or practices in or affecting commerce. (*Id.*) Pursuant to the Omnibus Act § 626, 123 Stat. at 678, as clarified by the Credit Card Act § 511, 123 Stat. at 1763–64, the FTC promulgated the Mortgage Assistance Relief Services Rule ("MARS Rule"), 16 C.F.R. Part 322, recodified as Mortgage Assistance Relief Services, 12 C.F.R. Part 1015 ("Regulation O"). (*Id.*)[1]

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	**CV 16-00999-BRO (AFMx)**	Date	June 1, 2016
Title	**FEDERAL TRADE COMMISSION V. KUTZNER, ET AL.**		

Defendant Damian Kutzner ("Kutzner")

According to Plaintiff, "Defendants Kutz

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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12).) For those actually added to a case, Defendants have failed to deliver the promised recoveries, with all but one of the mass joinder actions having been dismissed for lack of prosecution, misjoinder, or failure to state a claim. (TRO at 9–10.) Moreover, given Defendants' unresponsiveness, clients are unable to receive status updates on their cases. (TRO at 10 (citing Leonido Decl. ¶ 13; Chapman Decl. ¶ 12; C. Durrett Decl. ¶¶ 14–17; Nava Decl. ¶¶ 8–12; Decl. of Malu Lujan ("

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Depinet, 11 F.3d 641, 650 (6th Cir. 1993)). The applicant "must show that defendants would have disregarded a direct court order and disposed of the goods within the time it would take for a hearing . . . [and] must support such assertions by showing that the adverse party has a history of disposing of evidence or violating court orders or that persons similar to the adverse party have such a history." *Id.* (citing *First Tech.*, 11 F.3d at 650–51). Conclusory statements by the applicant's counsel that the defendant will destroy goods will not justify ex parte issuance. Were such bare allegations sufficient, ex parte orders "would be the norm and this practice would essentially gut Rule 65's notice requirements." *Id.* at 1132. Nevertheless, there are occasions where notice should be excused, as rendering further prosecution fruitless "is surely not what the authors of the rule either anticipated or intended" in drafting the notice requirement. *Matter of Vuitton et Fils S.A.*, 606 F.2d 1, 5 (2d Cir. 1979).

The Court finds that Plaintiff has sufficiently demonstrated why notice should be excused in this matter. First, Plaintiff proffers evidence indicating that Defendants have evolved over time from ULG to Brookstone and Advantis in an effort to perpetuate their fraudulent practices. Based on Plaintiff's evidence, Defendant Kutzner appears to be a notable risk, as the evidence indicates that he is in violation of two previous permanent injunctions issued against him. (TRO at 1 n.1.) Further, Plaintiff has proffered evidence demonstrating that Defendants Kutzner, Torchia, and Broderick have a history of violating court orders; more specifically, "Kutzner, with Torchia's help, violated a bankruptcy court order when he absconded with ULG's computers and monitors by 'breaking and entering' the bankruptcy estate's premises," (TRO at 30 (citing *In re United Law Grp. Inc.*, No. 10-18945 (Bankr. C.D. Cal.)), a court has previously sanctioned Brookstone and Torchia, issuing a bench warrant to compel Torchia's appearance after he and Brookstone ignored the court's orders, (*id.* (citing Order to Show Cause Re Compliance of August 7, 2016 Order (Dkt. 52) and Why Enforcement or Contempt Proceedings Should Not Commence, *Randall v. Citigroup, Inc.*, LA CV14-00097 JAK (AGRx) (C.D. Cal. Feb. 23, 2015)), and Broderick has testified during discovery proceedings that he destroyed a computer and cell phone that he used to conduct business prior to a Rule 30(b)(6) deposition, (*id.*).

In light of these facts, the Court concludes that Plaintiff has satisfied its burden under *Reno Air*, justifying excusal of Rule 65's notice requirement. *See Reno Air*, 452 F.3d at 1131.

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Moreover, Plaintiff adequately demonstrates a likelihood that Brookstone and Advantis form a "classic common enterprise," as Plaintiff provides evidence establishing their relationship to the Individual Defendants and their connection with the allegedly fraudulent scheme. Plaintiff has also shown that the Individual Defendants are liable because they "had knowledge that the [company] or one of its agents engaged in dishonest or fraudulent conduct, that the misrepresentations were the type upon which a reasonable and prudent person would rely, and that consumer injury resulted." *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1101 (9th Cir. 2014) (internal quotation marks omitted). Thus, based on the information before the Court at this time, Plaintiff has established that it is likely both the Corporate and Individual Defendants could be liable under Section 5 of the FTC Act.

Given that Plaintiff has proffered sufficient evidence to demonstrate a likelihood of success on its Section 5 claim, the Court concludes that this factor weighs in favor of granting Plaintiff's Ex Parte Application.[8] *See World Wide Factors*, 882 F.2d at 347 ("Because irreparable injury must be presumed in a statutory enforcement action, the district court need only to find some chance of probable success on the merits." (quoting *United Stated v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 176 (9th Cir. 1987))). The Court now turns to the balance of equities.

2. The Balance of Hardships Weighs in Plaintiff's Favor

"[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*, 882 F.2d at 347. Here, the public interest in granting Plaintiff's Ex Parte Application is significant, as Plaintiff has proffered sufficient evidence to demonstrate a likelihood that Defendants have engaged in a scheme to defraud public consumers in violation of the FTC Act. Given that this scheme has evolved from Defendant Kutzner's ULG to Brookstone and Advantis notwithstanding the disbarment and/or suspension of certain

[8] In its TRO, Plaintiff states that "[a]ll of the relief included in the proposed TRO is supported by [D]efendants' high likelihood of violating Section 5 of the FTC Act," therefore "the Court need not reach" the MARS Rule claim "to grant the requested preliminary relief." (TRO at 24.) Given that an analysis regarding the merits of Plaintiff's MARS is unnecessary at this stage in the action, the Court will not do so at this time.

attorneys involved, as well as other official action taken to thwart

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4. Bond Amount

A TRO typically is accompanied by payment of a bond "in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered