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I. INTRODUCTION

Plaintiffs, the Federal Trade Commission and State of Illinois, jointly ask the Court to put a speedy end to an utterly fraudulent “debt collection” enterprise that operates nationally but is located in the Chicago suburbs. Defendants cold-call consumers, demand payment for allegedly delinquent payday loans, and threaten people with wage garnishment or arrest if they do not pay immediately. In reality, though, these consumers do not owe any money to Defendants. This is simply theft.

This enterprise has a boiler room that has been operating in the western suburbs of Chicago for several years. It currently is located in Aurora, but purports to be in Nevada. During the last five years, Defendants have defrauded thousands of consumers out of at least \$3.4 million. There are hundreds of complaints from consumers. During this time, Defendants have changed their business name at least nine times, and they have moved physical locations at least four times.

Defendants’ practices are particularly egregious because Defendants concentrate on ripping off consumers who already are in difficult financial conditions. People who have serious financial problems, such as an inability to pay the rent when it is due, often resort to payday loans to “bridge the gap” between paychecks. Many of these payday loan companies operate online, and completing a loan application requires that consumers provide detailed personal information, often including Social Security numbers.

Unfortunately, we have found that at least some of the information included in these payday loan applications is being sold to fake debt collectors like Defendants. Armed with detailed and sensitive personal information about consumers, Defendants call and demand that these consumers immediately pay Defendants for delinquent payday loans.

Some consumers pay because they mistakenly believe Defendants are a legitimate debt collector collecting legitimate debt. Other consumers, though, know they do not owe a payday loan because they paid it off or never actually obtained one. But, even those consumers often pay when Defendants threaten to garnish their wages, suspend or revoke their drivers' licenses, have them arrested, or sue. There is absolutely no evidence that Defendants have the right to collect any debts from these consumers.

Even if Defendants collected legitimate debt, the relief we seek would still be appropriate. It is illegal to operate as a debt collector in Illinois without a license, and Defendants have never had one. In addition, their practices violate numerous provisions of federal and state debt collection laws. Defendants were sued previously by the West Virginia Attorney General, and the Maine Bureau of Consumer Credit Protection issued a notice warning the public of Defendants' unlawful conduct, but Defendants simply continued to operate as before. As recently as November 2014, local television station NBC 5 Chicago aired a news exposé on this enterprise featuring a now former employee. The former employee exposed Defendants' illegal scheme, but even this had no effect.¹

The evidence of Defendants' fraud is overwhelming. Plaintiffs are submitting the sworn declarations of a dozen consumers and a Federal Trade Investigator, which also includes a small sampling of the consumer complaints generated by Defendants' activities.²

The FTC and State of Illinois jointly bring this action to halt immediately Defendants' illegal operation. Defendants' practices violate the Federal Trade Commission Act's ("FTC

¹ See "Whistleblower Alleges Intimidation Tactics at Debt Collection Agency," available at <http://www.nbcchicago.com/investigations/Whistleblower-Alleges-Intimidation-Tactics-at-Debt-Collection-Agency-282514581.html>. See also Plaintiffs' Exhibit ("PX") 1 Menjivar Declaration ("Dec.") ¶¶ 64-69 & Attachments ("Atts.") AA-DD (NBCChicago.com website printouts and transcripts of news reports).

² See PX 1 Menjivar Dec. ¶¶ 70-77 & Att. EE (sample consumer complaints).

Act”) prohibition against “unfair or deceptive acts or practices,” 15 U.S.C. § 45(a). Because the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692-1692p, applies to the collection of “alleged” debt, Defendants’ practices also violate that statute. 15 U.S.C. § 1692a(5). Even if Defendants collected legitimate debt, however, their practices still violate the FTC Act and FDCPA. In addition, Defendants’ practices violate the Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois Consumer Fraud Act”), 815 ILCS 505/1 *et seq.*, which also prohibits unfair or deceptive acts or practices and in relevant aspect closely models the FTC Act, and the Illinois Collection Agency Act, 225 ILCS 425/1 *et seq.*, which governs debt collection agencies in Illinois.

Plaintiffs ask that the Court issue an *ex parte* temporary restraining order (“TRO”) to end Defendants’ deceptive practices, appoint a receiver over the business, and freeze Defendants’ assets to ensure they do not disappear. This would preserve the Court’s ability to provide restitution to victims at the end of the day.

II. DEFENDANTS’ DECEPTIVE BUSINESS PRACTICES

A. Defendants’ Victims and Background on Online Payday Loans

Defendants prey on consumers who have sought high-interest payday or other short-term loans. Of course, most such consumers have serious financial problems, and many are struggling to make ends meet. Defendants target consumers who at least *applied* for payday loans, although they may not have actually received one.³

The online payday loan industry often employs “lead generation” websites where consumers can apply online for a loan. Such applications typically require consumers to disclose significant personal information, including Social Security numbers, employers, bank account

³ See, e.g., PX 6 Billups Dec. ¶ 4 (consumer qualified for loan but did not accept it); PX 8 Casto Dec. ¶ 2 (consumer did not qualify for loan in amount requested).

information, and contact information.⁴ Lead generators then electronically transmit this information to companies that actually provide payday loans, and this process may result in different lenders competing to see who can offer the consumer the best terms for a payday loan.

We know that at least some lead generators sell consumers' personal information to others. For example, the FTC recently sued LeapLab, which took payday loan applications that real lenders were not interested in and sold them for 50 cents apiece to other parties. The parties that bought the information simply stole money from consumers' bank accounts.⁵

The FTC is quite familiar with "phantom debt" collectors that attempt to collect payday loan "debts" from consumers who either do not owe the debt at all or owe it to someone else. The FTC has brought several recent federal court cases against such outfits, including in this district.⁶

Defendants in this case are skillful at deceiving consumers into believing that they are dealing with someone who has a legal right to collect the debts. Needless to say, some consumers have received several payday loans in the past. Many may not have kept careful records of those transactions, or they may be overwhelmed with bad finances. These consumers

⁴ See, e.g., PX 1 Menjivar Dec. ¶ 84 (types of personal information requested to apply for online payday loans).

⁵ See *FTC v. Sitemsearch Corp., et al.*, Case No. 2:14-cv-02750-NVW (D. Ariz. filed Dec. 22, 2014); press release and complaint available at <https://www.ftc.gov/news-events/press-releases/2014/12/ftc-charges-data-broker-facilitating-theft-millions-dollars>. A simple Internet search for "payday loan leads" produces at least dozens of offers to sell this type of information.

