FAEGRE DRINKER BIDDLE & REATH LLP
Kathryn E. Bettini (No. 032568)
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
Telephone: (480) 643-1850
E-mail: kathryn.bettini@faegredrinker.com

FAEGRE DRINKER BIDDLE & REATH LLP
Richard L. Scheff (*Pro Hac Vice* Forthcoming)
One Logan Square, Suite 2000
Philadelphia, Pennsylvania 19103
Telephone: (215) 988-2700
E-mail: richard.scheff@faegredrinker.com

Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Federal Trade Commission, Plaintiff, vs. Credit Glory LLC, *et al.*, Defendants.	No. CV-26-05387-PHX-SPL

DEFENDANTS' OPPOSITION TO MEMORANDUM IN SUPPORT OF THE FTC'S *EX PARTE* APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND AN ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Defendants Credit Glory LLC (Delaware), Credit Glory LLC (Wyoming), Credit Glory LLC (Nevada), Credit Glory Inc., Credit Sage LLC, Joy Credit Software LLC, Clerk Credit Systems LLC, Clerk Credit Software LLC, Standard Scores LLC, Collection Payments LLC, Collections Dispute LLC, Collections Expert LLC, Collections Support LLC, Credit Cop LLC, Dispute Collection LLC, Glorious Credit LLC and Joyful Credit LLC ("Corporate Defendants"), together with Joshua Curtis, and David Naylor ("Individual Defendants" and, collectively, "Defendants") submit this memorandum in opposition to the Plaintiff Federal Trade Commission's ("FTC") *Ex Parte* Application for a Temporary Restraining Order and Order to Show Cause Why A Preliminary Injunction Should Not Issue (the "TRO Motion") and the FTC supporting memorandum ("FTC TRO Mem.").[1]

<u>Introduction</u>

The FTC's TRO Motion should be summarily denied. On extremely scant and legally insufficient evidence, summarized below, the FTC seeks to shut down Credit Sage, Credit Glory, Credit Clerk, and Standard Scores, LLC (collectively, hereafter, the "Company") that have for years provided a range of legitimate and highly regarded credit-related services to their clients. Not only has the FTC failed to meet its burden of demonstrating that such draconian relief should be granted, but the government also acted precipitously—through an extraordinary *ex parte* procedure reserved for the gravest emergency which does not exist here—in a manner that has unnecessarily caused severe and unjustified damage to the Company and its customers, and with no notice or opportunity for the Company to address or cure any legitimate FTC concerns. As explained herein, the FTC has not shown, and cannot show, that it is likely to succeed on the merits of its claims, that the balance of equities tips against the Company, or that the relief requested is otherwise legally justified at this juncture.

[1] The Court's Sealed Order, entered on August 4, 2026 (the "TRO"), provided that the FTC's TRO Motion would also be deemed a motion for a preliminary injunction under Federal Rule of Civil Procedure 65. [ECF 18, p. 41, § XXVII(A).]

For a decade, the Company has successfully served thousands of customers with its credit-related services.[2] In connection with credit reports from one or more of the three major credit reporting agencies, the Company has identified and disputed inaccurate, unverifiable and outdated information. And it has gotten results. For customers who have been enrolled for six or more months, 91% had at least one negative item successfully removed from their credit reports, with an average of over 11 items per customer. [*See attached* Declaration of Marko Petkovic (CEO, Credit Glory) ("Petkovic Decl.") ¶¶ 9–10, Exhibit A.] And approximately two-thirds of customers who provided at least two reports had a significant increase in their credit scores. [*Id.*]

In addition, the Company has provided credit-building and financial education resources, including a comprehensive financial-health guide. [*Id.* at ¶ 14, Exhibit G.] Also, at the time the TRO was entered, the Company was developing a partnership with National Credit Direct ("NCD") to offer a tool for customers to build a positive credit history. [*Id.*] Customers have been overwhelmingly satisfied with these Company services over the years, as manifest by both internal and external metrics. Trustpilot, a third-party platform, has received more than 24,000 reviews about the Company, with five-star ratings ranging from 88% to 93%, and four-star or higher ratings exceeding 91%. [*Id.* at ¶ 11.] Likewise, internal records show that the company has a detailed refund policy described below that routinely refunds customer payments on request. [*Id.* at ¶ 11, Exs. B–E.]

Far from the allegedly lawless and fraudulent operations the FTC describes, the Company maintained a comprehensive written compliance infrastructure—including formal policies governing truthful communication, required disclosures, and prohibitions on misrepresentation—that applied to every employee interacting with consumers. The Company enforced these standards through a dedicated quality assurance team that conducted routine compliance audits of recorded calls, enrollment activity, and CRM documentation, with

[2] When the Court entered the TRO, the only operational entities among the Corporate Defendants were Credit Sage, Credit Glory, Credit Clerk, and Standard Scores, LLC. The rest of the Corporate Defendants, as that term is defined in the Complaint, are non-operational and, except for Joy Credit Software LLC, have never been operating entities.

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

confirmed violations triggering progressive discipline up to and including immediate termination for intentional misrepresentation or fraud. Written Standard Operating Procedures required verbatim delivery of compliance statements to every consumer before an enrollment interaction could conclude, and a formal complaint intake process routed any consumer allegation of misrepresentation to independent Quality Assurance ("QA") review.

Despite the Company's tenure and its hard-earned, positive public reputation, the FTC did not, prior to its filing, engage its principals in a dialogue about their services or the handful of customer complaints at any point during its multi-month investigation.[3] Instead, the FTC sought *ex parte* relief calculated improperly to put the Company out of business:[4] (1) it was forced to cease all operations and stop serving thousands of consumers with on-going credit problems; (2) all assets were frozen, without even allowances for daily living expenses and attorneys' fees; (3) with no payroll, hundreds of employees lost their jobs; and (4) total control over the Company's operations was put into the hands of the Court-appointed Receiver, with no specific timetable for resuming operations, if ever.

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
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As referenced above, the evidentiary submission on which the FTC bases this Motion is razor thin and plainly insufficient as a matter of law. What the FTC characterizes as "ample evidence" actually consists of a mere handful of customer and former employee complaints:

- **<u>Two disgruntled former employees (of Credit Sage)</u>**: (1) one who worked for less than 3 months: 1/1/25-4/25 (Hobert Staton) (PX01) and (2) another who placed a call to the FTC in December 2025 and also claimed she was incorrectly listed on corporate forms (which was promptly resolved).[5]

[3] The FTC has been aware of the issues of which it complains since at least February 2026. Declaration of Michael Goldstein, Par. 36 (Feb. 6, 2026 interview of Kyle Totty).

[4] The FTC represented to the Court that the surreptitious investigation and *ex parte* motion were necessary because of the "substantial risk of asset dissipation and document destruction" and "ongoing and deliberate statutory violations." [TRO Mem. at 67.] But, as discussed below, the government points to no pre-Complaint conduct to substantiate that supposed rationale.

[5] Declaration of Hobert Staton: Employed from 1/1/25–4/25 (PX01); Transcript of Call to FTC (Attachment KKK Declaration of Michael Goldstein – claimed incorrectly listed; resolved) (PX08); Documents concerning Celina Coleman request to remove name from several corporate forms (Attachment III Declaration of Michael Goldstein – claimed incorrectly listed; resolved) (PX08). As reflected in the Transcript, Ms. Coleman was demoted, placed on paid leave of absence and was concerned that Credit Sage's operations "were going to be moving offshore, which means everyone in the United States would lose their jobs." PX08 – 939, 940. Ms. Coleman also admitted that she was only speculating as to the reason for that possible

- **<u>An employee of a collection service</u>**: who stated without providing any evidence that "around 2021 or 2022," she "estimates" that "several hundred consumers" of Credit Glory, Credit Sage, and Credit Joy[6] "who reported making payments to these entities under the belief the payment related to their accounts with Impact Receivables."[7]

- **<u>A summary of six consumer interviews in early 2026</u>**: of which five had contracts: Credit Joy (Bruce Hansen); Credit Glory (Kyle Totty, Darlene Buce); Credit Clerk (Connie Benson, Mariah Lewis).[8]

- **<u>A summary of six interviews with consumers</u>**: who filed complaints with the Better Business Bureau, the FTC's Consumer Sentinel, and the Consumer Financial Protection Bureau) of which only four named one of the Corporate Defendants: "Credit Joy" or "Joy Credit" (Mr. Ruopp); Credit Joy (Amanda Snyder); Credit Glory (Marsha Nelson), (Fred Valencia).[9]

- **<u>Single consumer declaration</u>**: for Credit Glory.[10]

If, instead of proceeding *ex parte* on this shockingly weak "evidence," the FTC had approached the Company and its principals, they would have listened. Indeed, like many other internet-based organizations, the Company has received inquiries by State regulatory agencies

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action. PX08 – 940 ("My assumption is either they are merging to offshore accounts or they are trying to cut ties on this LLC because they know that they're burned.").

[6] Credit Joy could not have been the subject of any complains during that time because, as the FTC knows, it did not exist until September 2023. [FTC TRO Mem. at 4.]

[7] Declaration of Amanda Killian (Collections Supervisor with Impact Receivables Management) (PX02). Ms. Killian also stated that since she submitted a complaint to the Better Business Bureau "the reports from consumers describing similar experiences involving Credit Glory, Credit Sage, and Credit Joy have continued and, in my observation, increased significantly." [*Id.*] Ms. Killian did not identify the source of her "reports from consumers," which were the basis of her "observation."

[8] Declaration of Michael Goldstein (PX05). The sixth interviewee was Jacqueline Talley who did not enter into a contract but sought a refund for charges by Credit Clark.

[9] Declaration of Michelle White (PX07). Ms. White also spoke with a mother and son (Khalia Spencer and Towayne Thomas) and Martha Emmons, but they did not identify any of the Corporate Defendants, only the first name of the person that was on the call or who they thought they were speaking with during the call.

[10] Declaration of Shelley Pfifer (PX06). The FTC also does not present any information on exactly how it selected which consumers to contact or even how many consumers it actually contacted or interviewed. [*See* Goldstein Declaration (PX5-01) ("I interviewed a number of consumers who had interactions with the Defendants and their representatives."); Declaration of Michelle White (PX7 – 01) ("Over the course of the investigation, I conducted telephone interviews with consumers who filed complaints against the Defendants with the Better Business Bureau, the FTC's Consumer Sentinel, and the Consumer Financial Protection Bureau ('CFPB')").]

