

United States District Court  
for the  
Southern District of Florida

Federal Trade Commission, )  
Plaintiff, )  
)  
v. ) Civil Action No. 19-25046-Civ-Scola  
)  
On Point Global LLC and others, )  
Defendants. )

**Order on Cross Motions for Summary Judgment**

This matter is before the Court upon the FTC’s motion for summary judgment (ECF No. 454), as well as the Defendants Robert Zangrillo, Dragon Global LLC, Dragon Global Management LLC, On Point Capital Partners LLC, and Dragon Global Holdings LLC’s motion for summary judgment. (ECF No. 410.) The Defendants opposed the FTC’s motion (ECF No. 471), and the FTC opposed the Defendants’ cross motion for summary judgment (ECF No. 443). The parties both filed replies in support of their respective motions. (ECF Nos. 459, 481). After careful consideration of the parties’ briefing, the record, and the relevant legal authorities, the Court **grants in part and denies in part** the FTC’s motion (**ECF No. 454**) and **grants in part and denies in part** the Defendants’ motion (**ECF No. 410**).

**1. Procedural History**

The FTC brought suit in December 2019, alleging that the Defendants violated 15 U.S.C. § 45(a), which prohibits “unfair or deceptive acts or practices[.]” (ECF No. 1 at ¶¶ 169–173.) The FTC sued several defendantsH suit2-3 23 On 6

consumers through a misrepresentation of the services that they offered and that immediate and irreparable damage would result absent a preliminary injunction. (*Id.* at 1–2, ¶¶ C, E.) Moreover, the Court found good cause to appoint a receiver over the Receivership Entities, as defined in the order, *see id.* at 4, ¶ H, as well as an asset freeze over the Defendants’ assets. (*Id.* at 3, ¶ F.)

On August 13, 2021, the Court held that the Defendants were entitled to partial summary judgment as to damages, holding that the FTC cannot obtain equitable monetary relief under Section 13(b). (ECF No. 484.) Moreover, the Court released all but the Contempt Defendants<sup>2</sup> from the asset freeze. (*Id.*)

## **2. Facts**

### **A. Paid-Guide Business**

Consumers looking for information online on how to renew a driver’s license may have found their way to “dmv.com” or another of On Point’s domains. Once there, consumers saw links to services, such as “Renew your License” or “Renew Car Registration.” (ECF No. 455 at ¶ 9; ECF No. 472 at ¶ 9.) However, On Point’s websites did not actually renew licenses or car registrations in all states; rather, consumers could purchase a pdf “guide” that attempted to simplify those tasks. (ECF No. 455 at ¶¶ 15, 22–23; ECF No. 472 at ¶¶ 15, 22–23.) Consumers complained—some consumers believed that they were paying to receive the actual service that they sought rather than a pdf guide. (ECF No. 455 at ¶¶ 36–37; ECF No. 472 at ¶¶ 36–37; ECF No. 440-18; ECF No. 489-1.)

The above exemplifies On Point’s “paid guide” business, which is one of On Point’s four lines of business and On Point’s most profitable. (ECF No. 455 at ¶¶ 1–6, 45; ECF No. 472 at ¶¶ 1–6, 45, 292.) This business consisted of, in part, “portal sites”—websites with URLs that often contained the name of a state, a keyword related to a government-related service, and a “.org” top-level domain—for example, “floridadriverslicense.org.” (ECF No. 455 at ¶ 4.) On Point had more than twenty portal sites. (ECF No. 455 at ¶ 6; ECF No. 472 at ¶ 6.)

Links from the portal sites led consumers to “transaction sites”—websites where consumers could purchase pdf guides and where On Point gathered consumers’ contact and credit card information. (ECF No. 455 at ¶ 11; ECF No. 472 at ¶ 11.) From January 2017 to December 2019, there were

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<sup>2</sup> The “Contempt Defendants” are the Defendants who are currently subject to contempt proceedings in the related action *FTC v. Acquinity Interactive LLC*, 14-cv-60166 (S.D. Fla.).

approximately 104 transaction sites—ninety-seven of which sold guides. (ECF No. 455 at ¶¶ 14–15; ECF No. 472 at ¶¶ 14–15.)

Consumers could reach a transaction site directly or via a portal site. When consumers arrived via a portal site (by clicking on a link), they saw a bold heading at the top of the page reading “Obtain Your . . . Guide,” followed by smaller text and a larger headline promoting a service. (ECF No. 455 at ¶ 16; ECF No. 472 at ¶ 16.) For example, the site “license-driver.com” had a headline reading “Obtain Your Road Guide,” followed by smaller text promoting the service as a “comprehensive resource for all you[r] driver license-related services” and informing consumers that they “can purchase” a paid guide. (ECF No. 440-1 at 207.) This text is placed against a light gray background. (*Id.*) Centered on the page is a white text box with a larger bold headline reading “Renew Driver[']s License in Your State.” (*Id.*) Smaller text follows, reading in part: “[t]o maintain your driver[']s license and your driving privileges, select one of the services above for simple and comprehensive information about driver’s licensure in your state[.]” (*Id.*)

Similarly, when a consumer came to a transaction site directly (not via a link on a portal site), they saw a headline reading “Obtain Your . . . Guide,” followed by small text set against a gray background. (ECF No. 455 at ¶ 17; ECF No. 472 at ¶ 17.) Consumers were asked to “select a service” and were given a list of options, such as “New Driver’s License” or “Renew Driver’s License.” (ECF No. 440-1 at 123.) These sites advertised, in small print at the bottom of the website, that they were not associated with the government. (ECF No. 455 at ¶ 21; ECF No. 472 at ¶ 21.)

