

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMERICAN CREDIT  
CRUNCHERS, LLC,  
a California limited liability company,

EBEEZE, LLC,  
a California limited liability company,

and

VARANG K. THAKER, individually,  
and as an officer of American Credit  
Crunchers, LLC and Ebeeze, LLC,  
also d/b/a American Credit Crunchers,

Defendants.

12cv1028

Judge George W. Lindberg  
Magistrate Arlander Keys

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

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## I. INTRODUCTION

This case involves a massive fake debt collection scheme that has defrauded thousands of consumers across the United States. Consumers receive telephone calls from Defendants' callers demanding immediate payment on a payday loan – and making serious threats of the consequences of not paying. But these consumers do not owe money to the Defendants. This is simply theft.

Many consumers are hurting financially, and have applied online for a payday loan. Somehow the information from their loan application forms finds its way to this enterprise. Armed with this information, Defendants' callers contact consumers and demand that they pay the Defendants for delinquent payday loans. In many cases, the callers pretend to be police or other law enforcers, and tell consumers that they will be immediately arrested if they do not pay. In other cases, the callers pretend to be lawyers who are poised to file a lawsuit against the consumer seeking a huge sum of money. These claims are false. Although many of Defendants' victims actually do owe payday loans, they owe them to someone else. The callers are not with law enforcement, and they are not lawyers. No arrests are made and no lawsuits are filed.

Unfortunately, all too often victims pay what the Defendants demand, usually by credit or debit cards. The money goes to the Defendants, who are here in the United States. The actual calls come from India. The Defendants pay for the phone lines used to make these calls, as well as for other expenses of this enterprise.

Defendants' practices violate the Federal Trade Commission Act's ("FTC Act") prohibition of "unfair or deceptive acts or practices," 15 U.S.C. § 45(a). In addition, because the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. 1692, *et seq.*, applies to the collection of "alleged" debt, this conduct also violates that statute. 15 U.S.C. § 1692a(5).

This is a large operation. In less than two years, Defendants have collected more than \$5 million in over 17,000 transactions.<sup>1</sup> This type of fraudulent conduct has become a serious issue nationally. Even the online and payday loan industries are very concerned about deceptive calls like those placed by Defendants. Those groups have themselves received huge volumes of complaints about fake debt collectors. The Online Lenders Alliance, a trade organization for these lenders, has posted a consumer alert on its website to warn consumers about this very issue, as have several individual payday lenders.<sup>2</sup> Additionally, many state attorneys general, the FDIC, and the FBI's Internet Crime Complaint Center have also issued alerts to warn consumers about fraudulent payday loan collection calls.<sup>3</sup>

We ask that the Court issue an *ex parte* TRO ending the deceptive practices and freezing the Defendants' assets to ensure that they do not disappear, and thereby preserve the Court's ability to provide restitution to victims at the end of the day.

## **II. DEFENDANTS**

The parties responsible for this outright fraud are two California limited liability companies and one individual who owns and directs them. **American Credit Crunchers, LLC** and **Ebeeze, LLC** are California corporations.<sup>4</sup> Their owner and president is **Varang K. Thaker**.<sup>5</sup> Both companies hold themselves out as doing business from 10492 Villa Park Circle,

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<sup>1</sup> Plaintiff's Exhibit (PX) 1, McKenney ¶¶ 20, 66 (at least 17,956 total transactions, netting \$5,415,492.10 after chargebacks).

<sup>2</sup> PX 1, McKenney ¶ 62, Att. S pp 1-7, 9 (various industry consumer alerts).

<sup>3</sup> *Id.* ¶ 62, Att. S, pp 10-25 (various government agency consumer alerts).

<sup>4</sup> *Id.* ¶ 7, Att. A and ¶ 8, Att. B (corporate records).

<sup>5</sup> *Id.* ¶ 11, Att. D, ¶ 14, Att. E, and ¶ 36, Att. I (financial records).

Villa Park, California, which is the address on Thaker's driver's license.<sup>6</sup> ACC has an extensive website, which is registered to Thaker, and which describes the debt collection services that ACC purports to offer.<sup>7</sup> ACC's bank records, however, do not support any claim of legitimate debt collection activities.<sup>8</sup> The only evidence that Ebeeze engages in any business at all is the fact that the ACC website indicates it was "Designed & Developed by eBeeZe.net."<sup>9</sup> It apparently is used by Thaker primarily to transfer funds among ACC, himself, and some India-based outsourcing companies.<sup>10</sup>

Defendants operate this scheme as a common enterprise. The Corporate Defendants appear to operate from the same location, co-mingle funds, and generally participate in a common scheme. As participants in a common enterprise, Defendants are all jointly and severally liable.<sup>11</sup>

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<sup>6</sup> *Id.* ¶ 11, Att. D, ¶ 14, Att. E, and ¶ 36, Att. I (financial records).

