

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FEDERAL TRADE COMMISSION,)	Case No.
)	
Plaintiff,)	
)	
v.)	
)	
E.M.A. NATIONWIDE, INC., a Florida)	
corporation, also d/b/a EMA and Expense)	
Management America,)	
)	
NEW LIFE FINANCIAL SOLUTIONS, INC.,)	
a Florida corporation, also d/b/a New Life)	
Financial, and New Life Financial Services,)	
)	
1UC Inc., a Wyoming corporation, also d/b/a)	
1 ST United Consultants, and First United)	
Consultants,)	
)	
7242701 CANADA INC., a Canadian)	
corporation,)	
)	
7242697 CANADA INC., a Canadian)	
corporation,)	
)	
7246293 CANADA INC., a Canadian)	
corporation,)	
)	
7246421 CANADA INC., a Canadian)	
corporation,)	
)	
JAMES BENHAIM, a/k/a Jimmy Benhaim,)	

individually and as an officer or director of)
E.M.A. Nationwide, Inc., New Life)
Financial Solutions, Inc., 1UC Inc.,)
7246293 Canada Inc., 7246421 Canada Inc.,)
and 7242697 Canada Inc.,)
)
DANIEL MICHAELS, a/k/a Dan Michaels,)
a/k/a Dan Michles, individually and as an)
officer or director of E.M.A. Nationwide,)
Inc., New Life Financial Solutions, Inc.,)
1UC Inc., and 7242701 Canada Inc.,)
)
PHILLIP HEE MIN KWON, a/k/a Phillip H.)
Kwon, individually and as an officer or)
director of E.M.A. Nationwide, Inc. and)
New Life Financial Solutions, Inc.,)
)
JOSEPH SHAMOLIAN, individually and as an)
officer or director of E.M.A. Nationwide,)
Inc. and New Life Financial Solutions, Inc.,)
)
and)
)
NISSIM N. OHAYON, individually and as an)
officer or director of E.M.A. Nationwide,)
Inc., New Life Financial Solutions, Inc., and)
1UC Inc.,)
)
)
Defendants.)

)
)

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR AN
EX PARTE TEMPORARY RESTRAINING ORDER WITH APPOINTMENT OF A RECEIVER, ASSET FREEZE
AND ACCOUNTING, EXPEDITED DISCOVERY, AND ORDER TO SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE

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I. SUMMARY

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”) asks this Court to bring an immediate stop to a deceptive telemarketing scheme that sells bogus debt-relief and mortgage assistance relief services to consumers struggling to make ends meet. Defendants E.M.A. Nationwide, Inc. (“EMA”), New Life Financial Solutions, Inc. (“New Life”), IUC Inc., doing business as 1st United Consultants (“1st United”), 7242701 Canada Inc., 7242697 Canada Inc., 7246293 Canada Inc., 7246421 Canada Inc., (collectively, “Corporate Defendants”), their two principals, James Benhaim (“Benhaim”) and Dan Michaels (also known as Dan Michles) (“Michaels”), and three other individuals that are or were owners or officers of at least one of the Corporate Defendants (collectively, “Defendants”) have fleeced thousands of U.S. consumers out of millions of dollars.

Over the past 28 months, Defendants have operated a telemarketing operation, based in Montréal, Canada, that has deceptively marketed debt relief and mortgage assistance relief services to thousands of U.S. residents – many of whom have registered their phone numbers with the Do Not Call Registry. Defendants claim that through their relationships with creditors and the power of negotiating on behalf of hundreds of debtors with each creditor, they are able to secure more favorable terms including reduction of monthly payments, interest rates, and outstanding principal – by up to 70%. Unfortunately for consumers, Defendants do little more than *market* those services; most, if not all, of their clients do not receive the help Defendants sold them, despite paying thousands of dollars in up-front fees. Since June 2010, Defendants have taken in more than \$4 million from U.S. residents through these deceptive practices.

Defendants' misrepresentations violate Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and the Mortgage Assistance Relief Services Rule, 16 C.F.R. Part 322 ("MARS Rule").

The FTC therefore brings this suit under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the TSR, and the MARS Rule to stop Defendants' illegal practices and provide a remedy to injured consumers. The FTC seeks an *ex parte* temporary restraining order:

(1) enjoining Defendants' deceptive practices; (2) appointing a receiver; (3) freezing Defendants' assets; (4) prohibiting Defendants from sharing consumer information with any other persons; and (5) expediting discovery. Supporting the motion are documents obtained from Defendants' payment processor that show the extent of Defendants' fraud, and 24 declarations from injured consumers, two FTC investigators, and third-party custodians of documents and records further evidencing Defendants' operations. These evidentiary materials demonstrate and corroborate the nature of Defendants' widespread deceptive scheme.¹

II. PARTIES

A. The Federal Trade Commission

Plaintiff, the FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. § 41. It is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce, and the TSR, which requires telemarketers to make certain disclosures, to refrain

¹ In support of its motion for a TRO and order to show cause, the Commission is filing 47 exhibits, which include, among other things, declarations from FTC investigator Mary Jo Vantusko; FTC investigator John Vega; FTC Legal Assistant Diane L. Jablonsky; and 24 consumers. Initial references to declarations in this Memorandum include the declarant's exhibit number, declarant's last name, and the relevant paragraph number(s) [*e.g.*, PX 16, Vega Decl., ¶ 1]. Subsequent references to declarations and references to exhibits other than declarations include the exhibit number and relevant page number(s) [*e.g.*, PX 4, p. 1]. Pursuant to FTC policy, personal information has been redacted from the FTC's exhibits.

from deceptive and abusive practices, to refrain from calling consumers who have entered their telephone numbers in the national Do Not Call Registry, to access the registry in order to learn which telephone numbers not to call, and to refrain from collecting up-front fees for debt relief services. 16 C.F.R. Part 310. The FTC is also charged with enforcing the MARS Rule, which requires providers of mortgage assistance relief services to make certain disclosures, to refrain from deceptive and abusive practices, and to refrain from collecting an up-front fee for mortgage assistance relief services. 16 C.F.R. Part 322. The FTC is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act, the TSR, and the MARS Rule, and to secure equitable relief that is appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b) and 57b.

B. Domestic corporate defendants

The consumers that have done business with Defendants know them only by one of three names, EMA, New Life, or 1st United, which Defendants have used in succession, abandoning the old corporation when too much negative publicity and attention accumulated. The first two iterations – EMA and New Life – incorporated in California, in March 2010 and August 2010, respectively.² They later incorporated in Florida with the exact same names on April 28, 2011.³ On June 4, 2012, EMA's and New Life's filings with the Florida Secretary of State listed the

² PX 1, p. 1; PX 2, p. 1. Both EMA and New Life originally listed 28310 Roadside Drive, Suite 155, Agoura Hills, CA 91301 as principal business offices, and they each used P.O. Box 595, North Hollywood, CA 91603 as the mailing address. PX 1, p. 3; PX 2, p. 3. On June 16, 2011, both corporations filed forms with the California Secretary of State listing 800 Park View Drive, #222, Hallandale Beach, FL 33009 as the principal business office. PX 1, p. 8; PX 2, p. 8. On October 11, 2011, the registered agent for both EMA and New Life – defendant Kwon – resigned as registered agent, and no replacement was listed. PX 1, p. 9; PX 2, p. 9. Neither EMA nor New Life has filed any form with the California Secretary of State since.

