also signed corporate resolutions to authorize other actions including opening new bank accounts, taking out credit, acquiring new domains, leasing new office space. PX18 Att A at 64-135. In fact, Zangrillo involved himself in matters as small as the removal of a freezer from the office. PX25 Att. AA p. 267. Further, he took advantage of his control of On Point Global to obtain perks for himself, his family, and his friends, including: paying half of his chief of staff’s salary, PX34 Att. H (invoice for Megan Black’s salary), PX33 Att. BB (adding Zangrillo and his employees to On Point payroll), and transferring a commercial lease to cut his other business’ costs, PX34 Att. L (sublease); PX35 Att. K (list of plans to cut costs); renting office space from a real estate development in which Zangrillo was a partner, PX33 Att. BV at 2; giving internships to his two daughters and one of their friends, PX33 Atts. AU, AY, AZ, BA, D, U, AL, PX37 (Zangrillo Dep.) 248:22-249:3, 242:24-243:12 (identifying daughters and other intern); keeping his former girlfriend on the payroll, PX36 (Katz Dep.) 144:5-9, PX37 (Zangrillo Dep.) 252:18-253:19 (identifying Emily Paulshock); PX33 Atts. BV at 3 (Rothman asked Zangrillo why “we can’t get paid back for paying a salary to your girlfriend who didn’t really work for us”), BD (Ms. Paulshock on payroll as “Executive Assistant”); and paying an executive assistant who primarily helped Zangrillo and his family with personal tasks, PX33 Atts. AX (Taylor Corson, On Point employee, states “I work for Bob Zangrillo” while seeking to get his furniture repaired), BN (Ms. Corson helping Zangrillo’s daughter look for apartments).

<sup>12</sup> As the Receiver reported, Zangrillo “reviewed and approved the slide deck for the investors, coordinated [and] ... sat in on investor meetings, and updated the investors after the investments had been made.” PX44 at 31.



Corporate Development.”), AD (attachment omitted), AE; *see also* PX25 Att. AA at 53-54 (Zangrillo solicited counsel from the advisors on important issues for the company and asked for a call with him and Katz); traveled to Latin America together to expand On Point’s operations and investors, PX33 Atts. M at 2 (Brazil itinerary showing meeting with Zangrillo and Katz), O; attended management meetings, PX37 (Zangrillo Dep.) 160:2-10 (Zangrillo testifying that he generally met “monthly” with On Point CEO and CFO), *see also* PX33 Atts. AM, J, T; and closely managed the company’s financial performance, *see, e.g.*, PX35 Atts. R, P, PX33 Atts. BH, BK, BL, BM, AF. Zangrillo also assisted the deceptive operation with obtaining new merchant processing bank accounts, PX35 Atts. Z, AA, and purchasing and appraising domains, PX35 Atts. V, PX33 Atts. R (intern Zangrillo recommended reported to him and Katz on domain research), BY at 2 (Zangrillo requested “Appraisal with detail by Domain”), D.

Zangrillo remained On Point’s chairman until March 2019, when he was arrested and later indicted in an unrelated college-entrance bribery matter known as “Varsity Blues.”<sup>13</sup> Shortly after the indictment, Zangrillo amended his agreement with On Point and formally resigned “as Chairman and Officer,” stating that he would “no longer have any day to day management responsibility” over On Point. PX34 Att. F. Zangrillo, however, continued to facilitate the operation, testifying that only his title, not his role, changed at that point. PX37 (Zangrillo Dep.) 133:10-134:11, 145:25-146:3; *see also id.* at 240:21-241:1 (Zangrillo resigned; he was not terminated), PX23 Att. A at 21-22, 29-30 (Zangrillo retained special approval rights and insurance requirement). Specifically, Zangrillo remained on the Board of Managers, which possessed “full, complete and exclusive authority, power, and discretion to manage and control the business.” PX23 Att. A at 30.<sup>14</sup> Further, Zangrillo continued to provide updates to investors, assisted in closing the company’s deal to acquire a third party business, participated in weekly management calls with Katz, and was “taking the lead” on negotiating rent for the Los Angeles

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<sup>13</sup> *United States v. Sidoo, et al.*, No. 1-19-cr-10080, ECF Nos. 4, 32, 314 (D. Mass.) (arrest warrant, return of executed arrest warrant, and second superseding indictment).

<sup>14</sup> The LLC agreement was further modified in October 2019 to obscure Zangrillo’s involvement in the business because his co-defendant Rothman did not wish to risk losing the company’s banking relationships due to Zangrillo’s indictment. PX38 (Rothman Dep.) 133:3-144:5; PX35 Ex. AB; PX34 Att. G. Even under the modified agreement, Zangrillo’s holding company retained his ownership stake, with control rights and board seat vested in a subsidiary that lists as its “Manager” attorney Bruce Weil of Boies Schiller Flexner LLP, which represented Zangrillo and Dragon Global Management LLC. PX34 Att. G at 69-70; PX47 at 8.

office. PX33 Atts. BT, CC, CD, BI, BJ, BP. In fact, the week before the FTC initiated the *de novo* action, Zangrillo was formulating the company's "executive offsite" meeting with Katz and proposing to be part of the "Team to accomplish" several goals of the company, including "[r]ecruit[ing] a world-class team of quarterbacks for executive roles around Product Management, Market and Engineering for the SaaS / Data Business, Publishing Business and the eCommerce Business"; "[p]repar[ing] a product roadmap, timeline and milestones for Tech Platform, SaaS / Data business and eCommerce Business"; and "[p]repar[ing] a clear separation of each of the Business Units[.]" PX33 Att. BY at 1-2.

**Brent Levison** has been Katz's top lieutenant since at least 2012 and played a crucial role in forming the sprawling network of dozens of companies that carried out Katz's deceptive scheme. *See On Point* TRO Mot. at 22-23.<sup>15</sup> Levison was Katz's operating partner and managed over 22 other corporate defendants. PX36 (Katz Dep.) 95:9-13 (Katz brought in Levison and Rothman as operating partners and built the original "On Point team"); PX41 (Levison Interrog. Resp.) at 4.<sup>16</sup> Moreover, Levison assisted Katz with managing nearly every aspect of the deceptive operation, including by obtaining several of the company's private mailboxes, PX9 and attachments; signing and managing its corporate filings, PX1 Att. BB, PX33 Atts. AN, AQ, AO (registered agent service orders); negotiating and signing leases for its office space, PX12 Att. C at 5, 17-22, 40, PX35 Att. W; registering 177 of its domain names for privacy services, PX1 ¶180, Att. AZ at 4-6; and providing services to investors, PX36 (Katz Dep.) 105:6-18. Further, Levison created companies to obtain advertising accounts for the deceptive sites, PX33 Att. BU, and used his corporate credit cards to pay for search-engine ads, *see, e.g.*, PX33 Att. BO at 1-2. Levison was also a signatory on at least 30 of the operation's bank accounts. PX12 and attachments.

Similar to Katz and Zangrillo, on January 1, 2018, Levison contributed his assets in other companies to become the fourth-largest shareholder of On Point Global. PX34 Att. I at 1, 19-21; *see also* PX12 Att. C at 115 (On Point ownership); *supra* n.15 (Cardozo is Levison's holding

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<sup>15</sup> In 2012, Katz, Levison, Katz's *Acquinity* co-defendant Jonathan Smyth, and another individual created Pivot Media Group LLC, and became its founding board members and officers. Pivot Media Group is a defendant in the FTC's related *de novo* action. PX34 Att. O at 1, 13, 20, 36; *see also On Point* TRO Mot. at 15 (Cardozo Holdings LLC, a defendant in the *de novo* action, is Levison's holding company); PX33 Att. N.

<sup>16</sup> Levison is an attorney and also served as counsel to these entities. PX41 at 4.

company). At that time, Levison became On Point's Senior Vice President of Products and Chief Administrative Officer. PX41 at 4. In these roles, among other things, Levison supervised the payment processing and call center operations for the deceptive scheme, reporting directly to Katz. PX34 Att. N; PX39 (Levison Dep.) 53:1-8.<sup>17</sup>

To facilitate payment processing on the deceptive sites, Levison and his team worked closely with merchant account representatives to, among other things, obtain new accounts (*see, e.g.*, PX33 Att. W) and manage account issues, chargeback ratios, and terminations. *See, e.g.*, PX33 Atts. K (issue with "settling funds"), Y (discussing letter Levison wrote to payment processor Vantiv), AJ (discussing chargebacks on DMV.com and remediation plan); PX39 (Levison Dep.) 163:1-24 (discussing Levison Dep. Ex. 19, a transcript for the company's Slack chat channel "payment-processing"), 166:16-169:14 (Levison received feedback from a broker about chargebacks and negative reviews for On Point's domains).<sup>18</sup> Additionally, starting in 2013, Levison obtained at least 18 merchant processing accounts for the scheme, some of which were terminated due to excessive chargebacks. PX11 and attachments. In exchange, Levison received a kickback or a "productivity fee" for processing transactions through his merchant accounts and entities. PX35 Att. B at 5; PX33 Att. Q.

Levison also managed Bella Vista Media Ltd., a subsidiary of On Point in Costa Rica that operated its call center. PX41 at 4<sup>19</sup>. Levison was involved in developing the call center, PX39

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<sup>17</sup> Compare PX41 at 5 (Levison supervised Victoria Lorida, Steven Hussey, Sara Catanzano, Karla Jinesta, and Gersom Bustos), with PX40 (Initial Disclosures) at 2-3 (Jinesta was "Operations Manager at BV Media," the call center (*see infra* n.19), and Hussey was "Director of Payment Solutions for On Point"), PX39 (Levison Dep.) 73:3-75:5 (Lorida was leader of the "payment solutions" team that managed merchant processing), and PX33 Att. E p. 2 (Bustos was "Product Manager, Call Center Operations" and Catanzano was "Product Manager, Billing Operations"). *See also* PX33 Att. BC at 7; PX36 (Katz Dep.) 182:8-16.

<sup>18</sup> *See also* PX39 (Levison Dep.) 107:17-108:11 (Levison referred to chargebacks as "CBs"), 148:14-16 (MIDs are "merchant [account] IDs"), and 155:17-156:8 (Greg Berard was one of On Point's "brokers who would help [them] fund processing"); PX36 (Katz Dep.) 198:2-199:11 (Andrew Saka was a merchant account broker for On Point, similar to Greg Berard).

Levison and his team also discussed chargeback alerts, PX39 (Levison Dep. Tr. 176:10-179:3), Visa rules for chargeback monitoring (*id.* at 179:4-180:23), and chargeback ratios (*id.* at 190:19). *See also* PX39 (Levison Dep.) Ex. 19.

<sup>19</sup> Bella Vista Media or BV Media is a defendant in the *de novo* action. Prior to January 1, 2018, Levison held a 26% interest in the company through Cardozo, his holding company. *See* PX34 Att. I at 19-20.