Consumers were not able to complete a transaction on these websites without clicking “accept” on a pop-up window. (ECF No. 472 at ¶ 301; ECF No. 482 at ¶ 301.) This pop-up window informed consumers that

“[m]otor 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[s] 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[.]” (*Id.*)

None of the portal or transaction sites advised consumers that the sites would not c

\$17,297,754.87 from January 2019 to mid-December 2019. (ECF No. 455 at ¶ 68; ECF No. 472 at ¶ 68.)

**C. Efforts to Maintain the Sites**

Operating the websites above did not come without challenges. On Point had adka8,rtifact swebsa8,rticcounintchal Google and Bweba8,rt, which Point

## **D. Leadership and Operations**

Each of the On Point and Corporate Defendants did business together under the name “On Point,” with each entity performing a function related to the business of On Point as a whole. (ECF No. 455 at ¶¶ 71, 73–82, 87, 91, 99–101, 113, 115–116; ECF No. 472 at ¶¶ 71, 73–82, 87, 91, 99–101, 113, 115–116.) Each of the Individual Defendants performed roles and held titles at On Point, and the Court will briefly discuss each.

### **1. *Burton Katz***

Katz was the Chief Executive Officer and a board member at On Point and an owner, member, officer, and manager of multiple Corporate Defendants. (ECF No. 455 at ¶¶ 143, 146; ECF No. 472 at ¶¶ 143, 146.) In this role, Katz developed business plans, reviewed On Point’s domains, met with other executives and officers, received information concerning the design, content, testing, and marketing of On Point’s websites, and directed the preparation of reports and budgets. (ECF No. 455 at ¶¶ 21, 141, 148–150, 152; ECF No. 472 at ¶¶ 21, 141, 148–150, 152.) In addition, Katz received information concerning chargebacks across the sites and discussed account issues, including chargebacks, with On Point’s payment processing team. (ECF No. 455 at ¶¶ 156–158; ECF No. 472 at ¶¶ 156–158.) Katz received information, on multiple occasions, that chargeback rates were “very high” on some merchant accounts. (ECF No. 440-26 at 57, 70.) He met with third-party advertising services and worked to restore advertising accounts when some of those accounts were suspended. (ECF No. 455 at ¶¶ 160–161; ECF No. 472 at ¶¶ 160–161.)

### **2. *Brent Levison***

Levison was a founder of On Point, the Chief Administrative Officer and Senior Vice President of Products, as well as the general counsel. (ECF No. 455 at ¶¶ 136, 207; ECF No. 472 at ¶¶ 136, 207.) Levison assisted in providing information to investors and building On Point’s team of content writers. (ECF EMC /P(and5



#### **4. Elisha Rothman**

Elisha Rothman was a Director of Data Processing, worked to purchase new domains, and worked with the On Point accounting and finance team. (ECF No. 455 at ¶ 248; ECF No. 472 at ¶ 248.) Rothman received financial and advertising reports, and he was aware that chargebacks were high on certain accounts. (ECF No. 455 at ¶¶ 252–253; ECF No. 472 at ¶¶ 252–253.) Rothman negotiated with third parties that operated text message advertising. (ECF No. 455 at ¶ 257; ECF No. 472 at ¶ 257.) Rothman personally guaranteed at least seven merchant accounts, earning \$114,226 in productivity fees for the charges that these merchant accounts processed. (ECF No. 455 at ¶¶ 260–261; ECF No. 472 at ¶¶ 260–261.) Rothman also reviewed the “PATH” survey on certain freemium websites and received metrics concerning the “PATH.” (ECF No. 455 at ¶¶ 263–264; ECF No. 472 at ¶¶ 263–264.)

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months from January 2018 to March 2019. (ECF No. 411 at ¶¶ 46–47; ECF No. 446 at ¶¶ 46–47.) As chairperson, Zangrillo worked to attract investment to On Point, provided advice on strategy and executive recruitment, and approved decisions brought to the Board, such as those involving equity and debt transactions. (ECF No. 411 at ¶¶ 48, 50; ECF No. 446 at ¶¶ 48, 50.) The parties dispute the extent of Zangrillo’s day-to-day involvement in the operations of On Point as chairperson. (ECF No. 411 at ¶¶ 49, 60; ECF No. 446 at ¶¶ 49, 60.) Moreover, the parties dispute the extent of Zangrillo’s authority as chairperson and consultant. (ECF No. 411 at ¶ 67; ECF No. 446 at ¶ 67.)