⁶ See *FTC v. Am. Credit Crunchers, LLC, et al.*, No. 12 C 1028 (N.D. Ill. 2012) (Dow, J.). See also *FTC v. Centro Natural Corp., et al.*, No. 14-23879 CIV-Altonaga (S.D. Fla. 2014); *FTC v. Williams, Scott & Assocs., LLC, et al.*, No. 1:14-cv-1599 (N.D. Ga. 2014); *FTC v. Pinnacle Payment Servs., LLC, et al.*, No. 1:13-cv-3455 (N.D. Ga. 2013); *FTC v. Broadway Global Master Inc., et al.*, No. 2:12-cv-00855-JAM-GGH (E.D. Cal. 2012); *FTC v. Pro Credit Group, LLC, et al.*, No. 8:12-cv-586-T-35EAJ (M.D. Fla. 2012).

are prime targets. When Defendants call, these consumers often believe that Defendants actually are collecting on payday loans they previously received from someone else.⁷

Moreover, Defendants are armed with a host of personal information about the consumer, including telephone numbers, employment information, addresses, and some portion or all of the consumer's Social Security or bank account numbers.⁸ Defendants' knowledge of this information leads consumers to believe that Defendants represent a company from which they have previously obtained a loan. Even consumers who know their payday loans were paid have doubts after receiving Defendants' calls.⁹

B. Defendants' Deceptive Calls and False Claims

Defendants call consumers out of the blue and demand immediate payment for purportedly delinquent payday loans.¹⁰ Defendants tell consumers that with interest and other fees added on, the consumer's delinquent debt is now substantially more than the "original" loan

⁷ See, e.g., PX 4 Arnold Dec. ¶ 3 (consumer had outstanding loans and wanted to know if Defendants were collecting on behalf of one of those lenders); PX 7 Blake Dec. ¶ 3 (consumer thought Defendants' call was regarding an outstanding debt owed to a payday lender); PX 12 McMillon Dec. ¶ 2 (consumer thought Defendants' call was regarding a savings account overdraft); PX 13 Petroski Dec. ¶¶ 3, 7 (consumer upset that she may not have paid a bill she owed).

⁸ See, e.g., PX 5 Beal Dec. ¶ 3 (Defendants had consumer's name, address, work telephone, and Social Security number); PX 6 Billups Dec. ¶ 2 (bank account number); PX 7 Blake Dec. ¶ 3 (name and telephone number, and claimed to know where consumer worked); PX 9 Gowdy Dec. ¶¶ 3, 5 (address, Social Security number, and bank and driver's license information); PX 10 Mason Dec. ¶ 3 (date of birth, cell phone number, e-mail address, and last four digits of Social Security number); PX 11 McKinney Dec. ¶¶ 2-3 (cell phone number and bank account information, and claimed to have Social Security and driver's license numbers); PX 12 McMillon Dec. ¶¶ 2, 6 (Social Security number, banking information, former address, and job contact information); PX 14 Starks Dec. ¶ 2 (Social Security and bank account numbers, previous address, and employment history); PX 15 Taylor Dec. ¶ 3 (home address, last four digits of Social Security number, and driver's license number).

⁹ See, e.g., PX 13 Petroski Dec. ¶¶ 3, 7 (consumer upset that she may not have paid a bill she owed).

¹⁰ See, e.g., PX 4 Arnold Dec. ¶ 2; PX 5 Beal Dec. ¶¶ 2-4; PX 6 Billups Dec. ¶¶ 2-3; PX 7 Blake Dec. ¶ 2; PX 8 Casto Dec. ¶ 3; PX 10 Mason Dec. ¶¶ 2-3; PX 11 McKinney Dec. ¶ 2; PX 12 McMillon Dec. ¶ 2; PX 13 Petroski Dec. ¶¶ 2, 9; PX 14 Starks Dec. ¶ 2.

amount.¹¹ However, Defendants will agree to “settle” the debt for a smaller amount, typically around \$300, provided the consumer makes an immediate payment.¹² Defendants typically accept payment by debit or credit card.¹³

These calls often are incredibly intimidating. Defendants routinely threaten to garnish consumers’ wages,¹⁴ suspend or revoke their drivers’ licenses,¹⁵ have them arrested or imprisoned,¹⁶ or have formal legal action taken against them if they do not pay.¹⁷ Consumers take Defendants’ threats seriously, and they understandably are scared.¹⁸

¹¹ See, e.g., PX 5 Beal Dec. ¶ 3 (\$1,100 owed for \$300 loan); PX 6 Billups Dec. ¶¶ 2-3 (consumer would owe \$1,000 plus court costs and legal fees for \$300 loan); PX 7 Blake Dec. ¶ 2 (consumer “now owed \$1,664”); PX 8 Casto Dec. ¶ 3 (consumer would owe over \$1,000 for \$200 or \$300 loan); PX 11 McKinney Dec. ¶ 2 (\$2,377.01 owed for \$300 loan); PX 13 Petroski Dec. ¶ 2 (\$3,300 owed for \$300 loan).

¹² See, e.g., PX 4 Arnold Dec. ¶ 2 (\$260); PX 5 Beal Dec. ¶ 4 (\$301); PX 6 Billups Dec. ¶ 3 (\$260); PX 7 Blake Dec. ¶ 2 (\$260); PX 11 McKinney Dec. ¶ 2 (\$290); PX 12 McMillon Dec. ¶ 2 (\$270); PX 13 Petroski Dec. ¶ 9 (\$300 immediately or two payments of \$297); PX 14 Starks Dec. ¶ 2 (\$350); PX 15 Taylor Dec. ¶ 5 & Att. B (\$298.91).

¹³ See, e.g., PX 4 Arnold Dec. ¶ 4; PX 5 Beal Dec. ¶ 4; PX 7 Blake Dec. ¶ 4; PX 11 McKinney Dec. ¶ 6; PX 12 McMillon Dec. ¶ 3; PX 13 Petroski Dec. ¶ 12. See also PX 1 Menjivar Dec. ¶¶ 39-53 (merchant account information).

¹⁴ See, e.g., PX 4 Arnold Dec. ¶ 2; PX 6 Billups Dec. ¶ 3; PX 7 Blake Dec. ¶ 2; PX 8 Casto Dec. ¶ 3; PX 10 Mason Dec. ¶ 2; PX 11 McKinney Dec. ¶ 2; PX 12 McMillon Dec. ¶¶ 2, 6, 9; PX 13 Petroski Dec. ¶¶ 2, 9, 17; PX 14 Starks Dec. ¶ 2; PX 15 Taylor Dec. ¶¶ 2-3, 9, 11.

¹⁵ See, e.g., PX 5 Beal Dec. ¶ 4; PX 9 Gowdy Dec. ¶ 4; PX 10 Mason Dec. ¶ 2; PX 15 Taylor Dec. ¶¶ 2-3.

¹⁶ See, e.g., PX 9 Gowdy Dec. ¶ 4; PX 10 Mason Dec. ¶¶ 3, 5-6 (Defendants threatened to “send the authorities to take me to jail and lock me up” and, “come and drag my ass to jail”); PX 13 Petroski Dec. ¶¶ 16-17 (consumer threatened she would be sent to jail and had committed fraud).

¹⁷ See, e.g., PX 5 Beal Dec. ¶¶ 4, 13 (charge consumer with check fraud); PX 13 Petroski Dec. ¶ 2 (consumer told legal action had been taken against her); PX 15 Taylor Dec. ¶ 11 (Defendants threatened to take consumer to court and garnish her wages).

¹⁸ See, e.g., PX 4 Arnold Dec. ¶¶ 4, 9; PX 6 Billups Dec. ¶ 2; PX 7 Blake Dec. ¶ 12; PX 8 Casto Dec. ¶ 4; PX 11 McKinney Dec. ¶¶ 5-6 (“I begged [caller] not to garnish my wages. She scared me so badly that I finally agreed to pay Second Chance \$290 to settle the debt”).