(Levison Dep.) 62:7-24; supervised its managers directly, *see supra* n.17; and traveled to Costa Rica “at least once every two to three months,” including with the CEO Katz, to oversee its operations, PX39 (Levison Dep.) 200:15-201:3, PX33 Atts. BX, AR. The call center fielded consumer complaints for On Point’s websites and distributed various call metrics to Katz and Levison, including refund rates. *See, e.g.*, PX33 Att. C at 1, 35-37. Levison discussed customer feedback with the call center team and was aware of customer complaints. PX39 (Levison Dep.) 203:10-204:8.

Levison also assisted Katz in making contumacious misrepresentations to consumers. Specifically, Levison was the operation’s counsel and admitted that he sought advice from outside counsel relating to On Point’s websites, advertising, and call center scripts. PX39 (Levison Dep.) 31:13-17, 45:18-47:2, 204:16-205:3. Levison was also involved in testing the websites<sup>20</sup>, and worked to create a staff of “really good content writers” for the websites. PX39 (Levison Dep.) 62:18-63:9.

**Elisha Rothman** is a business partner Katz brought on in 2014 to operate Defendants’ deceptive data monetization business. PX36 (Katz Dep.) 95:9-13 (Katz brought in Levison and Rothman as operating partners and built the original “On Point team”); PX35 Att. AC at 2. Rothman was On Point’s director of data processing, PX42 (Rothman Interrog. Resp.) at 4, and its third-largest shareholder, after Zangrillo and Katz.<sup>21</sup> Rothman co-owned and co-managed several of the corporate defendants, was an “executive” of the company, discussed the company’s finances with Katz, and advised him on soliciting investors. PX42 at 4; PX38 (Rothman Dep.) 108:12-124:24 & Ex. 13; PX35 Att. AB; PX33 Atts. AV, X (Rothman on Katz’s email to leadership), BS (Rothman analyzed financial performance for management forecast), BR (Rothman and Katz discussed revenue forecast); *see also id.* Atts. F, L, S, V (Rothman was included on emails discussing high chargeback rates for merchant processing companies he

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<sup>20</sup> PX33 Att. CB (describing On Point’s testing process, including data gathering, meetings to discuss metrics, and checks to ensure compliance with “FTC legislation”). Levison drafted various blogs on his personal website [www.brentlevison.com](http://www.brentlevison.com) touting his involvement in operating On Point’s sites and implementing a “compliance culture” at the company. *See, e.g., id.* & Att. CA (Levison is “always speaking with counsel and getting their opinions on every aspect of [On Point’s] websites”); *see also* PX39 (Levison Dep.) 214:11-215:1.

<sup>21</sup> Rothman held a 20% interest in the operation through his holding company Mac Media Ltd., which is a co-defendant in the FTC’s *de novo* case. PX12 Att. C p.115; PX34 Att. E at 65 (Schedule 3.1 to 2018 agreement); *see also On Point* TRO Mot. at 15.

owned).

Rothman supervised employees responsible for marketing to consumers who were deceived into providing personal information on the freemium sites.<sup>22</sup> Rothman, along with his *On Point* co-defendant Christopher Sherman, expanded the deceptive freemium operation by identifying and purchasing high-value domain properties. PX38 (Rothman Dep) 24:11-29:18, 291:9-295:3 & Exs. 40, 41. Rothman also discussed the design and marketing of the deceptive freemium sites with Katz, Sherman, and others. *Id.* Exs. 43, 44, 39; PX33 Atts. G, P. Katz regularly communicated with Rothman and sought his assistance with various projects. PX38 (Rothman Dep.) 25:8-30:1, 125:5-127:25 & Ex. 14. Rothman also assisted Katz's effort to obscure his ownership of the consumer-facing websites by securing private mailbox rentals the websites listed as their contact information. PX9 Atts. C, F, N.

Additionally, Rothman was heavily involved in the financial operation of the deceptive scheme and obtained bank accounts for the companies. PX12 and attachments; PX35 Att. AB; PX38 (Rothman Dep.) 133:3-144:5. Rothman also worked with the operation's payment processing team to analyze the company's financial performance, including, for example, the refund rates for the guide sales business. PX38 (Rothman Dep.) 280:13-283:3 & Ex. 37. Rothman created several entities to facilitate payment processing on the operation's deceptive guide sales sites, and he personally obtained at least seven merchant accounts for these sites. PX11 Atts. A at 8-9; B at 5-8, 35-38, 62-65, 77-78; E at 2-3, 4-6; PX38 (Rothman Dep.) Exs. 23-28, 30. Rothman provided personal guarantees on the merchant account applications he submitted, each of which listed a URL for a website the FTC has alleged as deceptive. *See id.* (merchant accounts); PX38 (Rothman Dep.) 187:23-229:18 (Rothman personally guaranteed each merchant account). Further, similar to Levison, Rothman assisted Katz's payment processing operation in exchange for a "productivity fee" payout. *See, e.g.*, PX38 (Rothman Dep.) 203:1-204:13, 228:15-229:3; PX35 Att. B at 5; PX33 Att. Q.

Rothman also created companies that obtained advertising accounts for the deceptive sites, PX33 Att. BU, and used his corporate credit cards to pay for search-engine ads. *See, e.g.*,

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<sup>22</sup> Compare PX42 at 5 (Rothman supervised Lisa Vallejos), with PX33 Att. BZ at 1, 3 (Vallejos was an "SMS & Push Operations Manager" in the "Channel Operations" department) and PX44 at 22 (defendants' lead generation business "is commonly referred to as "Freemiums" and is split into two parts: "Path", which gathers data; and "Channel", which markets to consumers"); *see also* PX34 Atts. J, K, M (organizational charts showing individuals who reported to Rothman).

PX33 Att. BO at 1-2. Moreover, Rothman personally bankrolled On Point's online advertising through loans to the corporate entities. PX38 (Rothman Dep.) 147:8-150:24, 177:10-178:1 & Ex. 18; PX33 Att. AG. As Rothman wrote in a November 2019 letter to Zangrillo, "I work every day in any capacity I am needed to help us." PX38 (Rothman Dep.) 152:3-178:13 & Ex. 19. Rothman continued, "I will continue to do everything in my power to help us succeed." *Id.*

**B. New Contempt Defendants' Knowledge of the *Acquinity* Order**

Each New Contempt Defendant knew about the 2014 Order at or around the time of its entry.<sup>23</sup> First, Zangrillo's and Katz's sworn testimony, financial records, and other documentary evidence establish Zangrillo's knowledge of the Order in 2014. Most importantly, Zangrillo directly paid Katz's full judgment amount of \$704,244 in the *Acquinity* case from his personal account to Katz's law firm's escrow account on the date the judgment was due. PX35 Att. A; Order at 4.<sup>24</sup> Further, after the Court entered the Order, both Katz and Zangrillo participated in at least one call with Linda Goldstein, who represented Katz in the *Acquinity* matter, regarding Katz's settlement with the FTC. PX37 (Zangrillo Dep.) 279:4-25; Order at 14 (Ms. Goldstein signed as Katz's attorney); PX35 Atts. C, E. According to Zangrillo, he spoke with Katz's counsel as part of his due diligence "to make sure that there was no pending or legal restrictions that Mr. Katz had that would prohibit him from acting in the role of CEO of DG DMV."<sup>25</sup> PX37

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<sup>23</sup> As explained above, the FTC's First Contempt Motion did not name the New Contempt Defendants because when the FTC filed that motion, it lacked sufficient evidence of these individuals' knowledge of the 2014 Order. However, the evidence the FTC recently discovered in the *de novo* action has confirmed that in fact each of these individuals knew about the 2014 Order throughout the course of their involvement in the alleged deceptive scheme.

<sup>24</sup> Though Zangrillo and Katz deny that Zangrillo knew about the injunction (while admitting he knew about the "settlement"), additional evidence relating to Katz's judgment also supports Zangrillo's knowledge. The Court entered the Order on October 16, 2014 and required Katz to pay the judgment amount of \$704,244 to the FTC by October 23, 2014. Order at 4. Zangrillo created DG DMV LLC on October 22, 2014, and transferred \$704,244 from his personal account to Katz's law firm the next day. PX34 Att. C at 5, 8, 15; PX35 Att. A (wire record stating "PER YOUR REQUEST" in the "Details for Beneficiary field"). DG DMV, which is a defendant in the pending *de novo* and contempt proceedings, also executed several agreements with Katz on October 23, 2014, including agreements Zangrillo signed. *See supra* n.7. In June 2015, On Point Capital Partners LLC, which is Zangrillo's holding company and a defendant in the *de novo* case, assumed the loan. PX35 Att. F. Again, Zangrillo signed the loan assumption agreement.

<sup>25</sup> Similarly, Katz testified that Ms. Goldstein participated in a call with Zangrillo that "would have happened before 2016" and during which Zangrillo was assured that Katz's settlement was



(Zangrillo Dep.) 277:7-281:2. Zangrillo knew that Katz had been engaged in “prior civil litigation” “around mobile billing,” had a conversation with Ms. Goldstein about mobile billing, and “validated” that Katz could operate in the role [of CEO] without any restrictions.” *Id.*<sup>26</sup> In addition, Katz testified that he told Zangrillo that he “had a settlement,” and he “believe[d]” he mentioned that the settlement was with the FTC. PX36 (Katz Dep.) 107:22-110:6. Emails and calendar entries also show a call between Katz, Zangrillo, and Ms. Goldstein in April 2015, shortly before DG DMV purchased DMV.com. PX35 Atts. C, E. Moreover, on April 16, 2021, Katz submitted a sworn statement to the FTC regarding his compliance with the 2014 Order (“April 16, 2021 Compliance Report”) and represented that he “had at least one verbal communication with Mr. Zangrillo regarding settlement of a civil action at or around the time they closed on a transaction relating to DG DMV LLC.” PX45 (April 16, 2021 Compliance Report) at 2.

Second, Levison admitted during his deposition that he knew of the 2014 Order around the time it was entered. Specifically, Levison testified that he became aware of Katz’s *Acquinity* settlement shortly after the case was resolved, and he saw the 2014 Order when “it got resolved or when it got entered into.” PX39 (Levison Dep.) 236:7-239:9. Katz’s April 16, 2021 Compliance Report similarly states that he “had at least one verbal communication with Mr. Levison at or around the time of the entry of the [2014] Order regarding the substance of the Order and/or the settlement of the case.” PX45 at 2. Additionally, Katz and Levison exchanged emails regarding the 2014 Order on “April 23, 2014; May 15, 2014; August 12, 2014; and February 9-10, 2016.” *Id.* In one such email exchange, Levison negotiated with a law firm that represented Katz in the *Acquinity* matter regarding payment for their services, and told the firm their advice had been ineffective. *See* PX45 Att. A at 2 (Levison writing, “the services rendered didn’t equate to the amount being billed and even more there were zero results and lots of inaccurate / bad advice regarding this matter”).<sup>27</sup>

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“around mobile billing” and would not restrict him from “investing or working in DG DMV.” PX36 (Katz Dep.) 109:16-112:14.

<sup>26</sup> As noted *supra*, the *Acquinity* matter involved Katz’s violations of the FTC Act pertaining to unauthorized charges crammed on consumers’ mobile phone bills.

