IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

FEDERAL TRADE COMMISSION , Plaintiff, v. GRAND TETON PROFESSIONALS, LLC, et al., Defendants.	FILED UNDER SEAL Case No. June 17, 2019

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

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I. INTRODUCTION

Plaintiff, the Federal Trade Commission ("FTC"), brings this action to halt a pernicious credit repair scheme that has defrauded millions of dollars from consumers nationwide. Through Internet websites and unsolicited emails and text messages, Defendants promise substantially improve consumers' credit scores by removing all negative items and hard inquiries from their credit reports or by adding seasoned tradelines to their credit histories. Despite their promises and the extraction of thousands of dollars in illegal advanced fees, Defendants typically have not been able to raise consumers' credit scores. In many instances, when victimized consumers complain about the lack of results, Defendants threaten them with legal action for violating anti-disparagement clauses. Defendants also allow consumers to finance their substantial fees but fail to make critical disclosures. Finally, Defendants initiate electronic fund transfers from consumers' accounts without proper authorization and unlawfully use remotely created checks. Defendants unlawful activities have caused at least $6.2 million in consumer injury.

Defendants' actions violate Section 5 of the FTC Act, 15 U.S.C. § 45, the Credit Repair Organizations Act ("CROA"), 15 U.S.C. §§ 1679–1679j, the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, the Consumer Review Fairness Act of 2016 ("CRFA"), 15 U.S.C. § 45b, the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601–1667f, and its implementing Regulation Z, 12 C.F.R. Part 1026, and the Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. § 1693e(a) and its implementing Regulation E, 12 C.F.R. Part 1005.

To put an immediate stop to Defendants' illegal conduct, the FTC seeks, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), an *ex parte* temporary restraining order ("TRO") with an order to show cause why a preliminary injunction should not issue. The proposed TRO would enjoin Defendants' illegal practices, freeze their assets, disable their

Internet websites, allow the FTC immediate access to Defendants' business premises to inspect and copy documents, and impose other relief. These measures are necessary to prevent continued consumer injury, dissipation of assets, and the destruction of evidence, thereby preserving this Court's ability to provide effective final relief.

II.

attorneys, to initiate federal court proceedings to enjoin violations of the FTC Act, CROA, the TSR, the CRFA, TILA and Regulation Z, and EFTA and Regulation E, and to secure such equitable relief as may be appropriate, including consumer redress or disgorgement of ill-gotten gains. *See, e.g., FTC v. Bronson Partners, LLC*, 654 F.3d 359, 365-67 (2d Cir. 2011).

B. Defendants

Defendants include ten interrelated corporations operating as a common enterprise and two individuals who manage and run the credit repair scam. The corporate Defendants are:

- Grand Teton Professionals, LLC

indicates that Defendants use Demand Dynamics to pay their employees and independent contractors. (*Id.* at 23 ¶ 34.)

- Atomium Corps Inc. ("Atomium–WY") and Atomium Corps Inc. ("Atomium–CO") are Wyoming and Colorado corporations, respectively. (*Id.* at 4 Table 1, Att. B at 54–63, Att. C at 65–69.) Both Atomium entities were incorporated on October 31, 2016. (*Id.*) Defendants use the pair of Atomium companies to process payments from consumers. Atomium–CO maintains several merchant processing accounts to process credit and debit card and ACH payments, with those funds then deposited into bank accounts held by Atomium–WY. (*Id.* at 12–15 Table 5, Att. DD, Att. FF, Att. GG, Att. HH, Att. II, Att. JJ.)

- Startup Masters NJ Inc. ("Startup Masters–WY") and Startup Masters NJ Inc. ("Startup Masters–NJ") are Wyoming and New Jersey corporations, resp10 (r)n corpoporat Jersec

- Douglas Filter, who is or was the manager and organizer of Grand Teton, manager, president, and director of 99 Floor and Demand Dynamics, and president of Atomium–WY, Startup Masters–WY, and First Incorp–WY.[5] (*Id.* at 1 Table 4, Att. A at 47-52, Att. B at 54-63, Att. D at 77-79, Att. E at 84-87, Att. G at 93-116, Att. I at 121-24; PX16 Att. JJ at 146-47 (letter from Grand Teton to consumer signed by Filter as "President").) Mr. Filter is the signatory on many of Defendants' deposit accounts. (PX17 at 3 Table 6, Att. KK, Att. LL, Att. MM, Att. NN, Att. OO, Att. QQ, Att. SS, Att. TT, Att. UU, Att. VV.) He is the registrant and billing contact person f-4 (D) (D) (0o(n)-10 (y)20 (of) [(.))3 ( )]T

lists vendor as Grand Teton Professionals); PX11 at 11 ¶ 46 (payment charged to Atomium); PX16 at 17 ¶ 99, Att. AA at 122, Att. BB at 124; PX17 Att. A at 138, 233; PX18 at 12-15 Table 5 (merchant accounts with 99th Floor, Atomium, Demand Dynamics, First Incorporation, Startup Masters NJ).)