<sup>7</sup> *Id.* ¶¶ 44-45, Att. K (printout of portions of the website hosted at [www.AmericanCreditCruncers.com](http://www.AmericanCreditCruncers.com)).

<sup>8</sup> An analysis of this enterprise's bank accounts shows no transactions involving known lenders or debt sellers. The business-related transactions include deposits of payments made by consumers, payments to a telephone service provider, and payments to outsourcing companies located in Ahmedabad, – a city in Gujarat, India – which presumably are the call centers from which these fraudulent calls are placed. Other transactions show transfers among the enterprise's accounts, transfers to Thaker's personal accounts, the purchase of a Mercedes-Benz ML 350 vehicle, purchases of airline tickets, and tens of thousands of dollars of in-store debit card purchases in California and Ahmedabad. *Id.* ¶¶ 22-41.

<sup>9</sup> *Id.* ¶ 45, Att. K.

<sup>10</sup> *Id.* ¶¶ 32-40; *see n.8, supra.*

<sup>11</sup> *See FTC v. Think Achievement Corp.*, 144 F. Supp.2d 993, 1011 (N.D. Ind. 2000) (*citing Sunshine Art Studios v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973)), *aff'd*, 312 F.3d 259 (7th Cir. 2002); *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746-47 (2nd Cir. 1964); *see also CFTC v. Wall Street Underground, Inc.*, 281 F. Supp.2d 1260, 1271 (D. Kan. 2003). All Defendants are collectively referred to as "Defendants" or "ACC."



### III. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES

#### A. The Consumer Victims

Defendants target consumers who have at least applied online for a payday loan – though they may not have actually received one.<sup>12</sup> Completing online payday loan applications typically requires consumers to disclose a wealth of personal details, including their social security number, place of work, and complete contact information.<sup>13</sup> Somehow the information from loan applications has found its way to Defendants, though we do not yet know exactly how that happens.<sup>14</sup>

Consumers who seek this type of high-interest, short-term loan often have serious financial problems already, and many are struggling to make ends meet. Some consumers have received several of these online payday loans in the past. Moreover, consumers may not have maintained careful records of these transactions, or may be overwhelmed with bad finances. Thus consumers often believe the Defendants are actually collecting on a payday loan they

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<sup>12</sup> PX 2, DeJulius ¶ 2 (ex-husband used her personal information to obtain payday loan); PX 3, Ewing ¶ 4 (obtained two payday loans and applied online for one, but did not receive a loan from the online application); PX 4, Huhn ¶ 3 (acquired some online payday loans); PX 5, Merola ¶ 5 (had acquired a payday loan); PX 8, White ¶ 4 (had obtained an online payday loan).

<sup>13</sup> Payday loans, which are heavily regulated by the states, are high-interest, short-term loans that consumers seek to bridge the gap between paychecks. Consumers may apply for them online, either directly with a lender or through websites that act as clearinghouses to match consumers and lenders. As with any application for credit, consumers are required to supply extensive personal information, including their Social Security number and employment information. *See* Px 1, McKenney ¶ 63.

<sup>14</sup> A purported payday loan application website called payday24online.com is registered to Defendant Thaker. However, an inquiry submitted through this website by an FTC investigator received no response, suggesting that the website does not actually provide access to payday loans. PX1, McKenney ¶¶ 44 and 48, Att. L. It is possible that the site is used to collect consumer information for use in this scam.

previously received from someone else.<sup>15</sup>

### **B. The Deceptive Calls and False Claims Made in Them**

Defendants' callers telephone consumers and demand immediate payment for a supposedly delinquent payday loan.<sup>16</sup> The callers frequently claim to be law enforcement officers with a federal criminal agency or the local police or sheriff's office.<sup>17</sup> Consumers are regularly told that they will be arrested shortly – often within hours – if they do not immediately pay what is demanded.<sup>18</sup>

At other times, these callers claim to be lawyers or calling on behalf of law firms.<sup>19</sup> Callers tell consumers that a lawsuit will be filed against them for a very large sum of money if they do not agree to pay, and that their legal costs for litigation will be thousands of dollars if

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<sup>15</sup> PX 2, DeJulius ¶ 3 (consumer believed payment was demanded for a payday loan that had been obtained in her name); PX 3, Ewing ¶ 7 (consumer was concerned that her previous payday loan had not been discharged in bankruptcy, and believed the collection call was related to the previous loan); PX 4, Huhn ¶ 8 (consumer believed the collection call was related to payday loans on which he had been delinquent).

<sup>16</sup> PX 2, DeJulius ¶ 3; PX 3, Ewing; PX 4, Huhn ¶ 7; PX 5, Merola ¶¶ 3-4; PX 6, Rau Att. A; PX 7, Tesh ¶ 4; PX 8, White ¶ 6; PX 1, McKenney ¶ 21.