If consumers do not agree to pay immediately, Defendants ramp-up the pressure in other ways. They routinely use obscene and vulgar language to intimidate consumers.¹⁹ One consumer states, “[H]e told me that I was lying, and that I was playing a game with them, and that ‘it was a lot of bullshit.’” and, “He also told me that if I didn’t pay they were going to get someone to ‘come and drag my ass to jail.’”²⁰ Defendants also berate consumers, sometimes to the point of reducing them to tears.²¹ Defendants will repeatedly call consumers demanding payment, even after they are told to stop.²² Moreover, Defendants will repeatedly call consumers at work, even after they are told the consumers cannot receive such calls there, and Defendants will even try to intimidate consumers’ supervisors and co-workers.²³ Another consumer states that when her supervisor happened to answer one of Defendants’ calls:

Mr. Pritz screamed at my supervisor to give him my employer’s fax number, but my supervisor refused to provide it. Mr. Pritz was being so irate and screaming so loudly that I could actually hear him while my supervisor held the phone.²⁴

If a consumer refuses to pay, Defendants often contact the consumer’s employer by fax.²⁵ Defendants will send a one-page “Verification of Employment” that typically has the consumer’s

¹⁹ See, e.g., PX 1 Menjivar Dec Att. EE at p. 5 (“I don’t have to send shit, this debt was validated months ago and you need to pay up”). See also PX 10 Mason Dec. ¶ 5 (caller “used a lot of foul language”); PX 11 McKinney Dec. ¶ 17 (Defendants were “mean, nasty, rude, and threatening”).

²⁰ See PX 10 Mason Dec. ¶ 5.

²¹ See, e.g., PX 13 Petroski Dec. ¶ 7 (“In front of both my supervisor and the company owner, I broke down in tears. I was really concerned that I owed a debt I forgot to pay.”).

²² See, e.g., PX 5 Beal Dec. ¶ 12; PX 10 Mason Dec. ¶ 8; PX 11 McKinney Dec. ¶ 10; PX 15 Taylor Dec. ¶¶ 9, 11. See also PX 1 Menjivar Dec. Att. EE at pp. 5, 9, 23, 31 (multiple telephone calls).

²³ See, e.g., PX 9 Gowdy Dec. ¶ 8; PX 10 Mason Dec. ¶¶ 6-7; PX 13 Petroski Dec. ¶¶ 4-6. See also PX 1 Menjivar Dec. Att. EE at pp. 1, 3, 7, 11 (multiple telephone calls to consumers’ workplaces).

²⁴ See PX 13 Petroski Dec. ¶ 5.

name, address, and Social Security number already filled in.²⁶ The consumer's employer is instructed to complete the form and fax it back to Defendants. Among other things, the form asks for the consumer's employment information and an address to mail a "garnishment order." The form also instructs the employer to "forward a copy of this request to employee."²⁷ This tactic is, again, simply an attempt to scare a consumer into paying. There is absolutely no evidence that Defendants can or actually have garnished anyone's wages.

C. Defendants' "Settlement Contract"

In a transparent effort to prevent consumers from calling their credit card companies to dispute the charges, consumers who agree to pay typically receive a "settlement contract" to sign and return.²⁸ The contract identifies the consumer by name and address, and it provides the name of a putative creditor that the consumer purportedly owes. Defendants' contract purports to create a binding agreement between the consumer and the creditor. For example, Defendants' contract states:

The Creditor and Consumer agree that the current outstanding debt is **\$2,377.01** agrees [*sic*] to accept less than the full amount of the debt provided that Consumer make [*sic*] payment on or before **7/29/14**. Both parties agree that the creditor will accept a cash payment of **\$290.00** towards the settlement of the debt in full.

If the Consumer fails to send in the amount agreed by **7/29/14** the Creditor shall immediately demand the payment of the original amount owed by the Consumer.

²⁵ See, e.g., PX 9 Gowdy Dec. ¶¶ 5, 8; PX 13 Petroski Dec. ¶ 6. See also PX 1 Menjivar Dec. Att. EE at pp. 3, 5, 7, 19, 23.

²⁶ For an example of Defendants' verification form, see, e.g., PX 9 Gowdy Dec. ¶¶ 5, 9 & Atts. A ("Second Chance Financial"), B ("KIP Recovery").

²⁷ See *id.*

²⁸ See, e.g., PX 5 Beal Dec. ¶¶ 8-9 & Att. B (contract); PX 7 Blake Dec. ¶¶ 5-6 & Att. B; PX 11 McKinney Dec. ¶¶ 8-9 & Att. B; PX 12 McMillon Dec. ¶¶ 3-4 & Att. B; PX 13 Petroski Dec. ¶¶ 13-14 & Att. B; PX 15 Taylor Dec. ¶¶ 4-5 & Att. B.

This agreement for debt settlement shall be binding upon the Creditor, Consumer, and their successors and assignees.²⁹

Once consumers sign Defendants' contract and make payment, they may consider the matter resolved. No doubt Defendants' contract is used to ward off inevitable chargebacks once consumers realize Defendants' scheme.³⁰

D. Defendants' Empty Threats

As noted, all of the threats that the Defendants make are simply attempts—often successful—to scare or intimidate consumers into paying debts they do not owe. Defendants do not follow through with any of these threats.³¹ Obviously, they cannot suspend or revoke consumers' drivers' licenses, and consumers cannot be arrested or imprisoned for failing to pay a private debt. Despite their threats, Defendants do not actually sue anyone. Because consumers do not owe any money to Defendants, Defendants have no ability to use the courts to enforce any of these debts.

E. Consumers Do Not Owe Any Money to Defendants

Many of Defendants' victims can prove that they do not owe money to Defendants.³²

Federal law specifically requires a debt collector to provide proof of the debt and to identify the

²⁹ See PX 11 McKinney Dec. Att. B.

³⁰ Consumers who pay by debit or credit card can contact their issuing bank to dispute the charges. See, e.g., PX 11 McKinney Dec. ¶¶ 12-15 (consumer disputed debit). If the issuing bank determines that the charges are fraudulent, it will credit the consumer and "charge back" the charges, *i.e.*, obtain return of the money from the merchant that placed the charges. Many banks and credit card companies will not do business with merchants that have high chargeback rates. One of Defendants' merchant accounts was flagged by MasterCard for inclusion in its fraud monitoring and compliance program. See PX 1 Menjivar Dec. ¶ 39. In addition, at least three of Defendants' merchant accounts were closed due to increased chargeback volume. See *id.* at ¶ 46.

³¹ See, e.g., PX 4 Arnold Dec. ¶ 7; PX 5 Beal Dec. ¶ 12; PX 8 Casto Dec. ¶¶ 4-5; PX 9 Gowdy Dec. ¶¶ 6, 10; PX 13 Petroski Dec. ¶¶ 17-18.

³² See, e.g., PX 6 Billups Dec. ¶ 4; PX 7 Blake Dec. ¶¶ 7-11; PX 8 Casto Dec. ¶ 2; PX 11 McKinney Dec. ¶ 7; PX 15 Taylor Dec. ¶ 7. See also PX 1 Menjivar Dec. Att. EE at pp. 7, 15.

name of the creditor to whom the debt is owed and the amount of the debt.³³ Defendants never provide proof of the debt, even when consumers specifically ask.³⁴ Moreover, if Defendants provide the name of a supposed creditor, it is often not accurate and likely just fabricated.