Defendants represent that they are located at 261 South Main Street, Newtown, Connecticut on their websites and in consumer correspondence. (PX03 Att. A at 10; PX06 Att. B at 13; PX07 Att. C at 14; PX10 Att. G at 33; PX14 Att. E at 30; PX18 at 10 ¶ 21.) That address, however, is a commercial mail receiving (PX18 at 7 Table 3, Att. N at 160-62.) On corporate papers, bank statements, and service accounts, Defendants list different addresses, some of which are mail drops or virtual offices—including several in Florida and New York—while others appear to be residences titled to persons unrelated to Defendants. (*Id.* at 7 Table 3, at 23-25 Table 9, Att. M at 156-58.) A review of bank records, IP log-in addresses from Internet service providers and payment processors, phone records, and statements on Mr. Andrade's personal website show Defendants likely do not have a central operating physical location in the United States. (*Id.* Att. AA at 810, 813, Att. CC at 822-24.) Instead, their sales force appears to consist of employees or independent contractors located throughout the United States, Brazil, and The Philippines; their purported fulfillment office is located in The Philippines; and Mr. Filter and Mr. Andrade likely work out of their residences. (*Id.* at 22 ¶ 34, Att. AA at 810, Att. CC at 822-24; PX09 at 3 ¶ 9 (representative told consumer that Defendants had employees throughout the world, but consumer thought company was based in Connecticut); PX17 Att. A at 169 (consumer spoke with employees in the Philippines).)

III. DEFENDANTS' UNLAWFUL BUSINESS PRACTICES

Since at least mid-2014, Defendants have deceptively marketed credit repair services online and through telemarketing. Defendants' unlawful credit repair practices fall into four main categories: (1) false promises that they will remove negative information from consumers' credit reports and improve consumers' credit scores, in violation of the FTC Act, CROA, and the TSR; (2) advising consumers to mislead credit reporting agencies (through filing false ID theft affidavits) and lenders (through the use of third-party tradelines), in violation of CROA; (3) failure to make required CROA disclosures; and (4) collection of prohibited advance fees for credit repair services, in violation of CROA and the TSR.

In addition to these unlawful credit repair practices, Defendants unlawfully attempt to

product. *FTC v.*

need not prove that Defendants' misrepresentations were made with an intent to defraud or deceive or were made in bad faith. *See, e.g.*, *Verity Int'l*, 443 F. 3d at 63; *Removatron Int'l Corp. v. FTC*, 884 F.2d 1489, 1495 (1st Cir. 1989); *FTC v. World Travel Vacation Brokers*, 861 F.2d 1020, 1029 (7th Cir. 1988).

A representation is also deceptive if the maker of the representation lacks a reasonable basis for the claim. *See FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 8 (1st Cir. 2010). Where the maker lacks adequate substantiation evidence, they necessarily lack any reasonable basis for their claims. *Id.*; *see also Removatron Int'l Corp.*, 884 F.2d at 1498; *FTC v. OMICS Grp. Inc.*, 2017 U.S. Dist. LEXIS 161910, at *5 (D. Nev. Sep. 29, 2017).

Similarly, Section 404(a)(3) of CROA prohibits credit repair organizations from making or using "any untrue or misleading representation of the services of the credit repair organization." 15 U.S.C. § 1679b(a)(3).[8] Further, the FTC only needs to show an untrue or misleading statement regarding a credit repair service; the statement need not be designed to induce the consumer's purchase. *FTC v. Gill*, 265 F.3d 944, 955 (9th Cir. 2001); *FTC v. RCA Credit Servs., LLC*, 727 F. Supp. 2d 1320, 1334 (M.D. Fla. 2010). And Section 310.3(a)(2)(iii) of the TSR prohibits sellers and telemarketers from

Here, Defendants' core misrepresentation is that their purported credit repair services will substantially improve consumers' credit scores.

PX05 at 1 ¶ 2; PX06 at 1¶ 3; PX07 at 1 ¶ 3; PX08 at 1 ¶ 3; PX11 at 5 ¶ 20; PX14 at 1 ¶ 4; PX16 at 16 ¶ 94.) For example, Defendants' websites, deletionexpert.com and inquirybusters.com, claim:

- REMOVE ALL NEGATIVE ITEMS FROM CREDIT REPORT IN 3 TO 6 WEEKS (PX18 Att. Q at 298; *see also* PX16 at 9 ¶ 52.)
- Guaranteed to Remove ALL Negative Items on your Credit (PX18 Att Q. at 256; *see also* PX05 at 1 ¶2; PX16 at 9 ¶ 52.)
- REMOVE ALL QUALIFIED INQUIRIES IN 3 TO 6 WEEKS – 100% SUCCESS RATE GUARANTEED! (PX18 Att. R at 322; PX03 Att. A at 7; PX14 Att. A at 5.)
- Credit Score Effects: Credit Scores typically go UP by 50 to 250 Points, all else being equal (PX18 Att. Q at 256.)

Defendants' unsolicited texts and emails make similar claims: "We GUARANTEE to delete your Negative Items in 8 weeks and Hard Inquiries in 6 weeks" (PX05 at 1 ¶ 2, Att. A; PX07 Att. A at 8) and "Purchase our Full Credit Sweep, including Inquiry Removal Service for $2,999. . . Boost your credit scores by 150+ points!" (PX10 at 4 ¶ 17, Att. F at 21-23.)

