

the Dragon Global Defendants' motion for summary contempt ruling, holding that those entities could not be held in contempt. (Id.) The Court did not rule on the appropriate tally of contempt damages, reserving that question for after the parties had an opportunity to present evidence concerning the appropriate measure of damages. (Id.)

The Court then set the matters for a contemporaneous non-jury trial and show cause hearing on the following issues: the individual liability of Elisha Rothman, Christopher Sherman, and Robert Zangrillo for the deceptive acts and practices at issue, as well as the contempt liability of Elisha Rothman and the appropriate measure of contempt damages for any Defendants subject to the contempt liability. (See ECF No. 541.)

The Court held a 6-day non-jury trial and show-cause hearing by videoconference, beginning on November 3, 2021. Prior to the trial, the parties submitted a joint pretrial stipulation (ECF No. 527), as well as their proposed findings of fact and conclusions of law (ECF Nos. 534, 535; Acquinity ECF No. 231.) The Court has carefully reviewed these submissions.

At the conclusion of the FTC's presentation of evidence, the Court found the FTC had failed to establish Zangrillo's liability for the deceptive acts and

together” to violate an order are jointly and severally liable for contempt remedy); (Acquinity ECF No. 225 at 11 n.5.). Any lesser/final amount will be determined after the claims process is concluded.

1. Summary of the Testimony

A. Lashanda Freeman

Freeman received a bachelor’s degree and a master’s degree in criminal justice. She has worked as an investigator for the FTC Consumer Protection Division since 2019.

She investigates possible violations of the FTC Act. She reviews and captures transactions online and makes undercover calls; she reviews corporate document filings as well as documents obtained by the FTC pursuant to civil investigative demands.

Freeman is familiar with this case. She was assigned this matter by her supervisor in February 2019. Burton Katz, in a compliance report, disclosed that he was associated with a couple of companies as well as the DMV.com website.

During her investigation in 2019, she captured websites online, conducted undercover calls, and reviewed documents obtained by the FTC. One of the websites she visited was OnPointGlobal.com. Freeman also visited direct-market.com. On the bottom of the website page are listed “The Team,” which includes Chris Sherman and Elisha Rothman.

Freeman also visited and captured the website dragonglobal.com belonging to Dragon Global. On page two of the website are photos of Robert Zangrillo, Burton Katz, and Bob Bellack. Zangrillo’s bio on the website indicates he is the founder, chairman, and CEO of Dragon Global. The website also contains a bio for Burton Katz which indicates that Katz partnered with Dragon Global to acquire and operate On Point.

Freeman visited the Defendants’ websites and conducted undercover transactions on eight of the sites. She did not conduct transactions on all the sites. Freeman also used the Wayback Machine software to review between five and ten of the websites’ histories.

There were three distinct functions: transaction websites, public benefits websites, and feeder websites. One of the public benefits websites was related to Section 8 public housing. Freeman created an undercover profile using a fictitious name with an email address and credit card to match. She then navigated through the Section-8-housing.org website found after writing “section 8 housing apply” in a Google search and clicking on

the link. Freeman did not use one of the On Point guides to navigate to the Section 8 housing website. The website she found through the Google search provides information for Virginia Section 8 housing. Freeman clicked on the “find out if you are eligible for the Section 8 program” box and completed the information requested, including her email and phone number of her undercover profile. The email Freeman created was only used for this website and for an Obamacare website.

After she completed the form on the Section 8 website, she received two text messages the day she navigated through the website and two more text messages the next day. She also received an email with the subject line “We found a check in your name.” The body of the email indicates that they “found a check in her name and she might be missing out on some serious cash and it would be in her best interest to click the link below to collect.” Freeman also received an email with the subject line, “CITIBANK Card Cleared (\$1000) Congrats.” The body of the email indicates that a total of \$1000 had been loaded to a CITIBANK Card and prompted the user to click the link below to collect.

Freeman also visited an On Point guides website and asked her paralegal to download 38 of the guides listed on the website. Freeman downloaded a guide pertaining to VA benefits and one pertaining to Section 8 housing. The On Point guides website did not ask for personal information and did not involve a financial transaction. It did not fit into one of the three types of website categories.

Freeman investigated whether any of the Defendants had social media accounts. She searched Facebook, Twitter, and LinkedIn. She found a LinkedIn account of Elisha Rothman. He is listed as the Director of Data Processing at On Point and is listed as a principal of Direct-market.com. Freeman also found a LinkedIn profile for Chris Sherman, who is listed as Director of Data Processing at On Point. Freeman also found a LinkedIn account for Robert Zangrillo, which lists him as Chairman and CEO of Dragon Global. An Instagram account of Zangrillo includes a post of a photo of On Point’s headquarters in Miami. Another capture from Zangrillo’s Instagram account includes a photo of Zangrillo standing next to a helicopter with Burton Katz in the Aeropuerto de Carrasco in Uruguay.

In December 2019, Freeman went to the On Point headquarters with the Receiver as part of an “immediate access” provision of the Court’s TRO. The building was a large, converted warehouse with large open work areas as well as individual offices. Freeman spent three days at the headquarters. Freeman supervised other FTC employees who gathered and copied documents and computers. Freeman also gathered documents.

In Rothman's office, in a filing cabinet, Freeman found various letters from Offices of Attorneys General and Better Business Bureaus from numerous states. Also found were letters from merchants terminating business due to excessive chargebacks.

Domains by Proxy submitted approximately 21,000 pages in response to an FTC request. Freeman prepared a summary of the Domains by Proxy records. Zangrillo's shopper ID for On Point was transferred to Levison in 2018.

Freeman took a screenshot of the californiadrivers.org and the floridadriverslicense.org websites in April 2010.

Freeman was recalled as a rebuttal witness by the FTC. During her rebuttal she added the following testimony.