<sup>27</sup> *See also* PX45 Att. A at 1 (attorney writing that “the invoice for the FTC matter . . . has not been paid. A copy of that invoice is attached as *Acquinity* matter.”); *id.* (attorney writing, “the

Third, Rothman admitted during his deposition that he knew of Katz's settlement with the FTC around the time the 2014 Order was entered. PX38 (Rothman Dep.) 317:1-320:10. Specifically, Rothman testified that he became aware of Katz's *Acquinity* lawsuit and settlement following a conversation with Katz "around the end of 2014, beginning of 2015" at the beginning of their business relationship. *Id.* He further testified that while he did not recall whether Katz specifically mentioned the Order, he knew Katz had settled a lawsuit with the FTC "centered around mobile billing." *Id.* Katz's April 16, 2021 sworn statement similarly states that he "had at least one verbal communication with Mr. Rothman regarding the substance of the Order and/or settlement of the case at or around the time Mr. Rothman purchased an ownership interest in Cambridge Media LLC," which is a defendant in the contempt and *de novo* actions. PX45 at 2.<sup>28</sup>

### III. ARGUMENT

The standard for contempt is the same as stated in the FTC's initial contempt motion. *See* First Contempt Mot. at 15. Specifically, the movant must show by clear and convincing evidence that: (1) "the allegedly violated order was valid and lawful," (2) "the order was clear and unambiguous," and (3) "the alleged violator had the ability to comply with the order." *FTC v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010) (quoting *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1296 (11th Cir. 2002)); *McGregor v. Chierico*, 206 F.3d 1378, 1383 (11th Cir. 2000).<sup>29</sup> Importantly, intent is not an element of civil contempt. *See McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949). In addition, as the FTC previously noted, an order binds nonparties with "actual notice" of the order that violate the order "in active concert or

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invoices related to the *Acquinity* matter[] . . . remain[s] outstanding"); *id.* at 5-7 (*Acquinity* bill); *id.* at 6 (describing 2014 teleconferences with "Brent" in the invoice for the *Acquinity* matter)].

<sup>28</sup> In addition, Katz testified that "generally everybody in [his] office knew about the [O]rder." "In fact," according to Katz, he "would presume that almost everyone in the industry knew about the [O]rder." PX36 (Katz Dep.) 114:25-115:24.

<sup>29</sup> Once this *prima facie* showing of a violation is made, the burden then shifts to the alleged contemnor to come forward with evidence showing "categorically and in detail" why they should not be held in contempt. *FTC v. Affordable Media*, 179 F.3d 1228, 1241 (9th Cir. 1999) (citing *United States v. Rylander*, 460 U.S. 752, 755 (1983)); *see also Chairs v. Burgess*, 143 F.3d 1432, 1436 (11th Cir. 1998) (contemnor must show that he has made "in good faith all reasonable efforts to comply") (quoting *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991)).



participation” with a named party. Fed. R. Civ. P. 65(d)(2)(C); *Leshin*, 618 F.3d at 1232; *see also Chanel, Inc. v. Krispin*, No. 08–23439, 2010 WL 4822737, at \*3 (S.D.Fla.2010) (Torres, J.); *Taser Int’l, Inc. v. Phazzer Elecs., Inc.*, No. 6:16-cv-366, 2017 WL 3584906, at \*4 (M.D. Fla. July 21, 2017) (“it is clear that nonparties who assist the enjoined party in violating the injunction may be held in contempt”). For the reasons below, Zangrillo, Levison, and Rothman are bound by the Order and acted with Katz to violate it.

**A. The New Contempt Defendants Knew of the 2014 Order.**

To establish notice under Rule 65(d), “[a]ll that is required is knowledge of the mere existence of the injunction; not its precise terms.” *FTC v. Neiswonger*, 494 F. Supp. 2d 1067, 1079 (E.D. Mo. 2007), *aff’d*, 580 F.3d 769 (8th Cir. 2009); *see also Perfect Fit Indus., Inc. v. Acme Quilting Co.*, 646 F.2d 800, 808 (2d Cir. 1981). Additionally, knowledge of an order can be demonstrated through circumstantial evidence “derived from the parties’ relationship, concert of action in maintenance of the unlawful business, and the obvious interest of the defendants in evading any interference with their unlawful business as long as possible.” *Neiswonger*, 494 F. Supp. 2d at 1079 (citing *Hill v. United States*, 33 F.2d 489, 491 (8th Cir. 1929)); *see also United States v. Planes*, 2019 WL 3024895, at \*8 (M.D. Fla. July 11, 2019) (“A party who learns about an injunction cannot ‘maintain a studied ignorance of the terms of the decree in order to postpone compliance and preclude a finding of contempt.’”) (quoting *Perfect Fit Indus.* & citing *Neiswonger*).<sup>30</sup>

As described above, sworn testimony and a plethora of corroborating evidence demonstrates New Contempt Defendants’ knowledge of the Order. *See supra* at 14-16. Levison admitted he had notice of the Order, and indeed saw it, at the time of its entry. Zangrillo unquestionably had knowledge of the Order when he transferred the exact amount of Katz’s *Acquinity* judgment from his personal account to Katz’s law firm’s account on the judgement’s due date. In fact, Zangrillo admittedly investigated legal restrictions against Katz before entering into a business relationship with him, including by speaking with the attorney who negotiated and signed Katz’s Order. PX37 (Zangrillo Dep.) 278:12-279:25; PX35 Atts. C, E. Further, Rothman and Zangrillo were admittedly aware of the *Acquinity* lawsuit, including that it

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<sup>30</sup> *See also General Motors Corp. v. Gibson Chemical & Oil Corp.*, 627 F. Supp. 678, 681-82 (E.D.N.Y. 1986) (“the knowledge required of a party in contempt is knowledge of the existence of the order, . . . not knowledge of the particulars of that order”).

pertained to mobile billing, and discussed Katz's settlement with him around the time of the Order's entry. *See Neiswonger*, 494 F. Supp. 2d at 1079-80 ("The fact that [contempt defendant] may never had seen [the order] is immaterial. He was aware of an 'order' restricting [party defendant's] participation in any future selling of financial programs, and he was aware of the FTC's action against [the party defendant]."). In addition, Katz confirmed that he "had at least one verbal communication with Mr. Rothman regarding the substance of the Order and/or settlement of the case[.]" PX45 at 2. This evidence is more than sufficient to show that New Contempt Defendants had notice of the Order.

**B. The New Contempt Defendants Violated the Order.**

As described above, Zangrillo, Levison, and Rothman worked in active concert and participation with Katz to carry out the actions that egregiously violated the Order's prohibition on making misrepresentations. *See* Order at 3 (prohibiting "making, or assisting others in making, expressly or by implication, any false or misleading material representation"). Each of these individuals was Katz's business partner, co-owner, and played a central role in operation of the websites this Court has already described as "patently misleading." *On Point* Prelim. Inj. at 2.<sup>31</sup> Specifically, the New Contempt Defendants, along with Katz, had executive and supervisory authority over the deceptive practices, were signatories on bank accounts, and carried out important functions for the operation, such as securing merchant accounts, investments, and office space. *See supra* section II.A. Moreover, the New Contempt Defendants assisted Katz in concealing his deception from the FTC.<sup>32</sup> In sum, New Contempt Defendants worked alongside Katz to operate the deceptive scheme and carry out acts that violate the 2014 Order.

The record shows by clear and convincing evidence that the elements of contempt are met here. In fact, it is beyond dispute that the first two elements of contempt – a lawful and

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<sup>31</sup> As discussed above and in the First Contempt Motion, Katz and the New Contempt Defendants violated the Order in two ways. *See supra* section II.A. First, they operated sites that falsely offered consumers state licensing or motor-vehicle services for a fee. Second, they operated sites that falsely offered consumers assistance with eligibility determinations for public benefits in exchange for their sensitive personal information.

<sup>32</sup> For example, Levison and Rothman created several entities to obtain merchant processing and advertising accounts for the deceptive websites, thus shielding Katz's and his companies' involvement in the consumer-facing websites. PX11 (merchant accounts).

unambiguous order – are satisfied here. *See* First Contempt Mot. at 17-18 (citing *FTC v. EDebitPay LLC*, 695 F.3d 938, 943-44 (9th Cir. 2012) (holding provision prohibiting misrepresentations in the sale of any product or service specific and definite)). Similarly, there is no question here that New Contempt Defendants had the ability to comply. To satisfy an inability defense, New Contempt Defendants must demonstrate that they “made ‘in good faith all reasonable efforts’ to meet the terms of the court order [they are] seeking to avoid.” *CFTC v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1529 (11th Cir. 1992) (per curiam) (citations omitted). Indeed, it is insufficient to make efforts that are merely “substantial,” “diligent,” or in “good faith.” *Id.* Here, New Contempt Defendants could have simply refrained from operating the misleading websites with Katz.

**C. The New Contempt Defendants Are Liable for Compensatory Sanctions.**

The Court has “wide discretion” to craft a remedy for contempt. *EEOC v. Guardian Pools, Inc.*, 828 F.2d 1507, 1515 (11th Cir. 1987). The Court’s civil contempt power is measured “by the requirements of full remedial relief.” *American Airlines, Inc. v. Allied Pilots Ass’n*, 228 F.3d 574, 585 (5th Cir. 2000) (quoting *McComb*, 336 U.S. at 193). The measure of the compensatory civil contempt remedy is the amount required to reimburse the injured party for harm the contemnor caused. *Id.* Consumer loss is the proper measure of compensation in FTC-initiated contempt proceedings. *See FTC v. Trudeau*, 662 F.3d 947, 950 (7th Cir. 2011); *FTC v. Kuykendall*, 371 F.3d 745, 765 (10th Cir. 2004); *McGregor*, 206 F.3d at 1388-89. Contempt Defendants’ net revenues for the two types of deceptive websites totaled \$104,723,274.62, representing \$87,425,519.75 in net revenues from three years of guide sales and \$17,297,754.87 in revenues from one year of selling and monetizing data from the freemium websites. PX43 ¶7; PX44 at 22-23. The FTC therefore seeks an Order to show cause why they should not be held in civil contempt and ordered to pay a compensatory sanction in this amount.<sup>33</sup>

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<sup>33</sup> Any monetary compensatory sanctions should be entered jointly and severally because the New Contempt Defendants acted with Katz in a unified operation to carry out the Order violations. *Leshin*, 618 F.3d at 1237 (“Where . . . parties join together to evade a judgment, they become jointly and severally liable for the amount of damages resulting from the contumacious conduct.”) (quoting *NLRB v. AFL-CIO*, 882 F.2d 949, 955 (5th Cir. 1989)).

#### IV. CONCLUSION

Katz's business partners Zangrillo, Levison, and Rothman acted with him to violate the Order throughout its existence. The FTC thus respectfully requests that the Court grant the FTC's motion and order Zangrillo, Levison, and Rothman to show cause why they should not be held in contempt, and ultimately require them to undo the harm they have caused to consumers.

