

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TIMESHARE MEGA MEDIA AND  
MARKETING GROUP, INC., a Florida  
corporation, also d/b/a Timeshare Market  
Pro, Inc., *et al.*,

Defendants.

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

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## I. INTRODUCTION

The Federal Trade Commission asks that the Court bring an immediate halt to a “timeshare resale” scam that over the last eighteen months has defrauded consumers across the country out of millions of dollars. Timeshare Mega Media and Marketing Group, Inc. (“TMMMG”), calls consumers who are trying to sell their timeshares and tells them that they have a buyer. The company then charges a fee of nearly \$2000 or more, supposedly for various sales-related costs, that consumers are told will be refunded at closing. Needless to say, there are no buyers. Consumers receive absolutely nothing for their money. This is naked fraud.

Many consumers today are financially strapped, and they are desperate to sell timeshares they can no longer use or afford to maintain. The market for timeshare resales is notoriously poor, and many consumers have advertised their timeshares for sale. Consumers understandably are delighted when Defendants call and tell them that they have buyers for the consumers’ timeshares who are willing to pay the consumers’ asking prices or more. They also are told that the \$2000 fee, usually paid by credit card, will be refunded to them at closing. Defendants string these consumers along, almost never provide refunds, and fight consumers’ attempts to charge back through their credit card companies.

This company has generated hundreds of complaints to the Commission, the Florida Attorney General’s Office, and the Better Business Bureau. TMMMG has an “F” rating with the Better Business Bureau.<sup>1</sup> The Florida Attorney General’s Office recently reported that it has received more complaints about timeshare resale than any other single issue.<sup>2</sup>

The fraud perpetrated by Defendants is demonstrated by sworn statements from consumer victims, two former employees of TMMMG, and an FBI Special Agent. Needless to say, these are illegal deceptive practices that squarely violate Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), and provisions of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310. Defendants continue to operate their deceptive scheme

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<sup>1</sup> See PX 1 McKenney ¶ 31.

<sup>2</sup> See *Attorney General Announces Additional Consumer Protection Efforts Against Timeshare Resale Scams*, July 20, 2010, available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/EF554E6AF98D6BA8852577660051766F>.

unchanged even though criminal authorities executed a search warrant at the business premises in July 2010.

To bring an immediate halt to Defendants' law violations and to preserve assets for eventual restitution to victims, the Commission asks that the Court issue *ex parte* a temporary restraining order ("TRO") that includes a freeze of Defendants' assets and the appointment of a temporary receiver over the Corporate Defendants. The requested relief is required to prevent continued injury to consumers, the destruction of evidence, and the dissipation of assets, thereby preserving the Court's ability to provide effective final relief.

## **II. DEFENDANTS' DECEPTIVE AND UNFAIR BUSINESS PRACTICES**

### **A. Defendants' Telemarketing Calls**

Defendants call consumers who own timeshares and ask whether those consumers are interested in selling.<sup>3</sup> Because many consumers that Defendants target already have listed their timeshares for sale with some other timeshare resale company, Defendants often know the consumers' timeshare locations and selling prices.<sup>4</sup>

Defendants tell consumers that they have buyers who are interested in purchasing the consumers' timeshares.<sup>5</sup> They claim that the "buyer" is willing to pay a price at or above the

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<sup>3</sup> See, e.g., PX 6 Burk ¶ 4; PX 7 Elliott ¶ 3; PX 8 Federico ¶ 3; PX 9 Gumma ¶ 3; PX 10 Harmon ¶¶ 3-4; PX 11 Lien ¶ 3; PX 13 Patrick ¶ 3; PX 15 Seeger ¶ 4; PX 16 Swierupski ¶ 3; PX 17 Watson ¶ 3; PX 19 Yamamoto ¶ 3.

<sup>4</sup> See, e.g., PX 6 Burk ¶ 4; PX 8 Federico ¶ 3; PX 10 Harmon ¶ 3; PX 15 Seeger ¶ 4; PX 17 Watson ¶ 3. In some instances, Defendants represent that TMMMG acquired the customer list of the company the consumer previously used to list the consumer's timeshare for sale, or that TMMMG took over that company. See, e.g., PX 9 Gumma ¶ 3; PX 12 Magnell ¶ 5; PX 16 Swierupski ¶ 3; PX 18 Wroble ¶ 3.

<sup>5</sup> See, e.g., PX 7 Elliott ¶ 3; PX 8 Federico ¶ 3 (consumer told TMMMG had a "prospective buyer who would purchase [the timeshare] for the price of \$13,138"); PX 9 Gumma ¶ 3 (consumer told TMMMG "had a qualified buyer for our timeshare"); PX 10 Harmon ¶ 4 (consumer told TMMMG "did, in fact, have a buyer for a Las Vegas timeshare"); PX 12 Magnell ¶ 5; PX 13 Patrick ¶ 3 (consumer told TMMMG had "buyers lined up for my timeshares"); PX 15 Seeger ¶¶ 4-5; PX 16 Swierupski ¶ 3 (consumer told TMMMG "had a buyer ready and willing to purchase my timeshare"); PX 17 Watson ¶ 3; PX 19 Yamamoto ¶ 3.

consumer's asking price.<sup>6</sup> Understandably, consumers are delighted to learn this good news, particularly because many of the consumers Defendants target can no longer afford the costs associated with timeshare ownership.<sup>7</sup>

Defendants tell consumers that they must pay a fee before the sale can be completed. Typically, this fee is \$1996, but it can vary widely.<sup>8</sup> The reasons for the fee varies, but consumers usually are told that it covers sales-related costs such as title searches, closing costs, or document processing fees.<sup>9</sup> Regardless of the reasons given for the fees, however, Defendants tell consumers that the fee is refundable at closing.<sup>10</sup> When asked why Defendants' fee cannot simply be taken out of the sale proceeds, Defendants respond that it is illegal for them to do so.<sup>11</sup>

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<sup>6</sup> See, e.g., PX 7 Elliott ¶¶ 2-3; PX 10 Harmon ¶ 4; PX 16 Swierupski ¶ 3; PX 19 Yamamoto ¶ 3. In some instances, Defendants negotiate a price with the consumer after purportedly researching sales in the vicinity of the consumer's timeshare location. See, e.g., PX 15 Seeger ¶ 7. See also PX 5 Hellman ¶ 5 (consumers are offered a free "market analysis").