³ PX 1, pp. 2-3; PX 2, pp.2-3.

principal place of business (and mailing address) as 1444 Biscayne Blvd., Suite 213, Miami, Florida 33132.⁴

Defendant 1st United was incorporated in Wyoming on February 14, 2012, listing its mailing address as 800 Parkview Drive, #222, Hallandale Beach, FL 33009.⁵

C. Montréal-based corporate defendants

The four remaining Corporate Defendants are Montréal corporations, organized in Québec, each with its principal place of business at 75 Rue Queen, Bureau 6600, Montréal (Québec) H3C 2N6.⁶ Defendants 7242701 Canada Inc. and 7242697 Canada Inc. are holding companies, and they own the stock of Defendants 7246293 Canada Inc. and 7246421 Canada Inc. But for purposes of dealing with consumers, Defendants used only the names of the domestic corporations.

D. Individual defendants

Defendant Benhaim lives in Montréal, Canada, and during the relevant period, he has used the following titles: President of EMA;⁷ President of New Life;⁸ Vice President of “New Life Consultants;”⁹ Vice President of EMA;¹⁰ Vice President of 1st United;¹¹ and Vice President

⁴ PX 1, p. 4; PX 2, p. 4.

⁵ PX 3.

⁶ PX 4; PX 5; PX 6; and PX 7. Defendant Michaels is the President of Defendant 7242701 Canada Inc. PX 4. And Defendant Benhaim is President of Defendants 7242697 Canada Inc., 7246293 Canada Inc., and 7246421 Canada Inc. PX 5; PX 6; and PX 7.

⁷ PX 11 (MER-0020745); PX 11 (MER-0012588).

⁸ PX 11 (MER-0020759).

⁹ PX 11 (MER-0012186).

¹⁰ PX 11 (MER-0012202).

¹¹ PX 11 (MER-0001042).

of Operations of 1st United.¹² Mr. Benhaim is also the President of three of the Montréal-based defendant corporations.¹³ In that capacity, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants. He is also the registrant of three websites employed by the Defendants: www.emaonline.net,¹⁴ www.newlifeconsultants.net,¹⁵ and www.1unite.com.¹⁶ Also, Mr. Benhaim is primary – if not sole – communicator for EMA, New Life, and 1st United with the companies’ exclusive payment processor, Meracord.¹⁷ Mr. Benhaim is also President of one of the Montréal corporate defendants that received wire transfers from EMA and New Life totaling nearly \$1.7 million in 2010 and 2011.¹⁸

Defendant Michaels uses two different last names – “Michaels,” in the United States, and “Michles,” in documents and filings in Canada.¹⁹ As stated above, he is President of 7242701 Canada Inc. (using the last name “Michles”),²⁰ EMA (as “Michaels”),²¹ New Life (as “Michaels”),²² and 1st United (as “Michaels”).²³ Michaels currently owns 100% of the stock of

¹² PX 12 (MER-0026618).

¹³ See footnote 6, *supra*. (See also PX 5, PX 6, and PX 7).

¹⁴ PX 42, pp. 1-2.

¹⁵ PX 42, pp. 4-5.

¹⁶ PX 42, pp. 4-5.

¹⁷ See generally PX 11.

¹⁸ PX 15, ¶ 5 (wire transfers sent for the benefit of Montréal corporate defendant 7246293 Canada Inc., of which Benhaim is President. See PX 6, p. 3).

¹⁹ See, e.g., PX 44, p. 8 (GD 000263) (showing “Dan Michaels” in North Hollywood, CA in the “Shipping Information” field, but using “Dan Michles” as the name on the credit card used for payment, and with a Montréal, Canada address).

²⁰ PX 4.

²¹ PX 1, p. 4.

²² PX 2, p. 4.

²³ PX 12 (MER-0026618).

corporate defendants EMA, New Life, and 1st United.²⁴ In that capacity, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants. And he serves as EMA's and New Life's Registered Agent in Florida.²⁵

Defendant Kwon was formerly the President²⁶ and sole owner²⁷ of defendant EMA. In that capacity, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of at least EMA, and perhaps other Corporate Defendants. He also served as EMA's and New Life's Registered Agent.²⁸ And in a guide book distributed to EMA clients, he is listed as a member of EMA's "Legal Department."²⁹ Mr. Kwon also applied for a Post Office Box for EMA in North Hollywood in July 2010, and listed himself as President of EMA on that application.³⁰

Defendant Shamolian was the sole owner, Director, President, Secretary, and Chief Financial Officer of EMA and New Life according to September 2010 filings with the California Secretary of State.³¹ In that capacity, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of EMA and New Life.

²⁴ PX 12, pp. 18-23.

²⁵ PX 1, p. 4; PX 2, p. 4.

²⁶ PX 9, p. 5; PX 12 (MER-0027057).

²⁷ PX 9, p 1; PX 12 (MER-0027058).

²⁸ PX 1, pp. 5, 7, and 8; PX 2, pp. 5, 7, and 8. Note that the address given in these filings – 3440 Wilshire Blvd., Suite 1208, Los Angeles, CA 90010 – matches the address used by attorney Phillip Hee Min Kwon in his California attorney bar registration. *See* PX 15, ¶ 9 & p. 7. Defendant Kwon resigned as EMA's and New Life's California Registered Agent on October 5, 2011 (PX 1, p. 5; PX 2, p. 5), and no replacement agent was named for either entity.

²⁹ PX 36, p. 64.

³⁰ PX 14, p. 7.

³¹ PX 1, p. 3; PX 2, p. 3. *See also* PX 9, p. 1. According to June 2011 filings with the California Secretary of State, Mr. Shamolian no longer held any of these positions as of June 16, 2011. PX 1, p. 4; PX 2, p. 4.

Defendant Ohayon was the sole owner, President, and Registered Agent of EMA and New Life, according to the companies' respective articles of incorporation and other filings with the Florida Secretary of State.³² Indeed, he was the sole owner of all three Corporate Defendants until June 2012.³³ In that capacity, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Corporate Defendants. A condominium owned by Mr. Ohayon was reported as EMA's and New Life's "principal place of business."³⁴

III. DEFENDANTS' UNLAWFUL SCHEME

Defendants cold-call U.S. consumers, including consumers who have registered their phone numbers with the Do Not Call Registry, promising debt settlement and mortgage assistance services that never materialize. Defendants convince consumers to agree to services with explicit promises of savings in terms of monthly payments and principal balances, and by claiming to have special relationships with consumers' creditors. And Defendants claim that they can provide these services at no cost or for a nominal fee.

If consumers agree to Defendants' services, Defendants ask them to remit monthly payments to Defendants that total less than their current monthly payments on their debts. Defendants misrepresent to consumers that the monthly fees represent the new monthly payments that consumers will make once the promised debt settlement is finalized. If pushed, Defendants claim that the fees are held in an escrow account under the consumers' names until the debt settlement is finalized. In reality, the monthly fees paid by consumers are collected by Defendants almost immediately and sent out of the United States for Defendants' benefit.

³² PX 1, p. 8; PX 2, p. 8.

³³ PX 12, pp. 18-23.

³⁴ PX 15, ¶ 10 & p. 10.