Defendants bolster their website claims with numerous testimonials from purported satisfied customers who have successfully used Defendants' credit repair services. (PX06 at 1 ¶ 3; PX14 at 1 ¶ 4; PX16 at 10 ¶ 53; PX18 Att. Q at 296-320, Att. R at 426-56.) For example, one consumer testimonial claims that as a result of Deletion Expert's work his credit score is "back in the 700s." (PX18 Att. Q at 309.) Another purported testimonial recounts how Deletion Expert "began making the credit bureaus remove negative accounts." (*Id.* at 313.) A purported customer claimed, "It took about 4 weeks and all 17 inquiries were gone and my credit scores went up! And I ended up with 775 from TransUnion, 780 from Experian and 745 from Equifax." (*Id.* Att. Q at 318.) Another purported testimonial claimed his credit scores went "from 586 to 676 in 52 Days." (*Id.* at 439.) Yet another testimonial claimed "Veronica Raised her Credit Scores from 599 to 684 in 39 days" and that "Veronica's results are the norm here."

(*Id.* at 454.) Defendants also include testimonials in their unsolicited emails and text messages, which provide a link to Defendants' websites and a toll-free number for consumers to call for more information.

Defendants reiterate their claims during telephone conversations with consumers. (PX02 at 1 ¶ 4; PX03 at 1 ¶ 4; PX04 at 1 ¶ 4; PX05 at 1 ¶ 3; PX07 at 1 ¶ 6; PX08 at 1 ¶ 4; PX09 at 1 ¶ 2; PX10 at 3 ¶ 14; PX11 at 5 ¶ 21; PX16 at 2 ¶ 9, 10 ¶¶ 54-55, 13 ¶ 73, 16 ¶ 95; PX17 at 3 ¶ 10, Att. A at 41.) For example, consumer James Kocher states that Defendants' representative claimed that his credit score would improve by up to 100 points within four weeks. (PX02 at 1 ¶ 4.) Defendants told consumer Jennifer Bauer that Deletion Experts could "remove all negative items from my credit reports within 8 weeks, and that my credit scores would go up to the high 600s within 8 weeks." (PX07 at 1 ¶ 6; *see also id.* at 2 ¶ 7 (telemarketer followed up conversation with email guaranteeing that negative items and inquiries would be removed from credit report within 8 weeks).) Defendants told Joshua McDonald hard inquiries would be gone within 6 weeks. (PX03 at 2, 3 ¶¶ 6, 10; *see also* PX11 at 7 ¶ 31 (Defendants would remove negative items within 60 days).)

Defendants claim to remove negative information in one of two ways: a fast track credit sweep/expedited option and a manual credit repair option. (PX05 at 4 ¶ 13; PX17 Att. A at 41; PX18 Att. Q at 224, 226.) The former method involves the consumer filing an identity theft affidavit to remove negative information supposedly resulting from such theft. (PX05 at 4 ¶ 13; PX16 at 2 ¶ 10; PX18 Att. Q at 224.) The latter method involves Defendants submitting handwritten dispute letters to the credit bureaus. (PX02 at 1 ¶ 3; PX03 at 1 ¶ 4; PX04 at 1 ¶ 4; PX05 at 1 ¶ 3; PX06 at 1 ¶ 4; PX07 at 1 ¶ 6; PX08 at 1 ¶ 4; PX18 Att. Q at 226.) Defendants claim that credit bureaus disregard consumers' typed letters disputing negative information:

> [Consumer bureaus] scan the Dispute Documents, run them through an OCR Scanner to detect all the text in the Document, then analyze the text to try to match the text to one of tens of thousands of prior Dispute Letter Templates they have previously received from other Consumers. [Then the] System just spits back to the Consumer the information reported by the Creditor and claims the information was Verified.' (PX18 Att. Q at 226.)

By submitting handwritten letters "with a variety of different hand writing styles, and particularly hand-writing that is hard for OCR Scanners to identify," Defendants promise that "the chances of getting a Negative Item removed is increased dramatically." (*Id.*) Defendants also claim to dispute each negative item with a dispute letter to the creditor, the credit bureaus, and the FTC. They claim that:

> [i]n many cases, we will not get a response, which automatically qualifies the negative to be deleted. In other cases, one or the other target will be the right one to grant our requests and call for the elimination of the negatives. This 3-Way Dispute method is much more effective than the One-Way or Two-Way Methods used by the vast majority of Credit Repair Companies out there. (*Id.*)

(*See also* PX02 at 1 ¶ 3 (Defendants' telemarketer claimed that once they submitted a dispute, the credit bureaus would have to validate the negative items or "they would be required to remove them."); PX04 at 1 ¶ 4 (telemarketer stated that Defendants would keep sending letters until credit bureaus removed negative information).)

These claims are material. First, because they are express, they are presumed material. *See Bronson Partners*, 564 F. Supp. 2d at 125, 135. Even without a presumption, claims regarding a company's ability to raise credit scores by removing negative items or hard inquiries are material because they "involve information that is important to consumers," *id.*, at 135, especially when consumers are deciding whether to sign up for the company's credit repair services.

Despite their express guarantees, Defendants generally failed to remove most or any negative items or inquiries from consumers' credit reports. In numerous instances, after taking

hundreds or thousands of dollars from consumers in up-front fees. Defendants stopped corresponding with consumers and blamed them for the lack of results, claiming consumers

– whether typed or handwritten – is not sufficient to cause a credit bureau to delete the information without an attempt to verify the consumer's position. (*Id.* ¶ 12.) Because few, if any, consumers report that they provided specific reasons to Defendants to justify removal of negative information, based on the FTC's experiences with other credit repair companies, Defendants likely send non-specific letters disputing all or almost all negative information. Such letters, according to Equifax, would not be successful. (*Id.* ¶ 14.) In addition, the removal of hard inquiries older than twelve months would not affect credit scores. (*Id.* at 2 ¶ 5.)