Freeman conducted an investigation of the DMV.com website and took screenshots of the website on April 4, 2019. When Freeman was on the website, but not until after she had entered her financial information, a pop-up box with a disclaimer appeared.

On June 27, 2019, she conducted an investigation of a fishing license website. At no time did a pop-up box with a disclaimer appear even though she navigated through the entire path of the website.

Freeman attempted to obtain a refund from the fishing license website and called a call center. She did not receive a refund. She was told that she would receive a refund for everything except the processing fee of \$3.99 or \$4.99, but she never received the refund.

On March 8, 2019, Freeman navigated through two different DMV.com websites, and there was no pop-up disclaimer on either site.

B. Melanie Damian

Damian is the court-appointed receiver in this case pursuant to an order of the Court dated December 13, 2019. Damian and her team took control of the Defendants on December 16, 2019. The companies had three types of businesses: Ecommerce; freemium sites; and Avenue I, which involved the purchase and sale of websites.

The guides related to many different topics from hunting and fishing to driver's license guides. There were also different guides for each state. The freemium sites offered guides for free.

While On Point was operating the websites, there were guides relating to Section 8 housing, reclaimed property, veteran's benefits, and automotives, among others.

The free sites made money through advertising. Some revenue came from sharing email or information about consumers with marketers. After an email

address would be acquired, there would be an email sent to the consumer targeting interests of the consumer. Text messages were also sent to the consumers.

In 2017 the percentage of sales from guides constituted 62% of the revenue of On Point; in 2018 they constituted 68% of the revenue; but, in 2019 the sales constituted only 41% of On Point's revenues. The freemium sites revenues constituted 31% of On Point's revenues in 2017, 20% in 2018, and 26% in 2019. From January 2019 through her appointment as Receiver, the path revenues were approximately \$9.8 million. Through its channels subdivision the company obtained revenues through advertising. The channels revenue from January 2019 through the appointment of the Receiver totaled \$8.2 million.

On April 19, 2019, Bob Bellack forwarded an email to Zangrillo which discussed the anticipated loss of \$4 million in revenue due to Bing suspension.

The company had corporate credit cards in the names of some of the individuals who worked for the company. The cards were used to buy media, i.e., search advertising. On Point used cards in the name of Chris Sherman and Elisha Rothman. Some employees, including Sherman and Rothman, used their personal credit cards to purchase media and were reimbursed by the company. Since the Receiver took over On Point, the companies do not use employees' credit and do not use multiple processing entities and do not pay productivity fees to the owners of processing entities.

Liza Vallejos was on the On Point payroll from October 14, 2015 to the present. She is currently in the finance department. Vallejos was part of the channel team as SMS Push manager. The SMS numbers were not shared with marketing partners but were only used in-house. Aldo Lanvas, Mauricio Rodriguez, Nadia Peshev also worked at On Point.

Zangrillo was only on the On Point payroll for one month in January 2019 along with another Dragon Global employee, Megan Black, so that they could be covered by health insurance. Emily Paulshock was on the On Point payroll for a couple of years and was paid approximately \$77,000 over three years. Damian could not find any evidence that Paulshock performed any work for On Point.

On Point sought reimbursement of the salaries paid to Zangrillo, Black, and Paulshock from Dragon Global but were never reimbursed by Dragon Global.

In company records, employees are listed as "manager," "executive," or "all other." Sherman, Katz, Levison, and Rothman are listed as "executive." On another company document, Zangrillo is also listed as "executive."

Alicia Nuche worked with Rothman in the finance area. Rothman interfaced with the technology department.

On Point maintained 191 bank accounts. Sherman, Rothman, Zangrillo were listed as signatories on a least one of the accounts.

On Point also rented approximately 50 mailboxes for merchant processing accounts. Sherman obtained 37 channels mailboxes and a couple mailboxes for merchant processing. Rothman obtained two mailboxes for merchant processing accounts.

The website OnPointglobal.com is owned by On Point Global, LLC. Direct-market.com is owned by On Point but was previously owned by Direct-market.

On Point used a program called Slack for internal communications. In November 2017, there was a Slack conversation in which Katia Canete, an On Point employee, states that they want to avoid any further suspensions and Sherman and Rothman want a new protocol instituted.

The initial shareholders were Bronco (Katz), Cardozo (Levison), MAC

On an organizational chart, Sherman is listed as reporting to Rothman. Sherman is listed as director of data trading and path.

In 2018, On Point had operations in Uruguay and Brazil. Zangrillo was reimbursed for travel to South America. Zangrillo was also paid a per diem of \$750 for travel on behalf of On Point. Sarofim and Soltani were never paid a per diem; not were they ever reimbursed for any expenses.

Sherman has worked as a consultant for the Receivership. He still works in channels coding for email messages, but he has no managerial responsibilities. Rothman is also performing high level financial and data analysis for the Receivership.

Damian is familiar with the claims process proposed by the Defendants. The consumers would be notified of the process, and the process would be as consumer friendly as possible. For some consumers, the amount the consumers previously paid is known to the company.

At the present time, the company has \$30 million in liquid assets which could be available for the payment of claims. If there is a shortfall, the individual Defendants would be responsible.

Damian has previous experience as a claims' administrator and as a distribution agent. She feels comfortable in her ability to run the type of process proposed by the Defendants.

To be eligible for a claim, the consumer would have to make an affirmative indication that they were unsatisfied with their purchase. Even if someone received a voucher, they would still get their money back. All segments of the claims' process would be subject to Court approval.

For the freemium guides, the consumers do not pay any money but do provide data in exchange for a free guide. For some of the freemium guides, consumers provided solely their name and email address. In 2019 there were over 15 million freemium consumers and the freemium revenues during 2019 were approximately \$17 million, which breaks down to \$1.13 per guide.