Sadly for consumers, Defendants do not provide any debt settlement or mortgage assistance services. Instead, after consumers make months of payments totaling hundreds to thousands of dollars, Defendants merely “refer” consumers to yet another company that purports to provide debt settlement services in exchange for its own fees. Since this scam began, Defendants have fleeced United States consumers out of more than \$4 million.

A. Defendants Cold-Call U.S. Consumers with Deceptive Offers to Solve All Their Financial Problems by Negotiating Debt Payments that are Substantially More Affordable and Substantially Reduced.

Defendants’ sales calls often begin with the deceptive claim that Defendants are calling on behalf of the consumer’s creditors or a government program.³⁵ Indeed, one version of Defendants’ sales script states, “I am calling on behalf of your creditors and the Obama Debt Relief Initiative and I have some GREAT news for you!!!” (Emphasis in original.)³⁶ Consumers who express interest in Defendants’ services are promised that Defendants can help the consumer reduce or eliminate all varieties of outstanding consumer debt, including debt related to mortgages, credit cards, automobiles, back taxes, medical bills, and student loans.³⁷ Defendants claim that through their relationships with creditors and the power of negotiating on

³⁵ PX 25, Carino Decl., ¶ 3 (Home Affordable Modification Program, “initiated by President Obama”); PX 31, Noonan Decl., ¶ 3 (the “Obama Save America Initiative”); PX 35, Trojnar Decl., ¶¶ 2, 7.

³⁶ PX 14, p. 23.

³⁷ PX 17, Albandia Decl., ¶ 3 (mortgage and credit card debt); PX 18, Allen Decl., ¶ 4 (mortgage and credit cards); PX 20, Bayaoa Decl., ¶ 4 (mortgage and credit card debt); PX 21, Bernardo Decl., ¶ 4 (mortgage); PX 22, Berry Decl., ¶ 4 (mortgage); PX 23, Browning Decl., ¶¶ 3, 4 (credit cards); PX 24, Cadaoas Decl., ¶ 3 (mortgage); PX 25, ¶ 3 (mortgage); PX 26, Cheeks Decl., ¶ 3 (student loan debt); PX 27, Julian Decl., ¶ 3 (mortgage); PX 28, Kincaid Decl., ¶¶ 5, 6 (credit cards and vehicle loans); PX 29, Knowles Decl., ¶ 4 (mortgage); PX 30, Mahinan Decl., ¶ 3 (mortgage); PX 31, ¶ 3 (mortgage, credit cards, car loans, student loans, and medical bills); PX 32, Patten Decl., ¶ 9 (mortgage); PX 37, Ca. Sanford Decl., ¶ 6 (mortgage and credit cards); PX 38, Cl. Sanford Decl., ¶ 3 (mortgage and credit card); PX 33, Stenger Decl., ¶ 4 (mortgage and credit cards); PX 34, Supardi Decl., ¶ 3 (mortgage); PX 40, Terry Decl., ¶ 4 (mortgage); PX 35, ¶ 2 (mortgage and credit cards); PX 36, Young Decl., ¶ 8 (credit cards).

behalf of many debtors with each creditor, they are able to secure more favorable terms including reduction of monthly payments, interest rates, and outstanding principal.³⁸

Defendants' websites reinforce their claim that they can resolve all types of debt. The websites promise that Defendants can: (1) help "[w]hether you are struggling with: Mortgage Payments; Credit Cards; Monthly Budget; Medical Bills; Student Loans; Personal Loans; [and/or] Tax Debt;"³⁹ (2) reduce "balances, interest rates and payments" on "credit card debt," "mortgage and housing costs," "outstanding tax debt," and "outstanding medical bills;"⁴⁰ (3) "reduce your debt by 50-70% of the current total;"⁴¹ and (4) "set you up with an affordable monthly payment, which is determined on a client-by-client basis between you and a counselor at E.M.A."⁴²

Sadly for the cash-strapped consumers targeted by Defendants, these promised services never materialize.⁴³ Instead, after paying hundreds to thousands of dollars each, Defendants provide consumers with nothing more than a referral to third-party companies that promise the

³⁸ *E.g.*, PX 18, ¶ 6 ("because New Life Financial was negotiating with creditors on behalf of many consumers, [it] was able to settle debts for much less than the amount owed"); PX 23, ¶ 4 ("Davis explained that New Life had great working relationships with the credit card companies."); PX 34, ¶ 4 ("His response was something like, "No problem. We deal with [Bank of America] a lot."); PX 38, ¶ 4 ("Scharf told me he had everyone in line – my mortgage company, Ocwen, was all set to go with a loan modification, and the credit card companies, except for Discover Card, all agreed to settle for 50% of what was owed on the card."). Defendants also promise they can improve consumers' credit scores. *See* PX 26, ¶ 4; PX 28, ¶¶ 7, 8 (promised to increase credit score from 656 to 760 or higher).

³⁹ PX 14, p. 21.

⁴⁰ PX 14, p. 16.

⁴¹ PX 14, p. 13.

⁴² PX 14, p. 13.

⁴³ PX 17, ¶ 8 ("New Life took my money and did nothing for me. My money is gone. I lost \$6,875 to New Life. My home was foreclosed and I had to borrow money from relatives to reinstate my mortgage . . ."); PX 21, ¶¶ 8, 11; PX 25, ¶¶ 7, 12; PX 26, ¶¶ 9-10; PX 28, ¶ 35 ("Nothing to show for" the \$3,600 paid to New Life); PX 30, ¶ 8 ("New Life took our money and did nothing for us."); PX 34, ¶ 13; PX 36, ¶¶ 22, 29; PX 37, ¶ 18.

same services Defendants were to provide but for additional fees.⁴⁴ At this point, many consumers give up, realizing that they have lost hundreds to thousands of dollars while their debt continued to mount as it went unpaid for months as a result of Defendants' promises.⁴⁵

1. Defendants Make Material Misrepresentations that Their Services Will Make Consumers' Payments Substantially More Affordable.

During the sales calls, consumers are told that Defendants' services will lead to debt settlements that make consumers' payments substantially more affordable.⁴⁶ Consumers testify that Defendants' represent their services will lead to debt settlements that make consumers' payments substantially more affordable.⁴⁷ Some consumers are promised their monthly payments will be reduced by a certain percentage (*e.g.*, "up to 50%"),⁴⁸ while others are given specific (and significantly lower) new monthly payment amounts that are hundreds of dollars less.⁴⁹ Others have been told that the interest rates on their outstanding debts will be reduced, even as low as zero percent.⁵⁰

⁴⁴ PX 17, ¶ 7; PX 18, ¶¶ 19-20; PX 25, ¶ 7; PX 28, ¶ 36; PX 34, ¶¶ 8-10; PX 37, ¶¶ 18-23.

⁴⁵ PX 17, ¶ 7; PX 28, ¶ 36; PX 34, ¶¶ 8-10.

⁴⁶ PX 17, ¶ 3 (reduce monthly mortgage payment from \$1,450 to \$800-900); PX 18, ¶¶ 4, 6; PX 22, ¶ 4 (cut mortgage payments by up to 50%); PX 24, ¶ 3 (lower monthly mortgage payment from around \$1,200 to \$976.50); PX 26, ¶ 4; PX 28, ¶ 4; PX 30, ¶¶ 3,5 (lower monthly mortgage payment from \$1,600 to 1,117.32); PX 35, ¶ 2 (monthly mortgage payment lowered by \$400); PX 36, ¶¶ 4, 8 (reduce monthly credit card payments from between \$500-\$600 to \$215.65).

