ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17cv60907

FEDERAL TRADE COMMISSION, and

STATE OF FLORIDA,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants and Relief Defendants.

[FILED UNDER SEAL]

FILED by CLR D.C.
MAY 08 2017
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – FT. LAUD.

PLAINTIFFS' *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE, APPOINTMENT OF A RECEIVER, AND OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE, AND MEMORANDUM IN SUPPORT

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I. INTRODUCTION AND SUMMARY

The Federal Trade Commission ("FTC") and the Office of the Attorney General, State of Florida, Department of Legal Affairs ("State of Florida," and together, "Plaintiffs") respectfully request that this Court immediately halt Defendants'[1] massive scheme to defraud financially distressed consumers through phony debt relief services, including fake debt consolidation loans.[2] Defendants' scheme has taken in tens of millions of dollars and has caused injury to consumers already carrying significant debt, including the elderly and disabled.

Defendants typically ensnare consumers with false promises of large debt consolidation loans at attractive rates, or with representations that they have taken over the servicing of consumers' pre-existing debt relief accounts. Defendants then trick consumers into paying hundreds or thousands of dollars a month under the false pretense that Defendants will pay, settle, or obtain dismissals of consumers' debts and improve consumers' credit.

However, Defendants do not pay, settle, or obtain dismissals of consumers' debts, and they do not improve consumers' credit. Instead, Defendants convert consumers' money to their own use and generally provide nothing in return. Over time, consumers learn that their debts are unpaid, their accounts are in default, and their credit scores have plummeted. Some consumers are eventually sued by their creditors, and some are forced to file bankruptcy. Many face financial ruin.

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[1] "Defendants" include the "Individual Defendants" ((1) Jeremy Lee Marcus; (2) Craig Davis Smith; and (3) Yisbet Segrea) and the "Corporate Defendants" ((1) Financial Freedom National, Inc., f/k/a Institute for Financial Freedom, Inc. and Marine Career Institute Sea Frontiers, Inc., also d/b/a 321 Loans, Instahelp America, Inc., Helping America Group, United Financial Support, Breeze Financial Solutions, 321Financial Education, Credit Health Plan, Credit Specialists of America, American Advocacy Alliance, and Associated Administrative Services; (2) 321Loans, Inc., f/k/a 321 Loans, Inc., also d/b/a 321Financial, Inc.; (3) Instahelp America, Inc., f/k/a Helping America Team, Inc., also d/b/a Helping America Group; (4) Helping America Group, LLC, f/k/a Helping America Group, Inc.; (5) Breeze Financial Solutions, Inc., also d/b/a Credit Health Plan and Credit Maximizing Program; (6) US Legal Club, LLC; (7) Active Debt Solutions, LLC, f/k/a Active Debt Solutions, Inc., also d/b/a Guardian Legal Center; (8) Guardian LG, LLC, also d/b/a Guardian Legal Group; (9) American Credit Security, LLC, f/k/a American Credit Shield; (10) Paralegal Support Group LLC, f/k/a Paralegal Staff Support LLC; and (11) Associated Administrative Services, LLC, also d/b/a Jobfax).

[2] Plaintiffs submit five volumes of evidence and exhibits in support consisting of Vols. I-V. Declarations are cited by their exhibit number (Ex. #) and, where appropriate, include citations to specific attachments thereto ("Att. [letter]").

While consumers suffer, Defendants make millions. Defendants have made more than $50 million through this fraud—their only known source of income. Defendants then shield that money by transferring millions through real estate transactions to at least twelve shell companies—the Relief Defendants.[3]

Defendants' deceptive acts and practices violate Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a); the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310; and Section 501.204 of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Chapter 501, Part II, Florida Statutes (2016). In order to halt these illegal acts, protect consumers from further harm, and preserve the Court's ability to redress consumer injury, Plaintiffs move this Court for an *ex parte* temporary restraining order ("TRO"). The TRO will enjoin Defendants' wrongful conduct. It will also freeze Defendants' and Relief Defendants' assets; appoint a temporary receiver over the Corporate Defendants; permit Plaintiffs and the temporary receiver immediate access to Corporate Defendants' business premises and the records of the Corporate Defendants and Relief Defendants; require them to fully disclose their assets; and provide for other ancillary relief. Plaintiffs also ask the Court to order Defendants and Relief Defendants to show cause why a preliminary injunction should not issue against them.

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[3] The "Relief Defendants" include: (1) JLMJP Pompano, LLC; (2) 1609 Belmont Place LLC; (3) 16 S H Street Lake Worth, LLC; (4) 17866 Lake Azure Way Boca, LLC; (5) 114 Southwest 2nd Street DBF, LLC; (6) 110 Glouchester St., LLC; (7) 72 SE 6th Ave., LLC; (8) Fast Pace 69 LLC; (9) Strategic Acquisitions Two, LLC; (10) Halfpay International, LLC, also d/b/a 16 H.S. Street 12Plex, LLC, 311 SE 3rd St., LLC, 412 Bayfront Drive, LLC, 110 Glouchester St., LLC, 72 SE 6th Ave., LLC, 114 SW 2nd Street JM, LLC, 8209 Desmond Drive, LLC, and HLFP, LLC; (11) Halfpay NV LLC, also d/b/a Halfpay International LLC; and (12) Nantucket Cove of Illinois, LLC.

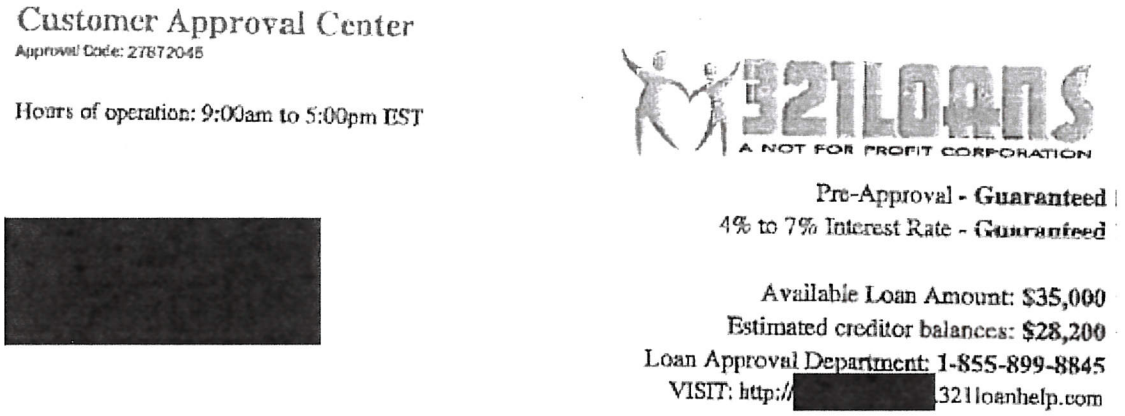
II. DEFENDANTS' WRONGFUL ACTS AND PRACTICES

Since at least late 2013, Defendants have been deceptively marketing and selling phony debt relief services, including fake debt consolidation loans.[4] The two main ways Defendants ensnare consumers are through their bogus loan campaign and their account takeover campaign.

A. Defendants' Bogus Loan Campaign

In the bogus loan campaign, Defendants lure consumers with false promises of guaranteed, low interest rate, debt consolidation loans.[5] Defendants use direct mail, Internet websites, radio advertisements, and unsolicited telephone calls to pitch their scam.[6]

Defendants' typical mail solicitation is in the form of a personalized letter to the consumer's home address.[7] A typical letter states it is from the "Customer Approval Center" of "321LOANS," "A NOT FOR PROFIT CORPORATION," and suggests that a low interest rate loan for tens of thousands of dollars, "Pre-Approval – Guaranteed," is only a phone call away:[8]


Customer Approval Center
Approval Code: 27872045

Hours of operation: 9:00am to 5:00pm EST

[redacted]

321LOANS
A NOT FOR PROFIT CORPORATION

Pre-Approval - **Guaranteed**
4% to 7% Interest Rate - **Guaranteed**

Available Loan Amount: **$35,000**
Estimated creditor balances: **$28,200**
Loan Approval Department: **1-855-899-8845**
VISIT: http://[redacted]321loanhelp.com

Defendants' typical letter then instructs consumers to call to receive a loan that will resolve their unsecured debts and build their credit.[9] Defendants tell consumers they will be able

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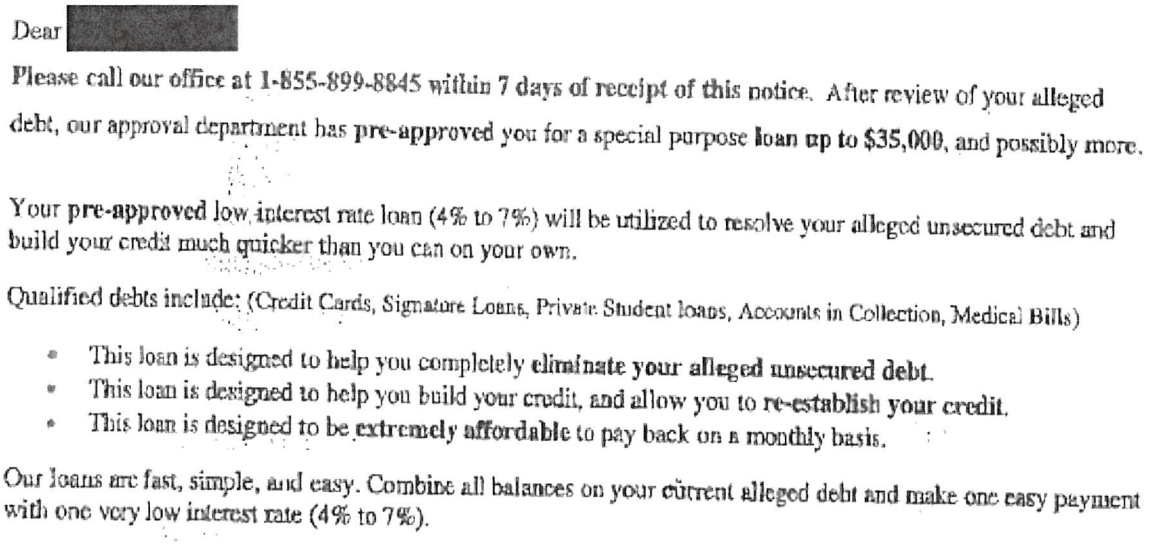
[4] *See* Declarations of FTC and State of Florida investigators (Exs. 1 and 3); the Better Business Bureau (Ex. 7); a former employee (Ex. 10); and 35 consumers (Exs. 11-46) contained in Vols. I-V filed contemporaneously herewith.
[5] *See* Exs. 4; 11; 12; 16; 19-21; 23-25; 27-29; 31; 32; 34; 36; 40-43; 45-46.
[6] Exs. 1; 4; 5 & Atts. E2-P; and Exs. 11-46.
[7] Exs. 19, Att. A; 20, Att. A; 21, Att. A; 23, Att. A; 27, Att. A; 29, Att. A; 42, Att. A; 43, Att. A.
[8] Exs. 19, Att. A; 20, Att. A; 21, Att. A; 23, Att. A; 27, Att. A; 42, Att. A; 43, Att. A; *see also* Ex. 29, Att. A.
[9] *Id.*

to "[c]ombine all balances on [their] current alleged debt and make one easy payment with one very low interest rate:"[10]



Dear [redacted]

Please call our office at 1-855-899-8845 within 7 days of receipt of this notice. After review of your alleged debt, our approval department has **pre-approved** you for a special purpose **loan up to $35,000**, and possibly more.

Your **pre-approved** low interest rate loan (4% to 7%) will be utilized to resolve your alleged unsecured debt and build your credit much quicker than you can on your own.

Qualified debts include: (Credit Cards, Signature Loans, Private Student loans, Accounts in Collection, Medical Bills)

- This loan is designed to help you completely **eliminate your alleged unsecured debt.**
- This loan is designed to help you build your credit, and allow you to **re-establish your credit.**
- This loan is designed to be **extremely affordable** to pay back on a monthly basis.

Our loans are fast, simple, and easy. Combine all balances on your current alleged debt and make one easy payment with one very low interest rate (4% to 7%).

Defendants have also maintained Internet websites with similar false debt consolidation loan promises.[11] For example, one website previously used by Defendants, www.321loans.org, explained: "We offer low interest rate loans to people with all types of credit scores, from the very bad to the very good. We want to help you get out of debt and get back on your feet."[12] The "About Us" section of this website further stated "321Loans: Easy, Low Interest Loans" and prominently displayed the following graphic:[13]

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[10] *Id.*
[11] Ex. 4, Atts. A-C; Ex. 1, §§ IV, V, Att. E; *see also* Ex. 5, Att. H.
[12] Ex. 4, Att. A; Ex. 1, § IV.
[13] *Id.*



Another of Defendants' websites, www.321badcreditloans.com, claimed: "Regardless of your credit score, we can offer you low interest rates to help you get out of your debt."[14]

Yet another of Defendants' websites, www.321financial.com, which is currently in use, contains the following "review:"[15]

> I had about $30000 in total debt including credit cards and medical bills and a few payday loans that were just killing me each month, I was paying about 800 on the payday loans alone and Cliff at 321Financial was able to get me to a 9% interest rate on all of my debt and lower my payment to 600 a month. I couldn't be happier with the process, they were also able to get 3 removed off my credit report that was showing up negatively. Please give these [sic] a call, don't waste your time with other companies.
> -Aaron O

When consumers call Defendants in response to Defendants' debt relief service ads, or when Defendants contact consumers through unsolicited telephone calls, Defendants lead

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[14] Ex. 4, Att. C; Ex. 1, § IV, Att. E; Ex. 5, Att. H.
[15] Ex. 4, Att. B; Ex.1, § IV, Att. E; Ex. 5, Att. H.

consumers to believe that their debts will be paid off.[16] For example, Defendants promise consumers low interest rate loans in the exact amount of their total unsecured debt, plus interest.[17] Those amounts typically range from $10,000 to $60,000 or more.[18] Defendants also quote attractive monthly payments that are significantly less than what consumers are paying their creditors.[19]

As an added benefit, Defendants also tell consumers they will receive a non-profit service that works to dismiss or settle the debts.[20] Defendants sometimes tell consumers their purported non-profit status enables them to provide the loans at such low interest rates.[21] In addition, Defendants sometimes tell consumers that, as a non-profit, they have legal teams of attorneys who will work to get consumers' debts dismissed or settled, and a credit corrections group who will improve consumers' credit.[22] Defendants may also explain that any money they earn comes from the interest rates consumers will pay, or from any difference between what consumers pay them and the debts they are able to dismiss or settle.[23]

Many consumers are several thousands of dollars in debt and are looking to consolidate their debt at a significantly lower interest rate and reduced monthly payment.[24] Many consumers also state that Defendants' purported non-profit status is important, as it makes Defendants and their offers appear more credible and legitimate.[25]

Often, while remaining on the line, Defendants' telemarketers email consumers an electronic link to 50-75 pages of documents designed to look much like a loan agreement, including a Truth in Lending Statement and loan repayment terms.[26] Consumers are instructed to scroll through the pages and notate their initials or e-signature by clicking where highlighted.[27]

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[16] Exs. 12; 13; 18-19; 21; 23-24; 27-29; 31-32; 35; 40-43; 45; *see also* Exs. 26; 33-34; 36; 41; 46.
[17] Exs. 12; 16; 18-21; 23; 25; 27; 29-32; 35-36; 40-43; 45-46; *see also* Ex. 11.
[18] Exs. 12; 16; 18-21; 23; 25; 27; 29; 31-32; 36; 41-43; 43; 45-46; *see also* Ex. 11.
[19] Exs. 12; 16; 18-21; 23; 25; 27-32; 36; 41-42; 45; *see also* Exs. 33-35.
[20] Exs. 13; 16; 21; 23; 31; 41; 43; 46.
[21] Exs. 21; 41.
[22] *See generally* Exs. 23; 41; 46.
[23] Exs. 11; 23; 41.
[24] Exs. 11-13; 16; 18-21; 23; 25; 27-28; 30-32; 35-36; 41-42; *see also* Exs. 34; 43; 45-46.
[25] Exs. 21; 23; 31; 41; 43; 46.
[26] Exs. 11; 12; 16; 19-21; 23; 24; 27; 28; 30-31; 41-43; 45-46.
[27] Exs. 11-13; 16; 19-21; 23; 24; 27; 28; 30-32; 36; 40-43; 45-46.

Consumers are unaware that buried deep within the documents is vague, ambiguous, and contradictory language that Defendants will later seek to rely upon to deny their promises to pay, settle, or obtain dismissals of consumers' unsecured debts.[28] For example, while Defendants provide electronic "loan" documents that reinforce their false promises to extend loans that will pay off consumers' unsecured debts, buried within those lengthy documents are contradictory statements that Defendants are "not a debt relief service" and do "not collect money from Client to pay a creditor or collector."[29]

Believing Defendants will pay their debts or get them settled or dismissed, consumers agree to allow Defendants to take their first loan "repayment" or a processing fee immediately or shortly thereafter.[30] Then, Defendants continue to take consumers' money each month, in amounts ranging from $200 to $1,000 or more.[31]

B. Defendants' Account Takeover Campaign

A second way Defendants lure consumers into paying them is through their account takeover campaign. Defendants call consumers already enrolled with third-party debt relief providers and inform them that Defendants are taking over the servicing of their existing debt relief accounts.[32] Many of these consumers have worked for years with their third-party debt relief providers and have saved money in established escrow accounts for use in negotiating with creditors.[33] Many consumers' escrow balances are in the thousands.[34]

Defendants falsely promise they will continue to perform the same or similar debt relief services for these consumers.[35] They instruct consumers to transfer all the money from their escrow accounts to Defendants,[36] or they simply take the escrow funds without the consumers'

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[28] *See* Exs. 11-13; 16; 18-21; 23-25; 27; 28; 30-32; 35-36; 41-43; 45-46.
[29] *See* Exs. 21, Att. B; 46, Att. A.
[30] Exs. 12; 13; 16; 18-21; 23-25; 27; 28, Att. A; 31-32; 34; 36; 40-43; 45-46; *see also* Ex. 29, Att. A.
[31] Exs. 12; 13; 16; 18; 21; 23-25; 27; 28; 31-32; 34; 36; 40-43; 46; *see also* Exs. 29, Att. A; 33.
[32] Exs. 10; 14; 15; 22; 37-39; 44.
[33] Exs. 10; 14; 15; 22; 37; 39; 44.
[34] Exs. 14; 22; 37; 39; 44.
[35] Exs. 10; 14; 15; 22; 37-38; 44; *see also* Ex. 39.
[36] Exs. 14; 15; 22; 37-38.

consent.[37] In addition, Defendants set up recurring monthly withdrawals from the consumers' checking accounts ranging from $200 to $1,000 or more.[38]

C. Regardless of the Campaign, Consumers Get Nothing for Their Money

Defendants do not provide debt consolidation loans.[39] Nor do Defendants generally pay, settle, or obtain dismissals of consumers' debts or improve consumers' credit.[40]

Once hooked through Defendants' misrepresentations, consumers often hear nothing from Defendants except, perhaps, in the form of a monthly telephone call to see how consumers are doing[41] or through payment reminders.[42] With the purported loans, consumers sometimes receive payment confirmations reinforcing the myth that consumers are repaying a debt consolidation loan.[43]

At some point, consumers typically learn from their creditors that their bills are unpaid and their accounts are going into default.[44] When asked, consumers' creditors often inform consumers that Defendants have not contacted them to seek to pay, settle, or dismiss the consumers' debts.[45] In some instances, even when consumers show Defendants that their creditors have offered to settle their debts, Defendants refuse to settle the debts.[46]

When consumers ask Defendants why their debts have not been paid as promised, Defendants continue to mislead consumers by stringing them along with false explanations, including that Defendants need time to validate consumers' debts or confirm payoff amounts.[47]

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[37] Exs. 39; 44.
[38] Exs. 14; 15; 22; 39; 44.
[39] Exs. 11; 12; 16; 19-21; 23-25; 27-29; 31-32; 34; 36; 40-43; 45-46.
[40] Exs. 10; 11-46.
[41] Exs. 10; Ex. 42.
[42] Exs. 16; 19; 21, Att. D; 22; 23, Att. E; *see also* Ex. 46.
[43] Loan payment "confirmations" typically specify an "Amount Applied to Principal," "Amount Applied to Interest," and "Amount Applied to Fees (if any)." Although Defendants later claim these payments are exclusively to pay Defendants' fees, payment confirmations state $0.00 applied to fees. *See, e.g.*, Exs. 12, Att. B; 20, Att. B; 23, Att. C; 31, Att. B; 42, Att. C; 46, Att. D.
[44] *See* Exs. 11; 13; 15-19; 21; 27; 28; 30-34; 36; 39; 42-43; 46.
[45] *See* Exs. 12; 17; 19; 21; 26; 28; 31-32; 34; 36; 41-42; *see also* Ex. 15.
[46] Exs. 26; 41.
[47] *See* Exs. 10; 11-17; 19; 21; 23-29; 31; 34-37; 40-43.

