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1 Plaintiff Federal Trade Commission (“Commission” or “FTC”), pursuant to Rule 65(b) of
2 the Federal Rules of Civil Procedure and Civil L.R. 231, is respectfully applying to this Court on
3 an expedited basis for a non-noticed Temporary Restraining Order (“TRO”).

4 As grounds for this motion, the Commission states that Defendants are engaging in acts
5 and practices that violate Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15
6 U.S.C. § 45(a), and the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692,
7 as set forth in the Complaint, Memorandum of Points and Authorities in support of this motion,
8 and the supporting declarations and exhibits.

9 The proposed TRO would temporarily: (1) restrain the Defendants from violating Section
10 5(a) of the FTC Act and Sections 806 and 807 of the FDCPA; (2) freeze the Defendants’ assets;
11 (3) allow immediate access to Defendants’ business premises, order certain expedited discovery,
12 and require the Defendants to retain business and financial records; and (4) require the
13 Defendants to show cause why a preliminary injunction should not issue, extending the
14 foregoing temporary relief until the merits of the Commission’s allegations are adjudicated.

15 The interests of justice require that this motion be heard on an expedited basis, pursuant
16 to Fed. R. Civ. P. 65(b). Hearing this motion on an expedited basis will prevent immediate and
17 irreparable damage to the Commission’s efforts to redress consumer losses that have resulted

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1 I. INTRODUCTION

2 Plaintiff, Federal Trade Commission (“FTC”), brings this emergency action to halt a
3 pernicious and massive debt collection scam. Defendants’ collectors prey upon cash-strapped
4 payday loan borrowers. They masquerade as police officers and bombard victims with calls –
5 threatening arrest and other dire consequences – to extort payments for bogus debts. Defendants
6 operate from a home in Tracy, California and an office in Pleasanton, California. They have no
7 affiliation with any law enforcement agency and no authority to collect these debts. They simply
8 pocket the money that they extort from intimidated consumers.

9 Working through call centers in India, Defendants’ scheme has involved at least 2.7
10 million calls and more than 600,000 phone numbers. Since 2010, they have collected and
11 processed more than \$5 million from consumers already in dire financial straits. Defendants’
12 practices violate the Federal Trade Commission Act’s (“FTC Act”) prohibition of “unfair or
13 deceptive acts or practices,” 15 U.S.C. § 45(a), and the Fair Debt Collection Practices Act
14 (“FDCPA”), 15 U.S.C. 1692et seq.

15 We respectfully ask that the Court issue an ex parte TRO to: (1) halt the deceptive and
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¹ Sabhi Atts. A (Articles of Incorporation), B (CA Secretary of State Records). (Declarations and exhibits cited in this memorandum have been filed concurrently with this motion. The content of declarations is referred to by the declarant's last name and the declaration paragraph number(s), e.g., Sabhi ¶ 1. Documents attached to declarations are referred to by the declarant's last name and attachment number, e.g., Sabhi Att. A. If there is more than one declarant with the same last name, the first initial is included. If there is more than one declaration from a declarant, the second one is signified by "II.").

² Id. Atts. C (Articles of Incorporation), D (CA Secretary of State Records).

³ Id. Atts. B, D.

⁴ Id., Atts. B, D, M-6 (Bank of America document), N-2-4 (Chase application), P-8 (Chase account summary) P-13 (Trust One Merchant Application), P-17 (IRS documents), P-19 (NDF merchant application), P-25 (CA Franchise Tax Board document).

⁵ Id. Atts. G (property records), P-3, P-15 (lists as "home address" on merchant applications).

⁶ Id. Atts. P-2, P-6-7.

⁷ Id. Att. B.

⁸ Id. ¶ 45, Att. O.

⁹ Id. ¶ 23b, Att. J-3.

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¹⁰ Id. ¶ 76.

¹¹ Id. ¶ 12, Att. D.

¹² Id. ¶¶ 9, 10, 12, 35, 40, 45, 49, Atts. B-1, D-1, P-3, P-5, P-6, P-14, P-15, P-20, P-24, M-3, N-3; Whitney (BBB) Att. B-9.

¹³ Sabhi Atts. M-3, N-2-4, O-2-3, P-2-8.

¹⁴ Sabhi ¶ 21, Att. I-3-4.