Moreover, Defendants had no reasonable basis to make the credit repair guarantees because they did not first obtain personalized information regarding consumers' credit histories. According to Equifax and Fair Is

personal relationship—they are entirely unrelated parties, brought together by Defendants solely for the purpose of artificially inflating authorized users' credit scores.[13]

Defendants charge thousands of dollars for their "credit piggybacking" service, marketed under the brand "Top Tradelines." On their websites and in unsolicited emails and text messages, they claim this service will improve consumers' credit scores:

- Guaranteed to boost credit scores. Guaranteed to post on all 3 credit bureaus (PX18 Att. S at 458, 497; PX04 at 2 ¶ 8, Att. B at 10; PX05 at 1 ¶ 2, Att. A at 9; PX11 Att. H at 47.)
- Permanet Score Improvement! (PX18 Att. S at 459.)

(PX10 at 1, 4 ¶¶ 3, 17, Att. A at 7 (email to consumer claimed 100+ point increase by purchasing tradelines); Att. F at 25 (text messages claiming tradeline packages will "Boost your credit scores by 100+ points!"); PX16 at 3 ¶ 19 (website mentioned addk-2 (o)-1neogddk-6 (r)3 b6t3d(l)-2P01(19 ()3

Weeks for Detarius!”(*Id*. at 547.)

utilization ratio, an authorized user's credit score could decrease. (*Id.*) Further, even if the addition of tradelines could improve a consumer's credit score, it would take more than the 30 to 60 days promised by Defendants and would depend on each individual consumer's credit profile. (*Id.*) In addition, FICO Score 8, released to the marketplace in 2009, substantially reduces any benefit of added tradelines. (*Id.*) In short, without a full assessment of the added tradeline and the authorized users' specific credit history, Defendants cannot truthfully guarantee that tradelines will increase credit scores.

But even if the addition of tradelines could improve a consumer's credit score in the promised time frames, in virtually all cases Defendants did not even provide consumers with the tradelines they purchased. (PX04 at 3, 4 ¶¶ 10, 14; PX08 at 4 ¶ 17; PX10 at 2-3, 5 ¶¶ 8, 11, 19, Att. C at 12 (consumer received email saying tradeline was added but when he checked his credit report it was not there); PX11 at 9 ¶ 39; PX16 at 4-6, 9 ¶¶ 22, 26, 32, 48; *see also* PX17 at 3 ¶ 10, Att. A at 225, 229, 242, 258.) In the handful of instances where some tradelines did successfully post, consumers report that the tradelines did not substantially improve their credit histories or credit scores. (PX11 at 12 ¶ 50; PX16 at 5 ¶ 27 (one tradeline was posted but flagged and deleted by bank shortly thereafter); PX17 Att. A at 247 (consumer's score went down after Defendants added tradeline).)

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Thus, Defendants' credit repair misrepresentations violate Section 5 of the FTC Act, as alleged in Count I of the Complaint, Section 404(a)(3) of CROA, as alleged in Count VI of the Complaint, and Section 310.3(a)(2)(iii) of the TSR, as alleged in Count XII of the Complaint.

2. Defendants Advise Consumers To Make False Statements

Section 404(a)(1) of CROA prohibits credit repair organizations from "counsel[ing] or advis[ing] any consumer to make any statement which is untrue or misleading . . . with respect

to any consumer's credit worthiness, credit standing, or credit capacity to (A) any consumer reporting agency or (B) any person (i) who has extended credit to the consumer or (ii) to whom the consumer has applied or is applying for an extension of credit." 15 U.S.C. § 1679b(a)(1). Here, Defendants encourage and advise consumers to make false statements to credit bureaus and creditors in violation of CROA.

a. Defendants Advise Consumers To File False ID Theft Affidavits

As discussed above, Defendants offer two methods by which they purportedly remove negative information from consumers' credit histories: credit sweep/fast track and manual credit repair. Under the first method, Defendants make use of provisions in the Fair Credit Reporting

Moreover, Defendants encourage the good-credit consumers to "activate each Credit Card and use them for some of your existing Day-To-Day Expenses, such as Gas, Groceries, Online Purchases, etc, in order to show the Bank that the Authorized User Accounts are actually being used." (*Id.*) Defendants assure consumers that "[i]t is 100% Legal," and that, "Yes, Banks and Credit Card Companies allow you to add Authorized Users on your Credit Card Accounts, and they can be ANYONE, and can be added for ANY REASON." (*Id.* at 629, 637.)

In reality, Defendants are advising consumers (both the good-credit consumers with the tradelines and the lower-credit consumers seeking tradelines) to mislead creditors about the lower-credit consumers' credit worthiness or credit capacity, including by claiming that the lower-credit consumers are legitimate "authorized users" of the good-credit consumers' lines of credit. (PX08 at 2 ¶ 7 (Defendants' telemarketer explained that Top Tradelines would add seasoned credit cards to consumer's credit account "to make it look like they were your credit cards").) Unlike situations where a family member or close personal friend allows someone access to their credit (for example, by serving as a guarantor or co-signor), the consumers are not truly "authorized users" on these third-party individuals' credit accounts because they cannot access those accounts. Thus, Defendants are advising potential Top Tradeline consumers to mislead creditors about their creditworthiness, and advising consumers with good credit to mislead creditors about purported "authorized users" on their accounts.[16] Thus, Defendants violate Section 404(a)(1)(B) of CROA, as alleged in Count V of the Complaint.