Defendants also insist that consumers refrain from paying their creditors or risk a double payment.[48]

When consumers demand proof of Defendants' efforts to pay, settle, or dismiss their debts, Defendants sometimes send a form letter to consumers' creditors in the consumers' own names without first ascertaining the truth of the statements in the letter.[49] The form letter suggests the consumers will be filing bankruptcy or disputes the validity of the consumers' debts.[50]

In many instances, it is not until consumers demand cancellation and a return of their money, threaten legal action, or complain to law enforcement or the Better Business Bureau ("BBB") that consumers discover Defendants intend to keep all of consumers' money, including any loan "repayments" or funds transferred from consumers' escrow accounts, as "fees."[51] Consumers who once thought their debts would be paid, settled, or dismissed are essentially told that their debts have more than doubled[52]—not only do consumers still owe their original debts, they now learn Defendants expect an equal amount in payments.[53]

Defendants typically refuse to return consumers' money[54] and, in many instances, report the purported loan to credit bureaus.[55] A consumer who initially had a total unsecured debt of approximately $30,000 may discover that his credit report now shows a total debt of approximately $60,000 due to Defendants' purported "loan," even though the consumer received no money.[56]

While Defendants collect millions from consumers, consumers generally get nothing in return. Consumers do not receive debt consolidation loans and generally do not get their debts paid, settled, or dismissed or have their credit improved.[57] To the contrary, Defendants leave

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[48] Ex. 19; *see also* Exs. 11; 23; 25-26; 28; 30; 32; 34; 36; 41; 43.
[49] Exs. 10, ¶ 14; 17, Att. A; 31, Att. A; 33.
[50] Exs. 17, Att. A; 31, Att. A; 33.
[51] *See* Exs. 12; 23; 28, Att. A; 30; 31; Ex. 6, ¶¶ 27-28, Atts. F, G; Ex. 7, ¶¶ 19, 21, Atts. G, H.
[52] *See* Exs. 16; 19; 21; 25; 34; 36; 39, Att. C.
[53] *See* Exs. 16; 19; 21; 23; 34.
[54] *See* Exs. 11-13; 15-17; 21; 23-24; 28; 30-31; 33-35; 38-40; 42-43; 45-46.
[55] *See* Exs. 13; 16; 18; 23; 29, Att. A; 30; 34; 36; 41.
[56] *See* Exs. 13; 16; 18; 19; 25; 29, Att. A; 34; 36.
[57] Exs. 11-46.

consumers in much worse financial positions.[58] In many instances, Defendants bilk thousands of dollars from consumers, many of whom are already in financial distress.[59] Many are also elderly or disabled.[60] Some consumers are eventually sued by their creditors,[61] and some are forced to file bankruptcy.[62] Often, consumers' credit ratings are severely damaged.[63]

D. Consumer Harm

Two of the Corporate Defendants attest that they each make $9 million in annual revenue.[64] Available bank records support this figure and show that Defendants have taken in gross revenue of more than $50 million between mid-2014 and mid-2016 alone.[65]

III. THE DEFENDANTS

Defendants constitute a common enterprise of entities that operate and facilitate the scam, as well as three individuals who have authority to control them and directly participate in the unlawful activities. In addition, twelve Relief Defendants unjustly reap significant financial benefit from Defendants' unlawful practices.

A. Individual Defendants

Jeremy Lee Marcus ("Marcus") is at the center of the scheme. Marcus is or was at various times the owner, director, president, managing member, or authorized representative of each Corporate Defendant and Relief Defendant.[66] Marcus is also an authorized signatory on nearly all Corporate Defendant bank records,[67] and he is listed as an owner and an officer on

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[58] *Id.*
[59] Exs. 11; 13-15; 17-18; 22-29; 33-34; 37; 39; 42-43; 46.
[60] Exs. 10, ¶ 8; 29, Att. A; 30; 39; 41.
[61] *See* Exs. 11; 13; 17; 26; 33-34.
[62] Exs. 16-17; 23; 33.
[63] Exs. 11-13; 16; 18; 23; 25-28; 30; 32; 34; 37; 39; 41-43; 46; *see also* Ex. 19.
[64] Ex. 7, ¶¶ 31-32, Atts. O, Q.
[65] Ex. 2, ¶ 7. As explained in the declaration of forensic accountant Roshni Agarwal at Ex. 2, this is a conservative figure, based on a limited number of available bank records over a two-year period. A forensic analysis of the records reveals the existence of a much larger universe of related accounts and records.
[66] Ex. 1, § II, Att. A. In a seeming effort to disguise ownership and control, each Corporate Defendant systematically replaced the names of the individual owners and managers with the names of partnerships and, later, business trusts. *Id.*
[67] Ex. 2, ¶ 4, Att. A.

telemarketing documents filed by three Corporate Defendants.[68] Marcus also holds himself out to state regulators and others as an owner or officer of Corporate Defendants.[69]

Craig Davis Smith ("Smith") is or was also at various times the manager, director, or president of each Corporate Defendant.[70] In addition, Smith has signatory authority over some Corporate Defendant bank accounts,[71] and he states to regulators and others that he is an owner, officer, manager, or director of Corporate Defendants.[72] Current and former employees attest that Smith and Marcus are owners of the operation.[73]

Yisbet Segrea ("Segrea") holds herself out to state regulators, the BBB, and consumers as "Director of Operations," "Operations Manager," or "Manager" for most, if not all, Corporate Defendants.[74] Segrea was also president of one Corporate Defendant and at various times was listed as an administrator and/or trustee for a number of other Corporate Defendants.[75] A former employee describes her as the person who runs all of Marcus and Smith's companies along with them.[76]

As is more fully explained in Section IV(B)(1)(d), *infra*, each Individual Defendant has authority to control, participates in, and has knowledge of Corporate Defendants' unlawful business practices.

B. Corporate Defendants and Their Purported Non-Profit Status

The Corporate Defendants are an elaborate web of inter-related companies with interchanging names and roles in the fraud. As further detailed in Section IV(B)(1)(c), *infra*, the Corporate Defendants share common ownership, employees, and the same principal place of business—an approximately 50,000 square foot warehouse located at 1410 SW 3rd Street,

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[68] Ex. 6, ¶¶ 11-14.
[69] Ex. 1, § II, Att. A.; Ex. 2, ¶ 4, Att. A; Ex. 5, ¶¶ 33, 36-37, 42-47, 49, Atts. F, G, I-P; Ex. 6, ¶¶ 13-14, 17, Atts. A, B, D; Ex. 7, ¶¶ 25, 36; Ex. 10, ¶ 5.
[70] Ex. 1, § II, Att. A.
[71] Ex. 2, ¶ 4, Att. A.
[72] Ex. 5, ¶¶ 16, 20, 33, 36-37, Atts. F, G; Ex. 6, ¶¶ 13-14, Atts. A4, B1; Ex. 7, ¶¶ 25, 31, Att. O; Ex. 10, ¶ 5.
[73] Ex. 5, ¶¶ 36-37, Atts. F, G; Ex. 10, ¶ 5.
[74] Ex. 5, ¶¶ 24, 39, 48; Ex. 6, ¶¶ 26, 30, Atts. F-I; Ex. 7, ¶¶ 24, 25, 30-34, Atts. O-R; Exs. 12 & Att. D; 16 & Att. G; 19 & Att. I; 21; 30; 37 & Atts. D, E; 39 & Att. C; 43 & Att. C.
[75] Ex. 1, § II, Att. A; Ex. 6, ¶ 15, Att. C.
[76] Ex. 10, ¶ 5.

Pompano Beach, Florida 33069 (the "Pompano Beach address"). In addition, the Corporate Defendants – including those claiming non-profit status – integrate their funds by transferring millions between and through their accounts and ultimately into multi-million dollar real estate purchases, an online alcohol store, and high-ticket items like Rolex watches and a Tesla.[77] These and other lavish expenses, including month-long paid vacations for employees and a holiday party with a 50" wide screen television as a door prize,[78] are for the benefit of Corporate Defendants' owners and their workers. There is no exception for the purported non-profits, who transfer funds freely with their designated for-profit counterparts.[79] The Corporate Defendants are:

Defendant **Financial Freedom National, Inc., formerly known as Institute for Financial Freedom, Inc., and Marine Career Institute Sea Frontiers, Inc., also doing business as 321 Loans; Instahelp America, Inc.; Helping America Group; United Financial Support; Breeze Financial Solutions; 321Financial Education; Credit Health Plan; Credit Specialists of America; American Advocacy Alliance; and Associated Administrative Services** ("FFN") is registered as a Florida non-profit corporation.[80] FFN does business under a number of fictitious names used by Defendants to market and sell their fraud, including "321 Loans," "Instahelp America," "Helping America Group," and "Breeze Financial Solutions."[81]

FFN's purported non-profit status is a ruse. In 1995, FFN, under a different corporate name and governance, filed non-profit incorporation papers with the Florida Department of State and received 501(c)(3) status with the IRS.[82] When Defendant Marcus became President of the company in 2014, he removed the board of directors and changed the company name, yet kept the 501(c)(3) designation granted to the preexisting company nearly two decades earlier.[83]

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[77] Exs. 1-3.
[78] Ex. 10, ¶¶ 22-23.
[79] Ex. 2, ¶¶ 8, 10-12, 16-21. As discussed herein, all Corporate Defendants are organized to carry on business for their own profit or that of their members and are therefore subject to FTC jurisdiction. *See* FTC Act Sec. 4, 15 U.S.C. § 44.
[80] Ex. 1, § II, Att. A.
[81] *Id.*
[82] *Id.*
[83] *Id.*