It is undisputed that Zangrillo had limited interactions with On Point’s executive team and at most only saw On Point’s websites in documents that discussed those websites. (ECF No. 411 at ¶¶ 61–64, 66, 68; ECF No. 446 at ¶¶ 61–64, 66, 68.) Moreover, the parties agree that Zangrillo did not approve advertising related to the websites at issue or that he was involved in the design of the websites. (ECF No. 411 at ¶¶ 69–71; ECF No. 446 at ¶¶ 69–71.)

#### **F. Dragon Global**

Dragon Global is a venture capital, private equity, and real estate investment firm that oversees numerous portfolio companies. (ECF No. 411 at ¶¶ 2–7; ECF No. 446 at ¶¶ 2–7.) Its portfolio includes investments across industries and in companies at various stages. (ECF No. 411 at ¶¶ 4, 6; ECF No. 446 at ¶¶ 4, 6.) One of those portfolio companies was On Point Global LLC. (ECF No. 411 at ¶ 8; ECF No. 446 at ¶ 8.) Dragon Global created On Point Capital Partners LLC as a special purpose vehicle for investing in On Point. (ECF No. 411 at ¶ 8; ECF No. 446 at ¶ 8.) Through investments, Dragon Global and Zangrillo own approximately 27% of On Point Global LLC. (ECF No. 411 at ¶¶ 9, 30; ECF No. 446 at ¶¶ 9, 30.)

But before it invested in On Point, Dragon Global created an investment vehicle called DG DMV in 2014 to purchase automobile-related domains and invest in the online automotive space with Burton Katz. (ECF No. 411 at ¶¶ 18–20; ECF No. 446 at ¶¶ 18–20.) DG DMV acquired the URL “dmv.com” in 2015, at which time that website did not sell paid guides. (ECF No. 411 at ¶¶ 21–23; ECF No. 446 at ¶¶ 21–23.) Katz was primarily responsible for managing the operations of DG DMV. (ECF No. 411 at ¶ 24; ECF No. 446 at ¶ 24.) DG DMV was consolidated with other entities into On Point Global LLC in January 2018. (ECF No. 411 at ¶¶ 26–27; ECF No. 446 at ¶¶ 26–27.)

Following the roll-up of DG DMV into On Point, Dragon Global continued to have an investor relationship with On Point. Dragon Global introduced On

Point to various advisors, sub-leased unused office space to On Point at market rates, and assisted On Point in cultivating third-party investors. (ECF No. 411 at ¶¶ 73, 76–77, 79–82; ECF No. 446 at ¶¶ 73, 76–77, 79–82.) Dragon Global's Chief of Staff Megan Black assisted On Point with certain investor-related tasks, and in exchange On Point paid a portion of her salary. (ECF No. 411 at ¶ 86; ECF No. 446 at ¶¶ 86, 149.)

Dragon Global maintained bank accounts separate from On Point and never paid On Point's payroll. (ECF No. 411 at ¶¶ 91–92; ECF No. 446 at ¶¶ 91–92.) Dragon Global and On Point had separate employees, although the parties dispute the extent to which at most five employees performed services for the other entity. (ECF No. 411 at ¶ 93; ECF No. 446 at ¶¶ 93, 157.) While the nature of those employee relationships is disputed, it is undisputed that On Point only paid some of one Dragon Global employee's salary. (ECF No. 411 at ¶ 94; ECF No. 446 at ¶ 94.)

Dragon Global was based in Miami, Florida, with a listed address at 350 NE 60th St., Miami. (ECF No. 455 at ¶¶ 118–119; ECF No. 472 at ¶¶ 118–119.) That address was also On Point's headquarters. (ECF No. 446 at ¶ 150; ECF No. 458 at ¶ 150.) The FTC did not provide evidence that On Point and Dragon Global shared this office space. Dragon Global subleased office space in Los Angeles to On Point, which in turn leased the space to another tenant that sometimes paid rent to On Point and sometimes to Dragon Global. (ECF No. 446 at ¶ 153; ECF No. 458 at ¶ 153.) Two Dragon Global employees and four On Point employees had keycard access to this office in Los Angeles. (ECF No. 446 at ¶ 154; ECF No. 458 at ¶ 154.) Dragon Global and On Point considered moving into new, separate office space in the same building in Miami, but neither party alleges that this move occurred. (ECF No. 446 at ¶¶ 158–159; ECF No. 458 at ¶¶ 158–159.)