#### CERTIFICATION OF COUNSEL

Counsel for the FTC conferred by email and Zoom conference with counsel for all parties named in this contempt motion on April 29 and 30, 2021. The parties named in this contempt motion oppose the relief sought.

Dated: April 30, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on April 30, 2021, a true and correct copy of the foregoing was served via email on the following counsel:

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Sana Chaudhry

# Exhibit D

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 14-60166-Civ-SCOLA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ACQUINITY INTERACTIVE, LLC, *et al.*,

Defendants.

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



## **INTRODUCTION**

Burton Katz, Robert Zangrillo, Brent Levison, and Elisha Rothman for years ran an online scheme that deceived consumers into providing money and their personal information. Their websites lured consumers by promising a quick and easy government service (e.g., renewing a driver's license or obtaining a fishing license) or eligibility determinations for public benefits (e.g., Section 8 housing vouchers or food stamps). Instead, consumers received only a PDF containing publicly available, general information about the service they sought.

The Contempt Defendants' deceptive websites violate a permanent injunction entered in a prior case against Katz.<sup>1</sup> Because each of the Contempt Defendants had notice of the order and acted with Katz to violate it, they are liable for compensatory contempt remedies. A temporary restraining order and preliminary injunction freezing Contempt Defendants' assets are necessary to prevent Contempt Defendants from dissipating those assets and to preserve the possibility of final monetary compensation to the consumers they harmed.

## **BACKGROUND**

In October 2014, the FTC settled a lawsuit against Burton Katz and other defendants for their roles in a mobile-billing cramming scheme. Stipulated Final Judgment and Order for Permanent Injunction ("Order"), ECF No. 132. The Order prohibited Katz and those acting in concert with him from "making, or assisting others in making, expressly or by implication, any false or misleading material representation including representations concerning the cost, performance, efficacy, nature, characteristics, benefits, or safety of any product or service, or concerning any consumer's obligation to pay for charges for any product or service." Order at 3.

In December 2019, the FTC filed a complaint against the Contempt Defendants and others, alleging their deceptive websites violated Section 5 of the FTC Act, 15 U.S.C. § 45. *See* Compl., *FTC v. On Point Global LLC, et al.*, No. 19-CV-25046, ECF No. 1. The FTC concurrently sought a temporary restraining order ("TRO"), including an asset freeze. The Court

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<sup>1</sup> Along with Katz, Zangrillo, Levison, and Rothman, the "Contempt Defendants" also include twelve corporate entities. The corporate entities (collectively, "Corporate Contempt Defendants") are: On Point Global LLC, On Point Employment LLC, and On Point Guides LLC f/k/a Rogue Media Services LLC (collectively, "On Point"); Dragon Global LLC, Dragon Global Management LLC, and Dragon Global Holdings LLC (collectively, "Dragon Global"); Waltham Technologies LLC; Cambridge Media Series LLC f/k/a License America Media Series LLC; Issue Based Media LLC; DG DMV LLC; Direct Market LLC; and Bronco Family Holdings LP a/k/a Bronco Holdings Family LP.

granted the TRO on December 13, 2019, freezing Contempt Defendants' assets. The FTC noted in its initial filings that the complaint in *FTC v. On Point Global* was related to this matter, that the FTC intended to file a motion for contempt in this matter, and that the factual and legal issues in the two cases overlapped. Pl.'s *Ex Parte* Notice of Related or Similar Action, *FTC v. On Point Global*, No. 19-CV-25046, ECF No. 5; *see also* Pl.'s *Ex Parte* Motion for Temporary Restraining Order, ECF 4 p.4 ("Katz's actions violate a permanent injunction in a prior case the FTC brought against him.")

In February 2020, the FTC filed its motion seeking an order to show cause why Burton Katz and related entities should not be held in contempt for their violations of the Order, and seeking compensatory contempt remedies for those violations. ECF No. 135 ("First Contempt Motion"). In discovery, the FTC subsequently uncovered evidence that the additional Contempt Defendants (Zangrillo, Levison, and Rothman) had notice of the Order, making them liable for contempt pursuant to Federal Rule of Civil Procedure 65(d)(2)(C). The FTC has therefore concurrently moved for contempt against the additional Contempt Defendants as well.

The Court initially entered a TRO and then a preliminary injunction freezing the Contempt Defendants' assets in *FTC v. On Point Global*, in which the FTC sought monetary relief pursuant to Section 13(b) of the FTC Act, a remedy coterminous with the civil contempt remedy it sought in this matter. ECF No. 135 p.18; *On Point Global*, No. 19-CV-25046, ECF No. 126 ("*On Point* Preliminary Injunction"). In the interim, the Supreme Court ruled that Section 13(b) does not authorize the award of monetary relief. *AMG Cap. Mgmt., LLC v. FTC*, 141 S.Ct. 1341 (2021) ("*AMG*"). The FTC therefore moves in this contempt matter to maintain the asset freeze to protect its ability to recover civil contempt compensatory relief, which remains available regardless of the change in the interpretation of Section 13(b) of the FTC Act. *See infra* Argument section I at 13-15.

The FTC seeks to ensure that Contempt Defendants remain under an asset freeze without interruption, because even a brief lifting of the freeze would allow them to place assets out of reach and render any further ruling on monetary relief fruitless.<sup>2</sup> The FTC therefore moves for

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<sup>2</sup> The FTC does not seek to maintain an asset freeze against Christopher Sherman and Arlene Mahon, who are defendants in *FTC v. On Point Global* but are not named as contempt defendants in this action. Further, the Court need not disturb the provisions of the preliminary injunction in *FTC v. On Point Global* other than the asset freeze, as *AMG* did not affect the FTC's ability to obtain both preliminary and permanent injunctive relief to enforce the FTC Act.

entry of a temporary restraining order in the short term, to replace the asset-freeze provisions of the Court's preliminary injunction in *FTC v. On Point Global*, and then a preliminary injunction once Contempt Defendants have responded to the FTC's motion. Alternatively, the FTC seeks maintenance of the asset freeze provisions in the *FTC v. On Point Global* preliminary injunction until the Court rules on a preliminary injunction in this matter.

### **STATEMENT OF FACTS**

#### **I. CONTEMPT DEFENDANTS' NOTICE OF THE ORDER**

Each Contempt Defendant knew about the Order at or around the time of its entry. First, Zangrillo's and Katz's sworn testimony, financial records, and other documentary evidence establish Zangrillo's knowledge of the Order in 2014. Most importantly, Zangrillo directly paid Katz's full judgment amount of \$704,244 in the *Acquinity* case from his personal account to Katz's law firm's escrow account on the date the judgment was due. PX35 Att. A; Order at 4. Further, after the Court entered the Order, both Katz and Zangrillo participated in at least one call with Linda Goldstein, who represented Katz in the *Acquinity* matter, regarding Katz's settlement with the FTC. PX37 (Zangrillo Dep.) 279:4-25; PX36 (Katz Dep.) 109:16-112:14; Order at 14 (Ms. Goldstein signed as Katz's attorney); PX35 Atts. C, E. According to Zangrillo, he spoke with Katz's counsel as part of his due diligence "to make sure that there was no pending or legal restrictions that Mr. Katz had that would prohibit him from acting in the role of CEO of DG DMV." PX37 (Zangrillo Dep.) 277:7-279:25. Zangrillo knew that Katz had been engaged in "prior civil litigation" "around mobile billing." In addition, Katz testified that he told Zangrillo that he "had a settlement," and he "believe[d]" he mentioned that the settlement was with the FTC. PX36 (Katz Dep.) 107:22-110:6. Emails and calendar entries also show a call between Katz, Zangrillo, and Ms. Goldstein in April 2015, shortly before DG DMV purchased DMV.com. PX35 Atts. C, E. Moreover, on April 16, 2021, Katz submitted a sworn statement to the FTC regarding his compliance with the Order ("April 16, 2021 Compliance Report") and represented that he "had at least one verbal communication with Mr. Zangrillo regarding settlement of a civil action at or around the time they closed on a transaction relating to DG

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*See On Point* Prelim. Inj. (e.g., provisions restricting deceptive conduct and appointing and empowering receiver to operate businesses lawfully). Instead, the FTC seeks only that the Court enter the same asset freeze provisions it ordered in *FTC v. On Point Global*, based now on the FTC's ability to obtain monetary contempt sanctions rather than monetary relief under the FTC Act.

DMV LLC.” PX45 (April 16, 2021 Compliance Report) at 2.

Second, Levison admitted during his deposition that he knew of the Order around the time it was entered. Specifically, Levison testified that he became aware of Katz’s *Acquinity* settlement shortly after the case was resolved, and he saw the Order when “it got resolved or when it got entered into.” PX39 (Levison Dep.) 236:7-239:9. Katz’s April 16, 2021 Compliance Report similarly states that he “had at least one verbal communication with Mr. Levison at or around the time of the entry of the [2014] Order regarding the substance of the Order and/or the settlement of the case.” PX45 at 2. Additionally, Katz and Levison exchanged emails regarding the Order on “April 23, 2014; May 15, 2014; August 12, 2014; and February 9-10, 2016.” *Id.* In one such email exchange, Levison negotiated with a law firm that represented Katz in the *Acquinity* matter regarding payment for their services, and told the firm their advice had been ineffective. *See* PX45 Att. A at 2.<sup>3</sup>

Third, Rothman admitted during his deposition that he knew of Katz’s settlement with the FTC around the time the Order was entered. PX38 (Rothman Dep.) 317:1-320:10. Specifically, Rothman testified that he became aware of Katz’s *Acquinity* lawsuit and settlement following a conversation with Katz “around the end of 2014, beginning of 2015” at the beginning of their business relationship. *Id.* He further testified that while he did not recall whether Katz specifically mentioned the Order, he knew Katz had settled a lawsuit with the FTC “centered around mobile billing.” *Id.* Katz’s April 16, 2021 sworn statement similarly states that he “had at least one verbal communication with Mr. Rothman regarding the substance of the Order and/or settlement of the case at or around the time Mr. Rothman purchased an ownership interest in Cambridge Media LLC,” which is a defendant in the contempt and *de novo* actions. PX45 Att. at 2.

## **II. CONTEMPT DEFENDANTS’ BUSINESS PRACTICES AND ROLES**

As set forth in the FTC’s First Contempt Motion and *On Point* TRO Motion<sup>4</sup>, Katz, Zangrillo, Levison, Rothman, and their co-defendants operated hundreds of websites that misled consumers into providing money and personal information in exchange for government services.

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<sup>3</sup> *See also* PX45 Att. A at 1 (attorney writing that “the invoice for the FTC matter . . . has not been paid. A copy of that invoice is attached as *Acquinity* matter;” *id.* at 6 (describing 2014 teleconferences with “Brent” in the invoice for the *Acquinity* matter)].

<sup>4</sup> *FTC v. On Point Global LLC*, No. 19-CV-25046, ECF No. 4.

Defendants' websites falsely offered to perform government services in two categories: (1) state licensing or motor vehicle services for a fee ("e-commerce sites"), and (2) determinations of eligibility for public benefits in return for personal information ("freemium sites"). First Contempt Mot. at 5-15; PX1 ¶¶18-25, Att. BH; *see also On Point* TRO Mot. at 1-13.