Although Marcus attested under oath to state regulators that FFN is a non-profit,[84] the evidence shows FFN operates for a fraudulent purpose and for the hefty profits and benefit of Defendants and their workers. From June 2014 to June 2016, FFN transferred and received millions to and from other Corporate Defendants' bank accounts, seemingly without regard for any legitimate business purpose.[85] In addition, a search of the IRS, Guidestar, and Citizenaudit.org non-profit reporting databases ("non-profit reporting databases") shows that the company has not complied with even the most basic filing and reporting requirements since Marcus took over in 2014.[86]

Defendant **321Loans, Inc., formerly known as 321 Loans, Inc., also doing business as 321Financial, Inc.** ("321Loans") is likewise registered as a Florida non-profit corporation.[87] "321Loans" is typically the name Defendants use on mailers and other solicitations marketing their purported debt consolidation loans to consumers.[88]

Although 321Loans filed articles of incorporation with the Florida Department of State claiming it is a non-profit, it does not operate as one. There is no record of the company in the non-profit reporting databases that demonstrates the company has complied with basic non-profit filing and reporting requirements.[89] In addition, a "321LOANS" sales training manual obtained by regulators carries no mention of providing the public a charitable, educational, scientific, religious, or literary service.[90] Rather, it teaches "The Art of the Sale" and the importance of qualifying consumers who can pay by explaining that "the more time you spend qualifying the prospect, the less time you will waste pitching unqualified people for hours only to find out they HAVE NO $$$."[91] The training manual further advises, "[w]hat is MOST important and something that many salespeople miss when they go into a call wanting to create value, they

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[84] Ex. 6, ¶ 13, Atts. A1-A2; *see also* Ex. 5, ¶ 49, Att. O.
[85] Ex. 2, ¶¶ 10-12, 16-20.
[86] Ex. 1, ¶ 7. For instance, since Marcus took over, FFN has not filed an IRS Form 990, the annual tax return form for tax-exempt organizations, which provides detailed financial information and an overview of the entity's activities, accomplishments, and governance.
[87] Ex. 1, § II, Att. A.
[88] Ex. 19, Att. A; Ex. 20, Att. A; Ex. 21, Att. A; Ex. 23, Att. A; Ex. 27, Att. A; Ex. 42, Att. A; Ex. 4, Att. A; Ex. 5, ¶¶ 34, 39, Att. H.
[89] Ex. 1, ¶ 7.
[90] Ex. 6, ¶ 13, Att. A4.
[91] *Id.* (emphasis in original).

forget the goal is to make a sale . . . So remember your ABC's – Always Be Closing!"[92] Further, 321Loans' bank records reveal that, in just two years, the company has received and deposited millions, which it then uses to pay for fine jewelry ($52,000 for three Rolex watches), real estate ($3,500,000), and whole-dollar withdrawals by Defendants Marcus or Smith ($300,000).[93]

Defendant **Instahelp America, Inc., formerly known as Helping America Team, Inc., also doing business as Helping America Group** ("Instahelp-HAG") is also registered as a Florida non-profit corporation.[94] "Instahelp America" and "Helping America Group" are other names predominantly used by Defendants in their debt consolidation scheme,[95] and Instahelp-HAG is one of three Corporate Defendants using the "Helping America Group" name.

Although Instahelp-HAG's articles of incorporation claim it is a non-profit, there is no record of the company in the non-profit reporting databases.[96] Like FFN and 321Loans, it transfers money freely with its for-profit counterparts.[97] In addition, a job positing for "Helping America Group" makes no mention of non-profit employment and instead touts a "generous" compensation package and asks, "[A]re you ready to work in a fun environment and make great $$$$?!?!?!?"[98]

Defendant **Helping America Group, LLC, formerly known as Helping America Group, Inc.** ("HAG") is a Florida limited liability company.[99] HAG is another of three Corporate Defendants using the name "Helping America Group." Although its SunBiz records clearly state its for-profit status, HAG has also held itself out as a non-profit entity, soliciting donations on its website until it was stopped and fined by state regulators in 2016.[100] Marcus paid the fine for the violation, as well as other telemarketing violations incurred by 321Loans

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[92] *Id.*
[93] *See* Ex. 2, ¶¶ 13, 16-17.
[94] Ex. 1, § II, Att. A.
[95] *See* Ex. 5, ¶ 34; Ex. 7, ¶¶ 11, 14, 16, 23, 30, 33, 34, Atts. B, Q, R; Ex. 6, ¶¶ 14, 20-22, Att. B; Exs. 11-13; 16; 18-21; 23-25; 27-32; 34; 36; 40-43; 45-46.
[96] *Id.* at ¶ 7.
[97] Ex. 2, ¶¶ 11, 16, 19.
[98] Ex. 5, ¶ 11, Att. B.
[99] Ex. 1, § II, Att. A.
[100] Ex. 5, ¶¶ 41, 46-47, Atts. A, M, N, P.

and Instahelp-HAG, using checks written on the account of another Defendant, ADS-Guardian Legal.[101]

Defendant **Breeze Financial Solutions, Inc., also doing business as Credit Health Plan and Credit Maximizing Program** ("Breeze Financial") is registered as a Florida non-profit corporation, but the company does not appear in any of the non-profit reporting databases.[102] Breeze Financial purports to provide credit correction services incident to consumers receiving their purported loan.[103] However, the company does not report any employees[104] and its bank accounts show negligible funds, suggesting it is merely a shell.[105]

Defendant **US Legal Club, LLC** ("US Legal") is a Florida limited liability company.[106] US Legal purportedly provides legal services if creditors sue consumers for their unsecured debts.[107] But again, US Legal has no employees and insignificant funds, suggesting it is also simply a shell.[108]

Defendant **Active Debt Solutions, LLC, formerly known as Active Debt Solutions, Inc., also doing business as Guardian Legal Center** ("ADS-Guardian Legal") is a Florida limited liability company.[109] The name "Guardian Legal" is formally used by at least two Corporate Defendants and is a name employed when convincing consumers that Defendants have taken over provision of pre-existing debt relief services that consumers were using.[110] Segrea owned and operated ADS-Guardian Legal until at least 2014 when Marcus became its president.[111]

Defendant **Guardian LG, LLC, also doing business as Guardian Legal Group** ("Guardian Legal") is a Florida limited liability company.[112] As stated above, the name

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[101] *Id.* at ¶¶ 43, 45, 47, Atts. J, L, N.
[102] Ex. 1, § II, Att. A.
[103] *See* Exs. 21; 22 & Att. A; 23; 36; 41; 46.
[104] Ex. 1, § III, Att. B.
[105] Ex. 2, n. 3, ¶¶ 12, 20.
[106] Ex. 1, § II, Att. A.
[107] *See* Exs. 16; 21; 23; 46.
[108] Ex. 1, § III, Att. B; Ex. 2, n. 5.
[109] Ex. 1, § II, Att. A.
[110] Ex. 1, § II, Att. A; Exs. 10; 14; 15; 22; 37-39; 44.
[111] Ex. 1, § II, Att. A; Ex. 6, ¶ 15, Att. C.
[112] Ex. 1, § II, Att. A.

"Guardian Legal" is one of the names used by Defendants when convincing consumers they have taken over consumers' pre-existing debt relief accounts.

Defendant **American Credit Security, LLC, formerly known as American Credit Shield, LLC** ("ACS") is a Florida limited liability company.[113] Defendants have also used the names "American Credit Security" and "American Credit Shield" in the process of convincing consumers that Defendants have taken over consumers' pre-existing debt relief services, as well as in other debt relief service misrepresentations.[114]

Defendant **Paralegal Support Group, LLC, formerly known as Paralegal Staff Support LLC** ("PSG") is also a Florida limited liability company.[115] PSG employs the Individual Defendants and other key personnel.[116] It also directs the activities of other Corporate Defendants[117] and deals directly with consumers, their money, or their complaints.[118]

Defendant **Associated Administrative Services, LLC, also doing business as Jobfax** ("AAS") is another Florida limited liability company.[119] AAS also employs the Individual Defendants and other key personnel,[120] and available bank records indicate that AAS otherwise acts as a pass through entity.[121]

C. Relief Defendants

The following twelve Relief Defendants serve as holding companies for assets derived from Defendants' unlawful scheme. The Relief Defendants, all of which Marcus is or was a manager, member, or authorized representative, also all maintain their principal address at Corporate Defendants' Pompano Beach address.[122] The Relief Defendants have no known legitimate claim to the assets they received. While Relief Defendants received millions from Corporate Defendants, nothing indicates that Relief Defendants provided anything in return as

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[113] Ex. 1, § II, Att. A.
[114] *See* 17; 26; 33; 37.
[115] Ex. 1, § II, Att. A.
[116] Ex. 1, § III, Atts. C, D; Ex. 6, ¶¶ 13, 14, 26, 29, Atts. A4, A7, B1, H.
[117] *See* Ex. 5, ¶ 29, Att. E4.
[118] Ex. 6, ¶¶ 26, 29, Att. H; Exs. 15; 21; 23 & Att. D; 27 & Att. B; 32; 34; 36; 42-46.
[119] Ex. 1, § II, Att. A.
[120] Ex. 1, § III, Atts. C, D.
[121] *See* Ex. 2, n. 4.
[122] Ex. 1, § II, Att. B.

consideration.[123] Indeed, most Relief Defendants were formed at or near the time that the real estate or other assets were quitclaimed or transferred to them.[124]

JLMJP Pompano, LLC; 1609 Belmont Place LLC; 16 S H Street Lake Worth, LLC; 17866 Lake Azure Way Boca, LLC; 211 SE 4th Ave, LLC; 311 SE 3rd Ave., LLC; 114 Southwest 2nd Street DBF, LLC; 110 Glouchester St., LLC; 72 SE 6th Ave., LLC; Fast Pace 69 LLC; and Strategic Acquisitions Two, LLC (together, the "Florida Relief Defendants") are registered with the Florida Department of State as limited liability companies formed by Marcus.[125] Together, the Florida Relief Defendants hold multiple pieces of real property purchased with funds largely traceable to Defendants' wrongful acts and either taken in their name or immediately quitclaimed to them by Marcus.[126]