### **3. Legal Standard**

“Summary judgment is such a lethal weapon, depriving a litigant of a trial on the issue, caution must be used to ensure only those cases devoid of any need for factual determinations are disposed of by summary judgment.” *Tippens v. Celotex Corp.*, 805 F.2d 949, 952–53 (11th Cir. 1986); *see also Brunswick Corp. v. Vineberg*, 370 F.2d 605, 612 (5th Cir. 1967) (“[C]ourts must be mindful of [the] aims and targets [of summary judgment] and beware of overkill in its use.”). Thus, summary judgment is only proper if following discovery, the pleadings, depositions, answers to interrogatories, affidavits, and admissions on file show that there is no genuine issue as to any material fact

and that the moving party is entitled to judgment as a matter of law. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56. An issue of fact is “material” if it “might affect the outcome of the suit under the governing law.” *Furcron v. Mail Centers Plus, LLC*, 843 F.3d 1295, 1303 (11th Cir. 2016) (internal citation omitted). “A material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* (internal citation and quotations omitted).

The moving party bears the burden of proof to demonstrate the absence of a genuine issue of material fact. See *Celotex*, 477 U.S. at 323. All the evidence and factual inferences reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. See *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Jackson v. BellSouth Telecomms.*, 372 F.3d 1250, 1280 (11th Cir. 2004). “If more than one inference could be construed from the facts by a reasonable fact finder, and that inference introduces a genuine issue of material fact, then the district court should not grant summary judgment.” *Bannum, Inc. v. City of Fort Lauderdale*, 901 F.2d 989, 996 (11th Cir. 1990); see also *Tippens*, 805 F.2d at 952 (“The District Court . . . can only grant summary judgment if *everything* in the record demonstrates that no genuine issue of material fact exists.”) (cleaned up). The Court will not weigh the evidence or make findings of fact. *Jackson* vi ( (ckye(can only grant su

#### 4. Discussion – Deceptive Acts or Practices

The sections above set out the relevant facts and parties. So what of the relevant law? The FTC brought two counts under Section 5(a) of the FTC Act, which prohibits the use of “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a). The only issue here is whether the Defendants’ practices were “deceptive.” (ECF No. 454 at 15.) To establish whether an act or practice is deceptive, the FTC must show that:

- (1) there was a representation or omission;
- (2) the representation or omission was likely to mislead consumers acting reasonably under the circumstances; and
- (3) the representation or omission was material.

*See FTC v. Lalonde*, 545 F. App’x 825, 837 (11th Cir. 2013).

The first prong is not difficult to decipher; there must be a representation or omission. As to the second prong, looking to the “net impression created,” a representation is likely to mislead consumers where a fact finder could determine that a reasonably prudent consumer could be misled. *See FTC v. RCA Credit Servs., LLC*, 727 F. Supp. 2d 1320, 1329 (M.D. Fla. 2010). Regarding the third prong, a representation is material if it is “of a kind usually relied upon by a reasonably prudent person.” *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1266 (S.D. Fla. 2007) (Marra, J.).

When evaluating Section 5(a), courts should bear in mind that the 1938 amendment to the FTC Act, which added the “deceptive acts or practices” clause, was significant for its extension of the FTC’s broad mandate to protect consumers. *See FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 384–85 (1965). Therefore, the term “deceptive” is meant to be “flexible,” and courts must look to the “overall, net impression rather than the literal truth or falsity of the words.” *See id.*; *FTC v. Nat’l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1189 (N.D. Ga. 2008). For that reason, simple disclaimers “do not automatically exonerate deceptive behavior”; rather, courts must look to whether the act or practice was deceptive as a whole. *FTC v. Connelly*, No. SA CV 06-701, 2006 WL 6267337, at \*10 (C.D. Cal. Dec. 20, 2006); *see also FTC v. Wash. Data Res.*, 856 F. Supp. 2d 1247, 1274–75 (M.D. Fla. 2012) (holding that disclaimers fail when they do not “sufficiently change the deceptive ‘net impression’”).

The FTC contends that two of On Point’s practices—the “paid-guide” business and the “freemium” business—are deceptive. The Court will address each in that order.







*Johnson*, 10-cv-02203-MMD-GWF, 2017 WL 3503720, at \*19 (D. Nev. Aug. 16, 2017) (looking to “representations, graphics, font size, [and] placement of the disclosures” when looking at deceptiveness). **Second**, the language of the disclaimers. The disclaimers were confusing at best. The disclaimers told consumers that the website was a “comprehensive resource for all you[r] driver license-related services.” (See ECF No. 440-1 at 207.) A “comprehensive resource” for driver’s-license needs could include a service that actually submitted driver’s license applications.



See *RCA Credit Servs.*, 727 F. Supp. 2d at 1329. Like the paid-guide websites, the “freemium” websites contained a “call to action,” where consumers were told to, among others, “Find out if you Qualify” for certain public benefits and “Confirm Your Address to Verify Eligibility.” (ECF No. 455 at ¶ 53; ECF No. 472 at ¶ 53; ECF No. 440-1 at 289.) Consumers were told affirmatively, and in the imperative, that they could “find out” and “verify eligibility,” but On Point did not actually verify consumers’ eligibility for public benefits. (ECF No. 455 at ¶ 61; ECF No. 472 at ¶ 61.) These prompts were located just above web forms which led to a series of screens (the “PATH”) where consumers were asked to input personal information. (ECF No. 455 at ¶¶ 54, 57–58; ECF No. 472 at ¶¶ 54, 57–58.) While On Point had run into trouble with their Google and Bing advertising accounts, On Point would sometimes remove the “PATH” from their websites when they submitted these sites to Google prior to public publication, and then input the PATH once the websites were approved. (ECF No. 455 at ¶ 60; ECF No. 472 at ¶ 60.) Consumers complained to the On Point and Better Business Bureaus about the spam that they received after inputting their personal information onto the websites. (ECF No. 455 at ¶¶ 63–64; ECF No. 472 at ¶¶ 63–64.) Moreover, On Point’s employees even noticed the deceptive nature of the websites. (ECF No. 455 at ¶ 66; ECF No. 472 at ¶ 66.)