<sup>17</sup> PX 2, DeJulius ¶ 3 (caller claimed to be from the “Federal Government Department of Crime and Prevention”); PX 7, Tesh ¶ 4 (caller claimed to be a “federal investigator”); PX 1, McKenney ¶ 21 (b) (caller claimed to be from the “Central Investigation Finance Agency” and that there was an outstanding warrant for the consumer), ¶ 21 (e) (caller claimed to be from the “Bureau of Investigations”), ¶ 21 (g) (callers claimed to be with law enforcement) and ¶ 55 (f) (caller claimed to be “Officer Jack Gates”).

<sup>18</sup> PX 2, DeJulius ¶ 4 (caller threatened “he would send agents to arrest me at my place of work”); PX 5, Merola ¶¶ 3-4 (caller threatened that “if I didn't pay it immediately, police officers would be sent to arrest me”); PX 6, Rau ¶ 4 (caller threatened that “I would be brought up on charges in New York and Indiana for three felonies”); PX 7, Tesh ¶ 4 (caller “threatened to have me arrested and locked up”); PX 8, White ¶ 5 (caller “threatened to have me arrested”); PX 1, McKenney ¶ 21 (b) (caller said there was an “outstanding warrant” for the consumer), ¶ 21 (c) (consumer was “threatened with being arrested at her home or work”), ¶ 21 (consumer would be “taken to jail”), ¶ 21 (h) (“caller threatened to have her arrested”) ¶ 55 (c) (caller said she “would be arrested at work in a few days”).

<sup>19</sup> PX 4, Huhn ¶ 6 (caller “identified himself as Mike Johnson, an attorney”); PX 5, Merola ¶ 4 (caller claimed to be an attorney); PX 6, Rau, ¶¶ 3-5 (caller claimed to be from “The Law Firm”).

they do not opt to “settle” these claims immediately.<sup>20</sup> Some callers threaten consumers with loss of their jobs if they do not agree to make a payment.<sup>21</sup>

People who receive these calls are scared by them and take the threats very seriously.<sup>22</sup> The callers are threatening and belligerent, and sometimes use obscene and vulgar language.<sup>23</sup> The callers are armed with a host of personal information about the consumer, including phone numbers, home and business addresses, and some portion or the entirety of Social Security or bank account numbers.<sup>24</sup> The callers’ knowledge of this information lends credibility to their claims that they are collecting on debts that are actually owed and leads those who pay to believe that the callers represent a company from which they have previously obtained a loan.

The case of Mark Merola, a resident of a retirement community in Florida, is typical. In

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<sup>20</sup> PX 2, DeJulius ¶ 4 (caller “threatened expensive litigation and court costs”); PX 3, Ewing ¶ 6 (caller threatened that “litigation would be filed against me, and I would owe not only the debt, but court and attorney’s fees as well”); PX 4, Huhn ¶¶ 7-8 (caller “threatened to forward my case to federal court”); PX 8, White ¶ 6 (caller threatened that “charges would be filed against me in court”); PX 1, McKenney ¶ 55(f) (consumer agreed to pay \$2700 out of fear of going to court and incurring higher costs).

<sup>21</sup> PX 1, McKenney ¶ 55(d) (consumer told her job could be in danger), ¶ 55(e) (caller threatened to have consumer terminated from her job).

<sup>22</sup> PX 2, DeJulius ¶¶ 4-5; PX 3, Ewing ¶ 7; PX 4, Huhn ¶¶ 4, 6-9; PX 5 Merola ¶ 5; PX 7, Tesh ¶¶ 8, 19; PX 8, White ¶¶ 5, 8; PX 1, McKenney ¶ 21(b) (consumer paid out of fear that she would lose custody of her child), ¶ 55(c) (consumer “panicked” and authorized payment), ¶ 55(d) (consumer paid because she was frightened by the threats).

<sup>23</sup> PX 3, Ewing ¶¶ 6-7

<sup>24</sup> PX 2, DeJulius ¶ 4 (caller knew her “home address, Social Security number, date of birth, home address, place of employment, and dates on which [she] was paid”); PX 4, Huhn ¶ 7 (caller had last four digits of Social Security number and email address); PX 8 White, ¶ 6 (caller had “a lot of personal information”); PX 1, McKenney ¶ 21(d) (caller had consumer’s personal information and information about a payday loan), ¶ 55(a) (caller had consumer’s Social Security and bank account numbers), ¶ 55(b) (caller knew who consumer’s references were and contacted them), ¶ 55(d) (caller had consumer’s home and work telephone numbers, Social Security number, and place of employment), ¶ 55(f) (caller knew consumer’s Social Security number).