Halfpay International, LLC, also doing business as 16 H.S. Street 12Plex, LLC; 311 SE 3rd Ave., LLC; 412 Bayfront Drive, LLC; 110 Glouchester St., LLC; 72 SE 6th Ave., LLC; 114 SW 2nd Street JM, LLC; 8209 Desmond Drive, LLC; and HLFP, LLC (the "Delaware Relief Defendant") is a Delaware limited liability company.[127] The Delaware Relief Defendant is one of two companies using the name "Halfpay International, LLC." "Halfpay International, LLC" is listed as an authorized member of the other Relief Defendants, and Defendant Marcus is the signatory on its application for authorization to transact business in Florida.[128] The Delaware Relief Defendant additionally maintains a corporate bank account that has received approximately $7.4 million in funds from dozens of bank accounts associated with at least seven Corporate Defendants.[129] More than $6 million of those funds were used to

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[123] Ex. 2, ¶ 15; Ex. 3.
[124] Ex. 3.
[125] Ex. 1, § II, Att. B.
[126] Ex. 2, ¶ 15; Ex. 3, § I, ¶ 5-§ IV, ¶ 54 & Atts. A-I, L. For example, in October 2014, Corporate Defendant ADS-Guardian Legal wired $622,000 to a title company, which then recorded a warranty deed for 16 S H Street in Lake Worth, Florida listing Defendant Marcus as the grantee. Shortly thereafter, Defendant Marcus quitclaimed that property to Relief Defendant 16 S H Street Lake Worth, LLC, which he formed around the same time, and which lists the same principal address as Corporate Defendants. Ex. 3, § III, ¶¶ 13-17.
[127] Ex. 1, § II, Att. B.
[128] *Id.*; Ex. 3, § X, ¶ 57, Att. J.
[129] Ex. 2, ¶¶ 8-9.

purchase many parcels of real estate, some of which were then flipped into the Florida Relief Defendants.[130]

Halfpay NV LLC, also d/b/a Halfpay International LLC ("Nevada Relief Defendant") is a Nevada limited liability company.[131] Marcus is the signatory on its application for authorization to transact business in Florida.[132] The Nevada Relief Defendant also does business as "Halfpay International LLC," which is the same name used to purchase the properties described immediately above.[133]

Nantucket Cove of Illinois, LLC (the "Illinois Relief Defendant") is registered by Marcus with the Illinois Secretary of State as a limited liability company.[134] It too has received funds traceable to Defendants' illicit activities, including money directly from Corporate Defendant 321Loans.[135]

IV. LEGAL ARGUMENT

Plaintiffs respectfully request that this Court protect consumers from Defendants' ongoing fraudulent scheme. To immediately halt their illegal practices, and to preserve assets necessary for consumer redress, Plaintiffs request that the Court issue an *ex parte* TRO enjoining Defendants' deceptive and illegal conduct. Plaintiffs also request that this Court freeze Defendants' and Relief Defendants' assets; appoint a temporary receiver; grant immediate access to their business premises; provide for other ancillary relief; and enter an order to show cause why a preliminary injunction should not issue.

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

Section 13(b) of the FTC Act authorizes the FTC to seek, and the Court to issue, permanent injunctions, together with "any ancillary relief necessary to accomplish complete justice."[136] The Court's ancillary power includes the ability to enter the relief requested here,

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[130] Ex. 2, ¶ 15; Ex. 3 & Att. L.
[131] Ex. 1, § II, Att. B.
[132] Ex. 1, § II, Att. B; Ex. 3, § X, ¶ 57, Att. J.
[133] *Id.*
[134] Ex. 1, § II, Att. B.
[135] Ex. 2, ¶ 16; Ex. 3, § XI, ¶¶ 59-61, Atts. K, L.
[136] 15 U.S.C. § 53(b); *AT&T Broadband v. Tech Commc'n, Inc.*, 381 F.3d 1309, 1316 (11th Cir. 2004) (citing *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432-34 (11th Cir. 1984) (quoting *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982)); *see also FTC v. Gem Merch.*

including a temporary restraining order, an asset freeze to preserve the possibility of effective final relief, and the appointment of a temporary receiver.[137] The Court may also grant its order *ex parte*.[138] Indeed, in FTC matters such as this, courts in this district routinely issue *ex parte* TROs granting the full panoply of ancillary relief requested here.[139]

B. Plaintiffs Meet the Standard for Immediate Injunctive Relief

In the Eleventh Circuit, "[f]or the FTC to obtain injunctive relief, it must show that (1) it is likely to succeed on the merits, and (2) injunctive relief is in the public interest."[140] Unlike in private controversies, irreparable injury need not be shown.[141]

When demonstrating its likelihood of success, the FTC is not required to show a strong probability of success, although the evidence here makes such a showing. Rather, the FTC need only show that it has "some chance of probable success on the merits."[142] Moreover, when a

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Corp., 87 F.3d 466, 468-70 (11th Cir. 1996)); *FTC v. USA Financial, LLC*, 415 F. App'x 970, 976 (11th Cir. 2011); *FTC v. U.S. Mort. Funding, Inc.*, No. 11-CV-80155, 2011 U.S. Dist. LEXIS 31148, at *5-6 (S.D. Fla. Mar. 1, 2011).

[137] *See Gem Merch. Corp.*, 87 F.3d at 468; *U.S. Oil & Gas*, 748 F.2d at 1432-34; *FTC v. USA Fin., LLC*, 415 F. App'x at 976; *U.S. Mort. Funding*, 2011 U.S. Dist. LEXIS 31148, at *5-6, 18; *see also FTC v. USA Beverages, Inc.*, No. 05-61682, 2005 U.S. Dist. LEXIS 39042, at *8-38 (S.D. Fla. Nov. 4, 2005).

[138] *See, e.g.*, *FTC v. Mail Tree, Inc.*, No. 0:15-CV-61034-JIC (S. D. Fla. May 19, 2015); *FTC v. Inbound Call Experts, LLC*, No. 14-81395-CIV-MARRA (S.D. Fla. Nov. 12, 2014); *FTC v. FMC Counseling Servs.*, No. 14-61545-CIV-ZLOCH (S.D. Fla. July 7, 2014); *FTC v. Centro Natural Corp.*, 14-23879-CIV-ALTONAGA (S.D. Fla. Oct. 20, 2014); *FTC v. 7051620 Canada, Inc.*, No. 1:14-CV-22132 (S.D. Fla. June 12, 2014); *FTC v. Your Yellow Pages, Inc.*, No. 1:14-CV-22129 (S.D. Fla. June 12, 2014); *FTC v. Shopper Systems, LLC*, No. 0:12-CV-23919 (S.D. Fla. Oct. 31, 2012); *FTC v. Prime Legal Plans LLC*, No. 0:12-CV-61872 (S.D. Fla. Sept. 24, 2012); *FTC v. IAB Mktg. Assocs., LP*, No. 0:12-CV-61830 (S.D. Fla. Sept. 18, 2012); *FTC v. Premier Precious Metals, Inc.*, No. 12-CV-60504 (S.D. Fla. Mar. 20, 2012); *FTC v. U.S. Mortg. Funding, Inc.*, No. 11-CV-80155 (S.D. Fla. Feb. 20, 2011); *see also FTC v. Regency Fin. Servs.*, No. 1:15-CV-20270-DPG (S.D. Fla. Jan. 27, 2015) (*ex parte* TRO with asset freeze); *FTC v. Diversified Educ. Res.*, No. 0:14-CV-62116-JIC (S.D. Fla. Sept. 14, 2014) (*ex parte* TRO with asset freeze and access to business premises); *FTC v. Southeast Trust, LLC*, No. 12-CV-62441 (S.D. Fla. Dec. 11, 2012) (same).

[139] *Id.*

[140] *FTC v. IAB Mktg. Assocs., LP*, 746 F.3d 1228, 1232 (11th Cir. 2014).

[141] *Id.*

[142] *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989)).

district court balances the hardships of the public interest against a private interest, the public interest should receive greater weight.[143]

Similarly, under FDUTPA, the State of Florida's sole burden is to show a clear legal right to the relief requested. Section 501.207(1)(b) of FDUTPA expressly authorizes the State of Florida to seek injunctive relief; the State of Florida does not have to show irreparable harm, lack of an adequate legal remedy or public interest.[144]

The evidence filed in support of this motion shows that Plaintiffs not only meet, but exceed, the standards for success on the merits. In addition, the equities weigh heavily in favor of granting the requested preliminary relief, not only to protect the public from Defendants' unlawful scheme, but also to preserve the Court's ability to render effective final relief.

1. Plaintiffs are Likely to Succeed on the Merits

Plaintiffs are likely to succeed on the merits of this action. The evidence presented in Volumes I-V shows that Defendants' scheme violates Section 5 of the FCT Act, the TSR, and the FDUTPA; that the Corporate Defendants share joint and several liability as a common enterprise; that the Individual Defendants have the requisite knowledge, participation, and control for joint and several liability; and that the Relief Defendants received ill-gotten assets to which they have no legitimate claim.

a. Defendants' Scheme Violates Section 5 of the FTC Act and Section 501.204 of the FDUTPA (Counts I and IV)

Section 5 of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. An act or practice is deceptive under Section 5 if it involves a material representation or omission that would likely mislead consumers acting reasonably under the circumstances.[145] Courts consider the overall net impression when evaluating the deceptiveness of an act or practice.[146] Express claims, or deliberately made implied claims, used to induce payments for products or services are presumed to be material.[147] The FTC need *not* prove actual reliance by consumers to establish materiality.[148] Likewise, Section 501.204(1) of the FDUTPA declares "unfair or deceptive acts or practices in the conduct of any trade or

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[143] *Id.*; *FTC v. World Travel Vacation Brokers*, 861 F.2d 1020, 1030 (7th Cir. 1988); *FTC v. USA Beverages, Inc.*, No. 05-61682, 2005 U.S. Dist. LEXIS 39075, at *15.
[144] *Millenium Commc'ns & Fulfillment, Inc. v. Florida*, 761 So. 2d 1256, 1260 (Fla. 2000).

commerce are hereby declared unlawful."[149] Conduct that violates Section 5(a) of the FTC Act also violates Section 501.204 of the FDUTPA.[150]

Plaintiffs' evidence, set forth in Section II, *supra*, shows that Defendants have made five material misrepresentations, expressly or by implication, to their victims, in violation of the FTC Act and the FDUTPA (Counts I and IV).