Contrary to the Defendants’ arguments, any disclaimers were not sufficient. At the bottom of the websites, in small text, was a disclaimer that the website was privately owned and not affiliated with any government agency. (ECF No. 455 at ¶ 55; ECF No. 472 at ¶ 55.) Such a disclaimer is hardly prominent or sufficient. See *Johnson*, 2017 WL 3503720, at \*10 (holding that consumers “were likely to disregard” a disclaimer printed in small font outside the primary text boxes). The Defendants also point to websites in the PATH where consumers were told that they could “Confirm your information to get your Eligibility Guide.” (ECF No. 472 at ¶ 53.) References to an “Eligibility Guide” do not overcome the net impression that consumers believed they were providing information in order to apply for public benefits or receive an eligibility determination. This is particularly true where the reference to which the Defendants point did not appear until after consumers had already begun completing the PATH in response to a prompt telling consumers to “Find Out if You Are Eligible[.]” (ECF No. 440-1 at 285–315.) Moreover, the freemium websites did not contain a disclaimer telling consumers that the websites would *not* complete public benefits applications or verify eligibility for such benefits. (ECF No. 455 at ¶ 56; ECF No. 472 at ¶ 56.)

In total, the net impression of the freemium websites show that On Point's representations and omissions were likely to mislead consumers. Therefore, all three prongs are met, and the Court finds that On Point's freemium websites violated Section 5(a).

## **5. Discussion - Liability**

As set out above, the Court finds that the On Point websites at issue violated Section 5(a). The Court now discusses to what extent the Corporate Defendants, Individual Defendants, and Global Dragon Defendants are liable for those deceptive practices.

### **A. Corporate Defendants**

The parties largely do not contest that the Corporate Defendants and the On Point Defendants operated as a "common enterprise." Under Section 5(a), a corporate entity can be held liable for the conduct of other entities where "the structure, organization, and pattern of a business venture reveal a common enterprise or a maze of integrated business entities." *FTC v. Lanier Law, LLC*, 715 F. App'x 970, 979 (11th Cir. 2017). Courts look to whether the businesses "share office space and employees, commingle funds, coordinate advertising efforts, and operate under common control." *Id.* at 979-80.

It is undisputed that the Corporate Defendants did business together, shared employees, including in accounting and payroll, used the same headquarters in Miami, and shared offices across the globe. (ECF No. 455 at ¶¶ 71, 73-81, 84-102, 113, 115-116, 127; ECF No. 472 at ¶¶ 71, 73-81, 84-102, 113, 115-16, 127.) The Court finds that the Corporate Defendants and the On Point Defendants operated under a "common enterprise" and are thus liable for the deceptive practices discussed above.

### **B. Individual Defendants**

To hold an individual liable for the deceptive practices of a company, the FTC must show that the individual (1) "participated directly in the deceptive practices" or had "authority to control" such practices and (2) had "some knowledge" of the deceptive practices. *See FTC v. IAB Mktg. Assocs., LP*, 746 F.3d 1228, 1233 (11th Cir. 2014). An individual's title alone is not sufficient to establish individual liability. *See FTC v. Johnson*, 156 F. Supp. 3d 1202, 1210 (D. Nev. 2015). "Authority to control" may be shown by "active involvement in business affairs and the making of corporate policy." *See IAB Mktg.*, 746 F.3d at 1233. Knowledge may be established by showing that the individual had

(1) “actual knowledge of the deceptive conduct,” (2) “was recklessly indifferent to its deceptiveness,” or (3) “had an awareness of a high probability of deceptiveness and intentionally avoided learning of the truth.” *FTC v. Primary Grp., Inc.*, 713 F. App’x 805, 807 (11th Cir. 2017). A defendant’s “participation in corporate affairs is probative of knowledge.” *See FTC v. Wilcox*, 926 F. Supp. 1091, 1104 (S.D. Fla. Sept. 29, 1995) (Ferguson, J.).