[16] Defendants may argue that they relied on a 2007 news article quoting a former FTC press officer who stated, in regards to the practice of credit piggybacking, "'What I've gathered from attorneys here is that it appears to be legal' technically. . . .'However, the agency is not saying that it is legal.'" This argument fails because a press statement is not a "final agency action" that could bind the FTC. *See, e.g., Trudeau v. FTC*, 384 F. Supp. 2d 281, 288-89 (D.C. Cir. 2005) (noting that "[n]o court has ever found a press release to be a final agency action under the APA"). In addition, the statement expressly clarifies that the FTC has not deemed the practice to be legal.

3. Defendants Fail to Make Required CROA Disclosures and Provide Consumers with CROA-Compliant Contracts

CROA requires credit repair organizations to make specific disclosures and provide consumers with written contracts that comply with the requirements of the statute. CROA's requirements include (1) a written statement using prescribed language regarding "Consumer Credit File Rights Under State and Federal Law" before any contract or agreement is executed, 15 U.S.C. § 1679c(a); (2) a full and detailed description of the services to be performed and an estimate of the date by which the performance of the services will be complete, 15 U.S.C. § 1679d(b)(2); (3) a conspicuous statement in bold face type, in immediate proximity to the space reserved for the consumer's signature on the contract, which reads as follows: "You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the date on which you signed the contract. See the attached notice of cancellation form for an explanation of this right." 15 U.S.C. § 1679d(b)(4); (4) a separate "Notice of Cancellation" form, 15 U.S.C. § 1679e(b); and (5) a copy of the completed contract. 15 U.S.C. § 1679e(c).

Here, consumers report that Defendants do not provide them with any of the CROA-mandated documents and disclosures. (PX02 at 2 ¶ 7; PX03 at 3 ¶ 13; PX05 Att. F at 28; PX06 at 2 ¶ 7; PX08 at 3 ¶ 10; PX09 at 1 ¶ 4; PX11 at 8 ¶ 34; PX16 at 3 ¶ 15, 11 ¶ 59, 18 ¶ 100.) For example, in some instances, Defendants do not require consumers to sign documents at all, in complete contravention to Section 1679d. (PX02 at 2 ¶ 7; PX03 at 3-4 ¶ 11; PX06 at 2 ¶ 7; PX08 at 3 ¶ 10; PX09 at 1 ¶ 4; PX11 at 8 ¶ 34.) In instances where Defendants do require consumers to sign forms, these forms are usually no more than authorizations for Defendants to charge consumers' credit or debit cards and do not conform to CROA's requirements for credit repair contracts, such as providing a description of the services to be performed or notifying consumers of their contract cancellation rights. (*See, e.g.*, PX05 Att. F at

28; PX16 at 17 ¶ 98, Att. Z at 120.) Defendants generally require these forms be signed via an online notary platform, Notarize.com, that connects consumers to a notary via online video chat and allows them to e-sign documents over the Internet. (PX03 at 2, 3 ¶¶ 7, 9, 11; PX05 at 3 ¶ 11; PX07 at 3 ¶ 11; PX10 at 2 ¶ 7, Att. B at 10; PX16 at 10, 13-18 ¶¶ 77, 178, 198; *see generally* PX15 at 14 ¶¶ 3-10.) Many consumers report never receiving a copy of the documents they signed, and although Notarize.com makes these documents available on the platform, consumers must sign in and download copies. (PX03 at 3 ¶ 11; PX07 at 3-4 ¶¶ 14, 15; PX10 at 2 ¶ 9; PX11 at 6 ¶ 24, 11 ¶ 45; PX15 at 4 ¶ 11; PX16 at 15 ¶ 158)

In addition, consumers also report they never received a statement regarding their credit file rights, which must be in written form and provided separately from the contract, or

And although on the online sign-up page, consumers are asked to check a box that they have read the Terms of Use and there is a hyperlink to the page, consumers can check the box without clicking on the hyperlink. *Id.*) Finally, as discussed above, some consumers sign up for Defendants' services as a result of mail, text message, or phone solicitations, without interacting with their websites at all. (*See, e.g.*, PX05 at 1 ¶ 2).

Thus, Defendants violate Section 405(a) of CROA, as alleged in Count IX of the Complaint, Sections 406(b)(2) and (4) of CROA, as alleged in Count IX, Section 407(b) of CROA, as alleged in Count X, and Section 407(c) of CROA, as alleged in Count XI.

4. Defendants Illegally Collect Advance Fees for Credit Repair Services

Section 404(b) of CROA prohibits credit repair organizations from "charging or receiving any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform before such service is fully performed." 15 U.S.C. § 1679b(b); *see also Gill*, 265 F.3d. at 956 ("The CRO Act prohibits acceptance of any payment before fully performing all services (even assuming [the defendant] could and did do what he represented he would do)."). Similarly, Section 310.4(a)(2) of the TSR prohibits sellers and telemarketers from "requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until: (a) the time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and (b) the seller has provided the person with documentation in the form of a consumer report from one of the u.eu.en26 92 (u

($499) up front. Defendants set up payments (either via credit card or ACH withdrawals) at the time consumers sign up for their credit repair services, and charge consumers' credit cards or debit their bank accounts the down payment almost immediately before any services have been

498 (S.D.N.Y. 2004) The FTC meets the first prong (substantial injury) by establishing, among other things, tha-2 (ha/n)-8 (g)12 ( )]TJ3r