First, defendants operated "e-commerce" sites that targeted customers seeking government services, such as renewing a driver's license, through misleading search-engine advertising. First Contempt Mot. at 5-12. In some instances, customers who clicked on defendants' search results were directed to websites that used misleading language and branding to induce consumers to enter payment information in hopes of obtaining the promised services ("transaction sites"). In other instances, search results led customers to intermediate websites ("feeder sites"), such as DMV.com, that also used misleading language and design to lead consumers to the transaction sites seeking payment information. *Id.* Consumers who paid never received the promised services; instead, they received only a PDF of general information about those services. *Id.*

Second, defendants operated "freemium" sites targeting indigent, unemployed, and elderly people with fake offers to determine their eligibility for public benefits, such as housing assistance, food stamps, and unemployment benefits ("public benefits sites"). First Contempt Mot. at 12-15. Defendants similarly used search-engine advertising and misleading language and branding to induce consumers into relinquishing their personal and sensitive data, including their name, email address, zip code, phone number, birth date, gender, employment status, health insurance coverage status, medical diagnoses, disability status, and debt. *Id.* Consumers who provided their information did not receive the promised eligibility determination; instead, they received only a PDF document with publicly available information untailored to the sensitive data consumers provided. Moreover, consumers who provided their information on defendants' websites were bombarded with spam emails and text messages containing additional marketing "offers." *Id.*

Both types of websites were "patently misleading": they were "cleverly designed so that even though "disclosures" appeared on many or most of the pages, consumers['] attention would be drawn to links and language in larger, more colorful font that directed them to the service they were seeking." *On Point* Prelim. Inj. at 2. As a result, consumers "would likely ignore the disclosures written in relatively smaller and pale colored font." *Id.* Indeed, even if consumers

did read the disclosures, they were not “clearly informed” that the sites did not provide the promised government services. *Id.* Defendants reaped over \$87 million in three years from the deceptive sale of paid guides and over \$17 million in one year from using or selling personal information harvested from consumers who visited the public-benefits sites. *See* PX43 ¶¶7; PX44 at 22-23 (Receiver’s report regarding freemium revenues).

Katz and the Contempt Defendants controlled the 54 corporate defendants in the *de novo* action that ran the websites. Katz was the operation’s CEO, one of its two largest shareholders, and one of three “Venture Team” members in its capital-raising arm, Dragon Global. The Contempt Defendants worked alongside Katz to operate the deceptive scheme.

**Robert Zangrillo** has been Katz’s business partner in the deceptive operation since at least October 22, 2014.<sup>5</sup> On that date, Zangrillo created DG DMV LLC and the next day, as described above, he paid Katz’s *Acquinity* judgment. PX34 Att. C at 5, 8; PX35 Att. A. *See supra* at 3.<sup>6</sup> In or around June 2015, Katz and Zangrillo negotiated and Zangrillo funded DG DMV’s acquisition of the domain DMV.com, which was central to their deceptive scheme. PX35 Atts. T, X, J, Y; *see also* First Contempt Mot. at 2-3. Zangrillo remained DG DMV’s majority shareholder, and Katz its minority shareholder, until January 1, 2018, when he and Katz contributed their respective interests in DG DMV to On Point Global LLC. PX34 Atts. B at 26-27 (Katz and Zangrillo were members), 35 (Zangrillo’s company held 80% interest); I at 1, 18 (chart of assets contributed by Zangrillo’s and Katz’s holding companies). Zangrillo provided Katz with funding for both DG DMV and On Point, helped formulate their business plan and corporate structure, and worked with Katz to design On Point’s logo and corporate website. PX35 Atts. J and Y (DGDMV funding), U (OPG LLC corporate structure), AD (business plan), M (logo); PX33 Atts. B, AT (website), A (OPG LLC corporate structure); PX37 (Zangrillo Dep.) 30:7-22, 207:3-20 (investment in DG DMV and On Point Global).

Zangrillo and Katz were the largest shareholders of On Point, each holding a 35% interest in the company at its inception. PX12 Att. C p.115; PX34 Att. E at 65 (Schedule 3.1 to 2018

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<sup>5</sup> Zangrillo is also the Chairman, CEO, and a “Venture Team” member of Dragon Global. PX1 Att. G; PX37 (Zangrillo Dep.) 19:6-9.

<sup>6</sup> Katz also testified that Zangrillo loaned him the funds to pay his judgment. PX36 (Katz Dep.) 99:13-100:16. The same day Zangrillo created DG DMV, the company and Katz signed agreements relating to the loan and establishing Katz’s business partnership with Zangrillo. PX35 Att. L.



agreement). Zangrillo was the company's chairman, and Zangrillo and Katz wielded "special approval rights" over all company decisions, were initially the sole members of the Board of Managers, and had the authority to hire and fire key personnel, including the CEO and CFO. PX18 Att. A at 64-135; PX34 Atts. E at 17-20 (Sec. 3.8, special approval rights and hiring/firing authority), D (consulting agreement); PX36 (Katz Dep.) 20:17-22:5. As chairman, Zangrillo approved and consulted with Katz on both major decisions affecting the business<sup>7</sup> and its day-to-day operations.<sup>8</sup> Zangrillo was the lead recruiter for new investors and assured them that as chairman, he had "been very active in [his] role." PX33 Att. AI; PX36 (Katz Dep.) 26:5-22. He and Katz spoke every other week, *id.* at 131:17-132:8, and drafted materials for and worked with third parties, such as auditors, PX33 Atts. AC, AB; PX35 Att. N; public relations firms, PX33 Att. AW (setting up meeting), PX35 Att. R (identifying PR firm), and investors, PX35 Atts. H (draft investor response for Zangrillo's review), I (investor response sent), AG (investor presentation), O, Q (Zangrillo's comments on draft presentation); PX33 Atts. AK, AP.

Zangrillo's investor presentations prominently promoted On Point's "Free Guides," "Paid Guides," "Services," and acquisition of "Third Party Data." *See, e.g.*, PX25 Att. Z at 5-6; PX33

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<sup>7</sup> Zangrillo was closely involved in recruiting the company's CFO Robert Bellack, PX44 at 30, PX33 Atts. Z at 1, 3, AA, AH, who upon joining also became an Operating Partner at Dragon Global and reported to Katz and Zangrillo. PX34 Att. A (Bellack's offer letter), PX1 Att. G; *see, e.g.*, PX33 Atts. BW at 1-2, BT, BQ, BH.

<sup>8</sup> Zangrillo also signed corporate resolutions to authorize other actions including opening new bank accounts, taking out credit, acquiring new domains, and leasing new office space. PX18 Att. A at 64-135. In fact, Zangrillo involved himself in matters as small as the removal of a freezer from the office. PX25 Att. AA p. 267. Further, he took advantage of his control of On Point Global to obtain perks for himself, his family, and his friends, including: paying half of his chief of staff's salary, PX34 Att. H (invoice), PX33 Att. BB (payroll), and transferring a commercial lease to cut his other business' costs, PX34 Att. L (sublease); PX35 Att. K (list of plans to cut costs); renting office space from a real estate development in which Zangrillo was a partner, PX33 Att. BV at 2; giving internships to his two daughters and one of their friends, PX33 Atts. AU, AY, AZ, BA, D, U, AL, PX37 (Zangrillo Dep.) 248:22-249:3, 242:24-243:12 (identifying daughters and other intern); keeping his former girlfriend on the payroll, PX36 (Katz Dep.) 144:5-9, PX37 (Zangrillo Dep.) 252:18-253:19 (identifying Emily Paulshock); PX33 Atts. BV at 3 (Rothman asked Zangrillo why "we can't get paid back for paying a salary to your girlfriend who didn't really work for us"), BD (Ms. Paulshock on payroll); and paying an executive assistant who primarily helped Zangrillo and his family with personal tasks, PX33 Atts. AX (Taylor Corson, On Point employee, states "I work for Bob Zangrillo" while seeking to get his furniture repaired), BN (Ms. Corson helping Zangrillo's daughter look for apartments).

Att. AP.<sup>9</sup> Zangrillo and Katz recruited members to join On Point's advisory board (*see, e.g.*, PX33 Att. AS (Zangrillo's goals include: "Support recruiting of senior executives, board members and advisors. [] Leverage DG to attract advisor for CTO, VP People Operations, VP of Corporate Development."), AD (attachment omitted), AE; *see also* PX25 Att. AA at 53-54 (Zangrillo solicited counsel from the advisors on important issues for the company and asked for a call with him and Katz); traveled to Latin America together to expand On Point's operations and investors, PX33 Atts. M at 2 (Brazil itinerary showing meeting with Zangrillo and Katz), O; attended management meetings, PX37 (Zangrillo Dep.) 160:2-10 (Zangrillo testifying that he generally met "monthly" with On Point CEO and CFO), *see also* PX33 Atts. AM, J, T; and closely managed the company's financial performance, *see, e.g.*, PX35 Atts. R, P, PX33 Atts. BH, BK, BL, BM, AF. Zangrillo also assisted the deceptive operation with obtaining new merchant processing bank accounts, PX35 Atts. Z, AA, and purchasing and appraising domains, PX35 Att. V, PX33 Atts. R (intern Zangrillo recommended reported to him and Katz on domain research), BY (Zangrillo requested "Appraisal with detail by Domain"), D.

Zangrillo remained On Point's chairman until March 2019, when he was arrested and later indicted in an unrelated college-entrance bribery matter known as "Varsity Blues."<sup>10</sup> Shortly after the indictment, Zangrillo amended his agreement with On Point and formally resigned "as Chairman and Officer," stating that he would "no longer have any day to day management responsibility" over On Point. PX34 Att. F. Zangrillo, however, continued to facilitate the operation, testifying that only his title, not his role, changed at that point. PX37 (Zangrillo Dep.) 133:10-134:11, 145:25-146:3; *see also id.* at 240:21-241:1 (Zangrillo resigned; he was not terminated), PX23 Att. A at 21-22, 29-30 (Zangrillo retained special approval rights and insurance requirement). Specifically, Zangrillo remained on the Board of Managers, which possessed "full, complete and exclusive authority, power, and discretion to manage and control the business." PX23 Att. A at 30.<sup>11</sup> Further, Zangrillo continued to provide updates to investors,

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<sup>9</sup> As the Receiver reported, Zangrillo "reviewed and approved the slide deck for the investors, coordinated [and] ... sat in on investor meetings, and updated the investors after the investments had been made." PX44 at 31.

<sup>10</sup> *United States v. Sidoo, et al.*, No. 1-19-cr-10080, ECF Nos. 4, 32, 314 (D. Mass.) (arrest warrant, return of executed arrest warrant, and second superseding indictment).