<sup>7</sup> See, e.g., PX 16 Swierupski ¶ 3; PX 12 Magnell ¶ 6. See also PX 6 Burk ¶ 2.

<sup>8</sup> See, e.g., PX 7 Elliott ¶ 3 (\$1996 fee); PX 8 Federico ¶ 4 (\$1996 fee); PX 9 Gumma ¶ 3 (\$2000 "hold"); PX 12 Magnell ¶ 5 (\$1996 fee); PX 14 Sandry ¶ 5 (\$1998 fee); PX 16 Swierupski ¶ 3 (\$1996 fee); PX 17 Watson ¶ 3 (\$1999 fee); PX 19 Yamamoto ¶ 3 (\$1996 "deposit"). See also PX 10 Harmon ¶ 5 (\$3950); PX 15 Seeger ¶ 6 (\$2999 fee; later reduced to \$1999). Consumers who protest that they cannot afford Defendants' fee may be placed in their "hardship program" at reduced costs. See, e.g., PX 17 Watson ¶ 3.

<sup>9</sup> See, e.g., PX 7 Elliot ¶ 3 ("title search, closing fees, the deed and other document fees"); PX 11 Lien ¶ 3 ("realtor fees"); PX 12 Magnell ("a variety of fees, including the cost of sending someone to go look at the timeshare"); PX 15 Seeger ¶ 5 ("handling fee"); PX 16 Swierupski ¶ 3 (title search); PX 17 Watson ¶ 3 (title search). In some instances, Defendants tell consumers that the fee is for costs already incurred in the marketing of the consumer's timeshare. See, e.g., PX 6 Burk ¶ 6; PX 10 Harmon ¶ 5. In other instances, Defendants describe the fee as a deposit for the protection of the buyer should the consumer later back out of the sale. See, e.g., PX 12 Magnell ¶ 5; PX 19 Yamamoto ¶ 3.

<sup>10</sup> See, e.g., PX 6 Burk ¶ 6; PX 7 Elliott ¶ 3; PX 8 Federico ¶ 4; PX 12 Magnell ¶ 5; PX 14 Sandry ¶ 5; PX 15 Seeger ¶ 5; PX 16 Swierupski ¶ 3; PX 17 Watson ¶ 3; PX 19 Yamamoto ¶ 3.

<sup>11</sup> See, e.g., PX 15 Seeger ¶ 5. To sweeten the deal, Defendants may also offer to help consumers obtain refunds from the companies they previously used to market their timeshare, which factors considerably into a consumer's decision to pay Defendants' fee. See, (continued...)

Defendants promise consumers that their timeshare sale closings will occur quickly, often in as few as 30 days.<sup>12</sup> To ensure that consumers move quickly, Defendants sometimes add a sense of urgency.<sup>13</sup> Consumers who are not initially receptive to Defendants' pitch are likely to receive subsequent calls urging them to reconsider.<sup>14</sup>

Defendants usually require that their fee be paid by credit card, and these charges are submitted almost immediately.<sup>15</sup> Sometimes Defendants charge consumers' credit cards without their permission.<sup>16</sup>

## **B. Defendants' Contract**

Defendants also send contracts for consumers to sign and return. These contracts contain fine print indicating that the fee is for marketing services only, but the reality is that these contracts serve no purpose other than to trick consumers into signing something that Defendants can then use to defend against the inevitable consumer complaints about being defrauded.<sup>17</sup>

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<sup>11</sup>(...continued)  
*e.g.*, PX 6 Burk ¶¶ 6-7; PX 7 Elliott ¶ 3; PX 14 Sandry ¶ 5.

<sup>12</sup> *See, e.g.*, PX 8 Federico ¶ 3; PX 9 Gumma ¶ 3; PX 10 Harmon ¶ 4; PX 13 Patrick ¶ 3; PX 14 Sandry ¶ 4; PX 19 Yamamoto ¶ 3. *See also* PX 15 Seeger ¶ 6.

<sup>13</sup> *See, e.g.*, PX 7 Elliott ¶ 4 (consumer wanted to pay by check, but Defendants urged her to pay by credit card to "expedite the process").

<sup>14</sup> *See, e.g.*, PX 15 Seeger ¶ 5; PX 6 Burk ¶ 5.

<sup>15</sup> *See, e.g.*, PX 6 Burk ¶ 11; PX 7 Elliott ¶ 5; PX 8 Federico ¶ 5; PX 9 Gumma ¶ 4; PX 10 Harmon ¶ 5; PX 12 Magnell ¶ 6; PX 13 Patrick ¶ 5; PX 15 Seeger ¶ 8; PX 16 Swierupski ¶ 3; PX 17 Watson ¶ 5; PX 19 Yamamoto ¶ 4. Account information obtained from Defendants' banks suggest that, for a period of time, Defendants also accepted payment by check. *See* PX 1 McKenney ¶¶ 21, 25, 30.

<sup>16</sup> *See, e.g.*, PX 6 Burk ¶¶ 7, 11-12 (Defendants charged \$2450 almost immediately and without permission); PX 9 Gumma ¶¶ 3-4 (Defendants told consumer they would place a \$2000 hold on the consumer's credit card, but instead charged the card); PX 11 Lien ¶ 3 (Defendants told consumer the fee would be "held in reserve" until closing); PX 18 Wroble ¶ 7 (Defendants told consumer that credit card would be credited, but instead made a \$1998 charge).

<sup>17</sup> For a sample of consumer complaints, *see, e.g.*, PX 2 Roberts ¶¶ 14-15 & Atts. F and G at pp. 1-35.