Faegre Drinker Biddle & Reath LLP
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Scottsdale, Arizona 85251
(480) 643-1850

in the past, and it has complied with reasonable information requests and modifications to its practices. The same remains true today, if that means the Company is allowed to salvage its business and return to providing credit-related services to its customers.

Accordingly, as discussed further below, Defendants respectfully request that the Court: (1) dissolve or at least modify the TRO, to allow the Company to resume operations, even perhaps under the supervision of a Court-appointed monitor – if the Court has concerns beyond what are addressed herein; (2) eliminate the current freeze on assets, so that the Company can pay its payroll and other corporate expenses (including legal fees), and the Individual Defendants can pay their living expenses; and (3) allow the parties to take full discovery and prepare for further proceedings on a materially more complete record.

Factual Background

A. The Company Has Provided and Provides Customers with Lawful and Valuable Credit-Related Services.

The Company consists of providers of credit-related services that have operated nationwide since at least 2016.[11] [*See* Petkovic Decl., ¶ 7.] Credit repair services involve assisting consumers in identifying and disputing inaccurate, unverifiable, or outdated information on their credit reports with the three major credit reporting agencies. When a dispute is successful, the negative item is removed or corrected, which may improve the consumer's credit score.[12]

The Company's core service consists of preparing and mailing individualized dispute letters to the three major credit reporting agencies—Equifax, Experian, and TransUnion—on behalf of consumers who seek to correct inaccurate, unverifiable, or outdated information on

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[11] At the time the Court entered the TRO in this case, the only operational entities associated with the Company were Credit Sage, Credit Glory, Credit Clerk, and Standard Scores, LLC ("Standard Scores"). The remainder of the Corporate Defendants, as that term is defined in the Complaint, are non-operational and, with the exception of Joy Credit Software LLC, have never been operating entities.

[12] Third-party sources have recognized the benefits of credit repair organizations. *See, e.g.,* The Best Credit Repair Companies (2026 Guide) ("While hiring a credit repair company is an investment, the potential benefits of an improved credit score can outweigh the initial costs if it helps you qualify for better loan terms and lower interest rates.").

their credit reports. [*Id.* ¶ 8.] The Company retains these letters in a digital repository known as "DigitalOcean," which resides within the Company's Customer Relationship Management system ("CRM"). All of these dispute letters are currently under the custody and control of the Court-appointed Receiver. [*Id.*]

Upon enrollment, each customer is provided with access to a client portal where they can monitor disputes in real time, track credit score changes, and view the progress on the repair of their credit. [*Id.* ¶ 13.] Customers receive a welcome video explaining the entire credit repair process, followed by ongoing email sequences that keep them informed at every stage. [*Id.*] The portal includes an Action Center with steps customers should take on their own to further improve their credit health. [*Id.*] This portal and the welcome video are among the records in the Court-appointed Receiver's custody, possession and control.

The Company also provides credit-building tools and financial education resources, including a comprehensive financial-health guide. [*Id.* ¶ 14.] And it is currently developing a partnership with National Credit Direct ("NCD") to offer a credit-builder product that will provide customers with additional tools to build positive credit history. [*Id.*] These resources reflect the Company's commitment to providing long-term value—not merely processing transactions. [*Id.* ¶ 16.] In addition, through Standard Scores LLC, consumers gain access to credit monitoring services and a customer-facing portal where they can track disputes in real time, monitor credit score changes, and receive ongoing progress updates and financial education resources. [*Id.* ¶ 14.]

The Company's internal performance data—drawn from comparisons of customers' credit reports at enrollment against reports pulled during and after engagement—demonstrates that its services produce genuine, measurable results. [*Id.* ¶ 9.] Across all brands, the Company has mailed 124,788 dispute letters within the last year on behalf of 30,738 customers who had dispute rounds processed. [*Id.* ¶ 8.] Approximately 65–67% of customers who provided at least two credit reports experienced an increase in their credit score, with average improvements ranging from 15.8 to 18.2 points depending on the brand. [*Id.* ¶¶ 9–10; Petkovic Decl., Ex. A.] For customers enrolled six months or more, approximately 91% had at least one negative item

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

successfully removed from their credit reports, with average item removal counts ranging from 11.1 to 15.3 items per customer. [*Id.* ¶ 10.] Consumer satisfaction is independently verified through Trustpilot, a third-party platform over which the Company exercises no editorial control: across all brands, the Company has received more than 24,000 reviews, with five-star ratings ranging from 88% to 93% and four-star-or-above ratings exceeding 91% for every brand. [*Id.* ¶ 11.] A small percentage of customers request any form of refund and there is an established and rigorous process to evaluate requests and pay refunds promptly.[13] These satisfaction rates reflect a consumer base that overwhelmingly values the services it receives.

Although the FTC chose to publicly impugn Defendants as operating "a sprawling credit repair scam" and an entirely "illegal operation" since 2016,[14] well-recognized consumer advocates and financial publications have concluded the exact opposite. For example, Business Insider concluded that: "After being reviewed by Business Insider's personal finance team, Credit Glory earned a spot in our guide for the best credit repair companies thanks to customer satisfaction."[15]

B. The Company's Compliance Policies and Procedures Prove Its Commitment To Deliver Valuable Services In A Highly-Regulated Industry.

The Company maintains a comprehensive, documented compliance infrastructure governing every phase of client interaction. Its formalized policies include, among others:

[13] Again, the records substantiating these facts are in the custody and control of the Court-appointed Receiver.

[14] [FTC TRO Mem. at 10]; FTC Stops Sprawling Credit Repair Scheme that Scammed Consumers Out of Nearly $200 Million | Federal Trade Commission. The FTC filed all of its pleadings under seal but shortly thereafter moved to unseal the record (presumably so that it could proceed with its press release). [ECF No. 25.]

[15] Credit Glory Review 2025; *see also* Best Credit Repair Services of 2026: Top 10 Compared | Loan4Rush (Credit Glory ranked fifth and concluded overall that it "CORA compliant" and "Best for" "Inquiry-heavy reports."); 5 Best Credit Repair Companies of August 2026 ("Best For: Those willing to pay a higher upfront cost for a straightforward credit repair service with a money-back guarantee."); Credit Sage Review – Is it Safe and Legit? (July 2026) ("Overall Score: 4.4/5 [:] A high score indicates that Credit Sage is highly regarded by its customers, delivering excellent service with minimal complaints. This level of trust and recognition positions Credit Sage as a leader in its field. Customers can confidently rely on its services, as it has proven to be consistent and dependable.").

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Compliance Standards, establishing company-wide expectations for truthful communication, required disclosures, and prohibitions on misrepresentation, guarantees, and deceptive sales tactics; Compliance Violation Standards, categorizing violations by severity and prescribing documentation, escalation, and corrective action procedures; Credit Repair Representation Rules, expressly prohibiting employees from guaranteeing score increases, promising specific deletions, or using fear-based tactics; Client Communication Standards, requiring professional, accurate, and non-misleading statements during all interactions; Client Privacy & Data Security, restricting access to client information exclusively to authorized personnel for legitimate business purposes; and quality assurance ("QA") Standards, mandating objective, evidence-based quality assurance reviews across all departments. [*See attached* Second Declaration of Marko Petkovic ("Second Petkovic Decl."), Exs. H–V.] These policies applied to every employee interacting with clients—from credit consultants and account specialists to billing staff and management—and were supported by detailed Standard Operating Procedures governing compliance statement delivery, contract signing, verbal contract authorization, and compliance complaint intake and routing. [Second Petkovic Decl. ¶¶ 5–6.] All sales representatives were rigorously trained to adhere to said policies and procedures within weeks of joining the Company. [*See attached* Declaration of Jessica Shuey (Sales Director of Credit Sage LLC, Credit Glory LLC (Wyoming), Credit Clerk Software LLC) ¶¶ 7–8 ("Shuey Decl.").]

The Company did not merely publish aspirational standards; it has enforced them through a multi-layered accountability system. A dedicated QA team conducted routine compliance audits, reviewing recorded calls, CRM documentation, enrollment activity, and compliance statement delivery against the Company's written standards. [*Id.* ¶¶ 19, 26–27.] When consumer complaints alleged misrepresentation—such as claims that a representative "guaranteed results" or "said they worked for" a particular entity—customer service personnel were required to submit formal compliance complaint intake forms categorizing the allegation and routing it for independent QA review, without investigating the complaint themselves. [*Id.* ¶ 23.] Confirmed violations triggered a progressive corrective action process—documented

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4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

coaching, official warnings, one-day and one-week suspensions, and termination—with the Company reserving the right to bypass progressive discipline for severe violations including intentional misrepresentation, intentional compliance violations, and fraud. [*Id.* ¶¶ 28–30.] The Company's Sales Disciplinary Policy specifically identified role misrepresentation, compliance statement violations, unauthorized guarantees, false pressure tactics, and creation of unauthorized plans as offenses warranting escalated discipline up to and including immediate termination. [*Id.* ¶ 31, Ex. R.] Again, the records proving these facts are and have been available to the Court-appointed Receiver.

The Company also maintained formalized refund policies and procedures that ensured consumers had a documented avenue for obtaining relief. Under the Company's Refund Handling Standards, refund requests were routed through a structured review process in which authorized Account Managers could evaluate eligibility, approve refunds, or negotiate resolutions (such as discounts). [*See id.* ¶ 36, Ex. T at 1–2.] The Company's Refund Eligibility Standards established criteria for full or partial refunds, including agent errors resulting in unauthorized billing, system errors producing duplicate or incorrect charges, and failures to process cancellation requests before billing cycles. [*Id.* ¶ 36.] Consumers could cancel at any time, and cancellation requests followed a standardized procedure requiring live transfer to an Account Manager for retention or processing, with mandatory documentation of the reason for cancellation and submission of cancellation forms. [*Id.* ¶ 33.] In addition, the Company offered structured billing accommodations—including tiered discounts and billing date extensions of up to fourteen days—for consumers experiencing financial difficulty, all governed by written policies. [*Id.* ¶ 34.]

The FTC's assertion that the Corporate Defendants consistently failed to properly make refunds is contradicted by the fact that the financial statements reflect that over $6 million has been refunded to consumers, which is separate and apart from chargebacks that were processed and can be quantified in the data which have been provided to the Receiver.

C. The FTC's Limited Evidence Does Not Accurately Represent The Company's Services Or Its Robust Compliance Program.

The FTC asserts that it "has presented ample evidence showing that the FTC is likely to succeed on the merits of its claims." [FTC TRO Mem. at 54.] But that "ample evidence" (accumulated over more than five months) consists solely of: (1) a grand total of two *former* employees[16] (2) a *single* employee of a collection service[17] (3) summaries of only *twelve* of the tens of thousands of consumers (and who interacted with different companies)[18] and (4) *one* consumer declaration for a single company (despite naming 17 corporate defendants).[19]

D. The Record Reflects That The Company Provided Legitimate and Effective Credit-Related Services To Customers.

The premise of the FTC's TRO Motion is that the Company's services have not provided benefits to consumers. [*See, e.g.*, FTC TRO Mem. at 34; *id.* at 45.] The results contradict the FTC's rhetoric. The Company has provided several separate and distinct services to consumers: Education, Dispute Services, Customer Portal Functionality, Ongoing Customer Support and Credit Building Value. And those activities have resulted in concrete financial benefits to *tens of thousands* of consumers: (1) approximately 2/3 of all customers have had their credit scores increase; (2) 80% of customers have had at least one negative item removed from their credit reports (with the average number of removals being no lower than 6 in the first month alone); and (3) the greatest results are with those who have used the services for months.[20]

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[16] Declaration of Hobert Staton: Employed from 1/1/25–4/25 (PX01); Transcript of Call to FTC (Attachment KKK Declaration of Michael Goldstein– claimed incorrectly listed; resolved) (PX08); Attachment III to Declaration of Michael Goldstein) (PX08).

[17] Declaration of Amanda Killian (Collections Supervisor with Impact Receivables Management) (PX02).

[18] Declaration of Michael Goldstein (PX05); Declaration of Michelle White (PX07).

[19] Declaration of Shelley Pfifer (PX06).

[20] All of which may explain the actual and overwhelming positive reviews provided by consumers. Over twenty thousand reviews were provided for Credit Glory, Credit Sage, and the lowest 5-star rating was 88%. https://www.trustpilot.com/review/www.creditglory.com;

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

E. The FTC's Application Of The Law To Its Characterization of The Company's Services Is Wrong.

1. Google Ad Services and Other Marketing Practices.

The FTC characterizes Defendants' use of Google's ad services as improper, but it does not point to anything specific that is deceptive or otherwise unlawful. [*See, e.g.*, FTC TRO Mem. at 14, 22 ("[O]ne way in which Defendants lure consumers to contact them is by using Google ads and Internet websites.").] Nor could it. The Company's use of those ad services is entirely appropriate and consistent with Google's own extensive marketing of such services.[21]

The FTC also points to a handful of consumer complaints (compared to the tens of thousands of consumers who have been helped and have provided positive comments to independent, third-party review sites) to conclude that there was company-wide deceptive conduct in the following areas: "impersonation of debt collectors," "deceptive internet marketing," and "false promises of credit repair services." [FTC TRO Mem. at 14, 22, 25.] Even if the complaints identified by this small percentage of the Company's customer base were deemed to be legitimate,[22] any such conduct would be in violation of the Standard Operating and Compliance Policies of the Corporate Defendants. Indeed, the Company's sales representatives are trained, as a matter of Company policy, to *never* represent themselves as debt collectors to customers. [*See* Shuey Decl. ¶¶ 7, 11; *see also* Petkovic Decl. ¶ 22.] Until the freeze on assets, the Company employed hundreds of workers, and it is not surprising that some of them did not strictly comply with the restrictions set by the Corporate Defendants in the decade that the Company has been in business. But that conduct, even if it happened on occasion, does not justify shutting the entire business down and depriving consumers of the

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https://www.trustpilot.com/review/creditsage.com; https://www.trustpilot.com/review/creditclerk.com; https://www.trustpilot.com/review/creditjoy.com.

[21] *See, e.g.*, Targeting your ads - Google Ads Help; How to steer branded traffic - Google Ads Help; *see also, e.g.*, Understanding And Making Use Of The Mysterious Organic Traffic Boost With Paid Google Ads; Google Website Advertising: Complete Guide to Running Effective Online Ads (**"Google website advertising i**s one of the most effective ways to drive targeted traffic, generate leads, and increase brand visibility online.") (Emphasis added).

[22] *See, e.g.*, FTC TRO Mem. at 18–21.

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

valuable credit-related services that the Company does provide.

Likewise, the substantial (and documented) improvement in the credit scores of thousands of consumers negates the FTC's blanket accusation of "false promises" by the Company. Thousands of positive customer reviews exist today and have existed in the past about the Company, which the FTC could have confirmed through publicly available sources.[23] While these favorable customer reviews are consistent with the positive results for the vast majority of its customers, the Company makes no representations or guarantees about the effectiveness of its services or the outcomes to any of its customers. [*See* Shuey Decl. ¶ 7 (employees are trained on Company policy to not guarantee point increases).] This is expressly set forth in a 3-page contract, which the FTC does not address other than to dismiss as "buried" language. [FTC TRO Mem. at 33.][24]

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4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

2. Enrollment Practices.

a. Charges to Customers' Accounts.

In the TRO Motion, the FTC asserts that "many consumers report that the Company charges or attempted to charge for the upfront fee or one or both of the recurring fees without a signed contract or other agreement to purchase the credit repair services." [FTC TRO Mem. at 44.] In terms of those documented by the FTC, the "many consumers" are a grand total of *two*. [*Id.*]

Moreover, the Company's contract formation process was governed by written standards specifically designed to ensure valid consumer authorization. [*See* Second Petkovic Decl., ¶ 18, Ex. M.] Under the Company's Contract Authorization Standards, electronic contract execution was the standard method for obtaining client authorization; representatives

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[23] *See, e.g.*, https://www.trustpilot.com/review/www.creditglory.com; https://www.trustpilot.com/review/creditsage.com.

[24] *See, e.g.*, PX05-23 ("Customer acknowledges and agrees that Company makes no promises about any particular outcome, and does not make any representations about the effectiveness of its service."); PX05-34 ("Credit Joy makes no representations or warranties about the effectiveness of the Services, nor does it promise any outcome."); PX05-46 ("It is understood that CG makes no guarantees or promises of any particular outcome whatsoever."); PX05-70 ("Customer acknowledges and agrees that Company makes no promises about any particular outcome, and does not make any representations about the effectiveness of its service.").

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4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

were required to send the agreement electronically, allow the consumer time to review each page, and obtain a digital signature before enrollment could proceed. [*See id.* ¶ 19.] Verbal contracts were permitted only in defined circumstances—technical issues, device limitations, accessibility needs, or safety concerns—and required prior Sales Management approval, verbatim reading of every word of the agreement, page-by-page client acknowledgment, and management signature on the consumer's behalf upon successful completion. [*See id.* ¶ 20, Ex. N.] Following contract execution, representatives were required to deliver mandatory compliance statements in full, without alteration, and to obtain confirmation of the consumer's understanding before the interaction concluded. [*See id.* ¶ 21.]

b. Contracting Issues

The FTC also claims that the Company has failed to provide CROA-compliant contracts to consumers. [FTC TRO Mem. at 45–47.] Under the law, a CROA-compliant contract is one that satisfies the written contract requirements set forth in 15 U.S.C. § 1679c (mandatory disclosures) and Section 1679d (required terms and conditions). The implication of non-compliant contracts in all respects is belied by the only issues identified by the FTC. Specifically, the FTC's only complaints are that: (1) the descriptions of the services to be provided are "vague" and not detailed enough; and (2) a required disclosure of a right to cancel is not "in immediate proximity" to the signature line. [*Id.*] While a trier of fact might reasonably have different views about the validity of those narrow assertions when reviewing the actual contracts, the FTC complaints are individually and collectively something that should have resulted in a conversation, rather than a lawsuit shutting down the Company's entire business down and imposing an asset freeze.[25]

3. Advance Fees.

The FTC makes a sweeping claim that the Company's credit-related services are premised on collecting illegal advance fees from consumers for services that are not delivered. [FTC TRO Mem. at 63.] As a preliminary matter, the tens of thousands of documented

[25] The FTC also makes the perplexing claim that the contracts do not provide "estimates of the dates by which services will be performed and the length of time necessary." [FTC TRO Mem. at 46.] Since the contracts are monthly contracts, it is difficult to see the concern.

instances in which the Company improved the credit scores of customers absolutely negates the premise of the FTC's claim.

Moreover, the monthly subscription or service fee charged by the Company is *not* charged in advance but *after* the month of service has been concluded as set forth in the very contracts submitted by the FTC.[26] Unaddressed by the FTC is the fact that this is the typical billing practice as repeatedly noted by outside reviews of credit repair organizations. For example, in describing how much credit repair services cost, *Money* magazine states the following:

> Credit repair service costs can vary widely depending on the company and the specific services you need. Generally, you should expect to pay a setup fee ranging from around $70 to $200. This initial fee typically covers onboarding, pulling your credit reports and creating a personalized dispute strategy. After the setup process, monthly service fees usually range from around $70 to $150.[27]

Indeed, the monthly services offered by the "consumer-facing" Corporate Defendants are exactly as those offered by numerous other companies.[28]

Finally, the FTC dedicates substantial attention to the $1 charge for consumers. [FTC TRO Mem. at 28.] But that charge is for the services of Defendant Standard Scores, which does *not* represent itself or advertise itself as a credit repair organization (and is not a credit

[26] *See, e.g.*, PX05-23 ("Company charges Customer's provided payment information only after it has performed its services for Customer. Customer agrees to pay Company $99.00 after work is completed."); PX05 – 46 ("This is a month-to-month agreement. CG provides service on an incremental basis charging only after work is complete."); PX05 – 46 ("Credit Glory charges $278.00 after initial work is completed (the "Setup Fee"). The Setup Fee includes the initial analysis of your credit history, specific recommendations based on your current situation, preparation of your Service, and your first round of Letters. Then, Credit Glory charges a monthly fee of $99.00 charged after your Letters are sent and for access to your unique customer portal.").

[27] The Best Credit Repair Companies (2026 Guide) (Money) (Jul. 27, 2026); *see also, e.g.*, Best Credit Repair Companies – Forbes Advisor ("A subscription model is the most common credit repair pricing structure. Monthly fees may range from $60 to $200, depending on the package. Some companies also charge a setup fee, which can be the same price as a full-month subscription.").