Some people contact the lender that Defendants claim to be collecting for and learn that the lender has no record of the consumer *ever* obtaining a loan from them.³⁵ Other consumers have obtained a payday loan, but they are able to verify that their loans were paid or that there is no overdue debt.³⁶ The real lenders also sometimes inform consumers that Defendants are not affiliated with the lender or authorized to collect that lender's debts.³⁷ Some consumers do owe money on a payday loan, but Defendants have no authority to collect such debt, and the money consumers pay Defendants is not applied to those consumers' actual outstanding debts. Some consumers who paid Defendants to "settle" their debt were later contacted by legitimate debt collectors attempting to collect the very same debt.³⁸

³³ See 15 U.S.C. § 1692g(a).

³⁴ See, e.g., PX 4 Arnold Dec. ¶¶ 2-3; PX 5 Beal Dec. ¶¶ 3, 5; PX 6 Billups Dec. ¶¶ 3, 7; PX 8 Casto Dec. ¶ 3; PX 9 Gowdy Dec. ¶ 4; PX 10 Mason Dec. ¶¶ 4-5; PX 11 McKinney Dec. ¶¶ 4, 10; PX 13 Petroski Dec. ¶ 2; PX 14 Starks Dec. ¶ 4; PX 15 Taylor Dec. ¶¶ 3, 6, 12.

³⁵ See, e.g., PX 6 Billups Dec. ¶ 4 (lender "had no record showing that I owed the company any money"); PX 15 Taylor Dec. ¶ 7 (lender "had no records showing that I owed it money on a payday loan"). See also PX 1 Menjivar Dec. Att. EE at p. 7 (lender "told me they do not show me having any outstanding debt with them and if I did they would reach out to me directly").

³⁶ See, e.g., PX 4 Arnold Dec. ¶ 6 (consumer confirmed her accounts had not been turned over to Defendants for collection). See also PX 1 Menjivar Dec. Att. EE at p. 15.

³⁷ See, e.g., PX 7 Blake Dec. ¶¶ 7, 10 (collection company for real lender was "not aware of Second Chance Financial, and that the debt I owed for the Speedy Cash loan was still outstanding"). See also PX 1 Menjivar Dec. Att. EE at p. 7.

³⁸ See, e.g., PX 7 Blake Dec. ¶¶ 7-11 (after paying Defendants for a purported debt from Speedy Cash, consumer started receiving calls from a legitimate collector collecting on behalf of Speedy Cash).

III. DEFENDANTS' WHOLESALE VIOLATIONS OF FEDERAL AND STATE DEBT COLLECTION LAWS

Even if Defendants collected legitimate debt for amounts actually owed, the relief we seek would still be appropriate. Widespread false claims violate not only the FTC Act's prohibition on "deceptive acts or practices," but also the similar Illinois Consumer Fraud Act. Moreover, there are specific provisions of federal and state debt collection laws that Defendants blatantly violate. In this section, we address only the specific debt collection laws.

A. Defendants are Illegally Operating a Debt Collection Business in Illinois

To operate as a debt collector in Illinois, Defendants must be licensed, but they are not.³⁹ Defendants thus have no authority to collect any debts, legitimate or otherwise. And, this is not the first time Defendants have scoffed at state licensing requirements. In 2010, the Maine Bureau of Consumer Credit Protection issued a public notice that not only were Defendants illegally collecting debts in the state without a license, but also that they had illegally threatened to garnish a Maine consumer's wages.⁴⁰ Similarly, in 2011, the West Virginia Attorney General sued Defendants for illegally collecting debts without a license and for collecting illegal Internet payday loans.⁴¹

Section 4 of the Illinois Collection Agency Act expressly provides:

No collection agency shall operate in this State, directly or indirectly engage in the business of collecting, solicit claims for others, have a sales office, a client, or solicit a client in this State, exercise the right to collect, or receive payment for another of any account, bill or other indebtedness, without registering under this Act[].⁴²

³⁹ See 225 ILCS 425/4; PX 2 Arthur Dec. ¶¶ 2-3.

⁴⁰ See PX 1 Menjivar Dec. ¶ 59 & Att. Y (Notice to the Public).

⁴¹ See *id.* at ¶ 58 & Att. X (Press Release).

⁴² 225 ILCS 425/4.

As noted by the Illinois Department of Financial and Professional Regulations, Defendants are *not* licensed by the State, either in their individual capacity or as a business entity.⁴³ Defendants' unlicensed operation, based in Illinois, is therefore a *per se* violation of Section 4 of the Illinois Collection Agency Act.

B. Defendants Blatantly Violate Both the Federal Fair Debt Collection Practices Act and the Illinois Collection Agency Act

Both the FDCPA and Illinois Collection Agency Act require Defendants to make certain disclosures to consumers that Defendants entirely ignore.⁴⁴ Both statutes prohibit Defendants from harassing consumers by using profane language or by repeatedly calling.⁴⁵ Yet, these are the precise tactics Defendants use to coerce consumers.⁴⁶ Even if Defendants did have legal authority to collect these debts, both statutes prohibit them from threatening consumers with actions that they do not intend to take or that they cannot lawfully take for failure to pay a private debt.⁴⁷

⁴³ See PX 2 Arthur Dec. ¶¶ 2-3.

⁴⁴ See, e.g., 15 U.S.C. § 1692g(a) (requiring written or oral notice of debt and consumer's rights to dispute the debt); 225 ILCS 425/9(a)(14), (21), and (25) (declaring the failure to disclose certain information violations of the Illinois Collection Agency Act). See also PX 4 Arnold Dec. ¶¶ 2-3, 8; PX 5 Beal Dec. ¶¶ 3, 5-6; PX 6 Billups Dec. ¶ 3; PX 8 Casto Dec. ¶ 3; PX 9 Gowdy Dec. ¶ 4; PX 10 Mason Dec. ¶¶ 4-5, 9; PX 11 McKinney Dec. ¶¶ 4, 10; PX 13 Petroski Dec. ¶ 2; PX 14 Starks Dec. ¶ 4; PX 15 Taylor Dec. ¶¶ 3, 6, 12.

⁴⁵ See 15 U.S.C. §§ 1692d(2) and (5); 225 ILCS 425/9(a)(15) and (16). See also 15 U.S.C. § 1692c(a) (prohibiting communications at consumer's place of employment when Defendants know or have reason to know that such communications are prohibited).

⁴⁶ See, e.g., PX 5 Beal Dec. ¶ 12; PX 6 Billups Dec. ¶ 8; PX 9 Gowdy Dec. ¶¶ 3, 8, 10; PX 10 Mason Dec. ¶¶ 5-8; PX 11 McKinney Dec. ¶¶ 3, 5-6, 17; PX 13 Petroski Dec. ¶¶ 2, 4-6, 15-17. See also PX 1 Menjivar Dec. Att. EE at pp. 1, 3, 5, 7, 9, 11, 19, 23, 27, 31.

⁴⁷ See 15 U.S.C. §§ 1692e(4) and (5); 225 ILCS 425/9(a)(11) and (20).