Merchant processing fees for the websites were \$13.9 million from 2017 through 2019. None of those monies were ever in the hands of the corporate Defendants.

Sometimes, consumers received coupons or vouchers in addition to the guides. When a customer activates a roadside assistance voucher, they can receive free towing or tire change. There were also vouchers for \$5 off for gasoline purchases, and gift cards for restaurants and grocery stores. Approximately 360,000 consumers used the vouchers provided with the guides.

Between 2017 and 2019, On Point took measures to attempt to comply with the law. They retained three law firms for privacy notices, disclaimers, and

reviewing websites. The company also purchased software to monitor TCPA compliance. The cost of the software was \$318,000 and the cost of the law firms was \$254,000. The company also paid \$344,000 for insurance. The company also paid government permitting expenses in the amount of \$165,000.

The company recently sent out a survey by email to 2.4 million consumers who purchased guides from 2017 to 2019 with a single question asking if they were satisfied with their experience with the purchase. 10% of them opened the survey and to this date, 4767 consumers responded to the survey. 80.49% indicated they were satisfied and 19.51% indicated they were unsatisfied.

Rothman was director of data processing when the Receiver took over but was not a member of the content team, marketing team, payment solutions team, or the freemium team.

Sherman was channels manager when the Receiver took over but was not a member of the content team, marketing team, payment solutions team, or the freemium team.

On one of the organizational charts, many employees are listed as "executive," but neither Rothman nor Sherman are listed as "executive." Rothman is listed as "director," and Sherman is listed as "manager." On another organizational chart, Rothman is listed as Director of Assets Acquisition and Sherman is listed directly below Rothman as Director of Data.

AdSense is an automated program from Google that places ads on publishers' websites. Google pays the publisher depending on the number of clicks on the ads.

On Point paid out over \$1 million on August 28, 2018 to Bronco, OCP, Cardozo, Mac Media and MMCardozo. Those payments are listed as "shareholder loan payout and investment in DG On Point" and include interest.

On February 4, 2019, \$4.5 million was paid to the same investors as loan payout plus interest. On Point never paid distributions to any investor.

There have only been four members of the board of managers: Katz, Zangrillo, Soltani, and Serofim. No board meeting minutes have been found since the meeting in August 2019 when Soltani and Serofim came on board.

C. Alicia Nuche

Nuche has been with On Point Global for five years and has been the director of finance since October 2019. Previously, she was the director of accounting.

On January 19, 2019, she sent an email to Wells Fargo listing the ownership interests in On Point Global, LLC. The email listed 35% for Bronco

Holdings (Katz), 35% by OCP (Zangrillo), 20% Mac Media (Rothman), and 10% Cardozo (Levison).

In 2019, Wells Fargo closed the accounts of On Point. Rothman had a

Miles was assigned to this case in February 2021. Her responsibilities included summarizing transactions in a database. She later received more data sets of Google and Microsoft ads and key words. She prepared summaries of the data.

Miles received a database with individual transactions, and from that data she prepared transaction summaries. There were 50 columns and 9.9 million individual transactions.

Miles summarized the purchase date, the source, the amount, refund amount and transaction status. The source column contained the URLs and there were 104 different URLs. The date range was from December 29, 2016 through December 31, 2019.

Miles also summarized financial information from an Excel file with two worksheets provided to her. There were ten columns and over 13,000 rows. It was organized by months, year, processing company, domain, product and a few other columns, and it was broken down into revenue, refunds, chargebacks, and fulfillment costs. There were 140 URLs. She compared those with the 104 URLs in the other summary and there were 80 URLs which were found in both.

The total amount of revenues set forth in the summaries is \$99.8 million. For the 80 URLs that were in both, the total amount was \$93.8 million. The total amount of refunds was \$12.8 million. For the 80 URLs in both, the total refunds were \$9.6 million.

Miles also determined the total amount of chargebacks of \$1.5 million.

The net amount (revenue minus refunds and minus chargebacks) was \$85.5 million.

Miles also prepared summaries of revenue by four processing entities. GNR had \$7.5 million, Pirate had \$3.6 million, Orange Grove had \$7.9 million, and Yamazaki had \$7.9 million.

Miles also summarized advertising data from Google ad and keywords and Microsoft keywords. There were four files. She was asked to find the top ten ads and the top 20 keywords.

Approximately 14.2% of the revenue was returned by refund or chargebacks. Thus, 85% of the revenue was not subject to refund or chargeback.

E. Elisha Rothman

Rothman is 51, married, and has six children from age 3 to 15. He has a bachelor's degree in economics.

He worked for an options trading house for three years and traded options on the New York Mercantile for 15 years. Prior to moving to Florida, he

had never done advertising work, web design, online content, or merchant processing.

Rothman had gone to school with Katz, and after he moved to Florida they were reintroduced.

At the end of 2014, Rothman bought shares in some of Katz's companies. One was doing guide sales and one was the precursor to the data business. Rothman felt he could use his talent to forecast financial numbers for the companies and reconcile numbers. Rothman looked at the financial data numbers, convergent rates, profitability, revenues, and sales to make his forecasts.

Rothman is still working for On Point as a consultant.

Rothman owns Mac Media, which owns 14% of On Point. Rothman was the director of data processing from January 2018 through December 2019. Before that, he was a manager at direct-market.com.

Katz, Levison, and Sherman were owners of direct-market.com at the time On Point was formed.

Rothman was the manager of 18 entities named as Defendants in this case. Rothman was also the manager of Yula Capital, which was set up to receive AdSense from Google. Rothman wrote in his answer to interrogatories that he had supervisory responsibility over Brian Satz, Lisa Vallejos, and Mauricio Rodriguez. But, in court he testified that he wrote that answer because at one point he was asked to sign their performance reviews even though he had not supervised them.