[28] *See, e.g.*, Best Credit Repair Companies for August 2026 | Top Consumer Reviews; Best Credit Repair Companies of August 2026 (CNBC); 10 Best Credit Help Companies - August 2026 | ConsumersAdvocate.org.

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

repair service at all).[29] [*See* Petkovic Decl. ¶ 16.] Rather, for that $1, the consumer is provided the following by Standard Scores: (1) access to the customer's credit history from each of the three major credit bureaus; (2) access to a customer portal that allows the customer to view his/her credit history in an easy-to-understand way; (3) credit report monitoring that identifies changes to the customer's credit profile over time; and (4) ongoing identification of potentially inaccurate or negative items that appear on newly updated credit reports.[30]

Indeed, in 2011, in response to an inquiry from then Chairman of the House of Representatives Committee on Financial Services, the FTC stated that this precise service (the only service performed by Defendant Standard Scores) was exactly the type of discrete service that a company could bill for after the service was complete: "Such discrete steps could include whatever component tasks the credit repair organization may undertake to achieve the results represented to the consumer, including reviewing the consumer's credit report, sending a dispute letter, or making a phone call."[31] This position also was consistent with previous Congressional Testimony where the FTC stated:

> As a matter of policy, the Commission sees little basis on which to subject the sale of legitimate credit monitoring and similar educational products and services to CROA's specific prohibitions and requirements, which were intended to address deceptive and abusive credit repair business practices. Credit monitoring services, if promoted and sold in a truthful manner, can help consumers maintain an accurate credit file and provide them with valuable information for combating identity theft.[32]

Also, the FTC has repeatedly identified the credit repair services that make promises or offer guarantees about unattainable results, even in the face of accurate and up-to-date credit

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[29] This is plainly stated on the Standard Scores website. Standard Scores ("Our 24/7 credit monitoring and alert system give you the peace of mind you deserve").

[30] *See id.* Presumably, the FTC is not claiming that the $1 charge is a substantial portion of the $172 million or warrants shutting down the Corporate Defendants' entire business operations.

[31] October 12, 2011 Letter from the then FTC Chairman Jon Leibowitz to the then Chairman of the House of Representatives Committee on Financial Services at 11 n.44. [*See attached* Declaration of Kathryn E. Bettini ("Counsel Decl.") ¶ 4, Ex. 1.]

[32] Prepared Statement of The Federal Trade Commission Before the Senate Committee on Commerce, Science and Transportation United States Senate Washington, D.C. July 31, 2007, at 19–20, available at p034412telemarket.pdf

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

reports, as the concern that led to the advance payment prohibition provision.[33] As set forth in detail above, the Company does not offer any such promises and guarantees to its customers, and doing so would be contrary to its internal practices and procedures. [*See* Shuey Decl. ¶ 7.]

F. The TRO's Asset Freeze Is Overbroad and Requires Modification In Several Respects.

Two weeks ago, the FTC brought suit without notice and obtained a freeze of *all* assets of (1) two individuals who received less than $300,000 for providing legitimate services; (2) a third individual who was, in actuality, an independent contractor also providing legitimate services; (3) the current Chief Executive Officer of Credit Glory and Credit Sage who began his role only in August 2024; and (4) one of the owners of the Corporate Defendants who has been in operations for at least a decade and has, not surprisingly, received profits over the years.

1. Mr. Curtis.

The FTC's inclusion of Mr. Curtis as a Defendant is inexplicable. According to the FTC: Mr. Curtis "has formulated, directed, controlled, had the authority to control, or participated in the acts and practices described in this Complaint." [Complaint ¶ 27.] This allegation defies common sense because, as even the FTC admits, the financial benefit to Mr. Curtis in connection with this alleged $200 million dollar "scheme" was less than two hundred thousand dollars. The fact is that Mr. Curtis was only an independent contractor for two of the corporate entities (providing outsourced CFO operations), and he knows nothing of their operations. [*See attached* Declaration of Joshua Curtis (Founder, EQB Strategy LLC) ("Curtis

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[33] Oct. 12, 2011 Letter at 5 ("[T]he Commission is concerned about companies that engage in deceptive and other illegal means to target consumers who have poor credit histories with false promises to remove accurate adverse information from their reports or fabricate new credit identities."); *id.* at 6 ("The Commission's enforcement program has focused on fraudulent CROs that exact substantial sums from vulnerable consumers by promising to achieve results that are not, and typically cannot legally be, achieved.") [Counsel Decl. ¶ 1, Ex. 1]; Jan. 8, 2008 Interpretation Letter at 5 ("[C]redit repair companies attract customers by representing that they can improve significantly consumers' creditworthiness by removing negative information from consumers' credit reports, regardless of whether that information is accurate and not obsolete."); *id.* at 6 ("In our experience, consumers are not interested in a series of individual and specific services, and the marketing of credit repair services does not focus on these intermediary efforts.") [Counsel Decl. ¶ 5, Ex. 2.]

Decl.") ¶¶ 17–24, 28–34.] What he does know is that as a father of four young children, the FTC's asset freeze has directly and negatively impacted his life (including, without irony, lowering his credit score). *Id.* ¶¶ 35–49.

2. Mr. Naylor.

Mr. Naylor served as Senior Sales Manager for Credit Glory since December 2021 and worked directly with Marko Petkovic to provide compliance oversight for sales operations. When sales representatives deviated from the approved script or engaged in non-compliant conduct, Mr. Naylor addressed those issues directly, including through disciplinary action. [*See attached* Declaration of David Naylor ("Naylor Decl.") ¶¶ 3–5.] Contrary to the FTC's allegations, his primary responsibilities were compliance-focused.

3. Mr. Emery.

The FTC's only allegation against Mr. Emery (based on an interrogatory answer) is that he "had full access to [Defendants'] Google Ads strategies and processes." [FTC Mem. at 6.] But Mr. Emery's role in marketing through Google Ads is entirely appropriate.

4. Mr. Petkovic.

Mr. Petkovic became CEO of Credit Sage in July 2024 and serves in a leadership capacity over Credit Glory and Credit Clerk. In that role, he has overseen the implementation of comprehensive written compliance policies, a centralized script repository, multi-layered QA review systems, and a progressive disciplinary framework for non-compliance. He does not have an ownership stake in any corporate entity nor access to the Company's bank or merchant accounts. [Petkovic Decl. ¶¶ 3, 5, 25–30.]

The result has been delivering outstanding and successful customer service with integrity. Mr. Petkovic has not "taken over $1.7 million in funds." [FTC TRO Mem. at 63.] He has earned them. Nor does the fact that he receives funds in Serbia of any significance. *Id.* He lives there.

5. Mr. Brola.

Mr. Brola holds the majority ownership interest in the corporate entities and served as an authorized signatory on bank and merchant accounts. The FTC has not identified any

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

evidence that Mr. Brola directed or participated in any specific deceptive communication with consumers. No declaration or testimony from any consumer identifies Mr. Brola as having been personally involved in any misrepresentation. [See Compl. ¶ 24.] While the FTC notes the amount of income Mr. Brola has received [FTC TRO Mem. at 63], there is nothing improper about being a successful business owner.

Standard of Review

A. Injunctive Relief.

"A preliminary injunction is an ***extraordinary*** remedy 'that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.'" *Palmer v. Wexford Med.*, 2013 WL 3930559, at *1 (D. Ariz. July 22, 2013) (emphasis added) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). "The movant has the burden of proof on each element of the test." *Id.*

The Court has discretion in determining whether to grant or to deny a TRO or preliminary injunction. *WildWest Inst. v. Bull*, 472 F.3d 587, 589–90 (9th Cir. 2006). But that discretion is not unlimited.

Injunctive relief must be tailored to remedy the specific harms shown by the plaintiff. *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991). The United States Supreme Court has long held that "the scope of injunctive relief is dictated by the extent of the violation established." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Further, "[a] preliminary injunction can only be employed for the 'limited purpose' of maintaining the status quo." *Zepeda v. United States I.N.S.*, 753 F.2d 719, 728 n.1 (9th Cir. 1983) (citation omitted). "Therefore, an injunction must be narrowly tailored . . . to remedy only the specific harms shown by the plaintiffs, rather than 'to enjoin all possible breaches of the law.'" *Price v. City of Stockton,* 390 F.3d 1105, 1117 (9th Cir. 2004) (quoting *Zepeda,* 753 F.2d at 728 n. 1). In short: "It is an abuse of discretion to issue an overly broad injunction." *Los Angeles Press Club v. Noem*, 171 F.4th 1179, 1190 (9th Cir. 2026) (citing *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1188 (9th Cir. 2024)).

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

B. FTC's Burden.

1. Preliminary Injunction.

The FTC concedes that it is seeking injunctive relief pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). [FTC TRO Mem. at 50.] Although the FTC cites several general principles concerning its requested relief, absent from its submission is any discussion of *its* burden in the first instance, which requires the FTC to "demonstrate a likelihood of prevailing on its claim for a permanent injunction barring Defendants from committing *future* violations of the FTC Act.," which "necessarily requires the FTC to demonstrate that the violations referenced in its Complaint are likely to recur." *FTC v. Merch. Servs. Direct, LLC*, 2013 WL 4094394, at *3 (E.D. Wash. Aug. 13, 2013) (citations omitted); *see also FTC v. Qualcomm Inc.*, 2018 WL 6597273, at *3 (N.D. Cal. Dec. 13, 2018) ("The legal standard for an injunction requires the FTC to show that 'the wrongs are ongoing or likely to recur.'") (quoting *FTC v. Evans Prods. Co.*, 775 F.2d 1084, 1087 (9th Cir. 1985)).[34]

In determining whether there has been a "proper showing" of entitlement to injunctive relief, the court must independently assess whether violations are imminent. *See, e.g.*, *Owner-Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co., (AZ)*, 2003 WL 25541714, at *1 n.1 (D. Ariz. Mar. 25, 2003), *aff'd*, 367 F.3d 1108 (9th Cir. 2004) (explaining that the Court's proper role is "to determine whether a violation of the statute has or is about to occur[,]" and that "an injunction should issue where the defendant is engaged in, or is about to engage in, any activity which the statute prohibits"); *see also FTC v. Elec. Payment Sols. of Am. Inc.*, 2019 WL 4287298, at *10 (D. Ariz. Aug. 28, 2019) (McNamee, J.) ("[C]ourts consider the totality of the circumstances surrounding the defendant's conduct" in determining whether violations are likely to recur) (citations omitted).