1. Defendants are Violating the Fair Debt Collection Practices Act

The FDCPA applies where the collection is regarding an “*alleged* obligation of a consumer to pay money,” 15 U.S.C. § 1692a(5) (emphasis added). Thus, the FDCPA applies whether or not a debt actually is owed. To determine whether communications violate the FDCPA, courts “examine them from the standpoint of an unsophisticated consumer.” *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562, 564 (7th Cir. 2004) (citing *Veatch v. Sheeks*, 316 F.3d 690, 692 (7th Cir. 2003)). The same deceptive claims that Defendants make that violate the FTC Act also are violations of Section 807 of the FDCPA, 15 U.S.C. § 1692e. The FDCPA further prohibits certain communications and harassment or abuse, and it contains a specific notice requirement, which, as discussed above, Defendants regularly violate or ignore.

2. Defendants are Violating the Illinois Collection Agency Act

Section 9(a) of the Illinois Collection Agency Act provides an extensive list of prohibited conduct.⁴⁸ Defendants engaged in numerous knowing violations of Section 9(a), many of which mirror Defendants’ FDCPA violations, including the following:

- Threatening to instigate arrest or criminal prosecution of a consumer where no basis for a criminal complaint lawfully exists, in violation of 225 ILCS 425/9(a)(11);
- Initiating or threatening to initiate communication with a consumer’s employer before timely written notice has been provided to the consumer, in violation of 225 ILCS 425/9(a)(14);
- Communicating with a consumer or the consumer’s family at times and with such frequency as to constitute harassment, in violation of 225 ILCS 425/9(a)(15);
- Using profane, obscene, or abusive language when communicating with a consumer, the consumer’s family, or others, in violation of 225 ILCS 425/9(a)(16);

⁴⁸ See 225 ILCS 425/9(a).

- Disclosing, or threatening to disclose, information concerning the existence of a debt reasonably known by Defendants to be disputed by the consumer without disclosing the fact that the consumer disputes the debt, in violation of 225 ILCS 425/9(a)(18);
- Attempting or threatening to enforce a right or remedy with knowledge or reason to know that the right or remedy does not exist, in violation of 225 ILCS 425/9(a)(20);
- Failing to disclose to the consumer, or the consumer's family, the business name under which Defendants are engaging in debt collection and that Defendants are legally authorized to use, in violation of 225 ILCS 425/9(a)(21);
- Failing to disclose to consumers, at the time any demand for payment is made, the name of the person to whom the claim is owed, in violation of 225 ILCS 425/9(a)(25);
- Representing that an existing debt may be increased by the addition of fees or other charges when such fees or charges may not legally be added to the existing debt, in violation of 225 ILCS 425/9(a)(27);
- Representing that Defendants are an attorney at law or an agent for an attorney when they are not, in violation of 225 ILCS 425/9(a)(28); and
- Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud or harm the public, in violation of 225 ILCS 425/9(a)(31).

IV. DEFENDANTS

This enterprise is owned, managed, and controlled by Charles Dickey and Chantelle Dickey, husband and wife. Currently, the Dickeys operate their scheme under the guise of K.I.P., LLC ("KIP"), an Illinois LLC. Over at least the last five years, though, the Dickeys have operated their scheme using at least eight other business names (the "d/b/a's"). Some of these d/b/a's were formally organized business entities in Illinois, but all have since been involuntarily

dissolved by the Illinois Secretary of State for failure to follow corporate formalities. Other d/b/a's used by the Dickeys were purely fictitious. Typical with operations based entirely on fraud, the Dickeys appear to change business names frequently and, most likely, in response to consumer complaints, or law enforcement or media attention.⁴⁹ On corporate papers and in financial records, the Dickeys often try to shield their involvement by also using family members or others as fronts for the operation. In reality, though, the Dickeys themselves exercise control over the operation, and they profit handsomely from it.

A. Corporate Defendant K.I.P., LLC

Corporate Defendant KIP is an Illinois LLC first organized in December 2011.⁵⁰ The initial managers of KIP were Charles Dickey and Marvin Rudd, but additional members of the Dickey family were added later.⁵¹ In January 2015, Charles Dickey filed the company's annual report.⁵² On corporate records, KIP's principal place of business is 123 West Madison Street, Suite 806, Chicago, Illinois 60602.⁵³ However, this is the business address of Spiegel & Utrera, P.A., an incorporation service. KIP's actual place of business is a storefront location at 75 South LaSalle Street, Aurora, Illinois 60505.⁵⁴

⁴⁹ See, e.g., PX 1 Menjivar Dec. ¶¶ 58, 59, 64-69 & Atts. X (Press Release), Y (Notice to the Public), AA ("Whistleblower Alleges Intimidation Tactics at Debt Collection Agency," NBCChicago.com website printout), BB (transcript of news report, Nov. 12, 2014), CC ("Feds Arrest Debt Collectors in Crackdown," NBCChicago.com website printout), DD (transcript of news report, Nov. 19, 2014).

⁵⁰ See *id.* at ¶¶ 15, 17 & Atts. G, H (corporate records).

⁵¹ See *id.* at ¶¶ 17-18 & Atts. H, I (corporate records with initial and additional managers).

⁵² See *id.* at ¶ 18 & Att. I (KIP annual report filed by Charles Dickey on Jan. 6, 2015).

⁵³ See *id.* at ¶¶ 15, 17-18 & Atts. G, H, I (corporate records).

⁵⁴ See *id.* at ¶¶ 57, 85 & Att. KK at p. 1 (telephone subscriber information); PX 3 Gonzalez Dec. ¶¶ 17-18, 20-21 & Atts. K (North Aurora Police Department Case Report, Nov. 26, 2013), L (North Aurora Police Department Case Report, Apr. 16, 2014).

When contacting consumers, Defendants currently use the business name “KIP” or a derivation, such as “KIP Recovery.”⁵⁵ In correspondence with consumers, Defendants do not use their true business address. Rather, they purport to be located in a large office complex at 2360 Corporate Circle, Henderson, Nevada 89074.⁵⁶ KIP uses the e-mail address kip.recovery@yahoo.com,⁵⁷ and it maintains a rudimentary website at www.kipmans.org.⁵⁸ The registrant of the [kipmans.org](http://www.kipmans.org) domain name is Charles Dickey.⁵⁹

B. The D/B/A’s

Defendants appear to have first started using the name KIP when contacting consumers in 2014.⁶⁰ Prior to then, the Dickeys cycled through at least eight other business names to operate their scheme, which included formally organized business entities (all of which were involuntarily dissolved by the Illinois Secretary of State) and entirely fictitious business names. Although the Dickeys attempted to conceal their involvement with these businesses by using

⁵⁵ See, e.g., PX 9 Gowdy Dec. ¶ 9 & Att. B (“KIP RECOVERY,” Dec. 2014); PX 13 Petroski Dec. ¶¶ 13-14, 17 & Atts. A, B (“KIP Recovery,” “K.I.P.,” and “KIP Processing”). See also PX 1 Menjivar Dec. ¶¶ 74.a, 77 & Att. EE at pp. 1-10 (consumer complaints against KIP). Defendants sometimes fail to identify themselves by name when calling. See, e.g., PX 13 Petroski Dec. ¶ 2. See also PX 1 Menjivar Dec. Att. EE at p. 3.