First, Defendants misrepresent that they will provide consumers a low interest rate loan to pay off consumers' unsecured debts. Second, Defendants misrepresent that they will negotiate, settle, or alter the terms of payment or other terms of consumers' unsecured debts to reduce the balance, interest rate, or fees owed to a creditor or debt collector. Third, Defendants misrepresent that they will otherwise eliminate consumers' unsecured debts. As set forth above, Defendants do not provide consumers a low interest rate loan to pay off consumers' unsecured debts, nor do they negotiate, settle, alter the terms of, or otherwise eliminate such debts.[151] To the contrary, Defendants generally attempt to double consumers' debts by seeking an equal amount in payments.[152]

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[145] *FTC v. Peoples Credit First, LLC*, 244 Fed. App'x. 942, 944 (11th Cir. 2007) (following *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003)).

[146] *See FTC v. Nat'l Urological Group, Inc.*, 645 F. Supp. 2d 1167, 1189 (N.D. Ga. 2008), *aff'd*, 356 Fed. App'x. 358 2009 WL 4810345 (11th Cir.), *reh'g and reh'g en banc denied*, 401 F. App'x 522, 2010 WL 2787701 (11th Cir), *cert. denied*, 131 S. Ct. 505 (2010); *FTC v. Peoples Credit First, LLC*, No. 8:03-CV-2353, 2005 U.S. Dist. LEXIS 38545, at *24 (M.D. Fla. Dec. 18, 2005), *aff'd*, 244 F. App'x 942 (11th Cir. 2007); *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993 (N. D. Ind. 2000).

[147] *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1266 (S.D. Fl. 2007) ("Express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service are presumed to be material."); *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1272 (S.D. Fl. 1999).

[148] *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1266-67; *SlimAmerica*, 77 F. Supp. 2d at 1272.

[149] Fla. Stat. § 501.204(1) (2016).

[150] *FTC v. Info. Mgmt. Forum, Inc.*, No. 6:12-CV-986-KRS, 2013 WL 3323635, at*5 (M.D. Fla. June 28, 2013)("Conduct that constitutes a 'deceptive act or practice' . . . under the FTC Act is a violation of [§ 501.204] of FDUTPA."); Fla. Stat. § 501.204(2) (2016) (providing that in construing Section 501.204(1) "great weight shall be given" to the federal court's interpretation of Section 5 of the FTC Act).

[151] *See supra*, Section II(C).

[152] *Id.*

Fourth, Defendants misrepresent that the purported debt relief services are offered or provided by a non-profit entity. How a company actually operates and who it benefits are dispositive of the non-profit issue.[153] As set forth in detail in Section III(B), *supra*, despite Defendants holding out many as non-profit organizations, all Corporate Defendants are for-profit entities operating for the benefit of themselves and their members.

Fifth, Defendants misrepresent that they will improve consumers' creditworthiness. In reality, not only do Defendants generally *not* improve consumers' creditworthiness—they severely damage it.[154]

Each of the above misrepresentations are presumed material, as Defendants use them to extract money from their victims. Moreover, these claims are likely to mislead consumers and do, in fact, mislead consumers acting reasonably under the circumstances. The attached consumer declarations, consumer complaints filed with law enforcement agencies and the BBB, and Defendants' own marketing materials and statements, all demonstrate that Defendants' misrepresentations are the inducement for consumers to pay.

Plaintiffs are therefore likely to succeed in proving that Defendants have violated Section 5 of the FTC Act and Section 501.204 of the FDUTPA.

b. Defendants' Misrepresentations and Unlawful Advance Fees Violate the TSR (Counts II and III)

The TSR prohibits deceptive and abusive telemarketing[155] acts or practices and specifically addresses debt relief operations. Among other things, the TSR prohibits sellers[156] and telemarketers[157] of debt relief services[158] from making misrepresentations about any material

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[153] *See, e.g., In re Daniel Chapter One*, 2009 FTC LEXIS 157 (F.T.C. Aug. 5, 2009)(courts and the FTC look to the substance, rather than the form, of incorporation).
[154] *See supra*, Section II(C).
[155] The TSR defines telemarketing as any "plan, program, or campaign which is conducted to induce the purchase of goods or services . . . by use of one or more telephones and which involves more than one interstate telephone call." 16 C.F.R. § 310.2(gg).
[156] A "seller" is any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. 16 C.F.R. § 310.2(dd).
[157] A "telemarketer" is any person, who in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(ff).

aspect of debt relief services.[159] Companies selling debt relief through telemarketing are also prohibited from collecting advance fees—*i.e.*, requesting or receiving fees before renegotiating, settling, or otherwise altering the terms of their consumers' debts.[160]

As set forth above, Defendants have marketed their scheme through telemarketing and have misrepresented, directly or by implication, (1) that Defendants will pay off or otherwise eliminate consumers' unsecured debts, (2) that Defendants will negotiate, settle, or alter the terms of payment or other terms of consumers' unsecured debts to reduce the balance, interest rate, or fees owed to a creditor or debt collector; (3) the effect of the service on a consumer's creditworthiness, and (4) that the debt relief service is offered or provided by a non-profit entity.[161] In addition, Defendants have collected advance fees. Indeed, Defendants take immediate payments from consumers and then debit their bank accounts hundreds or thousands of dollars each month thereafter, rarely, if ever, providing debt relief services.[162] These upfront payments also include those amounts that Defendants take from consumers' pre-existing escrow accounts.[163] Plaintiffs are therefore likely to succeed in proving that Defendants have violated the TSR (Counts II and III).

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[158] A "debt relief service" means "any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector." 16 C.F.R. § 310.2(o).

[159] 16 C.F.R. § 310.3(a)(2)(x). Prohibited misrepresentations include, but are not limited to, whether a debt relief service is offered or provided by a non-profit entity. *Id.* In addition, because Defendants offer debt relief services, they do not fall within the exemptions to inbound telemarketing in Sections 310.6(b)(5) and (6) of the TSR.

[160] Specifically, the TSR prohibits Defendants from requesting or receiving payment of fees or consideration for debt relief services before Defendants have renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer; and the customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor. 16 C.F.R. § 310.4(a)(5)(i).

[161] *See supra*, Sections II, III(B).

[162] *See supra*, Section II.

[163] *Id.*

c. The Corporate Defendants Are Jointly and Several Liable as a Common Enterprise

Because Corporate Defendants operate as a common enterprise, they are each jointly and severally liable for the deceptive acts and practices of the other.[164] "[I]n situations where corporations are so entwined that a judgment absolving one of them of liability would provide the other defendants with a 'clear mechanism for avoiding the terms of the order,' courts have been willing to find the existence of a common enterprise."[165]

To determine whether a common enterprise exists, "courts look to a variety of factors, including: common control, the sharing of office space and officers, whether business is transacted through a 'maze of interrelated companies,' the commingling of corporate funds and failure to maintain separation of companies, unified advertising; and evidence which 'reveals that no real distinction exists between the corporate defendants.'"[166]

All the major indicia of a common enterprise are present here. All Corporate Defendants are participants in and shared financial beneficiaries of the business scheme, and there is no real distinction between the companies, their employees, their finances, or their functions. The Corporate Defendants conduct their business through a maze of interrelated companies, which function as interchangeable corporate shells that exist solely as conduits for the scam.

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[164] *Nat'l Urological Group, Inc.*, 645 F. Supp. 2d at 1182; *FTC v. Direct Benefits Group, LLC*, 2013 U.S. Dist. LEXIS 100593, *52 (M.D. Fla. July 18, 2013); *CFTC v. Wall Street Underground, Inc.*, 281 F. Supp. 2d 1260, 1271 (D. Kan. 2003)(citing *Sunshine Art Studios, Inc. v. FTC*, 481 F. 2d. 1171, 1175 (1st Cir. 1973).

[165] *Nat'l Urological Group*, 645 F. Supp. 2d at 1182 (citing *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964).

[166] *FTC v. Wolf*, No. 94-8119, 1996 U.S. Dist. LEXIS 1760, *22-23 (S.D. Fla. Jan. 31, 1996) (internal citations omitted); *Nat'l Urological Group, LLC*, 645 F. Supp. 2d at 1182; *see also FTC v. Wash. Data Res.*, 856 F. Supp. 2d 1247, 1271 (M.D. Fla. 2012) ("If the structure, organization, and pattern of a business venture reveal a 'common enterprise' or a 'maze' of integrated business entities, the FTC Act disregards corporateness."); *FTC v. US. Oil & Gas Corp.*, 1987 U.S. Dist. LEXIS 16137, *58-63 (S.D. Fla. July 10, 1987) (finding common enterprise where corporate defendants were under common control, shared office space and employees, and used similar sales techniques); *FTC v. Direct Benefits Group, LLC*, 2013 U.S. Dist. LEXIS 100593, *55-56 (M.D. Fla. July 18, 2013).