[34] *See also FTC v. Elec. Payment Sols. of Am. Inc.*, 2021 WL 3661138, at *16 (D. Ariz. Aug. 11, 2021) (McNamee, J.) ("Section 13(b) 'cannot be used to remedy past violations' of the FTC Act"); *United States v. ACB Sales & Serv., Inc.*, 683 F. Supp. 734, 741 (D. Ariz. 1987) ("Past violations do not fall within the purview of Section 53(b).") (citing *FTC v. Evans Prods. Co.,* 775 F.2d at 1087).

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

The Ninth Circuit recently has stated that the FTC has a "lighter burden" in seeking injunctive relief under Section 13(b) than that of private parties. *FTC v. Microsoft Corp.*, 136 F.4th 954, 964 (9th Cir. 2025). Nevertheless, in determining whether the government is entitled to injunctive relief under § 13(b), the FTC must still carry its burden of showing that: (1) "the likelihood that the Commission will ultimately succeed on the merits"; and (2) the "balance [of] the equities" are in its favor. *Id.* (citation omitted).[35]

2. Asset Freeze.

An asset freeze is an extraordinary provisional remedy whose purpose is to preserve the status quo and the court's ability to render a meaningful judgment following a trial. *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir. 1982). It is not a punitive measure. *See id.* Where a freeze is broader than necessary to preserve assets for potential restitution, it should be modified. *FTC v. Willms*, 2011 WL 4103542, at *11 (W.D. Wash. Sept. 13, 2011) (court must consider whether freezing a defendant's assets "might thwart the goal of compensating those owed money if the freeze were to cause such disruption of defendants' business affairs that they would be financially destroyed") (internal quotations omitted).

Accordingly, the FTC must show "a likelihood of dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not granted." *SEC v. Janus Spectrum, LLC*, 2016 WL 614002, at *4 (D. Ariz. Feb. 16, 2016) (citing *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009). "Before ordering a defendant's assets frozen, a court must carefully balance the potential benefit to injured consumers against the potential for serious disruption of the defendant's business[.]" *Merch. Servs. Direct*, 2013 WL 4094394, at *2.

3. Appointment of Receiver.

While the Court certainly has discretion to appoint a receiver, "a receivership 'is only a means to reach some legitimate end sought through the exercise of the power of a court of equity.'" *Joint Equity Comm. of Invs. of Real Est. Partners, Inc. & Its Related Entities v.*

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[35] The FTC sets forth the traditional four factor test for private litigations (while also noting the reduced burden provided to the FTC). [FTC TRO Mem. at 53 n. 19.] Based on the Ninth Circuit's *Microsoft* decision (as well as earlier decisions), Defendants will address these two factors.

Davenport, 2009 WL 8688751, at *1 (C.D. Cal. May 14, 2009) (citing *Gordon v. Washington,* 295 U.S. 30, 37 (1935)). It has also been recognized that it "is an extraordinary equitable remedy that is only justified in extreme situations." *Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 316 (8th Cir. 1993); *see also Donovan v. Bierwirth,* 680 F.2d 263, 276 (2d Cir.), *cert. denied*, 459 U.S. 1069 (1982) ("Still the appointment of a receiver is a harsh remedy, not to be imposed without a showing of necessity.").[36]

Argument

I. THE FTC HAS NOT ESTABLISHED A "LIKELIHOOD OF SUCCESS" ON ITS CLAIMS

Although the FTC filed a seventeen-count complaint, its requests for injunctive relief and $172 million in consumer redress requested relief are based primarily on claims that Defendants required illegal advance payments in violation of its own Telemarketing Sales Rule and engaged in deceptive trade practices. Neither claim has a likelihood of success on the merits, and the FTC has no support for an award of such extraordinary equitable relief.

A. The FTC Has Exceeded Its Regulatory Authority In Seeking To Impose A Six-Month Waiting Period For Payment On Credit Repair Services.

The FTC relies on its own rulemaking to support its claim that Defendants collected prohibited advance fees, one of "three main categories" of alleged wrongful conduct.[37] Specifically, it cites the following provision of the Telemarketing Sales Rule ("TSR"), an administrative regulation purportedly issued pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101–08:

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[36] *See also Leone Indus. v. Assoc. Packaging, Inc.,* 795 F. Supp. 117, 120 (D.N.J. 1992) ("Such an appointment, however, should not be made lightly; it is appropriate only in the face of compelling circumstances and in the absence of a less drastic remedy."); *Bracco v. Lackner*, 462 F. Supp. 436, 456 (N.D. Cal. 1978) ("While the appointment of a receiver is within the equity powers of the federal court, it is an extraordinary step warranted only by the most compelling circumstances.") (footnote and citation omitted); *id*. ("Receivership is a remedy of last resort; a receiver should not be appointed if a less drastic remedy exists.").

[37] *See* Complaint ¶¶ 69–75, Count X; *see also* Memorandum in Support of Motion for Temporary Restraining Order at 10.

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

> (a) Abusive conduct generally. It is an abusive telemarketing act or practice and a violation of this part for any seller or telemarketer to engage in the following conduct:
>
> . . . .
>
> (2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:
>
> (i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; *and*
>
> (ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, *such report having been issued more than six months after the results were achieved*.

16 C.F.R. § 310.4(a)(2) (emphasis added).

Under the FTC's interpretations of its own regulatory authority, a credit repair organization (or CRO) – and *only* a CRO – cannot request payment for *any* of its services until it provides a customer with a credit report six months after services were provided to the customer. In effect, the FTC requires the Company (and any other CRO) to guarantee success to a consumer even though in the intervening six-month period a consumer's credit score may have worsened for completely unrelated reasons.[38] Exactly how a CRO could remain in business with such an onerous requirement is left unexplained.[39] Nevertheless, recent Supreme Court decisions addressing the limited authority of administrative agencies, including the FTC, make clear that the FTC has never had the authority to impose such a six-month waiting period on any CRO.

In *Bowen v. Georgetown University Hospital*, the Supreme Court observed, "[i]t is axiomatic that an administrative agency's power to promulgate legislative regulations is

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[38] Under this theory, the FTC presumably also would not allow a CRO to even request credit or debit card information to ensure payment until the expiration of this period because seeking such information would either be a "request for payment" or a violation of the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. § 6821. *See* Complaint, Count XIV.

[39] The FTC also has apparently decided (at least in this case) that its six-month waiting period applies to every activity of Defendants despite the fact that: (1) independent third parties discussing the activities of CROs, however, have readily understood the separate and distinct services provided by credit repair organizations; (2) the monthly payment plans for discrete services to consumers are disclosed and found on the Internet yet somehow every single dollar of the Defendants' charges represents "stolen" fund; and (3) the FTC itself has acknowledged that education and credit monitoring are proper activities. *See* discussion *supra*.

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

limited to the authority delegated by Congress." 488 U.S. 204, 208 (1988); *see also W. Va. v. EPA*, 597 U.S. 697, 721 (2022) ("Where the statute at issue is one that confers authority upon an administrative agency, that inquiry must be 'shaped, at least in some measure, by the nature of the question presented'—whether Congress in fact meant to confer the power the agency has asserted.") (citation omitted). Simply stated: "The question to be answered is 'not what the [Commission] thinks it should do but what Congress has said it can do.'" *Nat'l Petrol. Refiners Ass'n v. FTC*, 482 F.2d 672, 674 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974) (citing *Civ. Aeronautics Bd. v. Delta Air Lines, Inc.*, 367 U.S. 316, 322 (1961)).

Moreover, in making the determination of what Congress has authorized, the FTC's view as to the extent of its delegated powers is not entitled to any deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402–03 (2024) ("[D]elegating ultimate interpretive authority to agencies is simply not necessary to ensure that the resolution of statutory ambiguities is well informed by subject matter expertise."). Further, "the agency's reading must fall 'within the bounds of reasonable interpretation.' And let there be no mistake: That is a requirement an agency can fail." *Kisor v. Wilkie*, 588 U.S. 558, 575–76 (2019), *cert. denied*, 142 S. Ct. 756 (2022) (citation omitted). The FTC's position in unilaterally creating a six-month waiting period advance payment for credit repair organizations (and then expanding it to every single service performed by a credit repair organization) violates these principles.

Defendants do not dispute that, in the Telemarketing Act, Congress directed the FTC to prescribe "Telemarketing Rules." 15 U.S.C.A. § 6102. But that delegation was not unlimited. Importantly, the Telemarketing Act provided the FTC with authority regarding pricing *only* as to what *disclosures* the FTC may "deem appropriate":

> (3) The Commission shall include in such rules respecting other abusive telemarketing acts or practices—
>
> . . . .
>
> (C) a requirement that any person engaged in telemarketing for the sale of goods or services shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and make such other disclosures as the Commission deems appropriate, including the nature and price of the goods and services

15 U.S.C. § 6102(a)(3)(C).

Nothing in the statutory text of the Telemarketing Act provided the FTC with authority to issue a rule as to the *time* when a request for payment could be made.[40] The FTC was limited to determining what *disclosures* regarding price might be appropriate. That limitation on the FTC's authority is confirmed by the Legislative History for the Telemarketing Act. *See* S. REP. NO. 103-80, at 9 (1993) ("the FTC is directed to mandate any other disclosures considered appropriate, including a disclosure regarding the nature and the price of the goods and/or services being offered for purchase. The Committee intends that the FTC should use its discretion in determining at what point during a call these additional disclosures must occur.").[41]

The only decision that Defendants have located, which addressed the extent of the delegation provided by Congress in the Telemarketing Act under Section 6102(3), is the decision in *United States v. Stratics Networks Inc.*, 721 F. Supp. 3d 1080 (S.D. Cal. 2024). But that decision supports Defendants' argument here. The Court held that the delegation of rulemaking to the FTC under the Telemarketing Act by Congress was not an unconstitutional delegation *but* reached this result because "Congress provided guidance in the form of particular rules to be made such as for fraudulent charitable solicitations, restrictions on

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[40] Notably, when it issued its Telemarketing Sales Rule ("TSR") over three decades ago, the FTC claimed that its purpose was to prevent consumers from paying for services that were ***never*** provided by the credit repair company. Telemarketing Sales Rule, 60 FR 43842-01, at *43853 (Aug. 23, 1995) ("Section 310.4(a)(2) of the Final Rule is intended to limit the telemarketing of deceptive credit repair services. Typically, these services promise consumers that, for a fee paid in advance, they will improve the consumer's credit record by removing negative information from that record. Once the fee is paid, however, the seller fails to deliver the promised services or achieve the promised results, and the consumer's credit record does not improve."). As evidenced by this action, the FTC has proceeded far from its initial focus.