Defendants' contracts usually are sent by e-mail.<sup>18</sup> The contracts are accompanied by a "welcome letter" that instructs the consumer to sign and return the contract. Adding to the sense of urgency, Defendants' welcome letter states as follows:

**PLEASE NOTE TO REFER OFFERS ON YOUR TIMESHARE WE MUST RECEIVE YOUR SIGNED CONTRACT AGREEMENT!**<sup>19</sup>

However, the contract consumers receive is not a contract for the sale of a timeshare. Instead, it is a contract for the marketing and advertising of the consumer's timeshare. Below a description of the consumer's timeshare and the consumer's asking price, Defendants' contract states, in small print:

I/We the undersigned owner(s) grant(s) to Timeshare Mega Media and Marketing Group, Inc., authorization to advertise on the Internet and by pooling advertising resources with those of other sellers/renters as well as E-mail, magazines, newspapers, and other advertising sources to maximize exposure to prospective buyers or renters.<sup>20</sup>

There also is a provision stating that Defendants have "made no representation or guarantees that the property will be sold/rented at any price or within any specific period of time."<sup>21</sup>

These statements, of course, are utterly at odds with the promises made to consumers on the telephone and, in fact, Defendants do not actually provide any marketing services. At most, all Defendants seem to provide in exchange for thousands of dollars is a listing of the consumer's timeshare on their own obscure Web site.<sup>22</sup>

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<sup>18</sup> Defendants send their contracts through DocuSign, an electronic signature services provider. *See* [www.docuSign.com](http://www.docuSign.com). Defendants sometimes instead send contracts by mail. *See, e.g.*, PX 6 Burk ¶ 8; PX 7 Elliot ¶ 5; PX 9 Gumma ¶ 4; PX 10 Harmon ¶ 6; PX 12 Magnell ¶ 6; PX 13 Patrick ¶ 5; PX 15 Seeger ¶ 8.

<sup>19</sup> Emphasis in original. *See, e.g.*, PX 10 Harmon ¶ 6 & Att. B at p. 1; PX 15 Seeger ¶ 8 & Att. A at p. 1.

<sup>20</sup> *See, e.g.*, PX 15 Seeger ¶ 8 & Att. A at p. 2.

<sup>21</sup> *See id.*

<sup>22</sup> *See, e.g.*, PX 6 Burk ¶ 18 & Att. M; PX 8 Federico ¶ 2. Apart from victimized consumers, there are probably very few people that know Defendants' Web site even exists. Of course, Defendants' practices are deceptive regardless of the quality of any listing they may

(continued...)

Many consumers sign and return Defendants' contract without reviewing it or noticing the discrepancy between what Defendants promised during the telemarketing call and what the contract actually says.<sup>23</sup> Other consumers notice the discrepancy and question Defendants about it.<sup>24</sup> Consumers who question Defendants' contract usually are told it is just the first step to "get the ball rolling" on the sale.<sup>25</sup> Other consumers feel pressured to sign Defendants' contract despite its terms because they learn Defendants already charged their fee.<sup>26</sup>

Despite the terms of the contract, Defendants insist on obtaining a signature. The reason becomes clear later on. Consumers who attempt to get their money back often find Defendants

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<sup>22</sup>(...continued)

ultimately provide to consumers. It is unclear whether Defendants list all of their victims' timeshares. At least one consumer reports that when she went to view Defendants' Web site, it was not operational. PX 18 Wroble ¶ 10. These listings are worthless to consumers as a form of advertising, as there is little chance that consumers not already familiar with Defendants' Web site address would access it. *See* PX 1 McKenney ¶¶ 10-13.

<sup>23</sup> *See, e.g.*, PX 7 Elliott ¶ 5 (consumer did not read contract word-for-word, instead relying on Defendants' representations that a buyer was found); PX 8 Federico ¶ 4-5 (Defendants described the contract as a "seller's agreement," and consumer signed and returned contract as directed without reviewing it closely); PX 15 Seeger ¶ 8 (consumer looked over contract but did not read it through entirely, instead relying on Defendants' "promise that a buyer was lined up"); PX 17 Watson ¶ 5 (consumer understood the contract to be a contract for sale); PX 19 Yamamoto ¶ 4 (consumer was "eager to sell" his timeshare and "did not read the contract very carefully").

<sup>24</sup> *See, e.g.*, PX 6 Burk ¶ 10 (consumer was not comfortable with what contract said); PX 9 Gumma ¶ 4 (consumer noted that contract was "substantially different" from what consumer was told on the phone); PX 10 Harmon ¶ 6 (consumer "immediately noticed that the contract did not match what I had been told over the phone"); PX 16 Swierupski ¶ 5 (consumer read contract and noted that it "did not have any terms stating there was a potential buyer for my timeshare").

<sup>25</sup> *See, e.g.*, PX 16 Swierupski ¶ 5 (consumer told contract was just "a standard contract to get the ball rolling" and that he would be provided with "other paperwork" as soon as it was drawn up); PX 9 Gumma ¶ 4 (consumer told to "disregard the terms of the contract and to sign it").

<sup>26</sup> PX 10 Harmon ¶ 6 (after being charged \$3950 by Defendants, consumer signed contract because he believed "having a contract, even one that didn't exactly meet what I had been told over the phone, was better than nothing").

using the signed contracts against them.

### C. Consumers Get Nothing For Their Money and Cannot Get a Refund

Consumers quickly learn that Defendants provide no services whatsoever. Defendants have no buyers for consumers' timeshares.<sup>27</sup> After consumers pay the fee and sign the contract, Defendants do not answer or return phone calls. They simply disappear.<sup>28</sup> In other instances, consumers are met with a series of delay tactics designed to forestall them from seeking refunds.<sup>29</sup>

When consumers eventually realize that Defendants have no buyers for their timeshares, they understandably want their money back. Unfortunately, they find it nearly impossible to get a refund. Of course, many consumers call or send e-mail to Defendants requesting their money back, but those calls and e-mails are almost universally ignored.<sup>30</sup>