October 2010, Merola's wife received a phone call at home. The caller asked for Merola, who was at work.<sup>25</sup> When his wife indicated that Merola was not available, the caller told her that Merola would be arrested and imprisoned immediately if he did not pay what the caller claimed he owed on a payday loan.<sup>26</sup> Panicked, she called Merola at work and gave him the phone number provided by the caller.<sup>27</sup> Merola called back, and the same threat of arrest was made. The caller even indicated that he knew exactly where Merola worked, and that police officers would be sent there right away.<sup>28</sup> Merola had previously taken out a payday loan, but he did not believe that he was delinquent on it or any other loan at the time he received this call.<sup>29</sup> Merola was scared, however, and feared being arrested at his workplace, so he reluctantly agreed to pay \$523.87 in two payments using his debit card.<sup>30</sup> The debit card charges were paid to the Defendants.<sup>31</sup>

If consumers do not agree to pay immediately, the pressure continues in other ways. At times, the callers contact the consumer's place of work.<sup>32</sup> If consumers either refuse to pay or ignore the calls, Defendants undertake a relentless campaign of harassment by placing repeated

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<sup>25</sup> PX 5, Merola ¶ 3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* ¶ 4.

<sup>29</sup> *Id.* ¶¶ 4-5.

<sup>30</sup> *Id.* ¶ 5.

<sup>31</sup> *Id.* ¶ 5, Att. A.; PX 1, McKenney ¶ 56.

<sup>32</sup> PX 7, Tesh ¶ 5; PX 6, Rau ¶ 10; PX 1, McKenney ¶ 55(a).

calls to the consumers.<sup>33</sup> Some consumers are subjected to ongoing calls even after they have made a payment.<sup>34</sup>

The scare tactics work and many consumers agree to pay the Defendants. Some, like Mark Merola, pay even when they do not believe they owe anything. The threats of arrest or costly litigation simply cannot be ignored. The claims made in these calls, however, and the basis of these threats are entirely false. None of the callers are law enforcement or attorneys. Obviously, consumers cannot be arrested for failing to pay a debt. No lawsuits are ever filed, because consumers do not actually owe Defendants anything.

**C. Payments Made in Response to the False Claims Are Collected by Defendants**

The money taken from consumers who pay in response to these false claims goes into U.S. bank accounts owned and controlled by Defendant Varang K. Thaker.<sup>35</sup> Once consumers agree to pay what the callers demand, that payment is typically made by credit or debit card.<sup>36</sup> The payments are usually several hundred dollars, though some consumers have paid much more.<sup>37</sup> The callers also email or fax the consumers a payment authorization form that must be

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<sup>33</sup> PX 1, McKenney ¶¶ 21(e), 21(g), 55(a) (call records show six calls to consumer over three day period), 55(b) (call records show three calls to consumer in one day), 55(f) (call records show six calls over four days); 21(i) (call records show five calls in one day).

<sup>34</sup> PX 5, Merola ¶ 7; PX 1 McKenney ¶¶ 21(a), 21(h).

<sup>35</sup> PX 1, McKenney ¶¶ 11, 14, 17, 24, 29 (deposits into merchant accounts are directed to bank accounts opened by Thaker, and for which Thaker is the account signatory).

<sup>36</sup> PX 2, DeJulius ¶ 5; PX 3, Ewing ¶ 7; PX 4, Huhn ¶ 9; PX 5, Merola ¶ 5, PX 6, Rau ¶ 5; PX 7, Tesh ¶ 8; PX 8 White, ¶ 6.

<sup>37</sup> PX 2, DeJulius ¶ 4 (\$763); PX 3, Ewing ¶ 7 (\$250); PX 4, Huhn ¶ 9 (\$530.89); PX 5, Merola ¶ 5 (\$523.87); PX6, Tesh ¶ 9 (\$400); PX 7 White, ¶ 6 (\$525); PX 1, McKenney ¶ 21(a) (Consumer D.M. \$200), ¶ 21(b) (Consumer T.C. \$200), ¶ 21(c) (Consumer E.W. \$200), ¶ 21(d) (Consumer K.B. \$195), ¶ 21(e) (Consumer P.C. \$200), ¶ 21(f) (Consumer M.S. \$400), ¶ 21(g) (Consumer T.S. \$465), ¶ 21(h) (Consumer M.M. \$201.37).

filled out, or sometimes dictate the language for the consumers to use in creating their own payment authorization letter.<sup>38</sup> The consumers are directed to fax the payment authorization to a number provided by the callers.<sup>39</sup>

When consumers later view their bank or credit card statement, the line item charge for the payment will include a “merchant descriptor,” which identifies the payment recipient. The merchant descriptor sometimes includes a phone number that the consumer can call with questions. Defendant Thaker not only established the merchant accounts that process the credit or debit cards payments from victims of this scam, he also specified the merchant descriptors that are used to identify charges to ACC.<sup>40</sup> At one time, the descriptor included a phone number that Thaker controlled.<sup>41</sup>

#### **D. Consumers Do Not Owe Money to Defendants**

If consumers do owe money, it is not to the Defendants. There is absolutely no indication that the Defendants collect any legitimate debts. The ACC website describes supposed debt collection services that the company purports to offer.<sup>42</sup> However, a careful examination of Defendants’ bank records shows no indication that Defendants make loans, purchase debt from other lenders, or that any third parties hire them to collect debts.<sup>43</sup>

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<sup>38</sup> PX 3, Ewing ¶ 7; PX 4, Huhn ¶ 10; PX 5, Merola ¶ 5; PX 7, Tesh ¶ 8, Att. A; PX 8, White ¶ 6.