All Corporate Defendants are owned and controlled by the same core group of individuals – the Individual Defendants – who run their day-to-day operations.[167] They share the same principal place of business – the Pompano Beach address – and the common space within it.[168] They even share names: FFN maintains a d/b/a for names used by at least five other Corporate Defendants, while at least three Corporate Defendants use the name "Helping America Group," and at least two use the name "Guardian Legal."[169]

The Corporate Defendants also share employees.[170] For instance, FFN, HAG, and PSG have each reported millions in payroll for many employees who are also reported as employees of other Corporate Defendants.[171] 321Loans, which has received and deposited millions in its corporate bank accounts, seemingly has no employees, as it only reported quarterly payroll twice in the last two years for a nominal amount.[172] In addition, Breeze Financial and US Legal do not report any employees, despite holding themselves out to the public as providers of promised services.[173] Further, PSG operates as a personnel and operations manager for all the other Corporate Defendants and shares interactions with consumers.[174]

The Corporate Defendants also commingle funds. All Corporate Defendants hold commonly controlled accounts at financial institutions where tens of millions of dollars flow to and through their accounts, seemingly without regard to any stated business function.[175] Some Corporate Defendants receive almost all their deposits through transfers from other Corporate Defendants,[176] and some Corporate Defendants pay liabilities on behalf of others.[177] While funds

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[167] *See* Ex. 1, §§ II-IV, Atts. A-D; Ex. 2, ¶¶ 4, 15; Ex. 5, ¶¶ 17, 20, 24, 33-49, Atts. F-P; Ex. 6, ¶¶ 13-18, 26-30, Atts. A-I; Ex. 7, ¶¶ 11, 24-27, 30-36, Atts. O-R; Ex. 10, ¶ 5; 12 & Att. D; 16 & Att. G; 19 & Att. I; 21; 30; 37 & Atts. D, E; 39 & Att. C; 41.
[168] Ex. 1, § II, Att. A; Ex. 5, ¶¶ 20, 22-40, Atts. D-H.
[169] *See supra*, Section III(B).
[170] Ex. 1, Atts. C, D; Ex. 5, ¶¶ 36-38, 40, Atts. F, G; Ex. 6, ¶¶ 13-14, 17-18, 26, 30; Ex. 7, ¶¶ 24, 25; Ex. 10, ¶¶ 5, 7, 22-23.
[171] Ex. 1, § III, Atts. C, D.
[172] *Id.*; Ex. 2, ¶¶ 16-17.
[173] Ex. 1, § III, Atts. C, D; Ex. 2, ns. 3, 4, ¶¶ 12, 16; *see also* Exs. 16; 21; 22 & Att. A; 23; 36; 41; 46.
[174] *See* Ex. 5, ¶ 29, Att. E4; Ex. 1, § III, Atts. C, D; Ex. 6, ¶¶ 13, 14, 26, 29, Atts. A4, A7, B1, H; Exs. 15; 21; 23 & Att. D; 27 & Att. B; 32; 34; 36; 42-46.
[175] Ex. 2 & Att. A.
[176] Ex. 2.

may be found in one Corporate Defendant's account at one point, those funds are often funneled through other Corporate Defendants before ultimately reaching the Individual and Relief Defendants.[178]

d. The Individual Defendants Are Also Jointly and Severally Liable for the Unlawful Acts

The Individual Defendants are also liable for the wrongful acts alleged. An individual defendant is liable for injunctive and monetary relief under the FTC Act if the defendant (1) participated directly in the acts or practices or had authority to control the company's unlawful conduct and (2) had some knowledge of the unlawful conduct.[179]

"Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer."[180] Bank signatory authority also evidences authority to control.[181]

With regard to knowledge, the FTC is *not* required to prove subjective intent to defraud.[182] The FTC need only demonstrate that the individual had actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such representations, or an

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[177] *See supra*, Section III(B) (321Loans, Instahelp-HAG, and HAG paid regulatory fines with ADS-Guardian Legal checks).
[178] *See* Ex. 2.
[179] *Gem Merch.*, 87 F.3d at 470; *FTC v. USA Fin., LLC*, 415 F. App'x 970, 974-75 (11th Cir. 2011); *FTC v. World Media Brokers*, 415 F.3d 758, 764 (7th Cir. 2005); *FTC v. Bay Area Bus. Council*, 423 F.3d 627, 636 (7th Cir. 2005); *FTC v. 1st Guaranty Mortgage Corp.*, No. 09-CV-61840, 2011 U.S. Dist. LEXIS 38152, *52 (S.D. Fla. Mar. 30, 2011).
[180] *FTC v. Wilcox*, 926 F. Supp. 1091, 1104 (S.D. Fla. 1995)(quoting *FTC v. Amy Travel Serv.*, 875 F.2d 564, 572 (7th Cir.), *cert. denied*, 493 U.S. 954, (1989)); *see also Transnet Wireless Corp.*, 506 F. Supp. 2d at 1270 (an individual's status as a corporate officer gives rise to the presumption of ability to control a small, closely-held corporation)(citations omitted); *IAB Mktg.*, 746 F.3d at 1233.
[181] *See, e.g.*, *FTC v. USA Fin., LLC*, 415 F. App'x 970, 974-75 (11th Cir. 2011).
[182] *USA Fin., LLC*, 415 F. App'x at 974 (11th Cir. 2011)(citing *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1368 (11th Cir. 1988)); *FTC v. FTN Promo., Inc.*, No. 8:07-CV-1279, 2008 U.S. Dist. LEXIS 125419, *6 (M.D. Fla. Mar. 26, 2008), *aff'd*, 2008 U.S. Dist. LEXIS 28149; *FTC v. Jordan Ashley*, No. 93-2257, 1994 U.S. Dist. LEXIS 7494, *11 (S.D. Fla. April 5, 1994); *World Media Brokers*, 415 F.3d at 764.

awareness of a high probability of deception, coupled with intentional avoidance of the truth.[183] Participation in corporate affairs is probative of knowledge.[184]

Each Individual Defendant has authority to control or participates in Corporate Defendants' wrongful acts and practices. Each also has the requisite knowledge.

i. Authority to Control and Participation

Marcus owns and controls the Corporate Defendants. Marcus is an authorized signatory on Corporate Defendants' bank accounts and has been identified as an "owner," "director," "president," "managing member," or "authorized representative" of all Corporate Defendants at one time or another.[185] Marcus is a signatory on numerous Corporate Defendants' articles of incorporation, annual reports, and amendments, and he is likewise a signatory on each Relief Defendant's formation documents.[186] In addition, Marcus is listed as a signatory, officer, or owner of various Corporate Defendants who submitted telemarketing applications to state regulators, and he has at various times held himself out to those regulators as "owner."[187]

Like Marcus, **Smith** has been listed as the "manager," "director," or "president" of all Corporate Defendants at various times.[188] He is also listed as a "manager" on telemarketing applications filed on behalf of 321Loans and HAG.[189] When questioned by state authorities in connection with a regulatory investigation, Smith identified himself as both the "owner and CEO" of various Corporate Defendants, and as the "Operations Director" of all companies at Corporate Defendants' Pompano Beach address.[190] Sworn statements submitted by employees in connection with the investigation further identify Smith as an "owner" of 321Loans, HAG, and

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[183] *Id.*
[184] *See IAB Mktg.*, 746 F.3d at 1233; *Transnet Wireless*, 506 F. Supp. 2d at 1270; *FTC v. Affordable Media*, 179 F.3d 1228, 1234-35 (9th Cir. 1999); *Amy Travel Serv.*, 875 F.2d at 573.
[185] Ex. 1, § II, Att. A; Ex. 2, ¶ 4.
[186] Ex. 1, § II, Atts. A, B; Ex. 3.
[187] Ex. 6, ¶¶ 13-14, 17-18; Ex. 5, ¶¶ 33-49, Atts. F-P.
[188] Ex. 1, § II, Att. A.
[189] Ex. 6, ¶¶ 13-14.
[190] Ex. 5, ¶¶ 20, 33, 36, Atts. F, G.

Instahelp-HAG.[191] In addition, bank records list Smith as an authorized signatory on some Corporate Defendants' financial accounts.[192]

Segrea holds held herself out as "Director of Operations" or "Operations Manager" for various Corporate Defendants to law enforcement, state regulators, and the BBB. In addition to being identified by Marcus as the "Operations Manager" during an on-site regulatory inspection, she has consistently submitted written responses to consumer complaints filed with state attorneys general, other regulators, and the BBB on behalf of several Corporate Defendants.[193] Segrea also submitted telemarketing documents on behalf of 321Loans,[194] signed agreements with the BBB on behalf of 321Loans and HAG,[195] and she is listed as an "administrator" and/or "trustee" for a number of Corporate Defendants.[196] In addition, Segrea was an "owner" and "president" of Corporate Defendant ADS-Guardian Legal.[197]

ii. Knowledge

The Individual Defendants also have the requisite knowledge of Corporate Defendants' wrongful business practices. Although a reckless indifference or awareness of a high probability of deceptiveness and intentional avoidance of the truth will suffice, the evidence shows the Individual Defendants have actual knowledge of the deceptive acts and practices.

Marcus has received complaints over Corporate Defendants' business practices as the owner of the companies. When interviewed in connection with a state regulatory investigation, Marcus acknowledged his awareness of the many consumer complaints filed with the BBB, Ripoff Report, and others against his companies.[198] In addition, the BBB has forwarded complaints directly to Marcus, and Marcus has spoken to and personally met with BBB representatives to discuss his companies' "F" ratings and the pattern of consumer complaints

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[191] *Id.*
[192] Ex. 2, ¶ 4, Att. A.
[193] Ex. 5, ¶¶ 24, 39, 48; Ex. 6, ¶¶ 26, 30, Atts. F-I; Ex. 7, ¶¶ 24, 25, 30-34, Atts. O-R; Exs. 12 & Att. D; 16 & Att. G; 19 & Att. I; 21; 30; 37 & Atts. D, E; 39 & Att. C; 43 & Att. C.
[194] Ex. 6, ¶ 13, Att. A.
[195] *See* Ex. 7, ¶¶ 30-34, Atts. O-R.
[196] Ex. 1, §II, Att. A.
[197] Ex. 6, ¶ 15.
[198] Ex. 5, ¶ 35.

concerning Corporate Defendants' business practices.[199] Further, at least one state attorney general submitted a consumer complaint directly to Marcus, as did a consumer declarant,[200] and Marcus has apparently personally addressed consumers and their concerns.[201]

Smith also addressed regulatory concerns and acknowledged he knew of the numerous consumer complaints filed against corporate Defendants with the BBB, Ripoff Report, and others when he was interviewed by regulators.[202] Along with Marcus, Smith dismissed the complaints by stating his belief that they were generated by former employees or competitors. In addition, state attorneys general, the BBB, and consumers have all sent complaints directly to Smith.[203]

Segrea is consistently the point of contact with the BBB and various authorities, including state attorneys general and other regulators, who have inquired about Corporate Defendants' specific acts or practices.[204] As such, Segrea often communicates directly, both orally and in writing, with consumers, law enforcement agencies, and the BBB with regard to consumer complaints.[205] For example, in response to her specific request, the BBB sent several complaints regarding the Corporate Defendants directly to Segrea.[206] Segrea also appeared in person at the BBB office to discuss 321Loans's "F" rating and the pattern of complaints it received.[207] Segrea also signed and returned an "Agreement to Eliminate the Pattern" regarding the numerous uniform consumer complaints filed with the BBB.[208] In addition, Segrea often handles communications with consumers who have escalated their complaints to law enforcement or who threaten to take legal action against the Corporate Defendants.[209]