¹⁵ Sabhi ¶ 71, Atts. Y-1, Y-2, Y-8; see also Carson-Huff ¶ 2 (“My husband of 42 years passed away in 2010 and I applied for payday loans via the Internet to help me get through a financially difficult period.”).

¹⁶ Sabhi ¶ 71, Atts. Y-1, Y-2, Y-8.

¹⁷ Defendants’ victims have applied for a payday loan. Allen ¶ 4; Barringer ¶ 2; Carson-Huff ¶ 2; Hooks ¶ 2; T. Johnson ¶ 3; Lee Att. A; Meier Att. 3; McMullen ¶ 2; Whitney (BBB) Att. A-9 (Caviness), Att. A-28 (Valdes).

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1 many cases, the callers also threaten to file a lawsuit against the consumer seeking thousands of
 2 dollars in legal fees²⁵. The callers further threaten to inform the consumer's employer about the
 3 phantom debt and warn that the consumer could lose his or her²⁶ job. One consumer reported
 4 that the caller went so far as threatening to have her children taken away from²⁷ her. Another
 5 was led to believe that Defendants were conducting surveillance of her house and place of
 6 employment.²⁸ Consumers also report that the callers use obscene and vulgar language.

7 The collectors call consumers relentlessly, at home and at²⁹ work and at all hours of the
 8 day.³¹ Indeed, one consumer reportedly received 40 back-to-back calls in one morning.³² Call
 9 records show that hundreds of consumers each received more than 50 calls from Defendants.
 10 One consumer declarant received more than 100³⁴ calls. Simply not answering the phone offers
 11 no respite – the callers just bombard the consumers with offensive voicemail messages.³⁵ Some
 12 consumers report that the callers threatened to call, or actually did call, the consumers'
 13 employer, neighbors, and relatives.³⁶ When the consumer seeks substantiation for the debt, or

14
 15 ²⁵ Andrews Att. A; B. Foster ¶ 2; Flahaut ¶ 2; Grossi Att. A; Johnson Att. A; Nelson Att. A; Sabhi Atts. R-20, R-39, R-123, R-256.

16 ²⁶ Allen ¶¶ 5, 8, 10; Crandell ¶ 5; Gervais ¶¶ 2, 6; S. Johnson Att. A; T. Johnson ¶ 2; Kowal ¶ 15; Kowal II, ¶¶ 3, 5, 9.

17
 18 ²⁷ T. Johnson ¶ 2.

19 ²⁸ Kowal ¶ 3.

20 ²⁹ Allen ¶ 17; Hooks ¶ 5; T. Johnson ¶ 5.

21 ³⁰ Gervais ¶ 2 (“calls to my place of employment were relentless”); Hooks ¶ 5 (“calls back to back for up to two hours”); S. Johnson Att. A (“same man call [sic] me for the last three days”); T. Johnson ¶ 2 (“12-15 phone calls per day”).

22
 23 ³¹ Hooks ¶ 5 (“calls began in the morning and continued until approximately 8 or 9pm”); T. Johnson, ¶ 2 (“late at night”); Kowal II ¶ 7 (“midnight”); Flahaut ¶ 6 (“early in the morning, from 8-10am”).

24 ³² Allen ¶ 2.

25 ³³ Sabhi ¶¶ 30, 31.

26 ³⁴ Sabhi ¶¶ 30, 31.

27 ³⁵ Kowal ¶ 14, Att. D; Sabhi ¶¶ 14, 16, Atts. E-F; B. Foster ¶ 6, Att. A; Andrews Att. A; Barringer ¶ 13; Hooks ¶ 5.

28 ³⁶ Allen ¶ 10; Flahaut ¶ 4; Gervais ¶ 6; S. Johnson Att. A; Kowal, ¶ 3; Kowal II ¶ 9.

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³⁷ Allen ¶¶ 6, 9; Crandell ¶ 2; B. Foster ¶¶ 3-4; Gervais ¶¶ 2, 5; T. Johnson ¶¶ 3, 5; Kennedy Att. A; Kowal ¶ 4; Kowal II ¶ 5; Lee Att. A.