<sup>39</sup> PX 3, Ewing ¶ 7; PX 4, Huhn ¶ 10; PX 5, Merola ¶ 5; PX 6, Rau ¶ 6; PX 7, Tesh ¶ 8; PX 8, White ¶ 6.

<sup>40</sup> PX 1, McKenney ¶ 12(c).

<sup>41</sup> PX 1, McKenney ¶¶ 50-51.

<sup>42</sup> PX 1, McKenney ¶¶ 45-46, Att. K.

<sup>43</sup> PX 1, McKenney ¶¶ 22-41; *see n.8, supra*.

Some consumers have contacted the payday lenders from which they previously borrowed, and were told that the collection calls from Defendants are fraudulent. Payments made by consumers to Defendants were not applied to actual debts owed to those lenders.<sup>44</sup>

Consumers who realize that they have been scammed by Defendants sometimes challenge the charges with their banks or credit card companies to obtain a refund or “chargeback.” Many of these chargeback requests state plainly that the charge to Defendants was procured by fraud. Some consumers’ requests also detail the abusive and threatening conduct of the callers.<sup>45</sup> There have been more than 970 chargeback requests to Defendant’s primary merchant accounts.<sup>46</sup> The merchant who processes these charges forwarded chargeback requests to Thaker.<sup>47</sup> Although Thaker provided the merchant processor with ACC’s chargeback policy, he apparently did not respond to any of the requests.<sup>48</sup> This correspondence, sent to the address on Thaker’s driver’s license, makes plain that Thaker is fully aware of the fraud.<sup>49</sup>

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<sup>44</sup> PX 3, Ewing ¶ 8; PX 4, Huhn ¶ 15; PX 1, McKenney ¶¶ 21(d), 21(g), 21(h), 55(e).

<sup>45</sup> PX 1, McKenney ¶ 21, Att. G.

<sup>46</sup> This amounts to a chargeback rate of approximately 5.37%, well above the 1% benchmark used by Visa to alert it to potential fraud by a merchant. PX1, McKenney ¶ 20. Return rates that deviate substantially from normative or average rates are considered an indicia of fraud. *See, e.g., FTC v. Grant Connect, LLC*, 2009 U.S. Dist. LEXIS 94201, at \*19, \*25-26 (D. Nev. Sept. 22, 2009); *FTC v. QT, Inc.*, 448 F. Supp. 2d 908, 936 (N.D. Ill. 2006), *aff’d*, 512 F.3d 858 (7th Cir. 2008) (court considered defendants’ refund rate of at least 25% in granting judgment for FTC in deceptive advertising case); *FTC v. MacGregor*, 2009 U.S. App. LEXIS 28661, at \*7 (9th Cir. Dec. 30, 2009) (high refund and return rates were evidence that defendant knew of material misrepresentations or was at least recklessly indifferent to truth); *FTC v. Global Marketing Group, Inc.*, 594 F. Supp. 2d 1281, 1289 (M.D. Fla. 2008) (high return rates for defendants’ products evidence of actual knowledge of illegal activity).

<sup>47</sup> PX 1, McKenney ¶ 21, Att. G.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* ¶ 11.

#### E. The Defendants Are Responsible for the Telephone Calls From India

The telephone calls to consumers originate in India, and the Defendants provide the means for those calls to be placed. Defendants' bank records show significant payments to a "Voice Over IP" ("VoIP") service provider.<sup>50</sup> A sampling of records from the Defendants' account with the VoIP provider, which covers just eight months, shows that Defendants placed over 8.5 million calls to the U.S during that time, including nearly 160,000 to phone numbers with area codes in the Northern District of Illinois.<sup>51</sup> The records provide specific information about each call, including the telephone number to which it was made, the date, time and duration of the call, and the IP address where the call originated.<sup>52</sup> Included in the call detail records are calls to consumers who have complained to the FTC about threatening debt collection calls as well as calls to one of the FTC's consumer declarants.<sup>53</sup>

#### IV. ARGUMENT

Defendants employ false claims that have defrauded consumers out of millions of dollars. These deceptive practices squarely violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and the FDCPA, 15 U.S.C. §§ 1692, *et seq.* These include false statements 1) that Defendants are

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<sup>50</sup> PX 1, McKenney ¶ 52 (bank records show that Defendants paid Allianz Infonet \$1.87 million from February 2010 through July 2011).