⁴⁷ PX 17, ¶ 3 (reduce monthly mortgage payment from \$1,450 to \$800-900); PX 18, ¶¶ 4, 6; PX 22, ¶ 4 (cut mortgage payments by up to 50%); PX 24, ¶ 3 (lower monthly mortgage payment from around \$1,200 to \$976.50); PX 26, ¶ 4; PX 28, ¶ 8; PX 30, ¶¶ 3,5 (lower monthly mortgage payment from \$1,600 to 1,117.32); PX 33, ¶ 4 (reduce monthly bills, like credit cards, by 40% to 60% or more); PX 35, ¶ 2 (monthly mortgage payment lowered by \$400); PX 36, ¶¶ 4, 8 (reduce monthly credit card payments from between \$500-\$600 to \$215.65).

⁴⁸ *E.g.*, PX 22, ¶ 4 (cut mortgage payments by up to 50%).

⁴⁹ *E.g.*, PX 17, ¶ 3 (reduce monthly mortgage payment from \$1,450 to \$800-900); PX 24, ¶ 3 (lower monthly mortgage payment from around \$1,200 to \$976.50); PX 27, ¶ 3 (reduce \$906 monthly payment to \$509.85); PX 30, ¶¶ 3, 5 (lower monthly mortgage payment from \$1,600 to

An undercover telephone call recorded by an FTC Investigator, who posed as a consumer seeking debt settlement services for \$25,000 in credit card debt, supports consumer testimony. During the undercover call, Defendants' representative promised that 1st United would get the investigator "a reduction in terms of your payment of 30 to 50 percent."⁵¹

2. Defendants Make Material Misrepresentations that Their Services Will Substantially Reduce the Outstanding Amounts Consumers Owe.

In addition to reducing consumers' monthly payments, Defendants promise to reduce outstanding principal amounts of consumers' debt. Indeed, one of Defendants' prior sales scripts started off by offering "information on how to cut you debt by 50% OR MORE!!!"⁵² And Defendants continued to make these promises on the phone ever since. Defendants told Tiffanie Young that EMA's average was that 60-65% of debt would be relieved.⁵³ They told Kathleen Patten that 1st United could eliminate the \$110,000 arrearage on her mortgage.⁵⁴ They promised to settle Donte Cheeks' outstanding student loans for only half of what he owed.⁵⁵

Again, the undercover call placed by an FTC Investigator supports the consumer testimony. During the call, Defendants' representative explicitly promised that that 1st United

1,117.32); PX 35, ¶ 2 (monthly mortgage payment lowered by \$400); PX 36, ¶¶ 4, 8 (reduce monthly credit card payments from between \$500-\$600 to \$215.65).

⁵⁰ *E.g.*, PX 23, ¶ 4 ("as low as zero percent" interest); PX 25, ¶ 3; PX 29, ¶ 4 (lower interest rates on credit cards and home equity line of credit); PX 32, ¶ 9 (reduce mortgage interest rate to 2.5% to 3.5%); PX 38, ¶ 3 (credit card and home mortgage loan interest rates as low as 0% and no more than 2%); PX 33, ¶ 4 (reduce mortgage interest rate); PX 34, ¶ 3 (reduce mortgage interest rate).

⁵¹ Vega Decl., PX 16, p. 21 of 46, lines 18-20.

⁵² PX 14, p. 23.

⁵³ PX 36, ¶ 7.

⁵⁴ PX 32, ¶ 9.

⁵⁵ PX 26, ¶ 4.

would get “a reduction in terms of the principal up to 70 percent,”⁵⁶ and “a minimum of a 50 percent reduction.”⁵⁷

B. Defendants Misrepresent the Total Costs to Use Their Services.

Defendants charge thousands of dollars in up-front fees, disguised as new, lower monthly payments consumers are told will be collected, aggregated, and sent to creditors to resolve outstanding debt. During sales calls, however, Defendants, rarely mention any cost or fee to use Defendants’ services.

In the rare instances when Defendants do disclose a fee, it is usually only in response to a direct question, and even then the answer misrepresents both the costs to use the service and the consumers’ ability to receive a refund of any payments if they cancel. For example, Defendants’ representatives told consumer Vivian Allen that the only fees associated with the services would be “\$6 per month for four months, and a one-time closing fee of \$40,” explaining that “New Life Financial ‘made its money on the negotiated debt.’”⁵⁸ They told Jessica Kincaid a similar story, “New Life Financial’s only fee for their services was \$6 per month.”⁵⁹ Other consumers were promised low up-front fees too,⁶⁰ or no fee at all, or that even after adding Defendants’ fee to the consumers new payment it would still be lower than their current payment.⁶¹

⁵⁶ PX 16, p. 29 of 46, lines 12-13.

⁵⁷ PX 16, p. 36 of 46, lines 15-16.

⁵⁸ PX 18, ¶¶ 7, 15.

⁵⁹ PX 28, ¶ 10.

⁶⁰ *E.g.*, PX 33, ¶ 7 (“the only up-front fee I would pay was \$31”).

⁶¹ PX 31, ¶ 3 (“[I]n response to my questions he said that the fees for [New Life’s] program would still make my total monthly payments lower than they present were.”); PX 33, ¶ 4 (“Davis told me the difference between what I was paying on my accounts and what New Life was charging me was like free money to me.”).

In reality, the entire monthly payment made by consumers to Defendants is taken as Defendants' fee.⁶² Indeed, consumers' monthly payments go directly to Defendants and are quickly sent via wire transfer to Defendants' Montreal bank account.⁶³ When consumers finally learn the truth about Defendants' scam, their money is long gone, and consumers have virtually no means of obtaining redress.

C. Other Aspects of Defendants' Practices Violate TSR and MARS Rules.

Despite specific prohibitions enacted in the TSR and MARS Rule, Defendants routinely collect advance fees for their services, call numbers registered on the National Do Not Call Registry, tell their customers not to speak to or pay their creditors, and fail to provide disclosures required by law.

The TSR bans collection of advance fees for debt relief services, and the MARS Rule similarly bans collection of advance fees for mortgage assistance relief services. Nevertheless, Defendants do, in fact, collect their fees for such services in advance. As referenced above, Defendants explicitly promise to provide debt relief services and mortgage assistance relief services at no or little cost, but then retain all of the monies paid by consumers into a purported escrow account. When consumers complain to Defendants that the fees they paid were meant for their creditors, Defendants defend their practice on the basis that the fees represent their fee for referring consumers to another debt relief or mortgage assistance relief company. Moreover, Defendants' representative admitted they charge advance fees an undercover call with an FTC

⁶² *E.g.*, PX 18, ¶ 15 (“[Davis] told me, for the first time, that the payments I had been making were not going towards my outstanding debts, but the payments were being taken by New Life Financial as its ‘fee.’”); PX 26, ¶ 9 (“I found out that none of the money taken from me by New Life went towards paying off my debt.”); PX 28, ¶ 33 (“That’s not your money. That money is our fee. . . .”); PX 29, ¶ 2 (“New Life had no intention of using my payments to do anything but pay themselves.”)

⁶³ PX 15, p. 2, ¶ 5.