In some instances, when consumers have left (or threatened to leave) negative reviews of Defendants' services, Defendants have responded by sending cease and desist letters and threatening to file lawsuits. (PX03 at 4-5 ¶ 15, Att. D at 27; PX14 at 2 ¶ 9, Att. D at 22; PX16 Att. G at 46-48; *see also* PX17 at 3 ¶ 10.) For example, shortly after consumer Joshua McDonald filed a complaint with the Consumer Financial Protection Bureau, he received a cease and desist letter from someone purporting to be Defendants' lawyer. (PX03 at 4-5 ¶ 15, Att. D at 7.) Meanwhile, after consumer John Crowe posted a review on the website Sitejabber, he received an email from "Samantha Roberts of the Litigation Department of Grand Teton Professionals" threatening him with a $25,000 defamation lawsuit for his negative review. (PX14 at 2 ¶ 9, Att. C at 20, Att. D at 22.) Consumer Philimina Louis was also threatened with a lawsuit if she "posted any negative information." (PX16 at 22 ¶ 118, Att. JJ at 147 ("Each time You violate the Non-Disparagement Terms, the liquidated damages will be $25,000, for each violation").) Consumer Diecson Vilarino received a letter from one of Defendants' purported lawyers stating that

> Under your Contract with TopTradlines.com you are liable to Toptradlines for liquidated damages in the sum of $5,000 per breach of the non-disclosure provision and $25,000 per breach of the non-disparagement provision. Further under Florida law, it is unlawful to engage in defamation of another's character and reputation.

(PX16 Att. G at 46.)

Defendants' anti-disparagement provisions meet all three statutory elements of an unfair practice under Section 5(n). First, they cause or are likely to cause substantial injury to

* * *

3. Each time You violate the Non-Disparagement terms, the liquidated damages will be $25,000, for each violation.
4. If You don't pay an amount due within thirty (30) days after we send you a late payment notice, then the liquidated damages will be three times the total amount you were billed but failed to pay.

secrets or private medical information), Defendants' anti-disparagement clause does not appear to protect any legitimate interest of either Defendants or the consumers "agreeing" to it. Defendants could argue that banning negative reviews would keep prospective customers from being misled by disgruntled customers or false information. There is no reason, however, to believe that these supposed benefits to consumers outweigh the substantial injury the anti-disparagement clause is likely to cause. Indeeust clons-10 (g)10 ()4 (e)4 (p -10 (g)10 ()4 (-2 (v). Twv<6 (

provisions seek to prohibit—to "disparage or comment negatively, directly or indirectly," about Defendants—is a "covered communication" under the CRFA. Thus, effective March 14, 2017, the CRFA "renders void" Defendants' anti-disparagement provisions and they are prohibited from including such provisions in their contracts. Accordingly, Defendants violate the CRFA as alleged in Count XV of the Complaint.

2. Defendants' Anti-Chargeback Provision Is Unfair

Defendants also employ unlawful tactics to undermine consumers' ability to seek chargebacks of fees paid. Defendants' form contracts contain buried provisions that discourage consumers from exercising in a timely fashion their dispute rights under the Fair Credit Billing Act (sometimes referred to as a "chargeback").[22] These provisions typically require consumers

Your failure to follow these procedures before submitting a Chargeback/Unauthorized charge dispute to your credit card company is a major breach of this Contract. In the Contract you agreed to pay Toptradelines.com liquidated damages equal to 200% of the amount of the charge initiated

consumers complied with Defendants' rules, they would likely not receive a refund. At its core, the anti-chargeback provision seems formulated to send consumers on a dilatory and expensive wild goose chase in order to deny them their statutory rights to dispute charges for services they never received.

Second, consumers cannot reasonably avoid the harm caused by these provisions. As discussed above, the anti-chargeback provisions are buried in their "Terms of Use" and in credit card authorization forms, so that many consumers are unlikely to see it. And even when

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written authorization for preauthorized transfers (even if they were valid). (PX02 Att. A at 5.) Thus, Defendants violate EFTA and Regulation E, as alleged in Count VIII of the Complaint.[26]

D. Consumer Injury

A preliminary review of bank records suggests that Defendants have taken in gross revenues of at least $6,242,745 between mid-2016 and October 2018. (PX18 at 20 ¶ 31.)[27] Further, Defendants have generated at least 1,114 complaints. (PX17 at 3 ¶ 9.)[28]

IV. A TEMPORARY RESTRAINING ORDER SHOULD ISSUE AGAINST DEFENDANTS

A. This Court Has the Authority to Grant the Requested Relief

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to seek, and the Court to issue, temporary, preliminary, and permanent injunctions. The second proviso of Section 13(b), under which this action is brought, states that "the Commission may seek, and after proper proof, the court may issue, a permanent injunction" against violations of "any provision of law enforced by the Federal Trade Commission." 15 U.S.C. § 53(b).[29] "[C]ourts

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[26] As with the CROA disclosures, Defendants may argue that copies of consumers' authorizations are available on the Notarize.com online platform. As with the CROA disclosures, however, the EFTA distinguishes between statutory requirements to "provide" and to "make available." Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b), expressly state that a copy of the authorization for a preauthorized transfer "shall be provided," not "made available" to the consumer.