[41] When it issued its Notice of proposed rulemaking for the TSR, the FTC itself questioned whether this provision was even appropriate to define as an abusive practice. Telemarketing Sales Rule, 60 FR 8313-01, at *8324 (Feb. 14, 1995) (Section G. Questions on the Proposed Rule) (Question 5: "a. Is it appropriate to include this practice as an abusive act or practice? b. Is the description of the prohibited activity clear, meaningful, and appropriate? c. Are there other approaches to prohibiting this type of activity? d. What will be the economic impact, and the costs and benefits, of this provision? e. Are there any legitimate services that could not be provided, or would be more costly to provide, if this prohibition were promulgated? If such services exist, how could the rule be crafted to prohibit deceptive credit repair services while still permitting these legitimate activities?"). The FTC obviously overcame its initial hesitation.

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

unsolicited phone calls, restrictions on the hours calls are made, and *disclosure requirements*. 15 U.S.C. § 6102." *Id.* at 1110 (emphasis added).[42]

Well-settled principles of statutory construction further establish that the FTC cannot enforce its six-month waiting period. While the FTC might prefer to enforce its own standards of when payment for credit repair services can be made, the extent of the temporal payment limitation was enacted by Congress with the passage of the CROA. That limitation is *only* that a CRO could not receive payment until after the service was provided by the CRO. Under the heading "Payment in advance", the statute provides that:

> No credit repair organization may charge or receive any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed.

15 U.S.C. § 1679b(b).

Furthermore, it is well-settled that "[t]he meaning of one statute may be affected by other Acts." *Hall v. United States Dep't of Agric.*, 984 F.3d 825, 838 (9th Cir. 2020) (citing *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). *After* the passage of the general Telemarketing Act, Congress enacted a more specific statute directed solely at credit repair organizations, the CROA, which specifically defines the scope of the prohibition on advance payments, and it is not the limitation the FTC seeks to enforce here. Moreover, under the "general-specific" rule of statutory construction, the advance payment provision of the CROA controls. *Isaacson v. Mayes*, 2023 WL 2403519, at *2 (D. Ariz. Mar. 8, 2023) ("Canons of statutory construction provide when two statutes conflict, specific or recent statutes can govern over more general or older statutes.") (citing *United States v. Hernandez-Garcia*, 44 F.4th 1157, 1164 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 508 (2022)).

In sum, the FTC is limited to enforcing the advance payment of the CROA. And, despite

[42] In *Consumer Financial Protection Bureau v. Commonwealth Equity Group, LLC*, 554 F. Supp. 3d 202 (D. Mass. 2021), the Court addressed a different argument than the one Defendants make here. *Id*. at 209 ("Defendants have not demonstrated that Congress intended the FTC to *exclusively* address unsolicited telemarketing calls that would cause the TSR to exceed the Commission's authorized scope of rulemaking.").

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

the isolated instances identified by the FTC, the relevant service contracts all preclude advance payment. As such, the FTC is *not* likely to prevail on its advance payment claims.[43]

B. The FTC's Application of the Telemarketing Sales Rule To Defendants In This Case Also Is Arbitrary and Capricious.

As recently observed by another Court: "The Supreme Court has further clarified that the APA's arbitrary-and-capricious standard is no pushover and that courts should not hesitate to flunk agencies that fail to offer reasoned explanations for their actions or ignore critical issues during rulemaking." *Am. Ass'n of Cosmetology Schs. v. United States Dep't of Educ.*, 2025 WL 4219345, at *7 (N.D. Tex. Oct. 2, 2025) (citing *Ohio v. EPA*, 603 U.S. 279, 292–98 (2024)). Here, the TSR also is arbitrary and capricious because the FTC has promulgated markedly different advance payment rules for conduct related to credit transactions, namely:

> (1) For services provided in obtaining a loan or line of credit, an advance payment is prohibited but *only* where "the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person." 16 C.F.R. § 310.4(a)(4).
>
> (2) But for credit repair organizations, advance payment is prohibited for six months *and* (also unlike assistance in obtaining credit), the credit repair organization has to provide to the consumer "documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved." 16 C.F.R. § 310.4(a)(2)(i)-(ii).

A recent decision held that an FTC rule requiring certain additional documentation was arbitrary and capricious and exceeded the FTC's authority. *Chamber of Com. of United States*

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[43] There are decisions which address whether the CROA supersedes, conflicts with or trumps the TSR. But those decisions do *not* address whether the FTC exceeded its authority. In those decisions, the Court focused its analysis on whether a credit repair organization *could* be subject to both, not whether they *can* be subject to both for the reasons set forth above and even on that issue it was noted there was a "dearth" of authority. *See CFPB v. Prime Mktg. Holdings, LLC*, 2016 WL 10516097, at *9 (C.D. Cal. Nov. 15, 2016) (noting that: "There is a dearth of case law addressing the interaction between the CROA and the TSR" but holding that "the two provisions may be complied with concurrently; they do not conflict."); *see also CFPB v. Commonwealth Equity Grp., LLC*, 554 F. Supp. 3d at 207 (holding that: "The TSR and the CROA thus do not conflict" because it not impossible to comply with both the statute and the regulation); *CFPB v. Daniel A. Rosen, Inc.*, 2022 WL 1514439, at *3–4 (C.D. Cal. Apr. 5, 2022) ("[T]he CROA does not conflict with, or supersede, the TSR."); *State v. Lexington L. Firms*, 1997 WL 367409, at *6 (M.D. Tenn. May 14, 1997) ("[A]lthough the Credit Repair Organizations Act undoubtedly governs Defendant's business, there is no language in that statute indicating that Defendant's telemarketing activities may not simultaneously be regulated by the Telemarketing Act.").

of Am. v. FTC, 820 F. Supp. 3d 473, 490, 491 (E.D. Tex. 2026) (FTC Final Rule regulation requiring additional documentation for mergers "exceeds the FTC's statutory authority" *and* was arbitrary and capricious). That holding is applicable here because only a credit repair organization is required to provide documentation of a successful result.

The more onerous treatment of credit repair organizations also is arbitrary and capricious, because, in the Final TSR, the FTC never explained, as required, the reason for this differential treatment despite the fact that the advance payment restrictions were designed to address *the same perceived problem*.[44] *See, e.g. Univ. of Tex. M.D. Anderson Cancer Ctr. v. United States Dep't of Health & Hum. Servs.*, 985 F.3d 472, 479 (5th Cir. 2021) ("It is a bedrock principle of administrative law that an agency must 'treat like cases alike.'"); *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005) ("Where an agency applies different standards to similarly situated entities and fails to support this disparate treatment with a reasoned explanation and substantial evidence in the record, its action is arbitrary and capricious and cannot be upheld."); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 831 F. Supp. 3d 1012, 1031 (D. Or. 2026) ("'Unexplained inconsistency'" between agency actions is 'a reason for holding an interpretation to be an arbitrary and capricious change.'") (citing *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005)).[45]

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[44] Telemarketing Sales Rule, 60 FR 43842-01, at 43853 ("Section 310.4(a)(2) of the Final Rule is intended to limit the telemarketing of deceptive credit repair services. Typically, these services promise consumers that, for a fee paid in advance, they will improve the consumer's credit record by removing negative information from that record. Once the fee is paid, however, the seller fails to deliver the promised services or achieve the promised results, and the consumer's credit record does not improve."); *id.* at *43854 (Section 310.4(a)(4) "is intended to prevent 'advance fee loan' scams, in which a telemarketer promises to obtain a loan for a consumer, regardless of that consumer's credit history or credit record, in exchange for a fee, paid in advance. As with recovery room scams, after the consumer pays the fee, the promised services typically are not provided.").

[45] The FTC's bias toward credit repair organizations as a whole is stated on its website Fixing Your Credit FAQs | Consumer Advice ("**Is using a credit repair company a good idea?** Anything a credit repair company can do legally, you'll be able to do for yourself for little or no cost. The best way to improve your credit is to show over time that you pay your debts on time.) (emphasis added).

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Equally problematic, the FTC's TSR is supposed to apply only "for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating." 16 C.F.R. § 310.4(a)(2). The FTC, however, improperly has sought to apply its TSR rule to every single good or service provided by the Corporate Defendants such as credit monitoring, education, customer portal functionality, and ongoing customer support and credit building value.

To the extent the FTC is taking this expansive position against these Defendants, it is directly at odds with the agency's own prior position two decades ago. In particular, when responding to a congressman's inquiry, the FTC stated, in relevant part, the following:

> According to your letter, some parties have interpreted CROA to cover companies that offer credit monitoring and other educational products based on consumers' credit files. We are aware that private lawsuits have been filed under CROA to challenge practices relating to the sale of credit monitoring products.
>
> As a matter of policy, the Commission sees little basis on which to subject the sale of credit monitoring and similar educational products and services to CROA's specific prohibitions and requirements, which were intended to rein in fraudulent credit repair. In contrast, credit monitoring services—if promoted and sold in a truthful manner—can help consumers maintain an accurate credit file and provide them with valuable information for combating identity theft.

[July 1, 2005 Letter from FTC to Congressional Representative Edward R. Royce (Counsel Decl., ¶ 6, Ex. 3).]

The FTC subsequently acknowledged the benefits of credit repair organizations in an October 12, 2011 Letter from the then FTC Chairman Jon Leibowitz to the then-Chairman of the House of Representatives Committee on Financial Services. [*Id.* ¶ 4, Ex. 1.] As stated by the FTC: (1) "To the extent that CROs assist in correcting real errors in the credit reporting system, these efforts may well benefit consumers" and (2) "CROs that offer legitimate credit repair services may provide assistance to some consumers in exercising their rights under the FCRA [Fair Credit Reporting Act]." [*Id.*, Ex. 1 at 1, 3–4.] The FTC also acknowledged that it needed to be "judicious in its actions to enforce" CROA because, if improperly applied, the statute's broad definition of "credit repair organization" "may bring within its coverage legitimate businesses that help consumers utilize the tools available to remove inaccurate information from their credit reports." [*Id.* at 7.]