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<sup>27</sup> See, e.g., PX 6 Burk ¶ 31 (consumer believes Defendants “never had any buyer for my timeshare”); PX 7 Elliott ¶ 11 (Defendants “lied to me over the phone, took my money, and provided me with absolutely no service”); PX 8 Federico ¶ 9 (“I do not believe that [Defendants] ever had a buyer for my timeshare. I paid [Defendants] \$1996 and have received nothing in return”); PX 9 Gumma ¶ 17 (Defendants “took our money, continuously lied about the status of our timeshare sale, and provided no service in return”); PX 10 Harmon ¶ 11 (consumer is “confident there is not actually a buyer for my timeshare as I was promised over the phone”); PX 11 Lien ¶ 10 (“I do not believe that [Defendants] ever had a buyer for my timeshare”); PX 12 Magnell ¶ 10 (“I am sure that the buyers [Defendants] promised for my timeshares did not exist”); PX 13 Patrick ¶ 14 (“After [Defendants] took my money, they provided no service in return”); PX 14 Sandry ¶ 10 (“I have been knowingly lied to and purposely misled”); PX 15 Seeger ¶ 14 (Defendants “totally misrepresented their services and lied to us about having a buyer for our timeshare”); PX 16 Swierupski ¶ 8 (Defendants “simply lied to me over the phone, took my money, and provided nothing in return”); PX 17 Watson ¶ 7 (Defendants “simply took my money and did not provide anything in return”); PX 18 Wroble ¶ Defendants are “nothing but a fraud”); PX 19 Yamamoto ¶ 6 (Defendants “simply took my payment and provided no service in return”).

<sup>28</sup> See, e.g., PX 7 Elliott ¶ 7; PX 8 Federico ¶ 6; PX Gumma ¶ 4; PX 10 Harmon ¶ 8; PX 17 Watson ¶ 6; PX 19 Yamamoto ¶¶ 5, 7.

<sup>29</sup> See, e.g., PX 12 Magnell ¶¶ 6-7, 9-10; PX 14 Sandry ¶¶ 6, 8-10; PX 15 Seeger ¶¶ 7-9.

<sup>30</sup> See, e.g., PX 7 Elliott ¶ 7; PX 8 Federico ¶ 6; PX 10 Harmon ¶¶ 7-8; PX 13 Patrick ¶ 8; PX 15 Seeger ¶¶ 11, 14; PX 18 Wroble ¶ 8.

Consumers next attempt to get a chargeback on their credit cards. Defendants then produce the signed contracts, which they use to fight these attempts. In the end, most consumers end up losing their money.

Defendants use the contracts to ward off consumer chargeback requests and, unfortunately, the tactic frequently works.<sup>31</sup> Even though consumers have been lied to over the telephone, consumers' credit card companies often deny the chargebacks because the signed contracts purport to show that those consumers agreed to the charge.<sup>32</sup> Clearly, Defendants' contract is part and parcel of their scheme, designed to make it more difficult for consumers to get their money back.

The essentially fraudulent nature of this scheme is detailed in the declarations of two former employees. One, Scott Faraguna, explains that it was imperative to get consumers to sign and return Defendants' contract. If consumers tried to get their money back, Defendants would "put up a fight" and use the contracts "as proof that the consumer agreed to be charged."<sup>33</sup> When consumers called back to complain, Mr. Faraguna would simply avoid them or pretend to be somebody else offering to look into the consumers' concerns.<sup>34</sup> The goal at TMMMG, as Mr. Faraguna quickly learned, was to "string a customer along for as long as possible, so that the deal would stick."<sup>35</sup> Needless to say, Defendants promises of buyers at the ready and the sale of consumers' timeshares never materialize. Defendants simply take consumers' money and

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<sup>31</sup> See, e.g., PX 12 Magnell ¶ 9; PX 9 Gumma ¶ 17. In some instances, credit card companies have refused to process a chargeback even in the absence of a signed contract. See, e.g., PX 6 Burk ¶¶ 14-15. In other instances, credit card companies have issued conditional credits while awaiting a response from Defendants. See, e.g., PX 10 Harmon ¶ 10; PX 16 Swierupski ¶ 7.

<sup>32</sup> See, e.g., PX 2 Roberts ¶ 15 & Att. G at pp. 36-77 (sample of Defendants' responses to consumer chargeback requests).

<sup>33</sup> See PX 4 Faraguna ¶ 9. Mr. Faraguna also learned from Defendant Joseph Crapella that it is harder for a consumer to initiate a chargeback with his or her credit card company after sixty days; thus, Mr. Faraguna would try to "string a consumer along past that." *Id.* at ¶ 10.

<sup>34</sup> *Id.* at ¶ 10.

<sup>35</sup> *Id.*

provide nothing in return.<sup>36</sup>

### **III. DEFENDANTS**

Defendants are a group of three interrelated companies and six individuals that together operate as a common enterprise. While the three companies purport to have independent ownership, all of them are controlled, managed, and directed by the same group of individuals. Because Defendants operate the corporate entities as a common enterprise, they are all jointly and severally liable for their various law violations. *See Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1173 & 1175 (1st Cir. 1973); *FTC v. Wolf*, No. 94-8119-CIV-Ferguson, 1996 WL 812940, at \*7-\*8 (S.D. Fla. Jan. 30, 1996).

#### **A. Corporate Defendants**

The Corporate Defendants are Timeshare Mega Media and Marketing Group, Inc. (“TMMMG”), also doing business as Timeshare Market Pro, Inc.; Timeshare Market Pro, Inc. (“TMPI”); and Tapia Consulting, Inc. (“Tapia”). Although the three companies maintain separate registered mailing addresses, all three operate from the principal address of TMMMG at 2652 E. Oakland Park Blvd., Fort Lauderdale, Florida. TMMMG is a Florida corporation incorporated on June 11, 2009.<sup>37</sup> TMMMG is a spin-off of Defendant TMPI, which was incorporated on August 20, 2007, and voluntarily dissolved on July 1, 2010. Beginning in February 2009, control of TMPI was forcefully wrestled away from TMPI President Charles

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<sup>36</sup> Mr. Faraguna’s declaration provides an inside glimpse into this entirely fraudulent operation. Although Mr. Faraguna recalls that he first thought Defendants’ business was to market consumers’ timeshares for sale, he quickly “realized that the actual business was to get as much money as we could from the customers we called.” *See* PX 4 Faraguna ¶ 4. Mr. Faraguna confirms that consumers regularly were told that Defendants had buyers for consumers timeshares, and that Defendants’s fees were supposedly for sales-related costs. This was the pitch Mr. Faraguna picked up from “sitting in the room and overhearing the other telemarketers on their calls with customers.” *See id.* at ¶ 5. Former employee Gail Hellman also recounts that she regularly overheard telemarketers telling consumers, “Congratulations! We have a buyer for your timeshare!” *See* PX 5 Hellman ¶ 6.