Investigator posing as a consumer seeking help resolving outstanding credit card debt. “The first four months of payments, okay . . . goes [sic] to us. So that’s \$2,200.”⁶⁴ Unfortunately, the typical consumer does not learn of the advance fee until after Defendants have already taken their money without providing the promised services.⁶⁵

Since at least 2010, Defendants have placed numerous calls to consumers who have their phone numbers listed on the National Do Not Call Registry, without first establishing a business relationship with the consumers, or obtaining from them prior written authorization to place the calls.⁶⁶ Indeed, the FTC’s Consumer Sentinel database of complaints contains more than 920 Do Not Call Registry-related complaints against Defendants.⁶⁷ They have even disregarded do-not-call requests that they received from consumers.⁶⁸

Defendants also routinely tell their customers not to speak to (or pay) their creditors.⁶⁹ They also fail to provide disclosures mandated by the MARS Rule.⁷⁰

⁶⁴ PX 16, p. 32, lines 17-19. We note that Defendants’ representative only made this admission after the FTC Investigator pushed for clarification with very specific questions regarding how Defendants allocate their fees.

⁶⁵ *E.g.*, PX 18, ¶ 15; PX 26, ¶ 9; PX 28, ¶¶ 10, 33; PX 29, ¶ 12; PX 32, ¶ 15; PX 33, ¶ 7; PX 34, ¶¶ 10-11; PX 37, ¶ 18.

⁶⁶ *E.g.*, PX 18, ¶ 4; PX 19, ¶ 2; PX 22, ¶ 2; PX 32, ¶ 8; PX 33, ¶ 3; PX 36, ¶ 6.

⁶⁷ PX 15, Vantusko Decl., p. 5.

⁶⁸ PX 19, Bauer Decl., p. 3.

⁶⁹ PX 17, ¶ 3; PX 18, ¶ 6; PX 21, ¶¶ 4, 8; PX 24, ¶ 3; PX 25, ¶ 4; PX 28, ¶ 18; PX 29, ¶¶ 5, 8; PX 30, ¶ 6; PX 33, ¶¶ 5; PX 35, ¶ 2; PX 36, ¶ 11.

⁷⁰ Neither the undercover telephone call with the FTC Investigator (PX16), nor the Defendants’ contracts (*see* attached consumer declarations, PX 17 through PX 40, generally), nor their websites contain the disclosures mandated by the MARS Rule and discussed in greater detail in Section IV, B, 1, c below.

IV. ARGUMENT

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

This Court has subject matter jurisdiction over the Commission's claims pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c) and 6105(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345. Defendants' contact with and deception of at least one consumer in the Northern District of Ohio,⁷¹ give the Court personal jurisdiction over Defendants. Furthermore, the FTC Act provides that "process may be served on any person, partnership, or corporation where it may be found." 15 U.S.C. § 53(b). In this provision, Congress authorized worldwide service of process. In the Sixth Circuit, when a federal statute authorizes nationwide (or greater) service of process, a court should determine jurisdiction by asking whether the defendant has "sufficient minimum contacts with the United States" as a whole.⁷² Defendants have sufficient minimum contacts with the United States as a whole via their calling and then entering into contracts with more than 4500 U.S. citizens. Therefore, Defendants can be sued in any United States district.

Even if the requirement were that defendants have minimum contacts with the state, these defendants have it.⁷³ They sold their "services" to at least one Ohio consumer⁷⁴ and their "services" were – and still are – available to consumers in every state, including Ohio.⁷⁵

⁷¹ PX 39, Savage Decl., ¶ 2 (consumer resides in Bedford Heights, Ohio).

⁷² *Medical Mutual of Ohio v. DeSoto*, 245 F.3d 561, 566 (6th Cir. 2001); *Pikas v. Williams Cos.*, 2008 U.S. Dist. LEXIS 12623 at 5 (S.D. Ohio 2008); *Blue Cross Blue Shield v. Doctors Med. Ctr. of Modesto*, 2008 U.S. Dist. LEXIS 1191 at 19 (E.D. Tenn. 2008); *Peacock v. PACE Int'l Union Pension Fund*, 2007 U.S. Dist. LEXIS 62471 at 25 (M.D. Tenn. 2007); *Eastman Outdoors Inc. v. Archery Trade Ass'n*, 2006 U.S. Dist. LEXIS 42835 at 12 (E.D. Mich. 2006); *Wuliger v. Bock*, 2006 U.S. Dist. LEXIS 2014 at 3-4 (N.D. Ohio 2006). See also *United Liberty Life Ins. Co. v. Ryan*, 985 F.2d 1320, 1330 (6th Cir. 1993); Fed. R. Civ. P. §(1), (2).

⁷³ *FTC v. Dr. Clark Research Association*, (Case No. 1:03CV0054, N.D. Ohio) Memorandum Opinion and Order, July 31, 2003, attached as PX 47.

⁷⁴ See, e.g., PX 39.

Venue in the Northern District of Ohio is proper. Defendant Benhaim and the four Montréal corporate defendants (7242701 Canada Inc., 7242697 Canada Inc., 7246293 Canada Inc., and 7246421 Canada Inc.) are aliens, and they may be sued in any district. 28 U.S.C. § 1391(d). Venue as to the remaining defendants (Michaels, Kwon, Shamolian, Ohayon, EMA, New Life, and 1st United) is proper under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute and is charged with enforcing the Federal Trade Commission Act (“FTC Act”). 15 U.S.C. §§ 41-58. Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce,” 15 U.S.C. § 45(a)(1), and Section 13(b) vests the Commission with authority to prevent such practices by, in relevant part, seeking injunctive relief in federal district court, 15 U.S.C. § 53(b). *See, e.g., FTC v. World Travel Vacation Brokers*, 861 F.2d 1020, 1029 (7th Cir. 1988). Specifically, the FTC Act provides that “in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction.” 15 U.S.C. § 53(b).⁷⁶

In a Section 13(b) action for permanent injunction, such as this case, the Court is empowered to exercise the full breadth of its equitable authority, and accordingly, may impose such additional relief as is necessary to remedy any violation it finds. *See FTC v. Amy Travel*

⁷⁵ *See* PX 16, p. 22 of 46. On an undercover call to Defendants, an FTC Investigator claimed to be located in Dayton, Ohio, and Defendants’ representative claimed to be able to help him resolve outstanding debts.

⁷⁶ Because the Commission proceeds here under the second proviso of Section 13(b), the conditions set forth in the first proviso of Section 13(b) for the issuance of preliminary injunctions in aid of administrative proceedings do not apply to this case. *See FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984) (“Congress did not limit the court’s powers under the [second and] final proviso of § 13(b). . . .”); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982) (routine fraud cases may be brought under the second proviso, without being conditioned on the first proviso’s requirement that the Commission institute an administrative proceeding).

Serv., Inc., 875 F.2d 564, 571 (7th Cir. 1989); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982); *FTC v. Renaissance Fine Arts, Ltd.*, No. 1:94CV0157, 1994 WL 543048, at *6 (N.D. Ohio Sept. 1, 1994). In addition, during the pendency of a permanent injunction suit under Section 13(b), the Court may employ its inherent equitable authority to grant a temporary restraining order, preliminary injunction, and such ancillary preliminary relief as is necessary to preserve the possibility of effective ultimate relief. See *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984) (stating court's inherent equitable powers may be employed to issue a preliminary injunction, including a freeze of assets). This Court and other district courts have entered such orders, including in cases involving debt relief and mortgage relief schemes.⁷⁷

B. Defendants' Activities Warrant Issuance of a Temporary Restraining Order.

The practice of defrauding consumers by misrepresenting or omitting material facts in violation of Section 5(a) of the FTC Act presents a "proper case" for injunctive relief under Section 13(b). *World Travel*, 861 F.2d at 1028. When the FTC brings suit to enforce the FTC Act, it is to prevent violation of federal law and, therefore, it litigates "not as an ordinary citizen, but as a statutory guardian safeguarding public interest in enforcing" the law. *SEC v. Mgmt. Dynamics*, 515 F.2d 801, 808 (2d Cir. 1975).