³⁸ Carson-Huff ¶¶ 3, 5; B. Foster ¶ 2; Gervais ¶¶ 2-3; Sabhi Atts. R-34, R-46, R-63, R-65, R-79, R-100, R-115, R-158, R-168, R-176, R-181, R-183-84, R-199, R-214, R-243, R-270, R-275.

³⁹ Carson-Huff ¶ 5; Gervais ¶ 11; Kowal ¶ 6; McMullen ¶ 5.

⁴⁰ Allen ¶ 7; Crandell ¶ 6; Barringer ¶ 5; Gervais ¶ 3; Kowal ¶ 3.

⁴¹ Carson-Huff ¶ 4; B. Foster ¶ 4; Gervais ¶¶ 3-4; McMullen ¶ 5.

⁴² Allen ¶ 11; T. Johnson ¶ 4; Kowal ¶ 5.

⁴³ Allen ¶ 14; Barringer ¶ 13; Broxton Att. A; Carson-Huff, ¶¶ 5-6, 17, 27; Crandell ¶¶ 4, 8; B. Foster ¶ 6; Gervais ¶¶ 4-7; T. Johnson ¶ 5; Kennedy Att. A; Kowal Osnson ¶ 5; Kennedy Att de6o0(186 T)-0(f8712(oh)(¶)23(7);35(Cr)17(an)

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⁴⁶ Barringer ¶ 6; Carson-Huff ¶ 4; Meier Att. A; Whitney (BBB) Att. A-24.

⁴⁷ Sabhi Att. Q.

⁴⁸ Id. Att. P.

⁴⁹ Allen ¶ 13; Andrews ¶ 2; Barringer ¶ 9, Att. D; Broxton ¶¶ 2-3, Att. A; Carson-Huff ¶ 5, Att. B-1; Crandell ¶ 7; B. Foster ¶ 5; W. Foster ¶¶ 3, 8, Att. F; Gervais ¶ 11; Housel ¶ 2, Att. A; S. Johnson ¶ 2, Att. A; T. Johnson ¶ 4; Kowal ¶ 6; Lee Att. A; Mcs ¶ 11; H 4; 4;os

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⁵⁴ Allen ¶ 14; Broxton Att. A; Carson-Huff ¶ 6; Crandell ¶ 8; B. Foster ¶ 6; Gervais ¶¶ 5-7; T. Johnson ¶¶ 5-6; Kennedy Att. A; Whitney (BBB), Atts. A-10, A-28.

⁵⁵ Allen ¶ 15; Andrews ¶ 3, Att. A; Barringer Att. H; Broxton ¶ 4, Att. A; Carson-Huff ¶ 22; Gatewood ¶ 3, Att. A; Grossi ¶ 3, Att. A; Housel ¶ 3, Att. A; S. Johnson ¶ 3, Att. A; Kennedy ¶ 3, Att. A; Kowal ¶ 10, Att. A; Lee ¶ 3, Att. A; Meier ¶ 3, Att. A; Mutchler ¶¶ 9-10, Atts. C-D; Nelson ¶ 3, Att. A; Whitney (BBB) Att. A; Sabhi Att. S.

⁵⁶ Whitney (BBB)passim.

⁵⁷ Carson-Huff ¶ 22; Housel Att. A; Whitney (BBB) Att. A-28.

⁵⁸ Flahaut ¶ 5 (“went to the voice mail”); W. Foster Att. B (“contact number that only have a voice mail box that most of the time is filled”); Housel Att. A (“on hold for long periods of time”); S. Johnson Att. A (consumer attempted to call “the number that was left on [her] phone” but was unable to reach anyone); Whitney (BBB) Att. A-9 (“disconnected and when I called back was put on hold for 30 minutes and disconnected again”), A-28 (“disconnected”);see alsoCarson-Huff Att. M (email to BGM about the unfulfilled promise of a refund).

⁵⁹ Barringer ¶ 11, Att. G; T. Johnson ¶ 6, Att. B; Kowal ¶ 11, Att. B; Whitney (BBB) ¶ 4, Att. A.

⁶⁰ Whitney (BBB) ¶ 5.

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complaints like this.”), B-4 (false claim from Patel, “We have already contacted Ms Webrand and resolved the issue to her satisfaction, by refunding the charged amount.”), B-6 (false claim from Patel, “resolved the issue to her satisfaction, by refunding the full amount that was charged.”), B-7 (false claim from Patel, “resolved the issue to his satisfaction, by refunding the full amount.”).