<sup>11</sup> The LLC agreement was further modified in October 2019 to obscure Zangrillo's involvement in the business because his co-defendant Rothman did not wish to risk losing the company's



assisted in closing the company's deal to acquire a third party business, participated in weekly management calls with Katz, and was "taking the lead" on negotiating rent for the Los Angeles office. PX33 Atts. BT, CC, CD, BI, BJ, BP. In fact, the week before the FTC initiated the *de novo* action, Zangrillo was formulating the company's "executive offsite" meeting with Katz and proposing to be part of the "Team to accomplish" several goals of the company, including "[r]ecruit[ing] a world-class team of quarterbacks for executive roles around Product Management, Market and Engineering for the SaaS / Data Business, Publishing Business and the eCommerce Business"; "[p]repar[ing] a product roadmap, timeline and milestones for Tech Platform, SaaS / Data business and eCommerce Business"; and "[p]repar[ing] a clear separation of each of the Business Units[.]" PX33 Att. BY at 1-2.

**Brent Levison** has been Katz's top lieutenant since at least 2012 and played a crucial role in forming the sprawling network of dozens of companies that carried out Katz's deceptive scheme. *See On Point* TRO Mot. at 22-23.<sup>12</sup> Levison was Katz's operating partner and managed over 22 other corporate defendants. PX36 (Katz Dep.) 95:9-13 (Katz brought in Levison and Rothman as operating partners and built the original "On Point team"); PX41 (Levison Interrog. Resp.) at 4.<sup>13</sup> Moreover, Levison assisted Katz with managing nearly every aspect of the deceptive operation, including by obtaining several of the company's private mailboxes, PX9 and attachments; signing and managing its corporate filings, PX1 Att. BB, PX33 Atts. AN, AQ, AO (registered agent service orders); negotiating and signing leases for its office space, PX12 Att. C at 5, 17-22, 40, PX35 Att. W; registering 177 of its domain names for privacy services, PX1 ¶180, Att. AZ at 4-6; and providing services to investors, PX36 (Katz Dep.) 105:6-18. Further, Levison created companies to obtain advertising accounts for the

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banking relationships due to Zangrillo's indictment. PX38 (Rothman Dep.) 133:3-144:5; PX35 Ex. AB; PX34 Att. G. Even under the modified agreement, Zangrillo's holding company retained his ownership stake, with control rights and board seat vested in a subsidiary that lists as its "Manager" attorney Bruce Weil of Boies Schiller Flexner LLP, which represented Zangrillo and Dragon Global Management LLC. PX34 Att. G at 69-70; PX47 at 8.

<sup>12</sup> In 2012, Katz, Levison, Katz's *Acquinity* co-defendant Jonathan Smyth, and another individual created Pivot Media Group LLC, and became its founding board members and officers. Pivot Media Group is a defendant in the FTC's related *de novo* action. PX35 Att. G at 1, 13, 20, 36; *see also On Point* TRO Mot. at 15 (Cardozo Holdings LLC, a defendant in the *de novo* action, is Levison's holding company; PX33 Att. N.

<sup>13</sup> Levison is an attorney and also served as counsel to these entities. PX 41 at 4.

deceptive sites, PX33 Att. BU, and used his corporate credit cards to pay for search-engine ads, *see, e.g.*, PX33 Att. BO at 1-2. Levison was also a signatory on at least 30 of the operation's bank accounts. PX12 and attachments.

Similar to Katz and Zangrillo, on January 1, 2018, Levison contributed his assets in other companies to become the fourth-largest shareholder of On Point Global. PX34 Att. I at 1, 19-21; *see also* PX12 Att. C at 115 (On Point ownership). At that time, Levison became On Point's Senior Vice President of Products and Chief Administrative Officer. PX41 at 4. In these roles, Levison supervised the payment processing and call center operations for the deceptive scheme, reporting directly to Katz. PX34 Att. N; PX39 (Levison Dep.) 53:1-8.<sup>14</sup>

To facilitate payment processing on the deceptive sites, Levison and his team worked closely with merchant account representatives to, among other things, obtain new accounts (*see, e.g.*, PX33 Att. W) and manage account issues, chargeback ratios, and terminations. *See, e.g.*, PX33 Atts. K (issue with "settling funds"), Y (discussing letter Levison wrote to payment processor Vantiv), AJ (discussing chargebacks on DMV.com and remediation plan); PX39 (Levison Dep.) 163:1-24 (discussing Levison Dep. Ex. 19, a transcript for the company's Slack chat channel "payment-processing"), 166:16-169:14 (Levison received feedback from a broker about chargebacks and negative reviews for On Point's domains).<sup>15</sup> Additionally, starting in 2013, Levison obtained at least 18 merchant processing accounts for the scheme, some of which were terminated due to excessive chargebacks. PX11 and attachments. In exchange, Levison received a kickback or a "productivity fee" for processing transactions through his merchant

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<sup>14</sup> Compare PX41 at 5 (Levison supervised Victoria Lorigo, Steven Hussey, Sara Catanzano, Karla Jinesta, and Gersom Bustos), with PX40 (Initial Disclosures) at 2-3 (Jinesta was "Operations Manager at BV Media" and Hussey was "Director of Payment Solutions for On Point"), PX39 (Levison Dep.) 73:6-75:5 (Lorigo was leader of the "payment solutions" team that managed merchant processing), and PX33 Att. E p. 2 (Bustos was "Product Manager, Call Center Operations" and Catanzano was "Product Manager, Billing Operations"). *See also* PX33 Att. BC at 7; PX36 (Katz Dep.) 182:8-16, 228:8-223:19.

<sup>15</sup> *See also* PX39 (Levison Dep.) 107:17-108:11 (Levison referred to chargebacks as "CBs"), 148:14-16 (MIDs are "merchant [account] IDs"), and 155:17-156:8 (Greg Berard was one of On Point's "brokers who would help [them] fund processing"); PX36 (Katz Dep.) 198:2-199:11 (Andrew Saka was a merchant account broker for On Point, similar to Greg Berard).

Levison and his team also discussed chargeback alerts (Levison Dep. Tr. 176:10-179:3), Visa rules for chargeback monitoring (*id.* at 179:4-180:23), and chargeback ratios (*id.* at 190:19). *See also* PX39 (Levison Dep.) Ex. 19.

accounts and entities. PX35 Att. B at 5; PX33 Att. Q.

Levison also managed Bella Vista Media Ltd., a subsidiary of On Point in Costa Rica that operated its call center. PX41 at 4.<sup>16</sup> Levison was involved in developing the call center, PX39 (Levison Dep.) 62:7-24; supervised its managers directly, *see supra* n.14; and traveled to Costa Rica “at least once every two to three months,” including with the CEO Katz, to oversee its operations, PX39 (Levison Dep.) 200:15-201:3, PX33 Atts. BX, AR. The call center fielded consumer complaints for On Point’s websites and distributed various call metrics to Katz and Levison, including refund rates. *See, e.g.*, PX33 Att. C at 1, 35-37. Levison discussed customer feedback with the call center team and was aware of customer complaints. PX39 (Levison Dep.) 203:10-204:8.

Levison also assisted Katz in making contumacious misrepresentations to consumers. Specifically, Levison was the operation’s counsel and admitted that he sought advice from outside counsel relating to On Point’s websites,<sup>17</sup> advertising, and call center scripts. PX39 (Levison Dep.) 31:13-17, 45:18-47:2, 204:16-205:3. Levison was also involved in testing the websites, and worked to create a staff of “really good content writers” for the websites. PX39 (Levison Dep.) 62:18-63:9.

**Elisha Rothman** is a business partner Katz brought on in 2014 to operate Defendants’ deceptive data monetization business. PX36 (Katz Dep.) 95:9-13 (Katz brought in Levison and Rothman as operating partners and built the original “On Point team”) & PX35 Att. AC at 2. Rothman was On Point’s director of data processing, PX42 (Rothman Interrog. Resp.) at 4, and its third-largest shareholder, after Zangrillo and Katz.<sup>18</sup> Rothman co-owned and co-managed several of the corporate defendants, was an “executive” of the company, discussed the

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<sup>16</sup> Bella Vista Media or BV Media is a defendant in the *de novo* action. Prior to January 1, 2018, Levison held a 26% interest in the company through Cardozo, his holding company. *See* PX34 Att. I at 19-20.

<sup>17</sup> PX33 Att. CB (describing On Point’s testing process, including data gathering, meetings to discuss metrics, and checks to ensure compliance with “FTC legislation”). Levison drafted various blogs on his personal website [www.brentlevison.com](http://www.brentlevison.com) touting his involvement in operating On Point’s sites and implementing a “compliance culture” at the company. *See, e.g., id.* & Att. CA (Levison is “always speaking with counsel and getting their opinions on every aspect of [On Point’s] websites”); *see also* PX39 (Levison Dep.) 214:11-215:1.

<sup>18</sup> Rothman held a 20% interest in the operation through his holding company Mac Media Ltd., which is a co-defendant in the FTC’s *de novo* case. PX12 Att. C p.115; PX34 Att. E at 65 (Schedule 3.1 to 2018 agreement); *see also On Point* TRO Mot. at 15.

company's finances with Katz, and advised him on soliciting investors. PX42 at 4; PX38 (Rothman Dep.) 108:12-124:24 & Ex. 13; PX35 Att. AB; PX33 Atts. AV, X (Rothman on Katz's email to leadership), BS (Rothman analyzed financial performance for management forecast), BR (Rothman and Katz discussed revenue forecast); *see also id.* Atts. F, L, S, V (Rothman was included on emails discussing high chargeback rates for merchant processing companies he owned).

Rothman supervised employees responsible for marketing to consumers who were deceived into providing personal information on the freemium sites.<sup>19</sup> Rothman, along with his On Point co-defendant Christopher Sherman, expanded the deceptive freemium operation by identifying and purchasing high-value domain properties. PX38 (Rothman Dep) 24:11-29:18, 291:9-295:3 & Exs. 40, 41. Rothman also discussed the design and marketing of the deceptive freemium sites with Katz, Sherman, and others. *Id.* Exs. 43, 44, 39; PX33 Atts. G, P. Katz regularly communicated with Rothman and sought his assistance with various projects. PX38 (Rothman Dep.) 25:8-30:1, 125:5-127:25 & Ex. 14. Rothman also assisted Katz's effort to obscure his ownership of the consumer-facing websites by securing private mailbox rentals the websites listed as their contact information. PX9 Atts. C, F, N.

Additionally, Rothman was heavily involved in the financial operation of the deceptive scheme, and obtained bank accounts for the companies. PX12 and attachments; PX35 Att. AB; PX38 (Rothman Dep.) 133:3-144:5. Rothman also worked with the operation's payment processing team to analyze the company's financial performance, including, for example, the refund rates for the guide sales business. PX38 (Rothman Dep.) 280:13-283:3, Ex. 37. Rothman created several entities to facilitate payment processing on the operation's deceptive guide sales sites, and he personally obtained at least seven merchant accounts for these sites. PX11 Atts. A at 8-9; B at 5-8, 35-38, 62-65, 77-78; E at 2-3, 4-6; PX38 (Rothman Dep.) Exs. 23-28, 30. Rothman provided personal guarantees on the merchant account applications he submitted, each of which listed a URL for a website the FTC has alleged as deceptive. *See id.* (merchant accounts); PX38 (Rothman Dep.) 187:23-229:18 (Rothman personally guaranteed each merchant

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<sup>19</sup> Compare PX42 at 5 (Rothman supervised Lisa Vallejos), with PX33 Att. BZ at 1, 3 (Vallejos was an "SMS & Push Operations Manager" in the "Channel Operations" department) and PX44 at 22 (defendants' lead generation business "is commonly referred to as "Freemiums" and is split into two parts: "Path", which gathers data; and "Channel", which markets to consumers"); *see also* PX34 Atts. J, K, M (organizational charts showing individuals who reported to Rothman).

account). Further, similar to Levison, Rothman assisted Katz's payment processing operation in exchange for a "productivity fee" payout. *See, e.g.*, PX38 (Rothman Dep.) 203:1-204:13, 228:15-229:3; PX35 Att. B at 5; PX33 Att. Q.