<sup>37</sup> PX 1 McKenney ¶ 5. Recently, TMMMG was administratively dissolved on September 24, 2010, for failure to file its annual report with the Florida Department of State. *See id.*

Schwab by Defendants Joseph Crapella and Pasquale Pappalardo.<sup>38</sup> At that time, Crapella and Pappalardo seized control of TMPI's customer information and financial resources, and eventually incorporated and began operating as TMMMG.<sup>39</sup> Although TMPI has since been administratively dissolved by Schwab,<sup>40</sup> Defendants continue to make use of TMPI's name, customer lists, and accounts.

Defendant Tapia is a Florida corporation incorporated on February 7, 2008. On September 25, 2009, Tapia was administratively dissolved for failing to file an annual report with the Florida Department of State.<sup>41</sup> Although dissolved, the Individual Defendants continue to operate Tapia.<sup>42</sup> Tapia appears to serve no business function other than to funnel money to the Individual Defendants.<sup>43</sup>

### **B. Individual Defendants**

This fraudulent scheme is operated by a group of six individuals, all of whom share in the management, control, and day-to-day business operations of the Corporate Defendants. Several of these Individual Defendants have extensive criminal histories, which no doubt reflects on the veracity of this operation.

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<sup>38</sup> PX 3 Schwab ¶¶ 10-14. *See also* PX 2 Roberts ¶¶ 5, 6-8 (FBI Special Agent states that his investigation "has revealed that Crapella and Pappalardo started TMMMG by fraudulently acquiring another timeshare marketing business"). Although Schwab founded TMPI is listed as its President, his functional role was marginalized after Crapella and Pappalardo took control. *See* PX 3 Schwab ¶¶ 10-14.

<sup>39</sup> *See* PX 2 Roberts ¶¶ 7-8.

<sup>40</sup> *See* PX 3 Schwab ¶ 2 & Att. B.

<sup>41</sup> PX 1 McKenney ¶ 6.

<sup>42</sup> For example, Defendants' Web site at [www.timesharemediagroup.com](http://www.timesharemediagroup.com) is registered to "Tapia Consulting, Inc." *See* PX 1 McKenney ¶ 9.

<sup>43</sup> Beginning in about April 2009, Schwab was coerced into writing sizeable checks drawn from TMPI accounts payable to Tapia and others. *See* PX 3 Schwab ¶ 13; PX 2 Roberts ¶ 7. Tapia's bank records reveal that deposits into its accounts were then regularly paid out to several of the Individual Defendants. PX 1 McKenney ¶ 18. For example, for the period of February 27, 2009 through June 6, 2009, checks totaling \$34,629.50 were paid from Tapia accounts to Defendant L. Pappalardo.

Pappalardo and Crapella are the masterminds behind this fraudulent scheme. Pappalardo originally approached Schwab to suggest that he and Crapella assist him with TMPI, which was failing because of Schwab's poor health.<sup>44</sup> Shortly thereafter, Pappalardo and Crapella also brought in Pasqualino Agovino, Patricia A. Walker, and Louis Tobias Duany to assist in the operation of Schwab's business and to share in the profits.<sup>45</sup> Together, Pappalardo, Crapella, Walker, and Duany forcefully overtook Schwab's business.<sup>46</sup> Although Schwab's name remained on TMPI merchant and bank accounts, Pappalardo and Crapella began depleting those accounts.<sup>47</sup> Pappalardo's wife, Lisa Tumminia Pappalardo, thereafter took control of Schwab's business accounts.<sup>48</sup>

On corporate documents, Duany is the President and Registered Agent of TMMMG.<sup>49</sup> A former employee reports that Duany comes into the business premises daily, and he is responsible for signing employees' paychecks.<sup>50</sup> Duany is a signatory on several TMMMG corporate bank accounts, along with L. Pappalardo.<sup>51</sup> Duany holds himself out as an officer of

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<sup>44</sup> PX 3 Schwab ¶ 10.

<sup>45</sup> *Id.* at ¶¶ 11-12.

<sup>46</sup> *Id.* at ¶¶ 14-15. According to Schwab, Crapella fired many of Schwab's employees. In June or July 2010, Crapella and the others emptied out Schwab's business location and eventually moved to the business to its present location on Oakland Park Boulevard in Fort Lauderdale. *Id.* At one point after regaining some health, Schwab tried to come back to work, but was told by Pappalardo and Crapella to "go the f\_\_\_ back home." Schwab was afraid to report the forceful takeover of the business to law enforcement because he knew that Pappalardo was affiliated with organized crime. *See* PX 2 Roberts ¶ 6.

<sup>47</sup> *See* PX 2 Roberts ¶ 6. Schwab periodically received visits from Walker and her "boyfriend" to sign checks, many of which were paid to Tapia, Agovino, Pappalardo, Walker, and Crapella. *See* PX 3 Schwab ¶ 13.

<sup>48</sup> PX 3 Schwab ¶ 13.

<sup>49</sup> *See* PX 1 McKenney ¶ 5 & Att. A. *See also* PX 2 Roberts ¶ 3.

<sup>50</sup> PX 5 Hellman ¶ 8.

<sup>51</sup> PX 1 McKenney ¶¶ 20, 23, 26, 27 & Atts. J, K, D, M (signature cards).

TMMMG, and consumers often write complaint letters addressed to him.<sup>52</sup> Duany has a criminal history that includes a 1986 arrest by the FBI for false statements, for which Duany received a one year suspended sentence and two years of probation, and an arrest for assault and battery.<sup>53</sup>

Pappalardo, also known as “Posh,” originally approached Schwab to assist him with his business.<sup>54</sup> He, along with Crapella, led the takeover of Schwab’s business and was responsible for depleting Schwab’s business accounts.<sup>55</sup> Presently, Pappalardo visits the business location regularly and is known by employees to have an interest in the business.<sup>56</sup> A former employee reports that she would see Posh come into the business daily to collect a bank envelope from Crapella.<sup>57</sup> Pappalardo has an extensive criminal history dating back to 1978 that includes drug and weapon charges.<sup>58</sup> In 1991, Pappalardo was arrested by the U.S. Secret Service for distribution of counterfeit currency, possession of cocaine, and carrying a firearm in relation to drug trafficking.<sup>59</sup> Pappalardo was sentenced to 87 months of incarceration.<sup>60</sup>

Crapella directs many of the Corporate Defendants’ day-to-day activities. He interviews prospective employees and sometimes hands out lead lists.<sup>61</sup> Crapella regularly interacts with employees, and he instructs them on their duties.<sup>62</sup> On a corporate bank account application for

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<sup>52</sup> See, e.g., PX 6 Burk ¶ 27 & Att. X.