The Court can and should credit these FTC letters. *See Traveler v. Glenn Jones Ford Lincoln Mercury 1987, Inc.*, 2006 WL 173687, at *4 (D. Ariz. Jan. 24, 2006) (stating that court "should give some weight" to FTC letters) (citations omitted). In a later report to Congress, the FTC also was not definitive as to whether educational services were even subject to the CROA:

> Credit education services, some of which are already available to consumers, can benefit consumers if their providers market, offer, and provide them in a truthful, nonmisleading manner. Because CROA may apply to these services, there is some risk that it is causing or may cause a reduction in these services. Some companies may avoid offering credit education services to avoid being subject to CROA. Other companies may decide to comply with CROA's requirements, but requirements such as its three-day cooling-off period may reduce the number of consumers participating in the credit education component of their programs.[46]

As a result, the FTC has advanced a position in this case that is both inconsistent with the text of its own rule and has extended the scope of its advance payment prohibition beyond recognition, which it lacks the authority to do under firmly established law regarding administrative agencies. *See, e.g.*, *Vitarelli v. Seaton*, 359 U.S. 535, 546–47 (1959) (Frankfurter, J., concurring in part, dissenting in part) ("An executive agency must be rigorously held to the standards by which it professes its action to be judged. . . . This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."); *Yavapai-Prescott Indian Tribe v. Watt*, 707 F.2d 1072, 1076 n.5 (9th Cir. 1983), *cert. denied*, 464 U.S. 1017 (1983) ("[A]n agency normally is bound by its own regulations.") (citing *Vitarelli*, 359 U.S. at 539).[47]

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[46] Federal Trade Commission Report on Credit Education and the Credit Repair Organizations Act, at 8, available at p054815_ftc_report_to_congress_re_credit_education_and_the_croa.pdf.

[47] In the few decisions Defendants have been able to locate regarding application of the TSR, it was undisputed that the defendant's actions fell within the text of the TSR and the Courts were addressing whether all of the provisions of the TSR needed to be satisfied before payment can be requested. Neither decision, however, addressed the FTC's authority to issue such an expansive rule or how expansive it is currently applying the TSR. *See Bureau of Consumer Fin. Prot. v. Progrexion Mktg., Inc.*, 2023 WL 2548008, at *5 (D. Utah Mar. 10, 2023) ("Accordingly, the advance-fee provision of the TSR prohibits requesting or receiving payment until the prerequisites listed in romanettes (i) and (ii) are met."); *id.* at *3 ("[B]ased on the undisputed facts and Defendants' own statements, they offer services represented to remove derogatory information from, or improve, a person's credit history, credit record, or

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Moreover, that expansive interpretation is also at odds with the CROA because the CROA's controlling advance payment prohibition *does* apply to *every* service provided by a credit repair organization. 15 U.S.C. § 1679b(b) ("No credit repair organization may charge or receive any money or other valuable consideration for the performance of *any service* which the credit repair organization has agreed to perform for any consumer before such service is fully performed.") (emphasis added). The FTC cannot extend its six-month prohibition to *all* credit repair services when Congress has determined that there is only a one-month restriction. *Farrell v. United States*, 313 F.3d 1214, 1219 (9th Cir. 2002) ("It is well-settled that when a regulation conflicts with a subsequently enacted statute, the statute controls and voids the regulation.").

Finally, in *DuCharme v. Heath*, 2010 WL 5211502, at *5 (N.D. Cal. Dec. 16, 2010), the Court cogently set forth the reasons that a position (such as the FTC advances here) that services cannot be segmented under the advance payment provision of the CROA (let alone the six-month waiting period of the TSR) is unworkable, illogical and defies common sense:

> In the Court's view, CROA's ban on advance payments for work that has not been fully performed cannot mean that credit bureaus are not to be paid until *all* work on a client's behalf is completed. This is because (1) the Act speaks of "any service" and "such service," not of "all services," *see* 15 U.S.C. § 1679b(b), and (2) determining when all work on a client's behalf has been "fully performed" is untenable. Are all services fully performed only if a disputed item is successfully removed from a client's credit report? [] What if an organization challenges an item only to learn that the item was legitimate and should remain on the client's credit report? Are all services fully performed when responses from credit bureaus have been received? What if correspondence continues at length? What if a creditor or credit bureau does not respond? Worse yet, what if the credit repair organization determines that an issue has been resolved, bills a client for that work, and subsequently receives a communication from a creditor as to that issue? If it performs any work in response to that communication, using Plaintiff's definition, the earlier work must have only been partially performed, and the bill was therefore a violation of section 1679b(b). Instead, if "service" is defined as a typical legal task, such as drafting a letter (or a month's worth of letters), then that service can be indisputably fully performed upon the completion of the letter (or the month's worth of letters).

Id. at *5 (footnote omitted). The Court then held that monthly services were *not* a violation of the CROA:

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credit rating."); *id.* at *5 ("Defendants confirmed that they do not wait six months after providing results before billing clients.").

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4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

> In sum, the Court finds that section 1679b(b) means what it says: credit repair organizations may not charge clients for any service until such service has been done. By billing clients on a monthly basis for legal tasks that were indisputably performed during the previous month, Lexington does not run afoul of section 1679b(b)'s prohibition on advanced payments.

Id. at *6; *see also Spencer v. King Fin. Repair, LLC*, 2022 WL 2496209, at *3 (W.D. Ky. July 6, 2022) (following *DuCharme*: "The Court agrees with this reasoning. Section 1679b(b) prohibits charging a client before 'any service' is 'fully performed,' and 'any service'" includes all types of credit-repair services. § 1679b(b); A CRO, for example, may charge a client after setting up the client's credit file, reviewing the client's credit report, and drafting a single round of letters to send to credit bureaus.).

In subsequent correspondence to Congress, the FTC expressed its disagreement with the *Ducharme* decision, but it still conceded that certain discrete tasks (*exactly* those provided by the Company) could be charged by a credit repair organization after the analysis or service is completed:

> The net impression test avoids the problem Judge Breyer [in *Ducharme*] identified—once the specific service that consumers reasonably expect is identified, it is simple to determine if it has been fully performed. Thus, if the consumer's reasonable expectation is that he will achieve a substantial improvement in his credit score, it is this that the company must provide in order to collect its fee. On the other hand, ***if the consumer reasonably expects only that the company will provide an analysis of his credit report, and that this service is not a component of a larger offering, the company can collect its fee once the analysis is completed.***

[Counsel Decl. ¶ 4, Ex. 1 (Oct. 12, 2011 Letter) at 12 n.51 (second emphasis added).] Moreover, while the FTC offered its rationale for the provisions of the TSR when responding to the specific issue of advance fees for CRO services, it did *not* mention its six-month waiting period at all. [*Id.* at 8 n.36.] This is further confirmation that the TSR's advance fee provision does not apply to every service provided by a CRO, including the Company. For these reasons as well, the FTC is not likely to prevail on its advance payment claims.

C. In Support of Its Deceptive Trade Practices Claims, the FTC Has Failed To Demonstrate Any Misleading *Net Impression* by Consumers Of The Company's Services.

While the FTC cites *some* of the elements and general standards applicable to its deceptive and unfair trade practices claims, it glosses over the standard applicable to a case

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

like this one, where the FTC argues that the Company advertises by means that create a misleading *net impression* of its services. [FTC TRO Mem. at 11 (Court "must consider the overall 'net impression' that Defendants' representations make upon consumers.").]

The FTC cannot simply declare, as it has here, that the Corporate Defendants' websites and isolated customer interactions automatically lead to the conclusion that it is likely to succeed on its claim that the complained-of conduct reflects a wholesale corporate practice of deceptive or unfair conduct that satisfies the "likelihood of success" necessary for the comprehensive injunctive relief it seeks here. To the contrary, if, as the FTC contends, the communications "convey more than one meaning, only one of which is misleading . . . liability may be imposed if *at least a significant minority* of reasonable consumers ***would be likely*** to take away the misleading claim."[48] *See In the Matter of Intuit Inc.*, 2023 WL 1861211, at *9 (FTC Jan. 31, 2023) ("*Intuit I* ") (emphases added and cleaned up).

Significantly, the FTC has acknowledged that the "net impression" of the consumer is the applicable standard for assessing alleged violations of CROA's advance payment provision, and that it necessarily involves a case-by-case determination:

> In the Commission's view, for purposes of assessing compliance with this provision, the service a CRO has agreed to perform must be assessed from the perspective of the consumers who purchase the service. When the CRO has made express or implied representations in the context of a transaction that create a "net impression" such that consumers reasonably expect to receive a particular service or result, the CRO cannot accept a fee until that service is fully performed or result achieved.
>
> Applying the net impression/consumer expectations test is necessarily a case-by-case determination: In light of the specific messages the CRO conveyed in the context of the transaction, would consumers reasonably expect to receive only a set of discrete services, or, alternatively, the end result—an improvement in their credit score? In other words, what service did consumers reasonably believe they were purchasing? This is the service that must be fully performed before the CRO may charge or receive money from consumers.

[Counsel Decl. ¶ 4, Ex. 1 (Oct. 12, 2011 Letter) at 9, 10–11 (footnotes omitted).][49]

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[48] The FTC effectively concedes this point by requesting that the Court should not just "analyze isolated words and phrases" but consider "the overall 'net impression' that Defendants' representations make upon consumers." [FTC TRO Mem. at 11.]

[49] In its 2008 Interpretation Letter, the FTC only provided general views on the CROA in response to an inquiry whether the following charges would be impermissible under the CROA: (1) an initial "setup fee" or "processing fee" for sending an initial set of dispute letters;

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4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

The FTC has not even attempted to present evidence that meets this burden. Nor could it because, after months of investigation, it came forward with *twelve summaries* of consumer interviews and *one consumer declaration*.