[27] Although Defendants' credit repair misrepresentations are made predominantly under the Inquiry Busters, DeletionExpert, and Top Tradelines brands, Defendants' other brands also contain the same anti-chargeback provisions. As a result, it is appropriate to include gross revenues from all of Defendants' brands in the consumer injury calculation.

[28]

have consistently held that 'the unqualified grant of statutory authority to issue an injunction under [S]ection 13(b) carries with it the full range equitable remedies, including the power to grant consumer redress and compel disgorgement of profits.'" *Bronson Partners*, 654 F.3d at 365; *LeanSpa*, 2015 U.S. Dist. LEXIS 26906, at *49. By enabling the courts to use their full range of equitable powers, Congress gave them authority to grant preliminary relief, including a temporary restraining order, preliminary injunction, and asset freeze. *U.S. Oil & Gas*, 748 F.2d at 1434 ("Congress did not limit the court's powers under the final proviso of §13(b), and as a result this Court's inherent equitable powers may be employed to issue a preliminary injunction, including a freeze of assets, during the pendency of an action for permanent injunctive relief."). The Court therefore can order the full range of equitable relief sought and can do so on an *ex parte* basis. *Id.* at 1432 (authorizing preliminary injunction and asset freeze).[30]

B. The FTC Meets the Standard for Granting a Government Agency's Request for Preliminary Injunctive Relief

The standard for awarding preliminary relief in actions brought under Section 13(b) is lower than that required for private litigants. The Second Circuit applies a modified standard where, as here, the applicant is a government agency that is acting under its statutory authority to safeguard the public interest. *See City of New York v. Golden Feather Smoke Shop, Inc.*, 597 F.3d 115, 120 (2d Cir. 2010); *United States v. Diapulse Corp. of America*, 457 F.2d 25, 27 (2d Cir. 1972) ("[T]he function of a court in deciding whether to issue an injunction authorized by a

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proviso requirement that the FTC institute an administrative proceeding). *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984).

[30] Numerous courts in this district and throughout the Second Circuit have granted or affirmed temporary injunctive relief similar to that requested here. *See, e.g.*, *FTC et al. v. Campbell Capital LLC*, Case No. 1:18-cv-01163-LJV-MJR (W.D.N.Y. Oct. 25, 2018), ECF No. 17; *FTC v. Pairsys, Inc.*, Case No. 1:14-cv-01192-TJM-CFH (N.D.N.Y. Sep. 30, 2014), ECF No. 7; *FTC v. Marczak*, Case No. 1:12-cv-07192-PAE (S.D.N.Y. Sep. 25, 2012), ECF No. 15; *FTC et al. v. Leanspa, LLC*, Case No. 3:11-cv-01715-JCH (D. Conn. Nov. 14, 2011), ECF No. 24; *FTC v. Global U.S. Resources*, Case No. 3:10-cv-01457-VLB (D. Conn. Sep. 14, 2010), ECF No. 13; *FTC v. Consumer Health Benefits Assoc.*, Case No. 1:10-cv-03551-ILG (E.D.N.Y. Aug. 3, 2010), ECF No. 1; *FTC v. Int'l Direct, Inc.*, Case No. 3:97-cv-

statute of the United States to enforce and implement Congressional policy is a different one from that of a court when weighing claims of two private litigants"). The agency is not required to make a showing of irreparable harm; instead there is a "presumption of irreparable harm based on a statutory violation." *City of New* York, 597 F.3d at 120; *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 141 (2d Cir. 1977). Courts consider two factors in determining whether to grant preliminary injunctive relief under Section 13(b): (1) the likelihood of success on the merits and (2) the balance of equities. *FTC v. Crescent Publ'g Group*, 129 F. Supp. 2d 311, 319 (S.D.N.Y. 2001); *FTC v. Verity Int'l, Ltd.*, 124 F. Supp. 2d 193, 199 (S.D.N.Y. 2000).[31]

1. The FTC Has Demonstrated Its Likelihood of Success on the Merits

Generally, the FTC meets its burden on the likelihood of success issue if it shows preliminarily, by affidavit or other proof, "that it has a fair and tenable chance of ultimate success on the merits." *United States v. Sun & Sand Imports, Ltd., Inc.*, 725 F.2d 184, 188 (2d Cir. 1984) (

As set forth in Section III above, the FTC has presented ample evidence, including Defendants' own websites and advertisements and declarations from Defendants' customers, showing that it is likely to succeed on the merits of its claims that Defendants violated Section 5 of the FTC Act, multiple provisions of CROA and the TSR, the CRFA, TILA and its implementing Regulation Z, and EFTA and its implementing Regulation E

2. The Equities Weigh in Favor of Granting Injunctive Relief

the commingling of corporate funds, and failure to maintain separation of companies, (5) unified advertising, and (6) any other evidence revealing that no real distinction existed between the corporate defendants. *FTC v. Consumer Health Benefits Ass'n*, 2011 U.S. Dist. LEXIS 92389, at *16 (E.D.N.Y. Aug. 18, 2011)

'involvement in business affairs' or 'role in the development of corporate practices.'" *LeanSpa*, 2015 U.S. Dist. LEXIS 26906, at *36; *FTC v. Windward Mktg., Ltd.*, 1997 U.S. Dist. LEXIS 17114, at *15 (holding that defendant did not have to be an officer or even an employee to control corporate activities). Bank signatory authority or acquiring services on behalf of a corporation also evidences authority to control. *See FTC v. USA Fin., LLC*, 415 F. App'x. 970, 974-75 (11th Cir. 2011).