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⁷² Id. at Atts. R-34, R-47, R-63, R-65, R-79, R-115, R-158, R-168, R-176, R-181, R-183, R-214, R-243, R-270, R-275.

⁷³ Id. at Atts. R-21, R-39, R-123, R-256.

⁷⁴ Id. at Atts. R-47-50, R-66, R-79.

⁷⁵ Id. at Atts. R-124, R-132-133, R-141, R-148-49, R-158, R-168, R-193, R-214.

⁷⁶ Id. at Atts. R-39, R-50, R-57, R-86, R-91, R-169, R-270, R-275.

Id.

1 contact their payday lenders are told that the collection calls from Defendants are fraudulent.⁸¹

18 ⁸¹ Andrews Att. A;W. Foster ¶ 4; Gatewood Att. A; S. Johnson Att. A; Kennedy Att. A; Kowal ¶ 9; McMullen ¶ 7;
19 Meier Att. A; Nelson Att. A; Whitney (BBB), Att. A-2; Sabhi ¶ 61, Atts. R-27, R-39-40, R-49, R-79, R-158, R-168,
R-193.

20 ⁸² Sabhi ¶¶ 67, 69, Att. V (various industry consumer alerts). Additionally, the FTC, many state attorneys general,
21 the FDIC, and the FBI's Internet Crime Complaint Center have also issued alerts to warn consumers about this type
of fraudulent payday loan collection calls. ¶ 68, Att. W (various government agency consumer alerts); also id
¶ 66, Att. U (article about this type of fraud from Sacramento Bee).

22 ⁸³ Sabhi ¶ 26 (Bank records show that Defendants paid Allianz Infonet \$1.07 million from July 2010 through
23 December 2011).

24 ⁸⁴ Sabhi ¶ 28.

25 ⁸⁵ Id. Although the IP addresses indicate that the calls originate in India, consumers' caller ID does not reveal that
26 location. Consumers report their caller ID displaying domestic phone numbers, e.g. Gervais ¶¶ 9, 10 (number
shown on caller ID was 646-918-0991 but told to call back 347-637-6457 and 646-727-4981); T. Johnson ¶ 2
27 (consumer was told to call 510-256-0381); Kowal ¶ 2 (was provided the following phone numbers: 914-721-0566,
409-239-7081, 409-440-4184, 646-571-3306), Kowal II ¶¶ 4, 6 (caller ID indicated that the calls came from 401-
526-3373, 209-205-4002, 409-420-2321.).

28 ⁸⁶ Sabhi ¶ 30.

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⁸⁷ Whitney (BBB) Att. B-1.

⁸⁸ Sabhi ¶ 50b, Att. P-1.

⁸⁹ Sabhi ¶ 32.

⁹⁰ Sabhi ¶ 56.

⁹¹ Sabhi ¶ 58.

⁹² Carson-Huff ¶ 2 (“My husband of 42 years passed away in 2010 and I applied for payday loans via the Internet to

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⁹³ Barringer ¶ 10 (“Because of the amount withdrawn from my account, I no longer had enough money in the account to pay my bills”); Housel Att. A (“ I tried to purchase gas at Sheetz and my card was declined for insufficient funds.”); McMullen ¶ 6 (“My debit card company denied payment to Cashnet [a legitimate debt] because there was not enough money in my account.”); Whitney (BBB) Att. A-7 (“I was at walmart at the time of the call. I go to check out and my card declines.”).

⁹⁴ Whitney (BBB) Atts. A-3 (“my family will have no Christmas, because this company ruined my life”), A-7 (“I was trying to buy my children Christmas presents and wasn’t able to because of this matter.”); see also Barringer ¶ 7 (harassment calls ruined birthday celebration).

⁹⁵ Barringer ¶ 16.

⁹⁶ Barringer ¶ 10 (“I cancelled my credit card, closed my bank account, and had all of my checks destroyed.”); Gatewood Att. A-4 (“due to my situation of fraud I can not [sic] use my account”); Gervais ¶ 7 (“I was concerned that Officer Philips might have been able to drain all the funds in my bank account through my debit card, so I cancelled my debit card.”); McMullen ¶ 8 (“I immediately closed down my prepaid debit card account so that American Payday, Inc. could not take any more money from me.”); Mutchler ¶ 9 (“I requested that Citibank close my account so that no further charges could be made by Broadway Global Master.”).

⁹⁷ Barringer ¶ 10 (“I was very upset and started crying.”); Carson-Huff ¶¶ 5 (“I was scared”), 27 (“This whole experience has been stressful, time-consuming, and very upsetting.”); Foster ¶ (“I was confused and scared”); Gervais ¶ 3 (“He threatened me with arrest, so I was seriously concerned . . . I was scared”); T. Johnson ¶¶ 2 (“Other callers also threatened me and said they would arrest me and take away my children. I specifically recall one of the callers saying, ‘How will your kids feel when you get arrested?’”), 5 (“One of my employees answered my business phone and later told me that the caller had cursed at her because she wouldn’t transfer the call to me.”); Kowal ¶ 3 (“The calls scared me and I was often shaking when I hung up the phone.”); Kowal II ¶ 9 (“I am extremely upset that I continue to receive calls from individuals claiming to be law enforcement officers.”); Whitney (BBB) Atts. A-5 (“she got scared”), A-14 (“I was scared”), A-24 (“I was scared . . . I felt threatened”), A-28 (“I became scared”)

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⁹⁹ See, e.g. *FTC v. Corzine* 2:94-cv-1446 (E.D. Cal. filed Sept. 12, 1994) (credit repair scam), *FTC v. Shared Network Services* 2:99-cv-1099 (E.D. Cal. filed June 2, 1999) (internet cramming), also *FTC v. American*

1 has broad authority under the FTC Act to ‘grant ancillary relief necessary to accomplish
2 complete justice’”) (quoting *FTC v. Pantror* 888 F.3d 1088, 1102 (9th Cir. 1994)); Singer
3 668 F.2d at 1113 (“We hold that Congress, when it gave the district court authority to grant a
4 permanent injunction against violations of any provisions of law enforced by the Commission,
5 also gave the district court authority to grant any ancillary relief necessary to accomplish
6 complete justice”). In fact, Congress observed that Section 13(b) “authorizes the FTC to
7 file suit to enjoin any violations of the FTC Act. The FTC can go into court ex parte to obtain an
8 order freezing assets, and is also able to obtain consumer redress.” S. Rep. No. 103-30, at 15-16
9 (1993), reprinted in 1994 U.S.C.C.A.N 1776, 1790-91.

10 B. The FTC meets the applicable legal standard for issuance of
11 a temporary restraining order and preliminary injunction.

12 The evidence submitted by the FTC meets the standard for issuing a TRO and a
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1 of deceptive behavior *FTC v. Sec. Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir.
2 1991); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989).

3 As to the second prong, in balancing the equities, the “public interest should receive
4 greater weight” than private interests. *World Wide Factors*, 882 F.2d at 347. This principle is

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1 As discussed in Section III.B.-~~Es~~supra Defendants misrepresent the following to
2 consumers: (1) that the consumer is delinquent on a payday loan that Defendants have the
3 authority to collect; (2) that Defendants are a law enforcement authority or that they are
4 otherwise affiliated with a government agency; (3) that the consumer will be arrested or
5 imprisoned for failing to pay the Defendants; and (4) that the Defendants can or will take formal
6 legal action against a consumer who fails to pay, such as filing suit.

7 These representations are presumed to be material because Defendants make them
8 expressly. Moreover, they are likely to affect – and in fact have affected – consumers’ conduct.
9 The FTC has shown a likelihood of success on its claim that Defendants are engaging in
10 deceptive practices in violation of the FTC Act.

11 b. Defendants’ practices violate the FDCPA.

12 The FTC is likely to show that Defendants are debt collectors engaging in deceptive and
13 abusive practices that violate the FDCPA. In 1977, the “FDCPA was enacted as a broad
14 remedial statute designed to ‘eliminate abusive debt collection practices by debt collectors, to
15 insure that those debt collectors who refrain from using abusive debt collection practices are not
16 competitively disadvantaged.’”

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1 they fail to pay Defendants the demanded sum. In fact, Defendants are not authorized to, and do
2 not intend to, have consumers arrested or imprisoned.