⁷⁷ See, e.g., *FTC v. Lakhany, et al.*, No. SACV 12-337-CJC(JPR) (C.D. Cal. Mar. 7, 2012) (injunction, asset freeze, and receiver); *FTC v. The Debt Advocacy Center, LLC*, Case No. 1:09-CV-2712 (N.D. Ohio Nov. 19, 2009) (injunction, asset freeze, and receiver); *FTC v. NHS Systems, Inc.*, No. 08-cv-2215 (E.D. Pa. July 9, 2009) (injunction, asset freeze, and receiver); *FTC v. 9107-4021 Quebec, Inc.*, No. 1:08CV1051 (N.D. Ohio April 25, 2008) (injunction, asset freeze, and expedited discovery); *FTC v. 6554962 Canada, Inc.*, No. 08C-2309 (N.D. Ill. April 23, 2008) (injunction, asset freeze, and expedited discovery); *FTC v. STF Group, Inc.*, No. 03C-0977 (N.D. Ill. Feb. 10, 2003) (injunction, expedited discovery, and asset freeze); *FTC v. Federal Data Service, Inc.*, No. 00-6462-CIV (S.D. Fla. April, 11, 2000) (injunction, asset freeze, receiver, immediate access). Copies of these orders are contained on a CD provided to the Court. The FTC will provide a copy of that CD to any Defendant, if requested.

Accordingly, to obtain a temporary restraining order, the FTC need only show that it is likely to succeed on the merits of its case and that the equities favor the granting of preliminary relief. *See FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346 (9th Cir. 1989) (“Pursuant to 15 U.S.C. § 53(b), the district court is required (i) to weigh equities and (ii) to consider the FTC’s likelihood of ultimate success before entering a preliminary injunction”).⁷⁸ Harm to the public is presumed. *Env’tl. Def. Fund, Inc. v. Lamphier*, 714 F.2d 331, 338 (4th Cir. 1983); *World Wide Factors*, 882 F.2d at 346. And the FTC “need not prove irreparable injury.” *FTC v. Int’l Computer Concepts, Inc.*, No. 5:94CV1678, 1994 WL 730144, *12 (N.D. Ohio Oct. 24, 1994) (quoting *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 903 (7th Cir. 1989)).

1. The Commission Will Likely Succeed on the Merits Because Defendants Have Violated the FTC Act, TSR, and MARS Rule.

Defendants have engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act, abusive acts or practices in violation of the TSR, and unfair or deceptive acts in violation of the MARS Rule.

a. Liability for FTC Act Violation

Under Section 5(a) of the FTC Act, an act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances. *See, e.g., FTC v. Bay Area Bus. Council*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *Renaissance Fine Arts, Ltd.*, 1994 WL 543048, at *6. The materiality requirement is satisfied if the misrepresentation or omission

⁷⁸ *See also FTC v. Solar Michigan, Inc.*, 1988-2 TRADE CAS. (CCH) ¶ 68,339 at 59,916 (6th Cir. 1988) (“[t]here does not appear to be any doubt that the more lenient public interest test applies to preliminary injunctive relief for future statutory violations”); *SEC v. Youmans*, 729 F.2d 413, 415 (6th Cir. 1984) (“the standards of the public interest not the requirements of private litigation measure the propriety and the need for injunctive relief”); *FTC v. Bass Brothers Enters., Inc.*, 1984-1 TRADE CAS. ¶ 66,041, at 68,619 (N.D. Ohio 1984) (“Section 13(b) establishes ‘the public interest’ as the standard of proof. . .”).

involves information that is likely to affect a consumer's choice of, or conduct regarding, a product or service. *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992). Express claims are presumed to be material. *Id.* at 322. Moreover, it is reasonable for consumers to rely on express claims made by Defendants. *See, e.g., FTC v. Five-Star Auto Club*, 97 F. Supp 2d. 502, 528 (S.D.N.Y. 2000).

In this case, Defendants violate the FTC Act by expressly and implicitly misrepresenting their ability to obtain favorable changes in the terms of their outstanding debt, including reduced monthly payments, lower interest rates, and significant reductions in principal balances. *See* Sections III, A, 1 and 2, *supra*. Defendants systematically lie about the true nature of their services. Consequently, when consumers purchase those services, they believe they will receive the very benefits promised to them. Unfortunately, the payments that consumers believe will be collected and used to pay-off outstanding debts are simply transferred to Defendants' own bank accounts, and no efforts are made to even contact consumers' creditors. Due to Defendants' deception, consumers often do not learn this fact until after it is too late and Defendants have taken their money without providing the promised services and obtaining the promised results. Thus, Defendants misrepresentations are material in that they are likely to and do affect consumers' conduct.

b. Liability for TSR Violations

Under the TSR, "telemarketers" are liable for deceptive and abusive telemarketing conduct. 16 C.F.R. §§ 310.3; 310.4(a). The TSR defines a "telemarketer" as an entity that, "in connection with telemarketing, initiates or receives telephone calls to or from a customer." 16 C.F.R. § 310.2(bb). Because Defendants have initiated numerous calls to consumers, they are

telemarketers liable for TSR violations. *See, e.g., The Broadcast Team v. FTC*, 429 F. Supp. 2d 1292, 1295 (M.D. Fla. 2006).

i. Do Not Call Violations

Since October 17, 2003, the TSR has generally prohibited telemarketers from calling telephone numbers on the National Do Not Call Registry, unless the telemarketers or sellers have an established business relationship with the consumers or have obtained prior written authorization from them to place such a call. *See* 16 C.F.R. § 310.4(b)(1)(iii)(B)(i) and (ii). Consumer declarations and more than 920 complaints obtained by the Commission (including those filed as recently as last week⁷⁹) indicate that Defendants repeatedly violate this provision.

ii. Misrepresenting Material Information

The TSR prohibits telemarketers from misrepresenting, directly or by implication, the total costs to purchase, receive, or use any goods or services that are the subject of a sales offer. *See* 16 C.F.R. § 310.3(a)(2)(i). Defendants' misrepresentations regarding the costs of their services violate § 310.3(a)(2)(i) of the TSR.

The TSR also prohibits telemarketers from misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services offered for sale. *See* 16 C.F.R. § 310.3(a)(2)(iii). Therefore, Defendants' misrepresentations regarding the amount of money consumers will save by using Defendants' services violate § 310.3(a)(2)(iii) of the TSR. To the extent the Defendants have made similar misrepresentations after September 27, 2010 regarding debt relief services, they violate § 310.3(a)(2)(x).