⁵⁶ See, e.g., PX 9 Gowdy Dec. ¶ 9 & Att. B; PX 13 Petroski Dec. ¶ 14 & Att. B. Other than an incorporation service located at this address, there does not appear to be any other type of business located here that Defendants might use to run their operation, such as a mail receiving or forwarding service. See PX 1 Menjivar Dec. ¶ 56.

⁵⁷ See, e.g., PX 9 Gowdy Dec. ¶ 9 & Att. B at p. 1; PX 13 Petroski Dec. ¶ 13 & Att. A.

⁵⁸ See PX 1 Menjivar Dec. ¶ 54 & Att. V (website printout). The [kipmans.org](http://www.kipmans.org) website lists the telephone numbers (800) 478-5809 and (800) 961-7808, which are associated with the d/b/a Second Chance Financial, and the e-mail address kip.recovery@yahoo.com.

⁵⁹ See *id.* at ¶ 55 & Att. W (domain registration information).

⁶⁰ See *id.* at ¶ 74.a (consumer complaints against KIP beginning around Jan. 2014).

family members or others as fronts, one or both were identified on corporate or other records as owning, managing, or controlling the business. The Dickey's' d/b/a's have included:

- Ezell Williams and Associates, Corp., and Ezell Williams, LLC;⁶¹
- Excel Receivables, Corp.;⁶²
- Second Chance Financial Credit, Corp., and Second Chance Financial, LLC;⁶³
- Payday Loan Recovery Group, LLC; Payday Loan Recovery Group; and Payday Loan Recovery;⁶⁴
- International Recovery Services, LLC, and International Recovery Services;⁶⁵ and
- D & R Recovery.⁶⁶

C. Individual Defendant Charles Dickey

Defendant Charles Dickey shares in the management and day-to-day business operations of this enterprise. As discussed above, he is a manager of, and filed corporate papers for, KIP.⁶⁷

⁶¹ See *id.* at ¶¶ 11, 12, 19, 22, 74.b & Atts. C (Ezell Williams and Associates Corp., file detail report), D (Ezell Williams, LLC, file detail and managers reports), J (Ezell Williams, LLC, corporate papers), M (Ezell Williams and Associates Corp., corporate papers).

⁶² See *id.* at ¶¶ 10, 23, 74.c & Atts. B (file detail report), N (corporate papers). See generally PX 3 Gonzalez Dec. (declaration of former landlord to Excel Receivables, Charles Dickey, and Chantelle Dickey discussing his experiences leasing tenant space to Defendants).

⁶³ See PX 1 Menjivar Dec. ¶¶ 8, 9, 24, 74.d & Atts. A (Second Chance Financial Credit, Corp., file detail report), O (Second Chance Financial Credit, Corp., corporate papers).

⁶⁴ See *id.* at ¶¶ 13, 21, 74.e & Atts. E (file detail and managers reports), L (corporate papers). In 2014, PLS Check Cashers filed a small claims suit against Payday Loan Recovery Group, LLC, in the Circuit Court for the 16th Judicial Circuit, Kane County, for writing bad checks. A default judgment was entered in favor of PLS Check Cashers. See *id.* at ¶¶ 60-63 & Att. Z (case file, *PLS Check Cashers v. Payday Loan Recovery Group, LLC*, No. 14 SC 1610 (Cir. Ct. 16th Jud. Cir., filed Apr. 25, 2014)); PX 3 Gonzalez Dec. ¶ 24 & Att. M (subpoena issued to former landlord).

⁶⁵ See PX 1 Menjivar Dec. ¶¶ 14, 20, 74.f & Atts. F (file detail and members reports), K (corporate papers).

⁶⁶ See *id.* at ¶ 74.g & Att. EE at pp. 31-32.

In addition, his name appears on business records for some of the d/b/a's.⁶⁸ He, along with his wife, made decisions regarding where to locate the operation, and he negotiated and signed the lease agreement for tenant space.⁶⁹ The former landlord corresponded and communicated with Charles Dickey often. When the Dickeys abruptly abandoned their tenant space in 2013 and moved the business to its current location, Charles Dickey responded to the former landlord's demand for back rent.⁷⁰ Charles Dickey also held himself out as owner and in charge of the business when interviewed by a detective from the North Aurora Police Department regarding the theft of property belonging to the former landlord.⁷¹

Significantly, Charles Dickey has profited handsomely from this scheme. At least one business account, which received over \$2.8 million in deposits from consumers, was used for numerous non-business and personal expenditures that clearly were for the benefit of Charles Dickey and the Dickeys' children.⁷²

D. Individual Defendant Chantelle Dickey

Chantelle Dickey, also known as Chantelle Rudd and Chantelle Williams, participates with her husband in managing the day-to-day business operations of this enterprise. Her name

⁶⁷ See *id.* at ¶¶ 15, 17-18 & Atts. G at p. 2 (manager), H at p. 3 (manager), I (manager).

⁶⁸ See *id.* at ¶¶ 12, 13, 19, 21 & Atts. D at p. 2 (Ezell Williams, LLC, manager), E at p. 2 (Payday Loan Recovery Group, LLC, manager), J at p. 3 (Ezell Williams, LLC, manager), L at p. 3 (Payday Loan Recovery Group, LLC, manager).

⁶⁹ See PX 3 Gonzalez Dec. ¶¶ 3-7 & Atts. A (lease, signed by Charles Dickey), B (Certificate of Liability Insurance), D (lease).

⁷⁰ See *id.* at ¶¶ 11-12, 14-16, 19 & Atts. F (correspondence), G (correspondence), I (correspondence), J (letter from Charles Dickey).

⁷¹ See *id.* at ¶ 21 & Att. L (North Aurora Police Department Case Report, Apr. 16, 2014).

⁷² See PX 1 Menjivar Dec. ¶¶ 32-35, 37-38.

appears on business records for some of the d/b/a's.⁷³ She too made decisions regarding where to locate and operate the business. Chantelle Dickey has been seen at the business location regularly, and she often provided rent checks to the landlord.⁷⁴ During the NBC 5 Chicago news exposé, the former employee pinned control of the operation on Chantelle Dickey.⁷⁵

Chantelle Dickey also has significant financial control over the operation. Using her home address, Chantelle Dickey applied for and obtained at least two merchant processing accounts for Payday Loan Recovery Group, LLC, and Ezell Williams, LLC.⁷⁶ Her name and home address are associated with a merchant processing account flagged by MasterCard for excessive chargebacks, and a number of other MasterCard merchant accounts trace to the Dickeys' home address.⁷⁷

Like Charles Dickey, Chantelle Dickey also has profited handsomely from this scheme. The same business account used to benefit Charles Dickey also was used extensively for the benefit of Chantelle Dickey. Several expenditures from the account are traceable directly to Chantelle Dickey, including at least \$48,000 used to pay American Express bills, at least \$480

⁷³ See *id.* at ¶¶ 11, 13-14, 20-24 & Atts. C (Ezell Williams and Associates Corp., agent), E at p. 2 (Payday Loan Recovery Group, LLC, manager), F at p. 2 (International Recovery Services, LLC, member), K at pp. 2-4 (International Recovery Services, LLC, manager/member), L at pp. 3-4 (Payday Loan Recovery Group, LLC, manager), M (Ezell Williams and Associates Corp., initial registered agent), N at p. 2 (Excel Receivables Corp., director), O at p. 2 (Second Chance Financial Credit Corp., director).