Rothman allowed the company to use his credit card to purchase media. He was always reimbursed and he received miles which he could use for travel with his family.

Rothman met with and spoke with Zangrillo very infrequently. Zangrillo's role was raising money from investors. Zangrillo did an amazing job raising money.

Rothman sent an email in January 2018 to Gabriela Mendivil. With the email he sent media performance reports for DMV.com, Direct market and PBJ. In another email he wrote that the conversion rate for Texas benefits was really low and the cost per acquisition was \$2.69.

From 2018 through 2019, Rothman had two responsibilities as the director of data processing: working on special projects with Sherman to identify websites to purchase, and, acting as liaison between the accounting/financing and the partners. Rothman also forecast revenue for On Point.

Rothman would sometimes receive daily summary reports. In one email he received which set forth refunds and chargebacks, there were 5.0%, 6.5%

and 6.6% refunds in three consecutive weeks and there were three months of chargebacks showing rates of 3.8%, 6.7% and 4.9% for April, May, and June.

According to a company document, Rothman spent 15% of his time during January 2019 on general administrative matters, 60% on investment banking, 10% on list management 3P, and 15% billing management-ecommerce. Sherman spent 50% on investment banking, 12.5% on channel marketing-affiliates, and 37.5% on channel marketing SMS.

Once On Point purchased websites, Rothman did not really focus on what happened with the websites. In his deposition, Rothman indicated that in order to better monetize the sites once a site was purchased, Sherman would work with the team to implement the path, and it would be transferred to the On Point group of sites. The hardest part of the job was finding sites to purchase. He had to find the sites, evaluate the sites, find the owner, and negotiate to purchase the sites. Only ten websites were purchased despite all his efforts. Any purchase needed to be approved by Bellack or Katz.

Rothman kept track of the revenue produced by the new websites but would not go on the websites to see why they were underproducing. He would notify Sherman and others if a site was underperforming, and they would take

Moishe Gubin who was also a close friend of his. Gubin did not invest but he did make a short-term loan to On Point.

From 2017 through 2019, Rothman estimates he spent the majority of his time in forecasting. There was a finite time period during which he was more involved in obtaining new websites.

Rothman's authority to make decisions within the Defendant entities was extremely limited.

Rothman was aware of the *FTC v. Acquinity* lawsuit towards the end of 2014 or early 2015 after having a conversation with Katz about it. Rothman remembers the conversation very well. Katz said he had settled a case with the FTC, that Katz was a vendor, that the case centered around mobile billing, and that the case had nothing to do with the type of business that they were anticipating working together on. Rothman had a long-standing relationship with Katz, and he had no reason not to believe him. Katz assured Rothman that the FTC matter had nothing to do with the paid guide business and the data business they were embarking on. Rothman did not take any steps to investigate Katz and did not Google Katz.

Rothman first learned that Katz's previous dispute with the FTC resulted in an order enjoining Katz and others when this lawsuit started in December 2019. He never saw the order until his deposition.

F. Christopher Sherman

Sherman first met Katz in 2011. Katz invested in a technology project Sherman created which eventually became Direct Market. After the roll up into On Point, Sherman became the director of data processing. Sherman did not own On Point. Sherman owns an equity interest in Bronco which owns an interest in On Point.

Sherman signed a Contribution and Exchange Agreement which gave him a 4% ownership interest in Bronco which, in turn, gave him an ownership interest in On Point.

Sherman owns 100% of 714 Media, which owns 17% of Direct Market. He has also owned interests in Leatherback Media, Macau Media, GNR Media, and Pirate Media. He was also a manager of those entities and other media entities.

Since appointment of the Receiver, Sherman has continued to work as a contractor for On Point doing the same work he did previously. Sherman reported to Charlie Eissa and no one reported to Sherman. Ramiro Baluga ran the freemium team.

Sherman is not involved in designing ads that appear on Google or Bing and is not involved in the purchase of ads. Sherman is not involved in what

appears on the landing page of a website. The channels team has no involvement in writing the questions that consumers are asked to answer. Once the consumer goes through the flow of the paths, they receive a guide. Sherman is not involved in the preparation of the guides. Sherman is not involved in the coding or technical maintenance of the freemium websites.

Sherman flagged a website for a path flow demonstration and took screen shots of the path of one of the Section 8 housing websites. He sent the screen shots by email to Rothman and Baluga. The screen shots include notes with additional information by Sherman.

On January 2, 2018, Sherman sent Katz an email asking him to review a path report which was attached. In the attachment, there were details concerning the path for food-stamps.org and tennesseefoodstamps.org.

On January 8, 2018, Sherman wrote an email to Katz responding to certain of his questions.

On March 28, 2018, Sherman sent as an attachment to an email to Katz a sample domain relating to food stamps. The attachment also includes several notes of Sherman, but he had input from other workers to assist in the attachment.

Sherman was part of many email exchanges with Katz and others concerning the paths of many different websites. In several emails there are discussions of the language of landing pages of websites and on January 24, 2018, he received an email discussing three matters. As to one of the matters, the email suggested changing a disclosure statement to a non-bold font or even removing it. But Sherman explained that he had nothing to do with the matter about which the disclaimer was discussed and he would not have paid attention to that part of the email. In another email from Liza Vallejo in May 2019, Sherman was asked to add a disclaimer that the website was not a government website as part of a compliance review.

Sherman denies ever directing anyone to remove a path from an On Point website or a Direct Market website before submitting the website to Google.

On Point used Sherman's credit cards to purchase media and other company expenses.

At least one of On Point's AdSense accounts with Google was suspended, but Sherman indicated he does not know why it was suspended. It is common for AdSense accounts to be suspended in the industry for reasons other than fraud.