The parties dispute whether knowledge is a required showing if the FTC seeks only injunctive relief. The Court holds that knowledge is a required prong. *See IAB Mktg.*, 746 F.3d at 1233; *see also FTC v. Gem Merch. Corp.*, 87 F.3d 466, 470 (11th Cir. 1996). While the FTC argues that the type of relief sought should dictate the standard of liability, the degree of knowledge required is dictated by the statute. *See generally Aaron v. SEC*, 446 U.S. 680, 695–96 (1980). The FTC has not provided any argument why issuing an injunction under 15 U.S.C. § 53(b) for a violation of 15 U.S.C. § 45(a) would involve a different finding of individual liability than would be required under the FTC’s previous practice of recovering monetary relief under those same provisions. Therefore, the Court will follow Eleventh Circuit precedent requiring a showing of “some knowledge” of the deceptive scheme. *See IAB Mktg.*, 746 F.3d at 1233.

The Court will now discuss individual liability as to Burton Katz, Brent Levison, Christopher Sherman, Elisha Rothman, and Robert Zangrillo.

### **1. Burton Katz**

The Court finds that individual liability is appropriate as to Burton Katz, as he had authority to control the deceptive practices and had some knowledge of such practices. The undisputed evidence establishes that Katz was the day-to-day leader at On Point and that he set corporate policy and developed On Point’s strategy—therefore, he had the requisite authority to control. *See Gem Merch.*, 87 F.3d at 467–68; *Wilcox*, 926 F. Supp. at 1104 (holding that individuals had authority to control, in part, because they “made all the major business decisions”). While the parties dispute the legal significance of Katz’s title, it is undisputed that Katz was the CEO and a board member at On Point, as well as an owner, member, officer, and manager of multiple Corporate Defendants. (ECF No. 455 at ¶¶ 143, 146; ECF No. 472 at ¶¶ 143, 146.) Moreover, it is undisputed that Katz developed business plans, reviewed On Point’s domains, met with other executives and officers, received information concerning the design, content, testing, and marketing of On Point’s websites, and directed the preparation of reports and budgets. (ECF No. 455 at ¶¶ 21,

141, 148–150, 152; ECF No. 472 at ¶¶ 21, 141, 148–150, 152.) Moreover, he received information regarding On Point’s chargebacks, including that the chargebacks were “very high” on some accounts. (ECF No. 440-26 at 57, 70.) Additionally, Katz was not only aware of, but also used his authority to try to remedy the suspension of search-engine advertising accounts. (ECF No. 455 at ¶¶ 160–161; ECF No. 472 at ¶¶ 160–161.) These facts are enough to establish that Katz had authority to control the deceptive scheme. *See Gem Merch.*, 87 F.3d at 467–68, 470 (affirming the district court and holding that the “sole owner, president, and director” was individually liable when he “controlled the day-to-day affairs” and “was in a position to control” the relevant salespeople).

Moreover, Katz had the requisite knowledge of the deceptive scheme. *See Primary Grp.*, 713 F. App’x at 807. Katz knew that chargebacks were high and that advertising accounts had been suspended. (ECF No. 455 at ¶¶ 160–161; ECF No. 472 at ¶¶ 160–161; ECF No. 440-26 at 57, 70.) Katz was also aware of employee feedback that raised concerns over potential deception. (ECF No. 455 at ¶ 151; ECF No. 472 at ¶ 151.) While this evidence may stop short of actual knowledge of the deceptive representations’ explicit wording, this evidence demonstrates that Katz was at least “recklessly indifferent” to the deceptiveness at issue and that Katz was aware of and had authority to control the deceptive scheme, including the efforts to perpetuate and sustain the deceptive scheme. *See Primary Grp.*, 713 F. App’x at 807.

## **2. Brent Levison**

The Court finds that individual liability is appropriate as to Brent Levison, as he had authority to control the deceptive practices and had some knowledge of such practices. Levison was a founder of On Point Global LLC, the Chief Administrative Officer and Senior Vice President of Products, and the general counsel. (ECF No. 455 at ¶¶ 136, 207; ECF No. 472 at ¶¶ 136, 207.) Through these positions, Levison readily had the authority to control relevant players in perpetuating the deceptive scheme. In particular, Levison played a role in building On Point’s staff of content writers and oversaw On Point’s payment processing team and call center. (ECF No. 455 at ¶¶ 212–214; ECF No. 472 at ¶¶ 212–214.) Levison also sought and received guidance from outside counsel regarding On Point’s websites, advertising, and call center scripts. (ECF No. 455 at ¶ 215; ECF No. 472 at ¶ 215.) Moreover, Levison directed employees to toggle payment traffic (“load balancing”) between merchant accounts when informed that certain accounts had high chargebacks. (ECF No. 440-38 at 115.) Therefore, the undisputed evidence





The parties vigorously dispute material facts regarding the scope of Zangrillo's roles and duties at On Point, as well as his knowledge concerning On Point's activities. Specifically, the parties dispute whether Zangrillo served as an executive, employee, or officer of On Point, whether he exercised—in whatever role he had—oversight or authority over On Point's strategy and practices, and whether Zangrillo had any awareness of the content of On Point's websites or of On Point's efforts to perpetuate its deceptive practices. (ECF No. 411 at ¶¶ 43, 49, 60, 65, 67–68; ECF No. 446 at ¶¶ 43, 49, 60, 65, 67–68, 120–122, 124, 128, 139, 141–142; ECF No. 458 at ¶¶ 120–122, 124, 128, 139, 141–142.) Therefore, summary judgment is not appropriate as to Robert Zangrillo.