⁷⁴ See PX 3 Gonzalez Dec. ¶¶ 5, 7, 10 & Atts. A (lease, signed by Chantelle Dickey), D (lease).

⁷⁵ See PX 1 Menjivar Dec. ¶¶ 65-66 & Atts. AA (“Whistleblower Alleges Intimidation Tactics at Debt Collection Agency,” NBCChicago.com website printout), BB (transcript of news report, Nov. 12, 2014). See also *id.* at ¶ 74.b & Att. EE at pp. 25, 27 (consumer complaints naming Chantelle Dickey and Mrs./Ms. “Rudd”).

⁷⁶ See *id.* at ¶¶ 49, 50 & Atts. T (merchant account application), U (merchant account application). These two accounts, and at least one other linked to the Dickeys' home address, were closed by the merchant services providers due to increased chargeback volumes. *Id.* at ¶¶ 46-47.

⁷⁷ See *id.* at ¶¶ 39-40.

for an AT&T account, at least \$3,700 for an automobile-related account, and at least \$2,600 used to pay a Comcast bill. Other expenditures from this “business” account include over \$2,100 spent at a high-end hair salon, over \$950 for Apple iTunes purchases, over \$4,200 spent at grocery stores and supermarkets, and over \$5,200 spent at apparel, footwear, and other retailers.⁷⁸

V. ARGUMENT

Because of Defendants’ unlawful practices, thousands of consumers have been defrauded out of millions of dollars. These practices squarely violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and multiple provisions of the FDCPA, 15 U.S.C. §§ 1692-1692p. Defendants’ practices also violate Section 2 of the Illinois Consumer Fraud Act, 815 ILCS 505/2, and Sections 4 and 9(a) of the Illinois Collection Agency Act, 225 ILCS 425/4 and 425/9(a).⁷⁹ To prevent further injury to innocent consumers, Plaintiffs ask that the Court issue *ex parte* their proposed TRO. That order would enjoin Defendants from engaging in illegal conduct, freeze their assets, appoint a temporary receiver over the business, and prohibit Defendants from dissipating or destroying assets or documents. The Court has full authority to enter the requested relief, which is strongly supported by the evidence. Courts in this district have repeatedly granted similar TROs in FTC actions.⁸⁰

⁷⁸ See *id.* at ¶¶ 33-36.

⁷⁹ The State of Illinois may seek a remedy for Defendants’ violations of state law pursuant to the Court’s supplemental jurisdiction over state law claims. 28 U.S.C. § 1367(a).

⁸⁰ See, e.g., *FTC v. Am. Yellow Browser, Inc., et al.*, No. 15 C 2047 (N.D. Ill. Mar. 9, 2015) (Norgle, J.); *FTC v. AFD Advisors, LLC, et al.*, No. 13 C 6420 (N.D. Ill. Sep. 9, 2013) (Zagel, J.); *FTC v. Freedom Cos. Mktg., Inc.*, No. 12 C 05743 (N.D. Ill. July 23, 2012) (Shadur, J.) (*ex parte* TRO with asset freeze); *FTC v. Apogee One Enters. LLC*, No. 12 C 588 (N.D. Ill. Jan. 30, 2012) (Kennelly, J.) (same); *FTC v. Am. Credit Crunchers, Inc.*, No. 12 C 1028 (N.D. Ill. Feb. 14, 2012) (Guzman, J.) (same); *FTC v. Yellow Page Mktg., B.V., et al.*, No. 11 C 05035 (N.D. Ill. July 26, 2011) (Leinenweber, J.) (same); *FTC v. Am. Tax Relief LLC, et al.*, No. 10 C 6123 (N.D. Ill. Sept. 24, 2010) (Kocoras, J.) (*ex parte* TRO with asset freeze and appointment of a receiver); *FTC v. Asia Pacific Telecom, Inc., et al.*, No. 10 C 3168

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). Once the FTC 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. *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *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. *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1026 (7th Cir. 1988); *see also Amy Travel*, 875 F.2d at 571. Such ancillary relief may include an asset freeze to preserve assets for eventual restitution to victimized consumers. *World Travel*, 861 F.2d at 1031. Appropriate ancillary relief also includes the appointment of receivers. *See, e.g., FTC v. Am. Nat’l Cellular, Inc.*, 810 F.2d 1511 (9th Cir. 1987) (*aff’g*, without discussion, district court’s order appointing receiver).

The Court also has the authority to provide equitable relief for the state law claims. As discussed above, Defendants have violated Section 2 of the Illinois Consumer Fraud Act, 815 ILCS 505/2, and Sections 4 and 9(a) of the Illinois Collection Agency Act, 225 ILCS 425/4 and 425/9(a).⁸¹ Section 7 of the Illinois Consumer Fraud Act authorizes the Attorney General to bring suit “to restrain by preliminary or permanent injunction” violations of Section 2 of the Act.

(N.D. Ill. May 25, 2010) (Hart, J.) (same); *FTC v. API Trade, LLC, et al.*, No. 10 C 1543 (N.D. Ill. March 10, 2010) (Guzman, J.) (*ex parte* TRO with asset freeze); *FTC v. 2145183 Ontario Inc., et al.*, No. 09 C 7423 (N.D. Ill. Nov. 30, 2009) (Grady, J.) (same).

⁸¹ The Illinois Consumer Fraud Act and Illinois Collection Agency Act allegations are made solely by the State, pursuant to the supplemental jurisdiction conferred by 28 U.S.C. § 1367, because the FTC has no authority to enforce state law.

815 ILCS 505/7. “The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction” and “appointment of a receiver [].”⁸² *Id.* The State of Illinois therefore is entitled to injunctive and other relief for Defendants’ violations of state law, including a TRO, and the Court has the authority to enter the requested relief.

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. *World Travel*, 861 F.2d at 1029. Under this “public interest” test, “it is not necessary for the FTC to demonstrate irreparable injury.” *Id.* When the court balances the equities, the public interest “must receive far greater weight” than any private concerns. *Id.*

C. The Evidence Demonstrates an Overwhelming Likelihood that the Plaintiffs Will Prevail on the Merits

The earlier discussion of federal and state debt collection law violations amply demonstrates Defendants’ complete and wholesale disregard for those laws. In addition, Defendants’ deceptive claims independently violate the FTC Act and the Illinois Consumer Fraud Act. Thus, these widespread violations amply demonstrate that Plaintiffs are likely to succeed on the merits.