<sup>53</sup> See PX 2 Roberts ¶ 12.

<sup>54</sup> PX 3 Schwab ¶ 10; PX 2 Roberts ¶¶ 4-7.

<sup>55</sup> PX 3 Schwab ¶¶ 10-13; PX 2 Roberts ¶¶ 5-8.

<sup>56</sup> PX 2 Roberts ¶ 4. See also PX 4 Faraguna ¶ 12.

<sup>57</sup> PX 5 Hellman ¶ 8.

<sup>58</sup> See PX 2 Roberts ¶ 12.

<sup>59</sup> See *id.*

<sup>60</sup> *Id.*

<sup>61</sup> See PX 4 Faraguna ¶¶ 2, 4.

<sup>62</sup> See *id.* ¶¶ 4, 7, 10, 14.



TMMMG, Crapella was listed as “Op. Mgr.”<sup>63</sup> Like Pappalardo, Crapella also has an extensive criminal history. In 1998, Crapella was arrested by the Broward County Sheriff’s Office and charged with larceny, aggravated battery, resisting officer, insufficient funds, and RICO racketeering.<sup>64</sup> Crapella was sentenced to 11 years incarceration, and he served approximately eight years.<sup>65</sup>

On corporate documents, Agovino, also known as “Patsy,” is the President, Secretary, and Treasurer of Tapia.<sup>66</sup> He, along with Walker and L. Pappalardo, have been signatories on Tapia’s bank account.<sup>67</sup> Agovino is at the business premises regularly,<sup>68</sup> and he sometimes hands out lead lists to employees.<sup>69</sup> Agovino regularly profits from this scheme,<sup>70</sup> and his criminal history includes drug charges in 2006 and 2007.<sup>71</sup>

L. Pappalardo, along with Duany, controls the Corporate Defendants’ finances. She is a signatory on several TMMMG bank accounts, including accounts at Regions Bank, BankAtlantic, and Bank of America.<sup>72</sup> L. Pappalardo also was added as a signatory to Tapia’s

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<sup>63</sup> PX 1 McKenney ¶ 26 & Att. L. Although Crapella started to sign the application, his name subsequently was crossed out.

<sup>64</sup> PX 2 Roberts ¶ 12.

<sup>65</sup> *Id.*

<sup>66</sup> *See* PX 1 McKenney ¶ 6 & Att. B (corporate documents for Tapia).

<sup>67</sup> PX 1 McKenney ¶ 16 & Att. H. On a Regions Bank application for Tapia’s business account, Agovino is listed as President while Walker is listed as Secretary. Walker was later removed from the account and L. Pappalardo added. *See id.*

<sup>68</sup> *See* PX 2 Roberts ¶ 13.

<sup>69</sup> *See* PX 4 Faraguna ¶ 4.

<sup>70</sup> *See* PX 1 McKenney ¶¶ 18, 24, 28.

<sup>71</sup> *See* PX 2 Roberts ¶ 12.

<sup>72</sup> *See* PX 1 McKenney ¶¶ 20, 23, 26, 27 & Atts. J, K, D, M.

business account at Regions Bank.<sup>73</sup> L. Pappalardo shares in the profits generated from this scheme, and she purportedly owns a 45 percent share of TMMMG.<sup>74</sup>

Finally, Walker participates daily in the business operations. Walker is the registrant of TMMMG's Internet Web site,<sup>75</sup> and she was responsible for establishing Web site design services.<sup>76</sup> Walker also was a signatory to Tapia's business account.<sup>77</sup> Presently, Walker is at the business premises daily.<sup>78</sup> Known as "Pat" to employees, Walker is responsible for processing credit card charges.<sup>79</sup> She also regularly challenges consumers' chargeback requests by producing consumers' signed contracts and claiming that their contracts have been fulfilled.<sup>80</sup> Walker purportedly is TMMMG's Secretary and owns a 45 percent share of the business.<sup>81</sup>

#### **IV. ARGUMENT**

The Commission asks that the Court bring this scam to an immediate halt by issuing a temporary restraining order. The Commission also asks that the Court freeze Defendants' assets to preserve them for restitution to victims, and appoint a temporary receiver to both preserve

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<sup>73</sup> See PX 1 McKenney ¶ 16 & Att. H.

<sup>74</sup> See PX 1 McKenney ¶ 18. See also PX 2 Roberts ¶ 14 & Att. E (TMMMG "Partnership Agreement" that lists Duany as President, L. Pappalardo as Treasurer, and Walker as Secretary with L. Pappalardo and Walker each owning a 45 percent share of TMMMG and the remaining ten percent owned by Duany).

<sup>75</sup> See PX 1 McKenney ¶ 9 & Att. F (domain name registration information for [www.timesharemediagroup.com](http://www.timesharemediagroup.com)).

<sup>76</sup> See PX 2 Roberts ¶ 14 & Att. D (service agreement signed by Walker as a "Timeshare Market Pro Authoritative Representative").

<sup>77</sup> See PX 1 McKenney at ¶ 16 & Att. H (Tapia account application).

<sup>78</sup> See PX 2 Roberts ¶ 13. See also PX 5 Hellman ¶ 8.

<sup>79</sup> See PX 4 Faraguna ¶ 8;

<sup>80</sup> See, e.g., PX 2 Roberts ¶ 15 & Att. G at pp. 37, 43, 50, 56, 63, 65. Apparently, Walker will even challenge chargebacks initiated by consumers who did not sign and return Defendants' contract. See, e.g., PX 2 Roberts ¶ 15 & Att. G at pp. 65-70 (consumer's chargeback request with unsigned contract).