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[199] Ex. 7, ¶¶ 25-28, 36, Atts. K-N.
[200] Exs. 21 & Att. H; 43 & Att. B.
[201] *See* Exs. 37 & Att. A; 42.
[202] Ex. 5, ¶ 35.
[203] Ex. 7, ¶¶ 25-28, 36, Atts. I, J; Exs. 21 & Att. H; 43 & Att. B.
[204] Ex. 5, ¶ 48; Ex. 6, ¶¶ 26-30, Atts. F-H; Ex. 7, ¶¶ 24-34, Atts. I-R.
[205] *See id.*
[206] Ex. 7, ¶¶ 24-34, Atts. I-R.
[207] *Id.*
[208] *Id.*
[209] *See, e.g.*, Exs. 12 & Att. D; 16 & Att. G; 19 & Att. I; 21; 30; 37 & Atts. D, E; 39 & Att. C; 41; 43 & Att. C.

e. The Relief Defendants Are Liable for Their Ill-Gotten Gains

Under the FTC Act, equitable relief from a relief defendant is available where the relief defendant (1) has received ill-gotten gains and (2) does not have a legitimate claim to those gains.[210] An appropriate remedy is an equitable monetary judgment equivalent to the amount of ill-gotten gains the relief defendant received.[211] Here, abundant evidence shows Marcus created most of the Relief Defendants at or near the time that he either: quitclaimed them millions in real property purchased in his name with funds transferred from Corporate Defendants; or had the Relief Defendants directly purchase real property using those funds.[212] Other Relief Defendants received money directly from Corporate Defendants.[213] There is no evidence that any of these shell company transferees provided return consideration for the assets or otherwise have any legitimate claim to them.[214] Plaintiffs are therefore likely to succeed in proving that Relief Defendants are liable for their ill-gotten gains.

2. Injunctive Relief Is in the Public Interest

"[W]hen a district court balances the hardships of the public interest against a private interest, the public interest should receive greater weight.[215] The public interest in this case is obvious and compelling: immediately halting Defendants' unlawful and injurious conduct and preserving assets so that effective final relief may exist for their victims. Defendants, by contrast,

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[210] *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1273 (citations omitted); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 1009 (N.D. Cal. 2010), *aff'd*, 475 F. App'x 106 (9th Cir. 2012); *FTC v. Holiday Enter.*, No. 1:06-CV-2939-CAP, 2008 U.S. Dist. LEXIS 35858, *31 (N.D. Ga. Feb 5, 2008); *Think Achievement Corp.*, 144 F. Supp. 2d 1013 at 1020-22.

[211] *See, e.g.*, *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1273 (relief defendants liable for amount received from fraudulent operation); *SEC v. Banner Fund Int'l*, 211 F.3d 602, 617 (D.C. Cir. 2000)("disgorgement is an equitable obligation to return a sum equal to the amount wrongfully obtained, rather than a requirement to replevin a specific asset . . .").

[212] *See* Exs. 2-3.

[213] *Id.*

[214] *Id.*

[215] *World Wide Factors*, 882 F.2d at 347; *World Travel Vacation Brokers*, 861 F.2d at 1029; *USA Beverages*, 2005 U.S. Dist. LEXIS 39075, at *15.

have no legitimate interest in continuing to defraud consumers.[216] Because the injunctive relief precludes only harmful illegal behavior, the public equities supporting the proposed order far outweigh any burden imposed by such relief on Defendants.[217]

In sum, Plaintiffs' requested relief is wholly warranted. As the evidence demonstrates, Plaintiffs are likely to succeed on the merits, and the equities tip decidedly in the public's favor.

C. *Ex Parte* Relief Is Necessary and Appropriate to Prevent Further Harm and Preserve Effective Final Relief

Consistent with orders issued in other Section 13(b) actions,[218] the requested *ex parte* TRO would require Defendants to immediately cease their deceptive practices. It would also freeze Defendants' and Relief Defendants' assets; appoint a temporary receiver to marshal assets and preserve evidence; and permit Plaintiffs and the receiver immediate access to business premises and records.

1. The Relief Should Be Entered *Ex Parte*

Ex parte TROs are warranted where the facts show that "immediate and irreparable injury, loss or damage will result" if notice is given.[219] Congress and the courts have looked favorably on the availability of the FTC to seek such relief.[220] As has been proven in previous cases, there is a substantial risk that FTC defendants will destroy evidence, dissipate assets, and jeopardize the possibility of effective final relief if given notice of the relief sought against them.[221] Indeed, such behavior seems likely in this case given the fraudulent nature of Defendants' business practices and the steps they have taken to conceal their involvement and

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[216] *See World Wide Factors*, 882 F.2d at 347 (quoting the lower court, there is "no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment.").
[217] *Id.*
[218] *See supra*, n. 138.
[219] Fed. R. Civ. P. 65(b)(1); *see also supra*, n. 138.
[220] "The [FTC] can go to court *ex parte* to obtain an order freezing assets, and is also able to obtain consumer redress." S. Rep. No. 103-130 at 15-16 (1994); *see also supra*, n. 138.
[221] Plaintiffs' Rule 65(b) Declaration of Counsel, filed contemporaneously herewith, describes the need for *ex parte* relief and cites cases in which defendants who learned of impending FTC actions withdrew funds, destroyed vital documents, and fled the jurisdiction. Declarations of counsel provide an appropriate basis for granting *ex parte* relief. *AT&T Broadband v. Tech Commc'ns, Inc.*, 381 F.3d 1309, 1319-20 (11th Cir. 2004).

continue operating despite hundreds of complaints from consumers and state law enforcement agencies throughout the country.

As set forth above, Defendants, through a maze of multiple interrelated companies, have engaged in a massive scheme to defraud financially distressed consumers. Although Defendants operate from one location, under common ownership, and using shared employees, they seek to conceal the nature and scope of their activities through myriad companies and company names. They have continued their deceptive practices even after receiving hundreds of complaints from consumers, the BBB, and state attorneys general across the country.[222]

Defendants have made at least $50 million from this scam, and they have funneled those funds through dozens of bank accounts and into the purchase of tens of millions in real estate and other high-ticket items.[223] Defendants have further hidden their assets by transferring real estate or other assets to a dozen shell companies (the Relief Defendants) created or acquired by Marcus at or near the time of the transfers.[224]

Under these circumstances, without *ex parte* relief, Defendants are likely to destroy records and dissipate funds needed to provide adequate final relief to defrauded consumers.[225]

2. An Asset Freeze Is Necessary

This Court is well justified in freezing Defendants' and Relief Defendants' assets in order to make permanent relief possible.[226] The Eleventh Circuit has repeatedly affirmed that "only a reasonable approximation of a defendant's ill-gotten gains," is necessary to freeze a defendant's assets, as the burden of proof is "relatively light."[227] Following precedent, courts in the Southern District of Florida have frozen defendants' assets in numerous FTC enforcement actions such as this.[228]

Here, the requested asset freeze is particularly necessary and appropriate because of the fraudulent nature of Defendants' schemes, the magnitude of the estimated financial injury to

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[222] *See supra*, Section IV(B)(1)(d).
[223] *See* Exs. 2-3.
[224] *See id.*; *see also* Ex. 1, § II, Att. B.
[225] *See* Rule 65 Declaration of Counsel.
[226] *See, e.g., Gem Merch. Corp.*, 87 F.3d at 469.
[227] *IAB Mktg.*, 746 F.3d at 1234 (citing *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005)); *Gem Merch. Corp.*, 87 F.3d at 469.
[228] *See supra*, ns. 137, 138.

consumers, and Defendants' propensity to hide assets by transferring their ill-gotten gains to the shell company Relief Defendants. The Court should therefore impose the asset freeze to help ensure the availability of assets, preserve the *status quo*, and guard against the dissipation and diversion of assets.

3. Appointment of a Temporary Receiver Over the Corporate Defendants Is Appropriate

Similarly, the appointment of a temporary receiver is necessary and appropriate. Where corporate defendants and their managers and officers have been engaged in deception, "it is likely that in the absence of the appointment of a receiver to maintain the *status quo*, the corporate assets will be subject to diversion and waste," to the detriment of the fraudsters' victims.[229] A temporary receiver will help prevent Defendants and the Relief Defendants from disposing of ill-gotten funds by identifying and safeguarding the assets wherever located and in whatever form constituted, in addition to marshalling and preserving evidence and other critical records. The temporary receiver is also able to assist in assessing the extent of Defendants' widespread fraud, following and returning the proceeds of the fraud, and making an independent report of Defendants' activities to the Court.

4. Immediate Access Is Also Warranted

Immediate access to the Corporate Defendants' physical business premises and to the Corporate Defendants' and Relief Defendants' records is also warranted in order to locate and secure business records and assets.[230] As set forth above, given the nature of this scheme and the lengths to which Defendants have gone to disguise their assets, absent this relief, there is a strong likelihood that the perpetrators will destroy evidence and dissipate assets.

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[229] *SEC v. First Fin. Group*, 645 F.2d 429, 438 (5th Cir. 1981); *see also U.S. Oil & Gas Corp.*, 748 F.2d at 1432 (affirming preliminary injunction that imposed an asset freeze and appointment of a receiver); *USA Beverages*, No. 05-61682, 2005 U.S. Dist. LEXIS 39075, at * 22-23 (appointing a receiver is "essential" to ensure compliance and "to prevent the destruction of evidence and the concealment or dissipation of assets."); *see also SEC v. R.J. Allen & Assoc.*, 386 F. Supp. 866, 878 (S.D. Fla. 1974).

[230] *See supra*, n. 138; Rule 65(b) Declaration of Counsel; *FTC v. Centro Natural Corp.*, 14-23879-CIV-ALTONAGA (S.D. Fla. Oct. 20, 2014).

V. CONCLUSION

For the foregoing reasons, Plaintiffs request the Court grant their *Ex Parte* Motion for Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue.

Dated: May 8, 2017.

Respectfully submitted,

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