The Adwords account of Direct Market was taken over by other employees of On Point. Even though the same email address was used, and even though Sherman kept that email on his phone, he rarely checked the emails and other employees of On Point had access to the email address. Even

In February 2015, Katz sent Zangrillo an email saying he was going to call Megan Black, Zangrillo's executive assistant, to get on Zangrillo's calendar the next week. With the email, Katz sent an attachment with a business plan for DMV.com. There was no mention of guides in the business plan.

After DMV.com was purchased, Katz became CEO and ran the day-to-day operations and also took a 20% ownership stake in DGDMV. Zangrillo may have looked at the website once before he bought it but did not look at the website thereafter.

In an email on December 17, 2017, Zangrillo suggests giving Katz more

Zangrillo introduced Soltani to Katz and Soltani later made an investment of \$17 million.

Zangrillo made a recommendation to Katz to hire True Search for executive hiring decisions but Katz did not follow his recommendation.

In February 2018, Zangrillo wanted On Point Global to hire Bob Bellack as CFO and COO. Bellack had an impeccable record in publishing and e-commerce. In March 2018, Bellack and Zangrillo exchanged emails with details of his proposed compensation and responsibilities.

In May 2019, Bellack sent Zangrillo and others an email detailing the state of the entities including forecasts for 2019.

Zangrillo received numerous emails detailing operations of On Point throughout the relevant years. Most of the detailed information about the operations were contained in attachments to those emails. Zangrillo continuously claimed that he did not read and/or pay attention to the information in these emails since he was only interested in “high level”

worrisome, this was 3.8% of revenue, not transactions. Further, Zangrillo testified that he was not aware of that statistic even though it was included in the attachment and that no one brought to his attention that there were an inordinate number of chargebacks.

On April 19, 2019, Zangrillo received an email from Bellack which forwarded an email from Gabriel Penaloza. The Penaloza email indicated that \$4 million in revenue would be lost due to the company being suspended from Bing. Zangrillo testified that the loss of that revenue was less than 5% of their plan which anticipated \$100 million in revenue during 2019.

On May 12, 2019, Bellack sent an email to Zangrillo which mentioned the "Bing recovery." Zangrillo testified that Bing was a small search engine. Zangrillo denies discussing the Bing recovery with Bellack.

Zangrillo testified that he could not recall any accounts with Google AdSense being suspended.

When meeting with potential investors, Zangrillo would provide them with disclosures which had been prepared by his legal team. As part of the disclosures, investors are told that Zangrillo made decisions impacting the company that may be in conflict with the best interest of the company. As part of a draft investor deck, which included Zangrillo's and Megan Black's edits, screen shots of DMV.com, a registration page, and a purchase page were included in the slides, and Zangrillo crossed them out so they would not be included. There were other slides which included screenshots of how the website would look. But the text in the screenshots of the web pages is so small that it is illegible.

On Point received approximately \$25 million from other outside investors. Zangrillo's total investment was approximately \$5 million. Zangrillo received 5% from On Point for obtaining the investments, but this was more a reimbursement for legal fees and taxes than a fee he had earned.

In April 2019, an amendment to the consulting agreement was entered into under which Zangrillo stepped down as Chairman of the Board and as an officer and executive of the company and would no longer have any day-to-day management responsibility. Zangrillo testified that he did not pay close attention to the wording of the document because he was going through a traumatic time in his life. He was indicted in the Varsity Blues case and decided to step down from a number of companies and was more focused on that case and his daughter and not on matters related to the company.

On August 29, 2019, Zangrillo attended a board of director's meeting at which Sarofim and Soltani became board members.

Zangrillo introduced Rob Sena to Levison and others in the company in the hope that the company would use his services, but the company did not go

Katz was a defendant in the *FTC v. Acquinity* case, which he settled by agreeing to entry of a permanent injunction. That order required him to submit a compliance report to the FTC one year later. Katz did submit a compliance report to the FTC under oath in October 2015. Katz did not identify any of the entities in this case (Cambridge Media, Direct Market, Falcon Media). He did list Bronco Holdings Family, LLC which owned interests in those companies and in another part of the report indicated Bronco owned a passive, minority interest in other companies as a seed/angel investor. The freemium business and guide business were not identified in the report.

On April 2, 2021, the FTC sent Katz a demand letter to which Katz responded on April 16, 2021.

Katz discussed his settlement with the FTC with Zangrillo in approximately June 2015 but did not discuss the order from that case. Katz's attorney and Zangrillo's attorney spoke about the FTC matter to make sure Katz would be able to be the manager for DG DMV.

Katz is generally familiar with the threshold of Visa and MasterCard related to chargebacks. Visa's threshold was 1% and MasterCard's threshold was 1.5%. Katz is unaware of any website having its Visa or MasterCard account terminated due to excessive chargebacks.

I. Ramiro Baluga

Baluga started working for On Point's predecessors in 2016 until On Point was created in 2018.

Baluga was responsible for purchasing media. Neither Rothman nor Sherman were involved in purchasing media.

After On Point came online, Baluga helped with content design as well as the e-commerce business. Baluga headed a team responsible for content and user experience on e-commerce websites. Neither Rothman nor Sherman worked on e-commerce, and neither bought ads.

Baluga was responsible for creating new websites and improving the existing websites. Neither Rothman nor Sherman was involved in that work.

Katia Canete was the project manager of the freemium team. There were certain protocols that Google representatives recommended be implemented to make sure that the ads purchased complied with Google's rules. Baluga was included in a Slack channel discussion group with Canete relating to the Google ads. Rothman and Sherman were not part of the discussion group.

On the freemium websites, the consumer can obtain a guide without going all the way through the website. There are incidents of consumers who returned to the same website after earlier ordering a guide.