3 Defendants violate Section 807(5) by threatening to take action that is not lawful or that
4 the Defendants do not intend to take, such as filing suit. 15 U.S.C. § 1692e(5). As set forth in
5 Section III.E.supra

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1 likelihood of success on its claim that Defendants are engaging in deceptive and abusive
2 practices in violation of the FDCPA.

3 2. The balance of equities favors issuance of a TRO.

4 The equities support the issuance of a temporary restraining order in this case. Once the
5 FTC has shown a likelihood of success on the merits, the Court must balance the equities,
6 assigning greater weight to the public interest than to any of defendants' private concerns.
7 *Affordable Media*, 179 F.3d at 1236. The public equities in this case are compelling, as the
8 public has a strong interest in stopping the deceptive and abusive scheme, and in preserving the
9 assets necessary to provide effective final relief to victims. *See id.* at 1236; *FTC v. John Beck*
10 *Amazing Profits, LLC*, 2009 U.S. Dist. LEXIS 130923, at *50-51 (C.D. Cal. Nov. 17, 2009).
11 Defendants, by contrast, have no legitimate interest in continuing to deceive consumers and
12 persisting with conduct that violates federal law. *See World Wide Factors*, 882 F.2d at 347
13 (upholding district court finding of "no oppressive hardship to defendants in requiring them to
14 comply with the FTC Act, refrain from fraudulent representation or preserve their assets from
15 dissipation or concealment."). An injunction is required to ensure that Defendants' scheme does
16 not continue while the case is pending.

17 C. Kirit Patel is individually liable.

18 Patel is responsible for the deceptive and abusive practices of the corporations he
19 controls, and he therefore should be subject to the temporary restraining order and an asset
20 freeze. *Stefanchik*, 559 F.3d at 931; *Cyberspace.com.au*, 453 F.3d at 1202 (individuals can be liable
21 for corporate violations of the FTC Act). Individual liability for injunctive relief is appropriate
22 where the individual directly participated in or had the authority to control corporate acts and
23 practices. *Stefanchik*, 559 F.3d at 931; *FTC v. Medlab, Inc.*, 615 F. Supp. 2d 1068, 1081 (N.D.
24 Cal 2009). Authority to control can arise from assuming the duties of a corporate officer,
25 particularly when the corporate defendant is a small, closely-held corporation. *Atiyeh*, 875
26 F.2d at 573.

27 Individuals may also be liable for monetary relief if they had knowledge of the practices
28 at issue. *Publ'g Clearing House*, 104 F.3d at 1171. "The extent of an individual's involvement

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1 account signatory for BGMs (see Sections II.A. and III.C supra), Patel must know that his
2 companies are not making loans or purchasing actual debt from payday lenders.

3 Accordingly, Patel, having authority to control the challenges practices, participating in
4 them, and having full knowledge of them, should be held liable for the violations alleged in the
5 FTC's complaint.

6 D. Defendants operate as a "common enterprise."

7 Defendants operate their scheme as a common enterprise. Factors for determining the
8 existence of a common enterprise include: (i) common control; (ii) sharing office space; (iii)

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27 ¹⁰² Sabhi ¶ 46. The financial relationship between Broadway Global and In-Arabia is tangled. Bank records show
28 transfers to and from Broadway Global and various entities with the name In-Arabia ¶¶ 35, 37, 42, 73-74, Atts. M-N.

1 probability of success on the merits, the district court did not abuse its discretion in granting the
2 injunction to freeze World Wide's assets. Singer, 668 F.2d at 1113 ("13(b) provides a basis
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27 ¹⁰³ Sabhi ¶¶ 36, 41, 55.

28 ¹⁰⁴ Id.

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Respectfully submitted,

2 WILLARD K. TOM
3 General Counsel

4 /s/

LISA D. ROSENTHAL, Cal. Bar # 179486
5 SARAH SCHROEDER, Cal. Bar # 221528
6 KERRY O'BRIEN, Cal. Bar # 149264
AUSTIN A.B. OWNBEY, Cal. Bar # 272197
7 Federal Trade Commission
901 Market Street, Ste. 570
8 San Francisco, CA 94103
(415) 848-5100 (voice), (415) 848-5184 (fax)
9 lrosenthal@ftc.gov, sschroeder@ftc.gov
kobrien@ftc.gov, aownbey@ftc.gov

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