1. Defendants are Violating Section 5(a) of the FTC Act

There is no question 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

⁸² Further, Section 9.7 of the Illinois Collection Agency Act, 225 ILCS 425/9.7, provides that the Attorney General may enforce knowing violations of relevant portions of Section 9 as unlawful practices under the Illinois Consumer Fraud Act. Section 14a of the Illinois Collection Agency Act, 225 ILCS 425/14a, also authorizes the Attorney General to bring suit for violations of Section 4 of the Act, *i.e.*, the unlicensed practice of a collection agency.

reasonably under the circumstances. *See FTC v. Bay Area Bus. Council*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. World Media Brokers*, 415 F.3d 758, 763 (7th Cir. 2005); *FTC v. QT, Inc.*, 448 F. Supp. 2d 908, 957 (N.D. Ill. 2006). 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.*

Here, Defendants violate the FTC Act by making a series of deceptive claims to induce consumers to pay debts they either do not owe or that Defendants have no authority to collect. In the interest of brevity, the FTC does not again outline the egregiously deceptive claims involved.

2. Defendants are Violating the Illinois Consumer Fraud Act

The false claims made by Defendants also violate Section 2 of the Illinois Consumer Fraud Act, which prohibits unfair or deceptive acts or practices. 815 ILCS 505/2. To state a cause of action under Section 2, the Attorney General need only plead and prove that: (1) Defendants engaged in trade or commerce; and (2) Defendants engaged in unfair or deceptive acts or practices in the conduct of trade or commerce. *People ex rel. Hartigan v. Stianos*, 131 Ill. App. 3d 575, 578, 86 Ill. Dec. 645, 649, 475 N.E.2d 1024, 1028 (2nd Dist. 1985). By operating as a debt collector in Illinois, and attempting to collect alleged debts from consumers in Illinois and elsewhere, Defendants' conduct clearly fits the definition of "trade" and "commerce."⁸³ Whether Defendants engaged in unfair or deceptive acts or practices, Section 2 specifically

⁸³ Section 1(f) of the Illinois Consumer Fraud Act defines the terms "trade" and "commerce" to mean the "advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State." 815 ILCS 505/1(f).

provides, “In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.” 815 ILCS 505/2. Once again, Plaintiffs refer the Court to the earlier discussion of Defendants’ deceptive claims.

3. The Individual Defendants are Personally Liable

Individual Defendants Charles Dickey and Chantelle Dickey are responsible for the deceptive practices of Corporate Defendant KIP, as well as the various d/b/a’s they have used over the years to conduct their business. They therefore should be subject to the temporary restraining order and asset freeze. An individual defendant is liable under the FTC Act when he (1) participated directly in, or had some control over, a corporation’s deceptive practices, and (2) had actual or constructive knowledge⁸⁴ of the practices. *World Media Brokers*, 415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636. The FTC does not need to show intent to defraud. *Amy Travel*, 875 F.2d at 573-74. To the extent the Dickeys did business as the now-dissolved d/b/a’s and other fictitious names, the Dickeys also are liable for the FDCPA violations of those d/b/a’s. 15 U.S.C. § 1692l(a).

The FTC is likely to succeed in showing that Charles Dickey and Chantelle Dickey are liable under this standard. The role of each individual in this fraud is detailed in Section IV above.

⁸⁴ 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. *World Media Brokers*, 415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 574.

D. The Equities Tip Decidedly in the Commission’s Favor

Once the FTC has shown a likelihood of success on the merits, the Court must balance the equities, giving greater weight to the public interest than to any of Defendants’ private concerns. *World Travel*, 861 F.2d at 1029. The public equities here are compelling, as the public has a strong interest in halting the deceptive scheme, and in preserving the assets necessary to provide effective final relief to victims. *See FTC v. Sabal*, 32 F. Supp. 2d 1004, 1009 (N.D. Ill. 1998). Defendants, by contrast, have no legitimate interest in continuing to deceive consumers and persisting with conduct that violates federal law. *See id.*; *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.”). An injunction is required to ensure that Defendants’ scheme does not continue while the case is pending.

E. An Asset Freeze and the Appointment of a Receiver are Necessary and Appropriate

The relief sought by Plaintiffs includes restitution for the victims of Defendants’ fraud. To preserve the possibility of such relief, Plaintiffs seek a freeze of Defendants’ assets and an immediate accounting to prevent concealment or dissipation of assets. Absent a freeze, there is a very tangible risk that funds would be quickly concealed or dissipated. An asset freeze also is needed to prevent Defendants from moving their cash and other assets outside the U.S.

An asset freeze is appropriate once the Court determines that the FTC 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 the words of the Seventh Circuit, the district court at that juncture has “a duty to ensure that the assets of the corporate defendants [are] available to make restitution to the

injured consumers.” *Id.* at 1031. In a case such as this, where the FTC is likely to succeed in showing that officers and managers are individually liable for the payment of restitution, the freeze should extend to individual assets as well. *Id.* (affirming freeze on individual assets); *see also* *FTC v. Datacom Mktg. Inc.*, 2006 WL 1472644, at *5 (N.D. Ill. 2006) (freezing assets of individual and corporate defendants). Moreover, Defendant KIP and all of the d/b/a’s are essentially fictions created solely for the purpose of carrying out the Dickey’s fraudulent scheme.

The appointment of a temporary receiver also is necessary and appropriate. A receiver would prevent the destruction of documents and the dissipation of assets while the case is pending. Such an appointment is appropriate particularly in light of Defendants’ pervasive fraud, which presents the likelihood of continued misconduct. If Defendants are allowed to remain in control of their business, it is likely that evidence will be destroyed and the fruits of their fraud will be dissipated. A temporary receiver would eliminate those risks with a minimal disruption of legitimate business activity, if any. The receiver also would be helpful 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.

F. The Temporary Restraining Order Should Be Issued *Ex Parte*

To prevent Defendants from dissipating or concealing their assets, the requested TRO should be issued *ex parte*. An *ex parte* TRO is warranted where the facts show that immediate and irreparable injury, loss, or damage will occur before the defendants can be heard in opposition. *See* Fed. R. Civ. P. 65(b). Here, as in similar FTC actions in this district where courts have granted an *ex parte* TRO (*see supra* n.80), there is a serious risk that assets and evidence stemming from the illegal activity will disappear if Defendants receive prior notice.⁸⁵

⁸⁵ *See* Declaration and Certification of Plaintiff Federal Trade Commission’s Counsel Pursuant to Fed. R. Civ. P. 65(b) and Local Rule 5.5(d) in Support of Plaintiff’s *Ex Parte* Motion for

In this case, the blatantly deceptive nature of Defendants' scheme, their continued operation despite law enforcement and news media scrutiny, and their frequent name changes all indicate that there is a serious risk that Defendants will destroy documents and dissipate assets if given advance notice of Plaintiffs' motion.

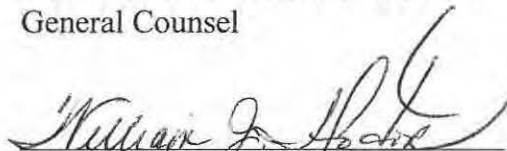
VI. CONCLUSION

Defendants have caused, and are likely to continue to cause, substantial injury to the public through their violations of the FTC Act, the FDCPA, the Illinois Consumer Fraud Act, and the Illinois Collection Agency Act. Plaintiffs, the FTC and State of Illinois, respectfully request that the Court issue the proposed *Ex Parte* 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 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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Temporary Restraining Order and *Ex Parte* Motion to Seal File Temporarily (describing need for *ex parte* relief and citing cases in which defendants who learned of impending FTC action withdrew funds, destroyed vital documents, and fled the jurisdiction).

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