<sup>81</sup> PX 2 Roberts ¶ 14 & Att. E (TMMMG "Partnership Agreement").

assets and manage the affairs of the Corporate Defendants. Although criminal authorities executed a search warrant at Defendants' business premises on July 16, 2010, Defendants have continued to operate their business and to make false statements regarding the sale of consumers' timeshares. Therefore, immediate injunctive relief, which includes both an asset freeze and appointment of receiver, is especially important considering that the criminal search warrant did not affect Defendants' ongoing conduct. This Court has full authority to enter the requested relief, which is strongly supported by the evidence. Courts in this district have repeatedly granted *ex parte* TROs that include these types of relief in FTC actions.<sup>82</sup>

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

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). The practice of defrauding consumers by misrepresenting or omitting material facts in violation of the FTC Act presents a "proper case" for injunctive relief under 15 U.S.C. § 53(b). *See FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996). Once the Commission invokes the federal court's equitable powers, the full breadth of the court's authority is available, including the power to grant such ancillary final relief as rescission of contracts and restitution. *Id.*; *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir. 1989). The court may also enter a temporary restraining order, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief. *Gem Merch. Corp.*, 87 F.3d at 468; *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11<sup>th</sup> Cir. 1984). Such ancillary relief may include an asset freeze to preserve assets for eventual restitution to victimized

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<sup>82</sup> *See, e.g., FTC v. Kirkland Young, LLC*, No. 09-23507-Civ-Gold (S.D. Fla. Nov. 18, 2009); *FTC v. 1st Guaranty Mortgage Corp.*, No. 09-61840-Civ-Seitz (S.D. Fla. Nov. 17, 2009); *FTC v. Integrity Mkt'g Team, Inc.*, No. 07-61152-Civ-Huck (S.D. Fla. Aug. 15, 2007); *FTC v. Fidelity ATM, Inc.*, No. 06-81101-Civ-Hurley (S.D. Fla. Nov. 29, 2006); *FTC v. USA Beverages*, No. 05-61682-Civ-Lenard (S.D. Fla. Nov. 4, 2005); *FTC v. Transnet Wireless Corp.*, No. 05-61559-Civ-Marra (S.D. Fla. Sept. 27, 2005); *FTC v. Sun Ray Trading, Inc.*, No. 05-20402-Civ-Seitz (S.D. Fla. Feb. 10, 2005); *FTC v. Vinyard Enters., Inc.*, No. 03-23291-Civ-Altonaga (S.D. Fla. Dec. 3, 2003); *FTC v. Greeting Cards of Am., Inc.*, No. 03-60746-Civ-Gold (S.D. Fla. Apr. 21, 2003); *FTC v. Assoc. Records Distribs., Inc.*, No. 02-21754-Civ-Graham (S.D. Fla. June 12, 2002).

consumers and the appointment of a receiver. *U.S. Oil & Gas*, 748 F.2d at 1432-34. The commission of past illegal conduct is “highly suggestive of the likelihood of future violations.” *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979). *See also FTC v. Direct Mktg. Concepts, Inc.*, 648 F. Supp. 2d 202, 212 (D. Mass. 2009).

**B. A Temporary Restraining Order is Appropriate and Necessary**

To grant preliminary injunctive relief in an FTC Act case, the district court must: (1) determine the likelihood that the Commission will ultimately succeed on the merits, and (2) balance the equities. *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1217 (11th Cir. 1991). “[T]he FTC need not satisfy the traditional equity standard that courts impose on private litigants – the FTC need not prove irreparable harm.” *Id.* at 1218. When the court balances the equities, the public interest “must receive far greater weight” than any private concerns. *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988).

**1. The FTC Has Demonstrated There is a Strong Likelihood That Defendants Have Violated the FTC Act and the TSR**

There is no doubt that Defendants’ activities qualify as deceptive acts or practices under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). 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. *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1266-67 (S.D. Fla. 2007) (*citing FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003)). The materiality requirement is satisfied if the misrepresentation or omission involves information that is likely to affect a consumer’s choice of, or conduct regarding, a product or service. *See Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992), *cert. denied*, 507 U.S. 909 (1993). In deciding whether particular statements are deceptive, courts must look to the “overall net impression” of consumers. *See id.*

The TSR also includes a series of specific provisions prohibiting the kinds of misrepresentations made by Defendants. TSR section 310.3(a)(4) prohibits defendants from “making false or misleading statements to induce any person to pay for ... services.” TSR Section 310.3(a)(2)(iv) specifically prohibits Defendants from misrepresenting material aspects of their refund policy.

As set out in Section II, *supra*, Defendants have violated the FTC Act and the TSR by

consistently making a series of false statements about their purported timeshare resale services and related policies.<sup>83</sup> The Commission’s sworn consumer declarations demonstrate that these lies are material because they often succeed in inducing consumers to pay thousands of dollars to Defendants when they otherwise would not have. The simple truth is best stated by former TMMMG employee Scott Faraguna: “It would be hard to get \$2000 from people just to advertise their timeshare for sale.”<sup>84</sup> Significantly, Defendants do not even provide the marketing services touted in their contracts and telemarketing scripts. Their conduct is entirely inconsistent with every representation that they make to consumers and is nothing less than pure fraud. Accordingly, a temporary restraining order to stop these practices is warranted.

## **2. The Individual Defendants Are Personally Liable**

An individual defendant may be held liable for injunctive relief and monetary restitution under the FTC Act if the Court finds that he “participated directly in the practices or acts or had authority to control them . . . [and] the individual had some knowledge of the practices.” *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1270; *Gem Merch. Corp.*, 87 F.3d at 470 (quoting *Amy Travel Serv., Inc.*, 875 F.2d at 573). The Commission does not need to show that the individual had the intent to defraud. *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1270. Rather, the Commission may satisfy the knowledge requirement by showing that the individual had “actual knowledge of material representations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth.” *Id.* at 1270; *Amy Travel Serv., Inc.*, 875 F.2d at 574. Significantly, “[t]he degree of participation in business is probative of knowledge.” *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1270.