Rothman also created companies that obtained advertising accounts for the deceptive sites, PX33 Att. BU, and used his corporate credit cards to pay for search-engine ads. *See, e.g.*, PX33 Att. BO at 1-2. Moreover, Rothman personally bankrolled On Point's online advertising through loans to the corporate entities. PX38 (Rothman Dep.) 147:8-150:24, 177:10-178:1 & Ex. 18; PX33 Att. AG. As Rothman wrote in a November 2019 letter to Zangrillo, "I work every day in any capacity I am needed to help us." PX38 (Rothman Dep.) 152:3-178:13 & Ex. 19. Rothman continued, "I will continue to do everything in my power to help us succeed." *Id.*

### **ARGUMENT**

The FTC seeks entry of an asset freeze to continue to ensure that Contempt Defendants will not dissipate their assets. As set forth below, the evidence overwhelmingly supports entry of the proposed asset freeze.

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

The Court has inherent authority to issue preliminary orders preserving the *status quo* pending its decision on the merits. *See United States v. United Mine Workers of America*, 330 U.S. 258, 290, 301 (finding that court has authority to issue orders to maintain *status quo* and approving issuance and extension of TRO pending ruling on contempt motion); *Shillitani v. United States*, 384 U.S. 364, 370 (1966) ("[C]ourts have inherent power to enforce compliance with their lawful orders through civil contempt."). Courts in this district and throughout the United States have repeatedly granted such preliminary relief to preserve assets before hearing civil contempt matters.<sup>20</sup>

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<sup>20</sup> *See, e.g., McGregor v. Chierico*, 206 F.3d 1378, 1381 (11th Cir. 2000) (citing trial court's order for asset freeze, along with other equitable relief, pending resolution of contempt proceeding); *FTC v. Vocational Guides, Inc.*, No. 3:01-cv-00170, Docs. 103, 120 (M.D. Tenn. Oct. 21, 2008, Nov. 12, 2008) (TRO and PI with asset freeze available as Exhibits A and B); *FTC v. Int'l Prod. Design, Inc.*, No. 97-cv-1114, Docs. 81, 84 (E.D. Va. Jan. 9, 2007, Jan. 17, 2007) (same) (Exhibits C and D); *FTC v. Zuccarini*, No. 01-cv-04854 (E.D. Pa. Dec. 21, 2006) (TRO) (Exhibit E); *FTC v. Gill*, 183 F. Supp. 2d 1171, 1176-77 (C.D. Cal. 2001) (noting court previously issued TRO with asset freeze in contempt matter) (TRO is Exhibit F); *FTC v. Neiswonger*, No. 06-cv-2225, Docs. 29, 140 (E.D. Mo. July 17, 2006) (TRO and PI are Exhibits G and H); *FTC v. Dayton Family Prods., Inc.*, No. 97-cv-00750, Docs. 133, 173 (D. Nev. Jan. 28, 2013, March 5, 2013) (same) (Exhibits I and J); *FTC v. Latrese & Kevin Enters. Inc.*, No. 08-



Further, the Court retains the power to grant monetary relief for civil contempt – the remedy the asset freeze would preserve – regardless of the Supreme Court’s recent decision in *AMG*, changing the long-held availability of monetary relief under the FTC Act § 13(b). *AMG*, 141 S. Ct. 1341; *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991). The Court’s ability to order complete relief in contempt arises from the Court’s “inherent power to police itself,” without reference to the remedies available in the action that gave rise to the injunction the contemnors violated.<sup>21</sup> *E.g.*, *McComb v. Jacksonville*, 336 U.S. 187, 193 (1949) (“We have no doubts concerning the power of the District Court to order respondents, in order to purge themselves of contempt, to pay the damages caused by their violations of the decree. We can lay to one side the question whether the Administrator, when suing to restrain violations of the Act, is entitled to a decree of restitution for unpaid wages.”); *Chambers*, 501 U.S. at 46 (“We discern no basis for holding that the sanctioning scheme of the statute and the rules displaces the inherent power to impose sanctions for the [contemptuous] conduct”); *American Airlines, Inc. v. Allied Pilots Ass’n*, 228 F.3d 574, 585 (5th Cir. 2000) (holding that the “district court did not abuse its discretion in deciding to award [the plaintiff] compensatory damages for the injuries caused by the defendants’ civil contempt” from violation of a temporary restraining order even where

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cv-1001, 2012 WL 12952608, at \*2 (M.D. Fla. Nov. 19, 2012) (same; TRO and PI are Exhibits K and L); *FTC v. Data Med. Cap. Inc.*, No. 99-cv-1266, 2010 WL 1049977, at \*2-3 (C.D. Cal. Jan. 15, 2010) (same, Exhibits M and N).

<sup>21</sup> The Eleventh Circuit did not hold otherwise in *McGregor v. Chierico* (which, indeed, would have been contrary to the Supreme Court authority cited above). In that case, the Eleventh Circuit first held that “[t]he inherent equitable powers of the federal courts authorize the district court to order payment of consumer redress for injury caused by [the defendant’s] contumacious conduct.” *Id.* at 1387. The court then turned to the appropriate measure of compensatory sanctions. It observed “the sanctions imposed by the district court would have been authorized by Section 13(b) of the Federal Trade Commission Act,” making cases interpreting that section “instructive in the case before us because the remedy for [the] contemptuous conduct is closely akin” to the then-existing statutory remedies. *Id.* at 1387-88.

Further, even if a court’s inherent contempt powers could be limited by the remedies in the statute that provided for the original injunction, the FTC Act continues to provide monetary relief against defendants who engage in unfair or deceptive acts or practices. 15 U.S.C. § 57b(b) (Section 19 of the FTC Act provides means for Commission to obtain “such relief as the court finds necessary to redress injury ... resulting from the rule violation or the unfair or deceptive act or practice,” including but not limited to “rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice”); *AMG*, 141 S. Ct. 1341 (noting monetary relief remains available under FTC Act).

damages were unavailable to the plaintiff under the statute which provided cause of action).<sup>22</sup>

## II. THE COURT MAY ENTER A PRELIMINARY INJUNCTION WITHOUT EVIDENTIARY HEARING

To preserve the possibility of final monetary relief, the FTC seeks immediate entry of the asset freeze provisions as a TRO in this matter, or, in the alternative, temporary maintenance of the asset freeze provisions of the preliminary injunction in *FTC v On Point Global* as to the Contempt Defendants. *See* Fed. R. Civ. P. 65(b) (permitting entry of short-term temporary restraining orders). The FTC seeks such immediate relief because even a brief interruption in the asset freeze would permit Contempt Defendants to dissipate or conceal their assets, rendering any further asset freeze ineffective.

Once the Contempt Defendants have responded to this motion, including by submitting any evidence or affidavits upon which they seek to rely, the Court may continue the asset freeze provisions as a preliminary injunction in the contempt matter without an evidentiary hearing. “Where material facts are not in dispute, or where facts in dispute are not material to the preliminary injunction sought, district courts generally need not hold an evidentiary hearing.” *McDonald’s Corp. v. Robertson*, 147 F.3d 1301, 1313 (11th Cir. 1998) (collecting cases); *see also All Care Nursing Serv. Inc. v. Bethesda Memorial Hospital Inc.*, 887 F.2d 1535, 1538 (11th Cir. 1989) (“An evidentiary hearing is not always required before the issuance of a preliminary injunction .... Where the injunction turns on the resolution of bitterly disputed facts, however, an evidentiary hearing is normally required to decide credibility issues.”). As described below, there is little dispute about the relevant facts in this matter – *e.g.*, the content of Contempt Defendants’ websites, the services they did and did not provide, and the Contempt Defendants’

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<sup>22</sup> Other district courts have noted that the FTC may recover monetary relief for contempt regardless of its ability to seek equitable monetary relief under Section 13(b) of the FTC Act. *See, e.g., FTC v. Noland*, 2020 WL 7075241, at \*4 (D. Ariz. Dec. 3, 2020) (“the FTC may still seek monetary relief through the contempt action, regardless of the outcome of AMG Capital.”); *In re Sanctuary Belize Litigation*, --- F. Supp. 3d ---, 2021 WL 1117763, at \*1 (D. Md. Mar. 24, 2021) (“Moreover, this Court’s findings of fact and determinations as to liability – including contempt of court . . . would not be affected by a decision in *AMG*.”).

Further, any monetary relief should be entered jointly and severally because the Contempt Defendants acted in a unified operation to carry out the Order violations. *FTC v. Leshin*, 618 F.3d 1221, 1237 (11th Cir. 2010) (“Where . . . parties join together to evade a judgment, they become jointly and severally liable for the amount of damages resulting from the contumacious conduct.”).

roles in the business. Where Contempt Defendants have indicated they dispute particular facts, those facts are not material to entry of the proposed asset freeze, as discussed below.

### **III. THE EVIDENCE JUSTIFIES ENTRY OF A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION.**

Private litigants seeking a TRO must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm; (3) the balance of equities is in their favor; and (4) an injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

A public agency seeking an injunction pursuant to its statutory duties generally need not show irreparable injury or that the injunction is in the public interest; in establishing the statutory scheme, Congress has already determined those factors.<sup>23</sup> *See United States v. Diapulse Corp. of America*, 457 F.2d 25, 27-28 (2d Cir. 1972) (“The passage of the statute is, in a sense, an implied finding that violations will harm the public and ought, if necessary, be restrained.”); *Navel Orange Administrative Committee v. Exeter Orange Co., Inc.*, 722 F.2d 449, 453 (9th Cir. 1983) (“When the government is seeking compliance pursuant to a statutory enforcement scheme, irreparable injury from a denial of enforcement is presumed.”); *see also FTC v. IAB Mktg. Assoc., LP*, 746 F.3d 1228, 1232 (11th Cir. 2014) (finding FTC need prove only likelihood of success and balance of equities); *FTC v. Vocational Guides, Inc.*, No. 3:01-CV-0170, 2008 WL 4908769, at \*1 (M.D. Tenn. Nov. 12, 2008) (applying two-prong test in granting preliminary injunction in FTC contempt action); Order, *FTC v. Gill, et al.*, No. CV-98-1436-LGB (MCx), at 15-16 and n.2 (C.D. Cal. Jun. 5, 2001) (combining the public interest/equities prongs and noting that a presumption of irreparable harm should apply in action seeking civil contempt because the contemptuous acts also violated the FTC Act and CRO Act) (attached as Exhibit O). The FTC can show both a likelihood of success on the merits and that the equities are in its favor.