<sup>51</sup> PX 1, McKenney ¶ 54.

<sup>52</sup> *Id.* Although the IP addresses indicate that the calls originate in India (most frequently Ahmedabad, Gujarat), consumers' caller ID does not reveal that location. Consumers report their caller ID displaying domestic or blocked phone numbers. *See* PX 4, Huhn ¶ 6; PX 6, Rau ¶ 3; PX 7, Tesh ¶ 4; PX 1, McKenney ¶ 55(b).

<sup>53</sup> *Id.* ¶ 21(I) (five calls in one day), ¶ 55(a) (consumer J.D. of Chicago, six calls in three days), ¶ 55(b) (consumer L.K. of Chicago ) and ¶ 55(f) (consumer M.S. of Milwaukee, six calls in three days). The Allianz Infonet call detail records and the Consumer Sentinel Database are too voluminous to fully cross-reference to identify all possible matches between consumer complaints and consumers called by ACC.



law enforcement; 2) that Defendants are attorneys or associated with a law firm; 3) that the consumer has a legal obligation to pay a debt to the Defendants; and 4) that consumers will be arrested or imprisoned if they do not pay.

The FTC seeks an *ex parte* temporary restraining order and a preliminary injunction ending the ongoing deception. The FTC also asks that the Court freeze assets, both corporate and personal, to preserve them for restitution to victims. 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.<sup>54</sup>

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

The FTC Act provides that “in proper cases the FTC may seek, and after proper proof, the court may issue, a permanent injunction.” 15 U.S.C. § 53(b).<sup>55</sup> 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 restitution. *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. Amy*

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<sup>54</sup> See, e.g., *FTC v. Yellow Page Mktg., B.V., et al.*, No. 11 C 05035 (N.D. Ill. July 26, 2011) (Leinenweber, J.) (*ex parte* TRO with asset freeze); *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 (N.D. Ill. May 25, 2010) (Hart, J.) (*ex parte* TRO with asset freeze and appointment of receiver); *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.) (*ex parte* TRO with asset freeze and appointment of receiver); *FTC v. Integration Media, Inc., et al.*, No. 09 C 3160 (N.D. Ill. May 27, 2009) (Bucklo, J.) (*ex parte* TRO with asset freeze); *FTC v. Data Bus. Solutions, Inc., et al.*, No. 08 C 2783 (N.D. Ill. May 14, 2008) (Dow, J.) (same); *FTC v. Union Consumer Benefits*, No. 08 C 2309 (N.D. Ill. April 23, 2008) (Aspen, J.) (same); *FTC v. Spear Sys., Inc., et al.*, No. 07 C 5597 (N.D. Ill. Oct. 3, 2007) (Andersen, J.) (same); *FTC v. Sili Neutraceuticals, LLC, et al.*, No. 07 C 4541 (N.D. Ill. Aug. 13, 2007) (Kennelly, J.) (same); *FTC v. 1522838 Ontario Inc., et al.*, No. 06 C 5378 (N.D. Ill. Oct. 4, 2006) (Gettleman, J.) (same); *FTC v. Datacom Mktg., et al.*, No. 06 C 2574 (N.D. Ill. May 9, 2006) (Holderman, C.J.) (same); *FTC v. Cleverlink Trading Ltd., et al.*, No. 05 C 2889 (N.D. Ill. May 16, 2005) (St. Eve, J.) (same).

<sup>55</sup> The practice of defrauding consumers by misrepresenting or omitting material facts in violation of Section 5(a) of the FTC Act presents a “proper case” for injunctive relief under 15 U.S.C. § 53(b). *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1028 (7th Cir. 1988).

*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. *World Travel*, 861 F.2d at 1026; *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.

The Court has personal jurisdiction over Defendants under the FTC Act's nationwide service of process provision, 15 U.S.C. § 53(b), because Defendants have minimum contacts with the United States. ~~*See FTC v. Cleverlink Trading Ltd.*, No. 05 C-2889, 2006 WL 1735276,~~ at \*4 (N.D. Ill. June 19, 2006) (Kendall, J.); *FTC v. Bay Area Bus. Council, Inc.*, No. 02 C 5762, 2003 WL 21003711, at \*2 (N.D. Ill. May 1, 2003) (Darrah, J.). Moreover, under the FTC Act's venue provision, an action may be brought wherever a corporation "resides or transacts business." 15 U.S.C. § 53(b). Here, as shown by the call detail records, Defendants have transacted business in this district. In addition, venue is proper over a corporation wherever it is subject to personal jurisdiction. *See Bay Area*, 2003 WL 21003711, at \*2.