⁷⁹ PX 15, p. 5 (926 complaints, filed as recently as the day declaration was executed).

iii. Collecting Advance Fee for Debt-Relief Services

The TSR also prohibits requesting and receiving payment of fees or consideration for debt relief services on or after October 27, 2010. *See* 16 C.F.R. § 310.4(a)(5)(i). On the FTC Investigator's undercover call, Defendants' representative admitted – when pressed for details of any fees – that the “first four months of payments . . . goes to us. So, that's \$2,200.”⁸⁰ Clearly, Defendants continue to attempt to collect advance fees relating to debt relief services in violation of § 310.4(a)(5)(i).

c. Liability for MARS Rule Violations

Defendants have violated various aspects of the MARS Rule by: (i) requesting or receiving payment for mortgage assistance relief services before the consumer has executed a written loan modification with his or her loan holder or servicer (*see* 16 C.F.R. § 322.5(a)); (ii) telling consumers not to contact or communicate with their lenders or servicers (*see* 16 C.F.R. § 322.3(a)); (iii) misrepresenting the likelihood of obtaining a mortgage modification that will make payments more affordable (*see* 16 C.F.R. § 322.3(b)(1)); (iv) misrepresenting the total cost to purchase the mortgage assistance relief services (*see* 16 C.F.R. § 322.3(b)(11)); and (v) failing to provide certain disclosures required by 16 C.F.R. § 322.4(a)(1), (a)(2), (b)(1), (b)(2), (b)(3), and (c).⁸¹

2. The Defendants Operate as a Common Enterprise.

The Defendants operate their scheme as one common enterprise, rendering each Defendant jointly and severally liable for the acts and practices of that enterprise. In cases involving the FTC Act, courts have long disregarded corporate formalities where necessary to

⁸⁰ PX 16, p. 32, lines 17-19.

⁸¹ The required disclosures are quoted in full in the Complaint filed in this matter at ¶ 96.

avoid an inequitable result and to prevent the purposes of the FTC Act from being thwarted.⁸² In determining whether a common enterprise exists,

courts look at a variety of factors, including: common control, sharing of office space and officers, whether business is transacted through a “maze of interrelated companies,” the commingling of corporate funds, unified advertising, and any other evidence revealing that no real distinction existed between the corporate defendants.⁸³

The above are just “some” of the factors that courts take into account.⁸⁴ No comprehensive list is possible, as the entire ““pattern and framework of the whole enterprise must be taken into consideration.””⁸⁵

Here, the domestic Corporate Defendants (*i.e.*, EMA, New Life, and 1st United) all listed the same principal place of business – 800 Parkview Drive, #222, Hallandale Beach, FL – in their state filings.⁸⁶ EMA’s and New Life’s state filings are virtually identical, and they always list the same officers, the same registered agents, and are filed on the same days.⁸⁷ The four Canadian Corporate Defendants all listed the same principal place of business – 75 Rue Queen, Bureau 6600, Montréal – in their corporate filings.⁸⁸ The Corporate Defendants’ owners and

⁸² *FTC v. U.S. Oil & Gas Corp.*, 1987 U.S. Dist. LEXIS 16137, *57-58, *61 (S.D. Fla July 10, 1987).

⁸³ *FTC v. Neovi, Inc.*, 598 F. Supp. 2d 1104, 1116 (S.D. Cal. 2008) (citing *FTC v. J.K. Publ’ns. Inc.*, 99 F. Supp. 2d 1176, 1201-02 (C.D. Cal. 2000), *FTC v. Wolf*, 1996 U.S. Dist. LEXIS 1760 at *22-23, *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973), and *Delaware Watch Co. v. FTC*, 322 F.2d 745, 746 (2d Cir. 1964)).

⁸⁴ *FTC v. National Urological Group, Inc.*, 2008 U.S. Dist. LEXIS 44145, *20-21 (N.D. Ga. June 4, 2008).

⁸⁵ *Id.* at *20 (quoting *Delaware Watch Co.*, 322 F.2d at 746).

⁸⁶ PX 1, pp. 2, 4, 8; PX 2, pp. 2, 4, 8; PX 3, p. 1.

⁸⁷ See PX 1 and PX 2.

⁸⁸ PX 4; PX 5; PX 6; and PX 7.

officers had and have significant overlap and duplication.⁸⁹ All of the domestic Corporate Defendants use the same payment processor.⁹⁰

3. Defendants Benhaim, Michaels, Kwon, Shamolian, and Ohayon Are Personally Liable for the Corporate Defendants' Violations of the FTC Act, TSR, and MARS Rule.

a. Injunctive Relief

Once the Commission establishes that a business entity has violated the FTC Act, TSR, and MARS Rule, an individual defendant behind that entity is personally liable for injunctive relief for the business entity's deceptive acts or practices if the individual defendant (1) participated directly in the wrongful practices or acts, or (2) had authority to control the business entity engaging in them. *FTC v. Freecom Commc'ns., Inc.*, 401 F.3d 1192, 1202-03 (10th Cir. 2005); *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1998). Authority to control the business entity can be evidenced by active involvement in business affairs and making corporate policies, including assuming the duties of a corporate officer. *FTC v. Amy Travel Servs., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989).

All five of the individual defendants have had authority to control the Corporate Defendants and have participated substantially in the companies' unlawful acts and practices. They have all been owners and/or officers of the domestic Corporate Defendants.⁹¹ Thus, Defendants Benhaim, Michaels, Kwon, Shamolian, and Ohayon are liable for injunctive relief.

⁸⁹ See Section II, D, *supra*.

⁹⁰ See generally consumer declarations attached hereto as PX 17 through PX40, most of which contain a copy of the underlying contract between Defendants and the consumer, as well as a contract between payment processor Meracord LLC, formerly known as NoteWorld Servicing Center LLC. *E.g.*, PX 36, pp. 24-26 (NoteWorld contract for EMA consumer); PX 28, pp. 16-17 (NoteWorld contract for New Life consumer); PX 32, pp. 16-20 (Meracord contract for 1st United consumer).

⁹¹ See Section II, D, *supra*.

b. Monetary Relief

Likewise, Benhaim, Michaels, Kwon, Shamolian, and Ohayon are personally liable for monetary relief. An individual defendant is personally liable for monetary relief if he “had knowledge that [the company] or one of its agents engaged in dishonest or fraudulent conduct, that the misrepresentations were the type which a reasonable and prudent person would rely, and that consumer injury resulted.”⁹² *Publ’g Clearing House, Inc.*, 104 F.3d at 1170. In the instant case, the individual defendants served as officers and owners of the Corporate Defendants – often the sole owner – and either had actual knowledge that they were not providing the debt relief and mortgage assistance relief services they were telemarketing, or they lacked that knowledge only through their intentional avoidance of the truth. (*See* Section II, D, *supra*.) Given the high level of customer dissatisfaction and complaints (as evidenced at least in part by the consumer declarations attached as exhibits hereto), and their blatant telemarketing without regard for the DNC Registry, and the fact that not one consumer declaration references any actual efforts by Defendants to resolve any outstanding debts, Benhaim, Michaels, Kwon, Shamolian, and Ohayon are liable for monetary relief.

4. The Balance of Equities Calls for the Proposed Relief.

Once the Commission has shown a likelihood of success on the merits, the Court must balance the equities, assigning greater weight to the public interest than to any of Defendants’ private concerns. *World Travel*, 861 F.2d at 1029. The public interest in this case is compelling.