Each Individual Defendant’s role in this fraud is detailed in Sections II and III above. Additionally, the Individual Defendants have been paid significant amounts of money for their

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<sup>83</sup> In many, if not all, instances, Defendants also violate state law by processing credit card charges before receiving a consumer’s signed contract. Pursuant to Fla. Stat. 501.615 (2), a telemarketer “shall not make or submit any charge to the purchaser’s credit card account ... until after the commercial telephone seller receives from the purchaser a copy of the contract, signed by the purchaser...” See PX 18, Wroble ¶¶ 4, 11; PX 6, Burk ¶ 11; PX 11 Lien ¶ 4.

<sup>84</sup> PX 4, Faraguna ¶ 5.

participation in this scheme. For example, according to TMMMG bank records thus far received by the Commission, from January to March 2010 alone, Crapella was paid \$132,136.<sup>85</sup> Over the same short period of time, Pappalardo was paid \$189,550.<sup>86</sup> These same records show that Walker was paid over \$200,000 during those three months, while Agovino was paid \$173,920.<sup>87</sup>

At bottom, the Individual Defendants may have varying degrees of documented and “official” ties to TMMMG, but their conduct makes plain that they each have an interest in and control over this common, fraudulent enterprise. The exorbitant sums paid to each of them—every penny of which is the result of fraud on consumers—are significant of the level of their knowledge and control over the pervasive fraudulent practices of this enterprise. Consequently, there is a strong likelihood that the FTC will succeed in proving that they should be held individually liable for their law violations.<sup>88</sup> *See Amy Travel Serv., Inc.* 875 F.2d at 573; *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1271-72.

### 3. The Equities Tip Decidedly in the Commission’s Favor

In weighing the public and private equities, the Court should give great weight to the public interest. *FTC v. Affordable Media*, 179 F.3d 1228, 1236 (9th Cir. 1999) (“Obviously, the public interest in preserving the illicit proceeds . . . for restitution to the victims is great.”); *FTC v. USA Beverages., Inc.*, No. 05-61682-Civ-Lenard, 2005 U.S. Dist. LEXIS 39075, at \*15 (S.D. Fla. Dec. 5, 2005). Indeed, once the Commission has shown a likelihood of success on the merits, the Court must balance the equities, assigning “far greater weight” to the public interest than to any of Defendants’ private concerns. *World Travel*, 861 F.2d at 1029. The public equities in this case are compelling, as the public has a strong interest in halting Defendants’ illegal activities and preserving assets necessary to provide effective final relief to thousands of victims. Defendants, by contrast, have no legitimate interest in continuing to engage in illegal

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<sup>85</sup> PX 1McKenney ¶¶ 24, 28.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> The Individual Defendants also cannot escape the fact that the FBI executed a search warrant at Defendants’ business location resulting from its investigation into Defendants’ fraudulent business practices. *See generally* PX 2 Roberts ¶¶ 4-11, 14-15.

conduct. *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (upholding 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”).

**C. The Court Should Enter the FTC’s Proposed *Ex Parte* TRO**

*Ex parte* relief is necessary here. An *ex parte* TRO is warranted where facts show that irreparable injury, loss, or damage may result before defendants may be heard in opposition. See Fed. R. Civ. P. 65(b). In executing the July 2010 search warrant, the criminal authorities seized some of TMMMG’s documents.<sup>89</sup> Despite that, Defendants—many of whom have extensive criminal histories—have continued to operate and to engage in the same deceptive practices. They thus have continued to generate additional records and assets that should be preserved. If Defendants receive prior notice of the FTC’s action, there is a tangible risk that these materials and assets will disappear. Moreover, historically, any funds deposited in corporate accounts were routinely paid out to the Individual Defendants as quickly as they came in. It is reasonable to believe that, if Defendants receive advance warning of this matter, they will dissipate funds even further, potentially to third parties, before those assets can be frozen by the Court. In sum, *ex parte* relief is necessary to preserve the status quo and ensure the Defendants cannot hide or destroy records and dissipate assets.

Part of the relief sought by the FTC in this case is restitution for consumers who were defrauded by Defendants’ misrepresentations. To preserve the possibility for such relief, the Commission seeks a freeze of Defendants’ assets and an immediate accounting to prevent concealment or dissipation of assets pending a final resolution of this litigation.

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. *World Travel*, 861 F.2d at 1031 & n.9. In the words of the Seventh Circuit, the district court at this juncture has “a duty to ensure that the assets of the corporate defendants [are] available to make restitution to injured consumers.” *Id.* at 1031. In a case such as this, where the Commission is likely to succeed in showing that corporate officers and managers are individually liable for the payment of restitution, the freeze should extend to individual assets as well. *Id.* (affirming

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<sup>89</sup> PX 2 Roberts ¶ 14.

freeze on individual assets). This Court has authority to order a party to “freeze” property under its control, whether the property is within or outside the United States. *U.S. v. First Nat’l City Bank*, 379 U.S. 378, 384 (1965). Such an order is necessary and appropriate here to ensure the possibility of effective final relief.

The appointment of a temporary receiver over the Corporate Defendants is also necessary to preserve the potential for a complete remedy. Such an appointment is particularly appropriate where Defendants’ pervasive fraud presents the likelihood of continued misconduct. If Defendants here are allowed to remain in control of their businesses, it is likely that they will continue to defraud consumers, that evidence will be destroyed, and the fruits of their fraud will be dissipated. By taking custody of the business, a neutral receiver would prevent further harm to consumers and prevent destruction or concealment of assets and records without disrupting any legitimate business activity. At the same time, a temporary receiver would be helpful to the Court in assessing the extent of Defendants’ fraud, tracing the proceeds of that fraud, preparing an accounting, and making an independent report of Defendants’ activities to the Court.


**V. CONCLUSION**

Defendants have caused, and are likely to continue to cause, substantial injury to the public through their violations of the FTC Act and the TSR. The Commission respectfully requests that the Court issue the proposed Temporary Restraining Order with Asset Freeze, the Appointment of a Receiver, and Order to Show Cause Why a Preliminary Injunction Should Not Issue to protect the public from further harm and to help ensure the possibility of effective final relief for defrauded consumers.

Respectfully Submitted,

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