### **C. Dragon Global Defendants**

As set out above, under Section 5(a), a corporate entity can be held liable for the conduct of other entities where “the structure, organization, and pattern of a business venture reveal a common enterprise or a maze of integrated business entities.” *Lanier Law*, 715 F. App'x at 979. Courts look to whether the businesses “share office space and employees, commingle funds, coordinate advertising efforts, and operate under common control.” *Id.* at 979–80. However, these factors are not strictly applied; rather, courts look to whether the entities “maintained an unholy alliance.” *FTC v. Pointbreak Media, LLC*, 376 F. Supp. 3d 1257, 1270 (S.D. Fla. 2019) (Altonaga, J.). Therefore, courts are primarily tasked with “evaluating the pattern and frame-work of the whole enterprise.” *Id.* at 1269 (quoting *FTC v. HES Merch. Servs. Co.*, No. 6:12-cv-1618-Orl-22KRS, 2014 WL 6863506, at \*5 (M.D. Fla. Nov. 18, 2014)).

The Court holds that the undisputed material facts establish that the Dragon Global Defendants did not operate a “common enterprise” with the Corporate Defendants. Dragon Global was a separate entity with a separate purpose—while On Point and the Corporate Defendants sought to collectively create and operate a business built, in relevant part, around the sale of paid guides and the collection of consumer data, Dragon Global sought to invest in entities, like On Point. (ECF No. 411 at ¶¶ 2–4; ECF No. 446 at ¶¶ 2–4.)

As an investor, Dragon Global was interested in the success of On Point, but there is no evidence that Dragon Global's relationship with On Point extended beyond that of an investor. **First**, as to shared employees, Dragon Global introduced On Point to a roster of advisors, some of whom may have advised both Dragon Global and On Point. (ECF No. 455 at ¶ 103; ECF No. 472 at ¶ 103; ECF No. 411 at ¶¶ 73–75.) Moreover, the FTC alleges that Dragon

Global and On Point shared anywhere from two to five employees. (ECF No. 455 at ¶¶ 106–107, 110–112; ECF No. 446 at ¶¶ 156–157.) While Dragon Global disputes that any employees overlapped, the Court finds that sharing two to five employees, one of whom was an administrative assistant and the other appeared to perform primarily administrative tasks (ECF No. 446 at ¶¶ 146, 157), does not weigh heavily when considering whether companies with hundreds of employees and multiple business lines were involved in a “maze of integrated business entities.” *See Lanier Law*



On Point or otherwise represent that it offered the same services that On Point offered; it only represented that it invested in On Point. *See Nat'l Urological Grp.*, 645 F. Supp. 2d at 1183–84 (finding a common enterprise where the entities shared and used the same advertising materials for its products).

The Court notes that the FTC produced evidence suggesting that Dragon Global is “ultimately Bob [Zangrillo].” (See ECF No. 455 at ¶ 162.) However, the FTC has not established facts sufficient to attribute acts taken by Zangrillo as On Point’s chairperson or consultant to the Dragon Global Defendants. Zangrillo exercised special approval rights on behalf of Dragon Global, and he at times used his Dragon Global email when conducting work for On Point (ECF No. 411 at ¶¶ 52, 54; ECF No. 446 at ¶¶ 52, 54, 148.) However, these do not establish that Zangrillo’s role and knowledge as chairperson and consultant at On Point are attributed to Dragon Global.

In total, the undisputed facts establish that the Dragon Global Defendants did not operate as a common enterprise with On Point. Rather, Dragon Global had an existence and purpose separate from On Point. Dragon Global invested in On Point, had a financial interest in its success, and provided resources, such as sharing the names of advisors and the time of an administrative assistant, in pursuit of maximizing its investment.

## **6. Discussion - Remedy**

When issuing an injunction under Section 13(b), courts may “frame its order broadly enough to prevent respondents from engaging in similarly illegal practices in [the] future[.]” *Colgate-Palmolive*, 380 U.S. at 395. Therefore, parties must “expect some fencing in” provisions that extend beyond the specific violations at issue. *Id.* When issuing a permanent injunction, courts look to the following factors, among others: (1) the egregiousness of the defendant’s actions, (2) the isolated or recurrent nature of the infraction, (3) the degree of scienter involved, and (4) the likelihood that the defendant’s occupation will present opportunities for future violations.” *FTC v. Partners in Health Care Ass’n*, 189 F. Supp. 3d 1356, 1369–70 (S.D. Fla. 2016) (Scola, J.). An injunction and its prohibitions must be stated “specifically” and “in reasonable detail.” *See LabMD, Inc. v. FTC*, 894 F.3d 1221, 1235 (11th Cir. 2018).