**B. The FTC Meets the Applicable Legal Standard for Issuance of a Temporary Restraining Order and Preliminary Injunction.**

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 (quoting *FTC v. Warner Commc'ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)); *see also FTC v. Datacom Mktg.*, No. 06 C 2574, 2006 WL 1472644, at \*3 (N.D. Ill. 2006). Under this "public interest" test, "it is not necessary for the FTC to demonstrate irreparable injury." *World Travel*, 861 F.2d at 1029. Unlike a

private litigant, who generally must show a substantial likelihood of success on the merits, the FTC need only make the statutory showing of a likelihood of ultimate success. *Id.* And when the court balances the equities, the public interest “must receive far greater weight” than any private concerns. *Id.* Preliminary injunctive relief is therefore appropriate if the FTC shows a likelihood of success on the merits and that a balancing of the equities, giving greater weight to the public interest, favors such relief.

**1. Defendants Have Violated Section 5(a) of the FTC Act.**

There is no doubt that Defendants’ activities are 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. 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); *World Travel*, 861 F.2d at 1029. A misrepresentation or omission is material if it involves information that is likely to affect a consumer’s choice of, or conduct regarding, a product or service. *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992); *Datacom Mktg.*, 2006 WL 1472644, at \*4.

Here, Defendants violate the FTC Act by making a series of deceptive claims that are designed to induce consumers to make payments toward alleged delinquent payday loan debt. As described above, Defendants falsely represent that they are collecting on delinquent payday loans, but in fact the consumers do not owe any debt that the Defendants are authorized to collect. Moreover, Defendants’ callers misrepresent their identities and threaten and harass consumers, claiming to be law enforcement or attorneys, and then threatening that the consumers will be arrested, sued, or even lose their jobs if they do not pay immediately. Sworn consumer

declarations demonstrate that these misrepresentations and overt threats often succeed in misleading consumers to make payments to Defendants. The misrepresentations are material, because they are likely to affect (and in fact have affected) consumers' conduct. The FTC has shown a likelihood of success on its claim that Defendants are violating the FTC Act.

## **2. The Corporate Defendants Have Violated the FDCPA.**

Corporate Defendants are debt collectors engaging in deceptive and abusive practices that violate the FDCPA. Congress enacted the FDCPA in 1977 "to protect consumers from debt collectors' abusive debt collection practices." *Fuller v. Becker & Poliakoff, P.A.*, 192 F. Supp. 2d 1361, 1366 (M.D. Fla. 2002) (citing *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367 (11th Cir. 1998)). 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 it applies whether or not a debt is actually owed.

The FDCPA sets forth a nonexclusive list of unlawful debt collection practices and provides for public enforcement by the FTC. Although Corporate Defendants violate several provisions of the FDCPA, a single violation is sufficient to establish civil liability. *Nielsen v. Dickerson*, 307 F.3d 623, 640 (7th Cir. 2002). Violations of the FDCPA also violate the FTC Act for purposes of the FTC's enforcement of the FDCPA. 15 U.S.C. § 1692l(a); *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1174 n.5 (11th Cir. 1985).

As described above, there is no doubt that through their deceptive statements, Corporate Defendants routinely violate the FDCPA. The FDCPA prohibits the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. The FDCPA specifically prohibits a false representation as to the "character, amount,

or legal status of any debt;” “false representation or implication that any individual is an attorney;” “representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person;” and “[t]he threat to take any action that cannot legally be taken or that is not intended to be taken.” 15 U.S.C. §§ 1692e (2)(A), (3), (4), and (5). 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 *Veach v. Sheeks*, 316 F.3d 690, 692 (7th Cir. 2003)). The same deceptive claims that violate the FTC Act are also violations of the FDCPA.

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

Once the FTC has shown a likelihood of success on the merits, the Court must balance the equities, assigning greater weight to the public interest than to any of defendants’ private concerns. *World Travel*, 861 F.2d at 1029. The public equities in this case 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); *Datacom Mktg.*, 2006 WL 1472644, at \*5. Defendants, by contrast, have no legitimate interest in continuing to deceive consumers and persisting with conduct that violates federal law. *See Sabal*, 32 F. Supp. 2d at 1009; *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.

#### 4. Varang K. Thaker is Individually Liable.

Thaker is responsible for the deceptive practices of the corporations he controls, and he therefore should be subject to the temporary restraining order and an asset freeze. An individual defendant is subject to injunctive relief and liable for monetary restitution 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 knowledge<sup>56</sup> of the practices. *World Media Brokers*, 415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 573-74. The FTC does not need to show intent to defraud. *Amy Travel*, 875 F.2d at 573. Thaker is also individually liable for Corporate Defendants' FDCPA violations.<sup>57</sup>

Thaker both actively participates in the acts or practices of the Corporate Defendants and has the authority to control them. As the sole director of the Corporate Defendants, he is able to control their acts and practices. *See, e.g., World Media Brokers*, 415 F.3d at 764-65 (corporate

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<sup>56</sup> 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.