An individual may be held liable for monetary redress for corporate practices if he or she

are the principal officers of the Corporate Defendants. They have signatory authority over the Corporate Defendants' financial accounts, and the points of contact for Defendants' service providers. And they are copied on consumer communications.

897 F. Supp. 2d 369, 386 (D. Md. 2012), *aff'd*, 743 F.3d 886 (4th Cir. 2014); *SEC v. IAB Marketing*, 746 F.3d 1228, 1234 (11th Cir. 2014). To help ensure the availability of assets, preserve the status quo, and guard against the dissipation and diversion of assets, this Court may freeze the assets of corporate and individual defendants and require an accounting where, as

Without an asset freeze, the dissipation and misuse of assets is likely. Defendants who have engaged in illegal activities are likely to waste assets prior to resolution of the action. *See SEC v. Manor Nursing Ctrs. Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972). In the FTC's experience, defendants engaged in similar unlawful practices secreted assets upon learning of an impending law enforcement action. (Decl. Pl.'s Counsel) ¶ 9 [filed concurrently herewith].)

Here,Defendants have taken in gross deposits of approximately $6.4 m(PX18 at 20 ¶ 31) through an enterprise permeated by deception and unlawful activity. Moreover, Defendants go to great lengths to hide their *Id.* operations, utilizing multiple trade names and mail-receiving entities as their business addresses at (6 ¶¶ 10-11, 7 Table 3.) They churn through merchant accounts, which is further indicia of fraud. *Id.* at 15-16 ¶ 28, 23 ¶ 34.) Further, they constantly shift funds through the various corporate bank accounts (*Id.* at 20-21 Table 7), and regularly move money to the Individual Defendants' personal accounts (*Id.* at 22 Table 8) Defendants also regularly make funds either untraceable, *e.g.*, (*Id.* at 22 ¶ 34 (at least $174,000 in cash withdrawals)) or move funds offshore, (*id.* (at leat l acht4u ¶ ecei(s)-5 (al)-1 t(ei(s)-(un

unlawful activt(ei(tie)6 (s)1 (s)1 (o)2 (th)2 (a)-4 n(t

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C.

E. Expedited Discovery, Including Immediate Production of Documents

The FTC seeks leave of Court for immediate access to Defendants' business premises, if any, and limited discovery to locate and identify documents and assets.[35] District courts are authorized to depart from normal discovery procedures and fashion discovery orders to meet particular needs in particular cases. *Campbell Capital, LLC*, 2018 U.S. Dist. LEXIS 186728, at *6. Federal Rules of Civil Procedure 26(d), 33(a), and 34(b) authorize the Court to alter the standard provisions, including applicable time frames, that govern depositions and production of documents. This type of discovery order reflects the Court's broad and flexible authority in equity to grant preliminary emergency relief in cases involving the public interest. *See Porter v. Warner Holding*, 328 U.S. 395, 398 (1946); *Fed. Express Corp. v. Fed. Expresso, Inc.*, 1997 U.S. Dist. LEXIS 19144, at * 6 (N.D.N.Y. Nov. 24, 1997) (holding expedited discovery is contemplated by the Federal Rules).

[35] "[T]he

and irreparable injury, loss, or damage will result" if notice is given. *Ex parte* orders are proper in cases where "notice to the defendant would render fruitless the further prosecution of the action." *In re Vuitton et Fils, S.A.*, 606 F.2d 1, 4-5 (2d Cir. 1979); *see also AT&T Broadband v. Tech Commc'ns.*, 381 F.3d 1309, 1319 (11th Cir. 2004). The court noted in *Cenergy Corp. v. Bryson Oil & Gas P.L.C.*, 657 F. Supp. 867, 870 (D. Nev. 1987), that given the pervasive deception in the case, "it [is] proper to enter the TRO without notice, for giving notice itself may defeat the very purpose for the TRO." Mindful of this problem, courts have regularly granted the FTC's request for *ex parte* temporary restraining orders in Section 13(b) cases.[36]

As discussed above, Defendants' business operations are permeated by, and reliant upon, unlawful practices. The FTC's past experiences have shown that, upon discovery of impending legal action, defendants engaged in fraudulent schemes withdrew funds from bank accounts and destroyed records. (Decl. Pl.'s Counsel ¶¶ 9-10.) Defendants' conduct—including large wire transfers to offshore accounts and to Individual Defendants' accounts—and the nature of Defendants' illegal scheme provide ample evidence that Defendants would likely conceal or dissipate assets and destroy evidence absent *ex parte* relief. Thus, this case fits squarely into the narrow category of situations where *ex parte* relief is appropriate to make possible full and effective final relief.

VI. CONCLUSION

For the above reasons, the FTC respectfully requests that this Court issue the attached proposed TRO with asset freeze, expedited discovery, and other equitable relief, and requi Defendants to show cause why a preliminary injunction should not issue.

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[36] *See supra* note 30 and the cases cited therein. Indeed, Congress has looked favorably on the availability of *ex parte* relief under the FTC Act: "Section 13 of the FTC Act authorizes the FTC to file suit to enjoin any violation of the FTC [Act]. The FTC can go into court *ex parte* to obtain an order freezing assets, and is also able to obtain consumer redress." S. Rep. No. 130, 103rd Cong., 2d Sess. 15-16, *reprinted in* 1994 U.S. Code Cong. & Admin. News 1776, 1790-91.

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Respectfully submitted,

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