### **A. Egregiousness and Recurrent Nature**

The Court finds that the violations were egregious in scope and duration. The violations resulted in potential consumer loss of over \$85 million

in three years from paid guides and \$17 million in one year from the freemium websites. (ECF No. 455 at ¶¶ 46, 68; ECF No. 472 at ¶¶ 46, 68.) Moreover, these violations come in contempt, as discussed in a contemporaneously filed order in the *Acquinity* matter, of a previous order enjoining Katz from making false or misleading representations. (ECF No. 455 at ¶¶ 281–284; ECF No. 472 at ¶¶ 281–284.) The Defendants argue that the violations at issue were not egregious, as the Defendants operated the websites at issue in good faith, including by consulting with counsel on compliance, training staff, and incorporating disclaimers. (ECF No. 471 at 20–21.) However, while the Liable Defendants<sup>4</sup> may have undertaken some steps to operate their websites in good faith, the evidence demonstrates that the Liable Defendants, when aware of the deceptiveness of the websites, sought to perpetuate the deception and evade limits on such deception, including by load balancing across merchant accounts, splitting sales from the paid-guide business, and writing fake reviews. *See supra* § 2.C.

### **B. Scienter**

As discussed above, Burton Katz and Brent Levison had the requisite knowledge to be held liable. *See supra* §§ 5.B.1, 5.B.2. A higher degree of scienter is not required for permanently enjoining such deceptive conduct.

### **C. Likelihood of Future Violations**

The Court finds that the Liable Defendants have ample ability to commit future violations absent a permanent injunction. In particular, the low barriers to entering the online advertising and sales business weigh strongly in favor of a permanent injunction. *See Wash. Data Res.*, 856 F. Supp. 2d at 1282 (holding that where the “economic barriers to enter the [specific] industry are minimal,” there is a “cognizable danger of a recurrent violation”).

### **D. Reasonable Relation**

An injunction must be “narrowly tailored to fit the specific legal violations adjudged.” *Keener v. Convergys Corp.*, 342 F.3d 1264, 1269 (11th Cir. 2003). Courts may include “fencing-in” relief to prevent defendants from engaging in “similarly illegal practices.” *Colgate-Palmolive*, 380 U.S. at 395. Nonetheless,

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<sup>4</sup>The Court will refer to the On Point Defendants, Corporate Defendants, Burton Katz, and Brent Levison as the Liable Defendants.



## DEFINITIONS

For the purpose of this Order, the following definitions apply:

- A. **“Clear(ly) and conspicuous(ly)”** means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
  2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
  3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
  4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
  5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
  6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
  7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
  8. When the representation or sales practice targets a specific

audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

- B. **“Corporate Defendants”** means On Point Global LLC; On Point Employment LLC; On Point Guides LLC f/k/a Rogue Media Services LLC; DG DMV LLC; On Point Domains LLC; Final Draft Media LLC; Waltham Technologies LLC; Cambridge Media Series LLC f/k/a License America Media Series LLC; Issue Based Media LLC; Bella Vista Media Ltd. also d/b/a BV Media; Carganet S.A. also d/b/a G8 Labs; 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

the information to be collected; (2) an accurate description, Clearly and Conspicuously stated, of the goods or services to be provided in exchange for the information; (3) an accurate description, Clearly and Conspicuously stated, of the specific use, disclosure, or sale Defendants are authorized to make of the information the customer is providing; and (4) an accurate description, Clearly and Conspicuously stated, of the identity or specific category of any third party to whom the information will be disclosed or sold.

E. **“Individual Defendants”** means Burton Katz and Brent Levison, individually, collectively, or in any combination.

F. **“Sensitive Information”** means:

1. information about an individual’s past, present, or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual;
2. a consumer’s financial institution account number, credit or debit card information, or any other information by which a consumer’s financial account can be accessed, or by which a consumer might be charged for goods or services;
3. Social Security number;
4. geolocation information; or,
5. information about an individual if any information that individual provided indicates he or she is a minor.

## **ORDER**

### **I. BAN ON SALE OR DISCLOSURE OF SENSITIVE INFORMATION**

IT IS ORDERED that Corporate Defendants, Burton Katz, and Brent Levison are permanently restrained and enjoined from selling, disclosing, or permitting third parties to access customers’ Sensitive Information, whether directly or through an intermediary, unless the disclosure or access is necessary to provide the good or service offered to the customer that induces the customer to provide the Sensitive Information.







within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

## **VI. COMPLIANCE REPORTING**

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

- A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:
  - 1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising,ry of this Order, eac0olThelivery 553.92 0.72 0.72,r

title, role, responsibilities, participation, authority, control, and any ownership.

- B. For 20 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
  2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious names, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.
- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_" and supplying the date, signatory's full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade

Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. On Point Global LLC, et al., X130054.

## **VII. RECORDKEEPING**

IT IS FURTHER ORDERED that Defendants must create certain records

Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.
- D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

#### **IX. RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**Done and ordered** at Miami, Florida, on September 29, 2021.

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Robert N. Scola, Jr.  
United States District Judge