In 2018 around 2.2 million customers purchased road guides and in 2019 it was around 1.8 million. In 2018, 641,000 customers who purchased road guides called into the call center and in 2019 there were 560,000 customers who called in. Approximately 29% of customers who purchased road guides called the call center. Approximately 25% of those who called the call center were calling for a reason other than a refund. Other customers requested a refund by email.

In 2018, the lowest priced guide was \$22.98 and in 2019 the lowest priced guide was \$23.98.

The total revenue of the persons who called the call center for reasons other than a refund in 2018 and 2019 was \$6.9 million.

L. Katia Canete

Canete worked for On Point from January 2017 until mid-February 2019. She was a project manager at the beginning and left as a product manager.

Canete created a Slack channel to communicate with her team when sites were being launched and to keep track of what was going on with the websites. Canete worked on freemium websites. Sherman worked on the channels team. Canete reported to Rothman and Sherman and Danielle Ciolfi.

Canete wrote in the Slack channel that Rothman and Sherman wanted no sites to be submitted to Google until every task was completed to avoid further suspension from Google ads. Sherman told her to hold off uploading a site to Google until Monday.

Canete was fired from On Point by Baluga because she was not performing her duties adequately.

2. Findings of Fact

A. Background

1. The Acquinity Permanent Injunction

In 2014, the FTC brought a lawsuit against Burton Katz and his associates alleging that they had engaged in the deceptive and unfair practice of cramming charges on consumers' mobile phone bills. *FTC v. Acquinity Interactive, LLC*, Case No. 14-cv-6011-Scola (S.D. Fla.), (*Acquinity ECF No. 88*). The FTC alleged that Katz's operation ran websites that offered free merchandise in exchange for consumers' phone numbers and enrolled consumers who provided their information in unwanted premium text messaging services that charged them monthly. (*Id.* ¶¶ 45–47.) To resolve the

matter, Katz stipulated to a final judgment and order for permanent injunction. (Acquinity ECF No. 132) (“2014 Order” or “Acquinity Order”).

Among other things, the 2014 Order prohibits Katz and persons in “active concert or participation” with him, “whether acting directly or indirectly, . . . from making, or assisting others in making, expressly or by implication, any false or misleading material representation including representations concerning the cost, performance, efficacy, nature, characteristics, benefits, or safety of any product or service, or concerning any consumer’s obligation to pay for charges for any product or service.” (2014 Order at 3 (Section II).) The 2014 Order also required Katz to pay \$704,244 to the FTC by October 23, 2014. (2014 Order at 3.) Acquinity Interactive LLC was Katz’s co-defendant in the 2014 lawsuit. (Acquinity ECF No. 88.)

2. The On Point Lawsuit

Despite the permanent injunction, Katz continued to operate deceptive businesses that he failed to disclose to the FTC in violation of the 2014 Order’s compliance monitoring provisions. After learning about Katz’s additional deceptive scheme, on December 9, 2019 the FTC filed its complaint against Katz, five of his associates, and fifty-four corporate entities. (ECF No. 1.) The Complaint alleges that defendants were operating scam websites that falsely promised to provide government services to consumers in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The Complaint further alleges that defendants are jointly and severally liable because the entity defendants acted as a common enterprise and the individual defendants participated in, controlled, and knew of the deceptive practices. (Id. at ¶¶ 61–77, 80–107.)

After a two-day evidentiary hearing, the Court issued a preliminary injunction that, among other things, appointed a receiver and froze the Defendants’ assets. (ECF No. 126.)

Upon conclusion of discovery, the FTC moved for summary judgment against all Defendants on both of its Complaint counts. (ECF No. 454.) Robert Zangrillo and the Dragon Global Defendants also moved for summary judgment. (ECF No. 410.)

3. Summary Judgment Rulings

On September 29, 2021, the Court partially granted the FTC’s motion for summary judgment as to individual defendants Katz, Levison, and the Corporate Defendants. (ECF No. 528.) The Court denied the FTC’s motion for summary judgment as to individual defendants Robert Zangrillo, Elisha

Rothman, and Christopher Sherman. ²

The Court found that On Point's paid-guides websites and freemium

not impermissibly vague and ambiguous. (Acquinity ECF No. 225).

The Court found that On Point's sites made false and misleading material representations to consumers. (Acquinity ECF No. 225 at 4.) The Court also held that Katz violated the 2014 Order as he had the requisite control or power to prevent the making of the false or misleading material representations at issue. (Id. at 4–5.) The Court also found that Levison and the On Point Contempt Defendants had actual notice of the 2014 Order and acted in active concert or participation with Katz to carry out the deceptive scheme. (Id. at 5–6, 9.) The Court further found that Katz, Levison, and the On Point Contempt Defendants were not excused from complying with the 2014 Order due to “inability to comply.” (Id. at 9–10.) Last, the Court also granted the Defendants' motion for summary contempt ruling as to the Dragon Global Contempt Defendants. (Acquinity ECF No. 225.)

B. Defendants

The On Point and Corporate Defendants operated the deceptive paid guides and freemium business as a common enterprise. (ECF No. 528 at 18.) Between 2012 to 2014, Burton Katz brought in Brent Levison, Elisha Rothman,

Zangrillo, and having received the slip opinion from the 11th Circuit Court of Appeals which affirmed the Court's finding that Zangrillo likely had "some knowledge" of On Point's deceptive activities, listened to Zangrillo's testimony

2. Elisha Rothman

The Court finds that the evidence and testimony establish that Rothman knew about and directly participated in the deceptive practices. He had the ability to control the company as the third largest shareholder with voting rights and authority to direct employees in the company's freemium operations and guide sales.