⁹² The knowledge requirement is satisfied by a showing that the defendant (1) had actual knowledge of the deceptive acts or practices, (2) was recklessly indifferent to the truth or falsity of the representations, or (3) had an awareness of a high probability of fraud coupled with an intentional avoidance of the truth. *Amy Travel*, 875 F.2d at 574. The Commission does not need to show intent to defraud. *Amy Travel*, 875 F.2d at 573.

Thousands of vulnerable consumers who were desperately searching for help reorganizing or getting a hand on their finances have lost millions of dollars at Defendants' hands. And consumers have been harassed by Defendants' unwelcome phone calls. For these reasons, the public has both a strong interest in halting Defendants' scheme and in preserving the assets necessary to provide effective final relief to victims.

Defendants, by contrast, have no legitimate interest in continuing to deceive and harass consumers and engaging in conduct that violates federal and state laws. *See FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (upholding district court finding of “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”); *FTC v. Thomsen-King & Co.*, 109 F.2d 516, 519 (7th Cir. 1940) (a court of equity has no duty “to protect illegitimate profits or advance business which is conducted by unfair business methods”); *U.S. v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972) (defendants “can have no vested interest in a business activity found to be illegal”).

Without temporary and preliminary injunctive relief, it is unlikely that Defendants will cease violating the law. Despite at least one State Order prohibiting them from providing their “services,”⁹³ more than 920 Do Not Call complaints,⁹⁴ Defendants have persisted in their unlawful activities. They simply adopt a new name and abandon the old one. Indeed, it is becoming more difficult to locate Defendants' new corporations – unlike EMA and New Life, which incorporated under names similar to the ones under which they do business,⁹⁵ 1st United

⁹³ PX 46.

⁹⁴ PX 15, p. 5.

⁹⁵ PX 1 & PX 2.

was inconspicuously incorporated in Wyoming as 1UC Inc.⁹⁶ Accordingly, an injunction is required to ensure that Defendants' scheme does not continue while this case is pending. For these reasons, the public interest calls for the imposition of injunctive relief.

C. The Proposed Temporary Restraining Order Should Be Entered *Ex Parte*.

The Commission requests that the proposed restraining order be entered *ex parte*. Congress has looked favorably on the availability of *ex parte* relief under the second proviso of Section 13(b) of the FTC Act: "Section 13 of the FTC Act authorizes the Commission to file suit to enjoin any violation of the FTC [Act]. The Commission 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). Federal Rule of Civil Procedure 65(b) permits this Court to enter *ex parte* orders upon a clear showing that "immediate and irreparable injury, loss, or damage will result" if notice is given. Proper circumstances for *ex parte* relief include situations where notice would "render fruitless further prosecution of the action." *In re Vuitton et Fils*, 606 F.2d 1, 5 (2d Cir. 1979); *Carroll v. Princess Anne*, 393 U.S. 175, 180 (1968) ("There is a place in our jurisprudence for *ex parte* issuance without notice, of temporary restraining orders of short duration. . ."). As is set forth in detail in the Commission's Rule 65(b) declaration of counsel, notice to Defendants would cause irreparable injury. Defendants have shown such a disregard for the law that an *ex parte* temporary restraining order is necessary. Only through such an extraordinary measure can the Court prevent otherwise likely destruction of documents and secretion of assets – both of which would jeopardize the possibility of final effective relief for victims.

⁹⁶ PX 3.

D. The Proposed Relief Is Necessary to Prevent the Likely Dissipation of Assets and Preserve Funds for the Possibility of Effective Final Relief for Consumers.

Once the Commission invokes the Court's equitable powers, the full breadth of the Court's authority is available, including the power to grant such additional preliminary relief as is necessary to preserve the possibility of providing effective final relief. *See World Travel*, 861 F.2d at 1026; *Amy Travel*, 875 F.2d at 571. Such ancillary relief may include an asset freeze to preserve assets for eventual restitution to victimized consumers and the appointment of a receiver to marshal and preserve assets. *See Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) (when the public interest is implicated, the court's equitable powers assume an even broader and more flexible character than when only a private controversy is at stake); *World Travel*, 861 F.2d at 1031.

1. The Court Should Freeze Defendants' Assets.

In addition to enjoining Defendants' unlawful conduct, Plaintiffs in this case seek restitution for the victims of Defendants' fraud. To preserve the possibility for such relief, the Commission asks that the Court freeze Defendants' assets and order an immediate accounting to prevent concealment or dissipation of assets pending a final resolution.

An asset freeze is appropriate once the Court determines that the Commission is likely to prevail on the merits and that restitution would be an appropriate final remedy. *See World Travel*, 861 F.2d at 1031 & n.9. In a case such as this, where the Commission is likely to succeed in showing that a corporate officer is individually liable for the payment of restitution, the freeze should also extend to individual assets. *Id.* (affirming freeze on individual assets); *Amy Travel*, 875 F.2d at 575, 576 (affirming district court order freezing assets); *H.N. Singer*,

9, 2009) (injunction, asset freeze, and receiver); *FTC v. Federal Data Service, Inc.*, No. 00-6462-CIV (S.D. Fla. April, 11, 2000) (injunction, asset freeze, receiver, immediate access).⁹⁷

Appointment of a receiver is particularly appropriate here because Defendants' deceptive and abusive scheme demonstrates such an indifference to the law that Defendants may reasonably be expected to frustrate the Commission's law enforcement efforts by destroying evidence and concealing or dissipating assets. A receiver can monitor the use of Defendants' assets, marshal and preserve records, identify assets, determine the size and extent of the fraud, and identify additional consumers who were injured.

The Commission recommends that the Court appoint Barry E. Mukamal, as temporary receiver for EMA, New Life, and 1st United. Mr. Mukamal's qualifications are set forth in the Commission's Recommendation for Temporary Receiver, filed separately with this Motion.

3. The Court Should Order Expedited Discovery and Prompt Access to Records.

In order to locate assets wrongfully obtained from defrauded consumers, the Commission respectfully requests that this Court permit expedited discovery, including immediate access to Defendants' business premises and records, and order financial reporting by Defendants.

District courts are authorized to depart from normal discovery procedures and fashion discovery by order to meet discovery needs in particular cases. Fed. R. Civ. P. 1, 26(d), 34(b). Moreover, the prompt and full disclosure of the scope and financial status of Defendants' business operations is necessary to ensure that the Court is fully advised regarding: (1) the full range and extent of Defendants' law violations; (2) the identities of injured consumers; (3) the total amount of consumer injury; and (4) the nature, extent and location of Defendants' assets.

⁹⁷ Copies of these orders are contained on a CD provided to the Court. The FTC will provide a copy of that CD to any Defendant, if requested.

For these reasons, the proposed Order requires that Defendants produce certain financial records and information on short notice, and requires financial institutions served with the order to disclose whether they are holding any of Defendants' assets.


This requested relief is necessary to identify and preserve assets Defendants wrongfully obtained from consumers. Any hardship on Defendants caused by the relief sought would be temporary and is greatly outweighed by the public's interest in preserving evidence and assets obtained through Defendants' unlawful practices.

V. CONCLUSION

Defendants in this case have harmed consumers across America. If not restrained, they will continue to dupe consumers into thinking they are purchasing legitimate and effective debt relief and mortgage assistance relief services, and pester consumers with unwanted phone calls. The Commission has detailed how the scam works and submitted sufficient proof to support the relief requested. Accordingly, the Court should grant the motion and issue the TRO.

Dated: September 25, 2012

Respectfully submitted,



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