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

The evidence unequivocally establishes the Contempt Defendants were subject to a clear,

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<sup>23</sup> Even if the FTC had to show a likelihood of irreparable injury and that the injunction is in the public interest, both factors are met here. Absent an asset freeze, the Contempt Defendants would be free to dissipate their assets, denying compensatory relief to the consumers they injured. *See FTC v. Simple Health Plans LLC*, 379 F. Supp. 3d 1346, 1364 (S.D. Fla. 2019) (“Dissipation does not necessarily mean that assets will be spirited away in secret; rather, it means that less money will be available for consumer redress.”). Further, the public interest would be served by preserving assets for return to Contempt Defendants’ victims. “It is not in the public interest to allow defendants to make themselves judgment-proof.” *PNY Techs., Inc. v. Salhi*, No. CV 12-4916, 2016 WL 4267940, at \*3 (D.N.J. Aug. 10, 2016).



valid order; had the ability to comply with it; and acted in concert to violate it. *See* Fed. R. Civ. P. 65(d)(2) (injunctions bind parties and those who, with notice of injunction, act in concert with parties); *Leshin*, 618 F.3d at 1232 (elements of contempt).

**1. The Order is Clear and Valid, and Contempt Defendants Had the Ability to Comply**

There is no question that the Order is valid and lawful. The defendants in the underlying case jointly moved the Court to enter the stipulated Order, and the Court did so after finding it had jurisdiction over the matter. Order at 2. The Order reflects the negotiated agreement of the parties to the underlying case. In addition, the Order’s provision prohibiting misrepresentations is clear, definite, and unambiguous. *See FTC v. EDebitPay LLC*, 695 F.3d 938, 943-44 (9th Cir. 2012) (holding provision prohibiting all misrepresentations in the sale of any product or service specific and definite).

Moreover, Contempt Defendants had the ability to comply with the Order. To satisfy an inability defense, a defendant must demonstrate that “he has made ‘in good faith all reasonable efforts’ to meet the terms of the court order he is seeking to avoid.” *CFTC v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1529 (11th Cir. 1992) (per curiam) (citations omitted). Indeed, it is insufficient to make efforts that are merely “substantial,” “diligent,” or in “good faith.” *Id.* Here, the Contempt Defendants simply could have refrained from making the deceptive claims.

**2. Contempt Defendants Had Notice of the Order**

To establish notice under Rule 65(d), “[a]ll that is required is knowledge of the mere existence of the injunction; not its precise terms.” *FTC v. Neiswonger*, 494 F. Supp. 2d 1067, 1079 (E.D. Mo. 2007), *aff’d*, 580 F.3d 769 (8th Cir. 2009); *see also Perfect Fit Indus., Inc. v. Acme Quilting Co.*, 646 F.2d 800, 808 (2d Cir. 1981). Additionally, knowledge of an order can be demonstrated through circumstantial evidence “derived from the parties’ relationship, concert of action in maintenance of the unlawful business, and the obvious interest of the defendants in evading any interference with their unlawful business as long as possible.” *Neiswonger*, 494 F. Supp. 2d at 1079 (citing *Hill v. United States*, 33 F.2d 489, 491 (8th Cir. 1929)); *see also United States v. Planes*, 2019 WL 3024895, at \*8 (M.D. Fla. July 11, 2019) (“A party who learns about an injunction cannot ‘maintain a studied ignorance of the terms of the decree in order to postpone compliance and preclude a finding of contempt.’”) (quoting *Perfect Fit Indus.* & citing

*Neiswonger*).<sup>24</sup>

As described above, sworn testimony and a plethora of corroborating evidence demonstrates Contempt Defendants' knowledge of the Order. *See supra* at 14-16. Levison admitted he had notice of the Order, and indeed saw it, at the time of its entry. Zangrillo unquestionably had knowledge of the Order when he transferred the exact amount of Katz's *Acquinity* judgment from his personal account to Katz's law firm's account on the judgement's due date. In fact, Zangrillo admittedly investigated legal restrictions against Katz before entering into a business relationship with him, including by speaking with the attorney who negotiated and signed Katz's Order. PX37 (Zangrillo Dep.) 278:12-279:25; PX35 Atts. C, E. Further, Rothman and Zangrillo were admittedly aware of the *Acquinity* lawsuit, including that it pertained to mobile billing, and discussed Katz's settlement with him around the time of the Order's entry. *See Neiswonger*, 494 F. Supp. 2d at 1079-80 ("The fact that [contempt defendant] may never had seen [the order] is immaterial. He was aware of an 'order' restricting [party defendant's] participation in any future selling of financial programs, and he was aware of the FTC's action against [the party defendant]."). In addition, Katz confirmed that he "had at least one verbal communication with Mr. Rothman regarding the substance of the Order and/or settlement of the case[.]" PX45 at 2. This evidence is more than sufficient to show that Contempt Defendants had notice of the Order.

### **3. Contempt Defendants Acted in Concert to Violate the Order**

As described above, Katz, Zangrillo, Levison, and Rothman worked in active concert and participation with Katz to carry out the actions that egregiously violated the Order's prohibition on making misrepresentations. *See Order* at 3 (prohibiting "making, or assisting others in making, expressly or by implication, any false or misleading material representation"). The four individuals were business partners and co-owned and controlled the operation that ran websites this Court has already found to be "patently misleading." *On Point* Prelim. Inj. at 2. They had executive and supervisory authority over the deceptive practices, were signatories on bank accounts, and carried out important functions for the operation, such as securing merchant accounts, investments, and office space. *See supra* section II pp. 4-13. In addition, despite

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<sup>24</sup> *See also General Motors Corp. v. Gibson Chemical & Oil Corp.*, 627 F. Supp. 678, 681-82 (E.D.N.Y. 1986) ("the knowledge required of a party in contempt is knowledge of the existence of the order, . . . not knowledge of the particulars of that order").

having managerial authority, none of the Contempt Defendants did anything to stop the misconduct. Instead, they worked alongside to operate the deceptive scheme and carry out acts that violate the Order.

**B. The Balance of Equities Favors Entering the TRO.**

“[W]hen a district court balances the hardships of the public interest against a private interest, the public interest should receive greater weight.” *World Wide Factors, Ltd.*, 882 F.2d at 347; *see also FTC v. USA Beverages, Inc.*, 2005 WL 5654219, at \*5 (S.D. Fla. Dec. 6, 2005) (“In balancing the equities, private concerns may be considered, but public equities must receive far greater weight.”). Here, the balance of equities mandates entry of a TRO because the public interest in compensating the victims of Contempt Defendants’ deceptive practices far outweighs defendants’ interest in dissipating their ill-gotten gains.

**IV. A REASONABLE APPROXIMATION OF LIKELY CONTEMPT SANCTIONS DEMONSTRATES THE NEED FOR AN ASSET FREEZE**

The availability of an asset freeze to preserve the possibility of final relief depends on whether the matter is an at-law “action seeking money damages,” in which asset freezes are impermissible. *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734 (11th Cir. 2005) (quoting *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999)). Civil contempt is not a “proceeding at law;” rather, it is derived from a court’s inherent equitable powers. *Shillitani*, 384 U.S. at 370 (inherent contempt authority); *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 444-45 (1911) (contrasting civil contempt proceedings with criminal contempt proceedings, which are “at law”); *EEOC v. Guardian Pools, Inc.*, 828 F.2d 1507, 1515 (11th Cir. 1987) (“The district court has wide discretion to fashion an equitable remedy for contempt that is appropriate to the circumstances.”). Notably, “[t]he measure of the court’s power in civil contempt proceedings is determined by the requirements of full remedial relief.” *McComb*, 336 U.S. at 193; *see also Howard Johnson Co., Inc. v. Khimani*, 892 F.2d 1512, 1521 (11th Cir. 1990) (“In the civil contempt context the district court’s discretion in imposing non-coercive sanctions is particularly broad and only limited by the requirement that they be compensatory.”). Because a court’s civil contempt authority is not an at-law “action seeking money damages,” and the court has broad power to order full remedial relief, the Court may freeze Contempt Defendants’ assets to preserve its ability to fully compensate consumers.

To justify the scope of such a freeze, a court must make a “reasonable approximation” of the ultimate relief figure. *ETS Payphones*, 408 F.3d at 735; *FTC v. IAB Mktg. Assocs., LP*, 972

F. Supp. 2d 1307, 1315 (S.D. Fla. 2013) (amount of assets that may be frozen is equal to the amount available in the ultimate remedy; court need only make a “reasonable approximation” of that remedy). Here, the ultimate remedy is measured by “the requirements of full remedial relief,” *McComb*, 336 U.S. at 193; in other words, the value of the money and information Contempt Defendants wrongfully took from consumers through their violations of the Order.

As discussed above, Contempt Defendants ran two types of websites that violated the Order: those that deceived consumers into giving up money, and those that deceived consumers into giving up personal information, which Contempt Defendants then sold and monetized. As to the first category of sites, the amount Contempt Defendants took is measured by totaling the amounts consumers paid for “guides” and subtracting the amounts Contempt Defendants have already refunded to consumers. The current best approximation of that net figure<sup>25</sup> is \$87,425,519.75, representing net guide-sales revenues from January 1, 2017 until the filing of the FTC’s suits. PX43 ¶7. As to the second category of sites, Contempt Defendants established the value of the information they took from consumers when they sold and monetized it on the open market. PX44 at 23-24. According to the Court-appointed receiver, the value of that information totaled \$17,297,754.87 from January 1, 2019 until the filing of the FTC’s suits. *Id.* Accordingly, \$104,723,274.62 is a reasonable approximation of the ultimate contempt remedy, and the Court may freeze Contempt Defendants’ assets up to that amount.

### **CONCLUSION**

For the reasons set forth above, the FTC moves this Court to enter the attached proposed order as a temporary restraining order and, following Contempt Defendants’ response to this motion, as a preliminary injunction.

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<sup>25</sup> As described in PX43, this figure represents completed transactions, net of refunds paid, as reflected in the receivership’s transaction records. The FTC learned in discovery that the receivership’s transaction records did not track amounts refunded to consumers in the form of chargebacks, which were tracked separately. The FTC has sought discovery as to the amount of chargebacks and will subtract that figure from the total once it is provided. However, the current figure still represents a “reasonable estimate,” as Contempt Defendants’ chargebacks hovered around 1 to 2%, *see* PX5 Atts. A, B; PX7 ¶¶8-12, meaning the total remedy figure is likely to be reduced by about that percentage.

**CERTIFICATION OF COUNSEL**

The undersigned counsel conferred by email and Zoom conference with counsel for all parties on April 29 and 30, 2021. The parties named in this motion oppose the relief sought.

Respectfully submitted,

Dated: April 30, 2021

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**CERTIFICATE OF SERVICE**

I hereby certify that, on April 30, 2021, a true and correct copy of the foregoing was served via email on the following counsel:

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