Rothman was the manager of 18 entities named as a defendant in this case. Rothman created and owned multiple companies to obtain merchant accounts and ad buying accounts, and he used his personal credit card to pay for ads to help the company continue operating during their frequent advertising account suspensions. Rothman received kickbacks for lending his name and credit to many of the company's merchant accounts. He was paid more than \$110,000 in "productivity fees." About 15 percent of the company's guide sales revenues over the past three years were processed through his merchant accounts.

Rothman was a shareholder and had the trust of Katz such that he was a signatory on company bank accounts. And, when Wells Fargo terminated its banking relationship with On Point, it was Rothman who sought out and obtained a new banking relationship with Optimum.

Rothman had full knowledge of the misleading nature of the representations On Point Global sites. Rothman knew about On Point's repeated breaches of processing thresholds and resulting chargebacks.

Rothman testified that he knew chargeback ratios above 1 percent would be cause for concern. Yet, Rothman was repeatedly notified that chargebacks exceeded this threshold and were very high, incredibly high, and breaching the thresholds. As just one example, in one email he received which set forth refunds and chargeback for three consecutive months, there were chargeback rates of 3.8%, 6.7%, and 4.9%. These notifications also included notifications that Rothman's own 3m-eratrvery high, io -1.345 TD -ataibanking relthe coi53 Tored n1 ()JTJ T* .13ue, in or

Capital. And Rothman personally stepped in to lend the company money to buy ads when their ad buying accounts were suspended.

Rothman and Sherman also ensured that On Point Global staff carried out a process for finalizing new freemium sites that included removing the information-gathering features from the sites before submitting them for Google's approval and then replacing those features once the sites were approved and had gone live.

Rothman also received and reviewed screen shots of the freemium site flow that Sherman put together. These screen shots included the freemium site's central misrepresentation. And, Rothman praised Sherman's reconstruction of the freemium sites as well done. Rothman also sent Katz a detailed description of the freemium site's layout and wording.

The evidence establishes Rothman had actual knowledge of On Point's representations that the company provided and the problems its deception caused. Even if he did not have actual knowledge (which he did), his admitted knowledge of repeated red flags from ad suspensions to merchant account

data. He directed other employees to make changes and edits to On Point's websites and provided the wording of text messages.

Sherman's emails showed that the sites he worked on made revenues from the paths and included one of the freemium sites on which the FTC's investigator conducted an undercover transaction (Foodstamps.com).

Katz referred to Sherman and Rothman as his "partners" and even scolded them and held them responsible for failing to properly supervise the workers who carried out the freemium sites operations.

Sherman directly participated in and had knowledge of On Point Global's deceptive activities. Sherman founded the freemium business before On Point Global was formed. He worked directly on the deceptive websites and directed employees to make edits to their coding, wording, and design.

Sherman also gave On Point the use of his credit to buy search engine advertising and open merchant accounts. On Point processed more than \$11 million in revenues from guide sales through Sherman's accounts. That amounted to 11 percent of the company's total guide sales reserves from 2017 to 2019.

Sherman also received more than \$60,000 in "productivity fees" in exchange for lending his name to the merchant accounts. He also obtained multiple bank accounts and rented mailboxes that the company used for both merchant and advertising account applications.

3. Conclusions of Law

The Court has subject matter jurisdiction over the FTC Act claims in this matter pursuant to 28 U.S.C. §§ 1391(b)(2), (c)(1), (c)(2), (c)(3), and (d), and 15 U.S.C. § 53(b).

The Court previously ruled, in granting partial summary judgment, that On Point's guide-sales and freemium websites are deceptive pursuant to Sections 5(a) and 13(b) of the FTC Act, that the On Point and Corporate Defendants are jointly liable for that conduct as a common enterprise, and that Defendants Katz and Levison are individually liable for injunctive relief. (ECF No. 528 at 12–21.) Moreover, in the Acquinity show-cause action, the Court previously ruled in a summary contempt proceeding that all Contempt Defendants except Elisha Rothman were in contempt of the Acquinity Order. (Acquinity ECF No. 225.)

Therefore, the remaining questions under Section 13(b) in the On Point action are whether Defendants Robert Zangrillo, Elisha Rothman, and Christopher Sherman are individually liable for injunctive relief. The remaining questions in the Acquinity show-cause hearing are whether Elisha Rothman can be held in contempt of the Acquinity Order and what is the appropriate

calculation of contempt damages.

A. Individual Liability

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.

direct participation.”

Rothman also had knowledge of his company's deceptive practices. Rothman and Sherman worked together to edit and analyze the path that gathered consumer data on the freemium sites. Rothman knew when search engines suspended the company's sites, and when the company accordingly had trouble buying search advertising, he permitted his personal credit card to be used to buy ads to work around those suspensions. Indeed, when Google suspended On Point freemium sites, Rothman and Sherman ordered their employees to remove the data-gathering path from those sites while they were under review, then restore the path once Google reinstated the sites. Rothman's and Sherman's action in submitting one version of the website to Google for approval, then using a different version once they were past the gatekeeper, demonstrates that their sites "contained terms that defendants knew were improper." *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 989 (N.D. Cal. 2010) (emphasis in original) (holding that when a telemarketing company deviated from a payment-processor-approved script, it demonstrated knowledge of improper terms in the scripts).

Rothman not only knew about but helped prepare analyses of and reports about the merchant accounts' high chargeback rates, and he testified that he was aware of the company's business model and pricing because he forecast its revenues. Rothman's claim that he does not "remember" seeing the websites that generated these problems—and the majority of the company's revenues—is not credible.

Rothman also re-established a banking relationship with Optimum Bank when Wells Fargo terminated its relationship with On Point and lent his credit to On Point to purchase media which helped prevent any misleading advertisements from being tied back to On Point.

Rothman participated directly in On Point's deceptive activity, had authority to control that activity, and had at least some knowledge of the deceptive activity. Thus, he is individually liable for injunctive relief pursuant to Section 13(b) of the FTC Act.