<sup>57</sup> In *Pettit v. Retrieval Masters Creditors Bureau, Inc.*, 211 F.3d 1057, 1059 (7th Cir. 2000), a private-plaintiff FDCPA case, the Seventh Circuit affirmed the district court's grant of summary judgment to an owner and shareholder of a debt collection company because he did not meet the statutory definition of a debt collector. The Court held that unless the owner and shareholder "otherwise meet[s] the statutory definition of 'debt collector' [he] cannot be held liable under the Act." *Id.*

*Pettit* does not foreclose a finding of individual liability for the FDCPA violations in this case. The FTC does not allege that Thaker is a debt collector who violated the FDCPA, but rather that as an owner who exercised control over the Corporate Defendants, he may be held liable for the Corporate Defendants' FDCPA violations. FTC enforcement actions are brought pursuant to a different provision of the FDCPA than private actions, and under that provision, the FTC is granted broad authority to enforce the FDCPA in the same manner it enforces the FTC Act, including seeking injunctive relief against an individual defendant. 15 U.S.C. § 1692l(a); *U.S. v. Trans Continental Affiliates*, No. C-95-1627, 1997 U.S. Dist. LEXIS 388 (N.D. Cal. Jan. 8, 1997) (holding that pursuant to § 1692l(a), the FTC may seek to enjoin an individual for corporate violations of the FDCPA).

officer “hard-pressed to establish that he lacked authority or control” over corporate entity); *Amy Travel*, 875 F.2d at 574. Thaker also has complete control over this operation’s finances.

Further, Thaker also has directly participated in the deceptive acts and practices by collecting payments that were procured by fraud and by paying for the VoIP service provider used to place the deceptive calls. He set up the merchant accounts that are needed to process credit or debit card payments from victims and even dictated the “merchant descriptor” that appears on consumers’ credit card statement.

The evidence also shows that Thaker has full knowledge of the false claims that are being made. ~~As noted above, Thaker controls the ACC merchant processing accounts. Consequently,~~ consumers’ chargeback requests for those accounts are forwarded to him. In their requests for chargebacks, many consumers indicate that the initial charge by ACC was procured by fraud.<sup>58</sup> Some consumers’ requests include narratives describing the abusive conduct of the caller and the consumer’s belief that the collection is fraudulent.<sup>59</sup> This correspondence makes plain that Thaker was fully aware of the fraud perpetrated by the callers. Additionally, as the only corporate officer and bank account signatory for ACC, Thaker must have known that his companies were not making loans or purchasing actual debt from payday lenders. Of course, even if the Defendants *were* collecting actual debts they would still be fully liable for the false claims they employ.

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<sup>58</sup> PX 1 McKenney ¶ 21, Att. G (sampling of consumer chargeback requests).

<sup>59</sup> *Id.*

**C. An Asset Freeze and the Appointment of a Receiver Are Necessary and Appropriate.**

The relief sought by the FTC includes restitution for the victims of Defendants' fraud. To preserve the possibility of such relief, the FTC seeks 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 in the U.S. would be quickly transferred out of the United States and beyond the control of the Court.

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. As the Seventh Circuit has held, the district court at that 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 FTC is likely to succeed in showing that a corporate officer is individually liable for the payment of restitution, the freeze should extend to individual assets as well. *Id.* (affirming freeze on individual assets); *see also Datacom Mktg.*, 2006 WL 1472644, at \*5 (freezing assets of individual and corporate defendants). Moreover, the Corporate Defendants here are essentially fictions, created solely for the purpose of carrying out Thaker's fraud.

The appointment of a temporary receiver would prevent the destruction of documents and the dissipation of assets while the case is pending. Such an appointment is particularly appropriate 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 any legitimate business activity.<sup>60</sup> 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.

**D. 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, there is a serious risk that assets and evidence stemming from the illegal activity will disappear if Defendants receive prior notice.<sup>61</sup> In this case, the blatantly deceptive nature of Defendants' scheme and the evident ties and frequent transfers of assets to overseas entities, all indicate there is a serious risk that Defendants will destroy documents and dissipate assets if given advance notice of the Commission's motion.

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<sup>60</sup> The Corporate Defendants operate out of Thaker's residence. Section XII.H. of the proposed Temporary Restraining Order filed herewith requires the Defendants to immediately produce to the receiver any business records and property located at the residence, but does not grant the receiver access to the premises.

<sup>61</sup> See Declaration and Certification of Plaintiff'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 Temporary Restraining Order and Motion to Temporarily Seal File (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).


V. CONCLUSION

Defendants have caused and are likely to continue to cause substantial injury to consumers as a result of their violations of the FTC Act and FDCPA. The FTC therefore asks that the Court issue the requested injunctive relief to prevent ongoing harm and to help ensure the possibility of effective final relief, including monetary restitution.

Respectfully submitted,

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