3. Christopher Sherman

Sherman also exercised control over On Point's deceptive operations, both before and after On Point Global LLC's formation. Sherman managed the day-to-day operations of Direct Market LLC, which originated and operated On Point's freemium business. He also owned several of Direct Market's subsidiaries, whose purpose was to purchase search advertising. Upon the creation of On Point Global LLC, Sherman's contribution of the entities he owned earned him a share in the new entity. He, along with Rothman, supervised the employees who operated the freemium sites, and in particular,

the “channel” marketing sent to consumers from those sites.

Sherman also directly participated in On Point’s deceptive conduct. Most directly, he, Rothman, and Katz worked together to edit and analyze the performance of the freemium websites. Sherman made, and ordered employees to implement, wording and design edits for the freemium sites, including their “disclaimers,” checkboxes, and language including, for instance, “Confirm that you will qualify for coverage” on a Medicare-related freemium site.

Sherman created companies to purchase search-engine advertising, and in some instances, he purchased those advertisements with his personal credit card. Sherman provided other essential services, including obtaining merchant accounts, bank accounts, rented mailboxes, and registration for On Point’s domains. Sherman obtained the merchant accounts by creating “billing companies” and signing merchant account applications that contained personal guarantees of the accounts and listed the deceptive websites for which the account would process sales. Sherman received kickbacks for the revenues obtained through his merchant accounts. In all, at least 11% of On Point’s

matter around the time it was entered and Sherman looked up the order and read it himself. Rothman and Sherman all worked closely with Katz's former colleagues from his codefendant Acquinity Interactive, and Katz testified that generally everyone in his office, and indeed his industry, knew about the 2014 FTC matter. Stronger relief is therefore necessary because Rothman and Sherman worked with Katz while paying little to no heed to his troubles with the FTC. Thus, there exists a cognizable danger of recurrent violation for Rothman and Sherman.

The Court has already examined the relationship between the FTC's proposed injunctive relief and fashioned a permanent injunction whose scope is reasonably related to the violations found. (ECF No. 528 at 26–27.) The Court will therefore enter the same injunctive relief against Rothman and Sherman as it entered against Katz, Levison, and the Corporate Defendants.

C. Contempt of the 2014 Order

The Court has jurisdiction over the contempt claims in this matter pursuant to its inherent power to enforce its 2014 Order. (See 2014 Order at 13) (stating that the Court retains jurisdiction “for purposes of construction, modification, and enforcement of this Order”).

The Court previously ruled in granting partial summary contempt that: its 2014 Order was valid, lawful, and unambiguous; On Point's websites made material misrepresentations in violation of that Order; Burton Katz, Brent Levison, and the On Point Contempt Defendants are liable in contempt for those violations and were not excused from compliance due to an inability to comply; and gross receipts of the paid-guide sites are the correct baseline for relief as to those sites, with the potential for appropriate offsets if the Defendants prove them. (Acquinity ECF No. 225 at 3–6, 9–11.)

The remaining questions in contempt are thus (1) whether Defendant Elisha Rothman is liable for contempt; (2) the appropriate baseline for relief as to the freemium sites; and (3) the amount of monetary relief required as a compensatory contempt remedy, following any permitted offsets that the Defendants establish.

1. Elisha Rothman Contempt

To establish contempt, the movant must show by clear and convincing evidence that:

- (1) the violated order was valid and lawful;
- (2) the order was clear and unambiguous; and
- (3) the violator had the ability to comply with the order.

(a) Actual Notice

compensate injured consumers”).

But as the Tenth Circuit held in *Kuykendall*, a baseline is just a starting

chargeback rate because the chargebacks pertained to all products sold by company, not just the two products at issue).

The FTC has shown that the Defendants' misrepresentations were widespread, as they occurred on publicly accessible websites and targeted consumers across the United States. The FTC has further shown that the misrepresentations—which led consumers to believe they would receive government services, when in fact they received only a PDF “guide”—were material. (See ECF No. 528 at 13); *FTC v. SlimAmerica, Inc.* , 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999) (“Express claims or deliberately-made implied claims used to induce the purchase of a particular product or service are presumed to be material.”). Finally, the FTC has shown that consumers actually paid money on the Defendants' guide-sales sites and provided their personal information on the Defendants' freemium websites. The FTC is

purchases. As such, it is reasonable to conclude that a vast majority of customers were 'wholly satisfied with their purchases.' Accordingly, the gross receipts from those customers should not be included in any contempt sanction and thus should be deducted from the baseline sanction of all gross receipts for the Defendants' paid-guide business." The Court does not agree. Failing to complain is not the equivalent to satisfaction. Moreover, the Defendants' claims of good faith are belied by the many red flags they ignored and indeed sought to evade or conceal, from high chargeback rates, to repeated suspensions of their advertising accounts, to the writing of false "reviews" to drown out online consumer complaints about their websites. (See ECF No. 528 at 26.)

As an alternative to the FTC's demanded remedy, the Corporate Defendants propose that this Court adopt its recommendation that the appropriate contempt sanction based on the amount of consumer losses from the Defendants' paid-guide business and freemium sites should be determined by a claims process. That process, which would be subject to this Court's ultimate approval, and administered by the Receiver, would allow actual consumer harm to be determined and a distribution plan to be established through which consumers could be wholly compensated. See, e.g., FTC v. Figgie

compensatory contempt remedies. See *Leshin I*, 618 F.3d at 1236–37 (holding that parties who “join together” to violate an order are jointly and severally liable for contempt remedy); (*Acquinity* ECF No. 225 at 11 n.5.). Any lesser/final amount will be determined after the claims process is concluded.

Done and ordered , in chambers, at Miami, Florida, on November 15, 2021.

Robert N. Scola, Jr.
United States District Judge