In sum, the FTC's evidence and argument here is strikingly similar to the FTC's position in *FTC v. Merchant Services Direct*, *LLC*, 2013 WL 4094394, at *3, where the Court held that the FTC had not met its "likelihood of success" burden:

> On the present record, the FTC has failed to demonstrate a likelihood of success on its claim for permanent injunctive relief. As Defendants correctly note, much of the evidence submitted in support of the instant motions is substantially outdated. When this "stale" information is excised from the materials, there is little to suggest that the violations alleged in the FTC's Complaint are likely to recur.
>
> Indeed, the FTC appears to have taken the position that future violations are simply a foregone conclusion based upon the number of prior alleged violations. At least at this juncture, the Court cannot agree. First, there is reason to believe that the prior alleged violations were not nearly as pervasive as the FTC contends. Based upon the number of active customers serviced by the Defendants during the relevant time periods, the number of complaints referenced in the FTC's materials is not necessarily indicative of widespread deception. Second, the Defendants appear to have taken meaningful steps toward improving customer satisfaction over the past two years by, for example, hiring a number of in-house customer service representatives, implementing and enforcing a code of ethics, and creating additional training materials. Defendants have also terminated several sales agents who have been the subject of repeated customer complaints. Whether these steps will prove successful over the long term remains an open question; nevertheless, the Court cannot conclude that future violations are *likely* to occur on the present record.

Id.

The record which warranted the conclusion that the FTC had not identified a "likelihood of success" in *Merch. Servs.* is comparable to the FTC's "evidence" here, namely: (1) the FTC has stale and limited evidence of consumer complaints; (2) the FTC made no effort to determine whether the limited number of complaints were anything other than isolated

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and (2) a monthly "support fee." [Counsel Decl. ¶ 5, Ex. 2 (Jan. 8, 2008 Letter) at 1.] The FTC stated "it is difficult to opine" on such a hypothetical scenario "[w]ithout additional investigation including the type of advertising involved and the representations made by the credit repair organization." [*Id.* at 2 (stating that "[t]he key question" is determining "what 'service' the credit repair organization has agreed to perform" and the "answer" to that question "necessarily depends on the nature of the services offered by credit repair companies").] The FTC's "investigation" here hardly equates to what it stated in 2008 would be necessary to determine whether a particular service was improper.

customer dissatisfaction prevalent in any customer service business; (3) Defendants have set forth evidence of the thousands of consumers that have benefitted from Defendants' services and the thousands of favorable reviews; and (4) Defendants have set forth their comprehensive compliance systems. *See also Tribal Behav. Health LLC v. Reeves*, 2022 WL 2290563, at *10 (D. Ariz. June 24, 2022) ("'In deciding a motion for a preliminary injunction, the district court 'is not bound to decide doubtful and difficult questions of law or disputed questions of fact.' Therefore, given the competing facts on this issue, Plaintiffs have failed to show a *substantial* likelihood of success on the merits of their breach of fiduciary claim.") (Logan, J.), *opinion clarified*, 2023 WL 183677 (D. Ariz. Jan. 13, 2023) (citing *Int'l Molders' & Allied Workers' Loc. Union No. 164 v. Nelson*, 799 F.2d 547, 551 (9th Cir. 1986)).

II. THE REQUESTED INJUNCTIVE RELIEF IS NOT "NARROWLY TAILORED."

A. The FTC Has Not Presented Sufficient Evidence to Justify an Injunction Against *All* Corporate Defendants and their *Entire* Business Operations.

The Corporate Defendants do not dispute that: "Where corporate entities operate together and act as a common enterprise, each may be held liable for the deceptive acts and practices of the others." [FTC TRO Mem. at 56.] What the Corporate Defendants *do* dispute, however, is that the "17 interrelated companies operated as a common enterprise." [*Id*. at 3.]

By the FTC's own admission, eight of the named Corporate Defendants "appear to have no other function than to place the Google ads used to solicit consumers or be named in the generic landing pages associated with the Google ads." [*Id*. at 3–4.] But placing Google ads is not a violation of anything, and that activity no longer even takes place.

Moreover, the FTC has only challenged the contracts (and related payment and conduct issues) for only *four* Corporate Defendants (Credit Sage, Credit Joy, Credit Glory, Credit Clerk). Section A.1.a. *supra*. This admission and limited evidence alone establish that the FTC's request for injunctive relief of this magnitude is not justified nor "tailored" to the areas of the claimed misconduct.

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

B. The FTC Has Not Presented Sufficient Evidence to Justify An Injunction Against All Individual Defendants.

"Individuals may be held liable for injunctive relief based on corporate entity violations of the FTC Act if (1) the corporation committed misrepresentations of a kind usually relied on by a reasonably prudent person and resulted in consumer injury, and (2) individuals participated directly in the violations or had authority to control the entities." *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1101 (9th Cir. 2014). The FTC has no such evidence against Defendants Curtis, Naylor or Emery. Given the limited responsibilities and actions of these Defendants, the FTC also cannot show that these Defendants "had knowledge that the corporation or one of its agents engaged in dishonest or fraudulent conduct, that the misrepresentations were the type upon which a reasonable and prudent person would rely, and that consumer injury resulted.'" *Id.* (quoting *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170–71 (9th Cir. 1997)).[50]

Moreover, the FTC's argument that a total freeze of the assets of all Individual Defendants (not just Messrs. Curtis, Naylor and Emery) in addition to those of the Corporate Defendants apparently is based on its conclusion that joint and several liability will render them personally liable for *all* alleged violations. [FTC TRO Mem. at 58–59.] But the evidence that the FTC has offered for that assertion is exceedingly thin. [FTC TRO Mem. at 60 ("They are the principal, and often sole, officers of the Corporate Defendants; have signatory authority over the Corporate Defendants' financial accounts; and are the points of contact for Defendants' service providers.").] The conclusory allegations of joint and several liability with this limited "evidence" warrant removing the asset freeze for all Individual Defendants. *Grand*

[50] Some courts have applied the same individual liability standards to the Gramm-Leach-Bliley ("GLB") Act, the Restore Online Shoppers' Confidence Act ("ROSCA"), the Telemarketing Sales Rule and the Credit Repair Organizations Act ("CROA"). *See, e.g.*, *FTC v. Doxo, Inc.*, 2026 WL 1429295, at *17 (W.D. Wash. May 21, 2026) (GLB and ROSCA); *United States v. Stratic Networks*, 2026 WL 1974742, at *13 (S.D. Cal. July 8, 2026) (Telemarketing Sales Rule)*; see also Grant Connect, LLC*, 763 F.3d at 1104 ("[W]e hold that individual liability for corporate malfeasance is available for violations of the EFTA because such violations are also deemed to be violations of the FTC Act[.]")*; FTC v. Gill*, 71 F. Supp. 2d 1030, 1046 (C.D. Cal. 1999) (finding individual liability under CROA*), aff'd*, 265 F.3d 944 (9th Cir. 2001). The FTC's evidentiary failures, therefore, extend to its additional claims as well.

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Isle Games, LLC v. Entities, P'ships, No. 3:25-CV-00390, 2025 WL 3517858, at *4 (M.D. Tenn. Dec. 8, 2025) (In RICO action, modifying total asset freeze imposed by TRO on chief executive officers of corporate defendants holding that "the argument that the total asset freeze on the Moving Defendants is necessary to preserve the plaintiff's ability to recover *joint and several* equitable relief" was "unavailing"); *see also S.E.C. v. Unifund SAL*, 910 F.2d 1028, 1042–43 (2d Cir. 1990) ("In view of the Commission's meager showing on the merits, it should not be entitled to interfere with the appellants' unrestricted use of their accounts for more than a brief interval."); *Skechers U.S.A., Inc. II v. P'ships & Unincorporated Assocs.*, No. 24 CV 596, 2025 WL 1455801, at *3 (N.D. Ill. Mar. 10, 2025) (modifying asset freeze imposed by TRO because the Court "had the benefit of the adversarial process in this case" and finding that "the restraint of 'any money or other of Defendants' assets' is overly broad.").

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

III. THE BALANCE OF THE EQUITIES DOES NOT SUPPORT THE EXPANSIVE PRELIMINARY INJUNCTIVE RELIEF SOUGHT BY THE FTC.

The FTC's focus should not be to immediately grind to a halt long-standing beneficial services, while concurrently seeking to freeze every asset of the Corporate and Individual Defendants through an unnoticed motion for a Temporary Restraining Order ("TRO") in an attempt to cripple the ability to defend against the FTC. But that is exactly what has occurred here.

A. The FTC Has Not Satisfied Its Burden To Show The Likelihood Of Dissipation Of Assets Or To Justify A *Total* Asset Freeze Against *Every* Corporate And Individual Defendant.

As a preliminary matter, *ex parte* temporary restraining orders must be "restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer." *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974). Accordingly, the Court has both the authority and the obligation to revisit the scope of the freeze imposed on Defendants.

Moreover, as the FTC concedes [FTC TRO Mem. at 61]: "A party seeking an asset freeze must show a likelihood of dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not granted." *Johnson*, 572 F.3d at 1085; [FTC TRO Mem. at

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

61 (citing *Johnson*).] The FTC has not satisfied either requirement to justify any asset freeze, let alone one that warrants a blanket freeze against seventeen corporations and five individuals.

1. Defendants Curtis, Naylor and Emery.

The FTC's failure of proof is illustrated in the first instance because, for these three individual Defendants, the FTC does not even attempt to show that they have dissipated assets. The FTC's Investigator does nothing more than note the amount of funds received over time by these three individuals. [Goldstein Decl. ¶¶ 249–51 (PX08).]

As even the authority the FTC cites demonstrates, this lack of evidence alone warrants denying any attempt to freeze their assets. *Willms*, 2011 WL 4103542, at *12 (limiting asset freeze to one individual and "exclud[ing] the other individual Defendants and their personal assets" because "the FTC has not shown little if any evidence of the other individual defendants engaging in off-shore transfers of assets"); [FTC TRO Mem. at 61.] Other courts have reached the same conclusion. *See, e.g.*, *FTC v. Vylah Tec LLC*, 328 F. Supp. 3d 1326, 1335 (M.D. Fla. 2018) ("[T]he record does not show that Dennis gained anything economically, emotionally, or otherwise from the unlawful practices to justify freezing his assets. Accordingly, the Court denies the Government's motion to reinstate the freeze on Dennis' assets."); *FTC v. Vemma Nutrition Co.*, 2015 WL 11118111, at *5 (D. Ariz. Sept. 18, 2015) (Tuchi, J.) ("While the FTC has provided evidence of Mr. Alkazin's participation in the promotion of Vemma's business opportunities, there is no evidence that, even as a top Affiliate, he had control over Vemma's structure, operations, or bonus and compensation structure. *See FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1203–04 (C.D. Cal. 2000). Accordingly, the Court denies the FTC's request for a preliminary injunction against Mr. Alkazin with regard to the operation of an illegal pyramid scheme.").

2. Alleged Dissipation of Assets.

The claim of the threat of dissipation of assets is also wildly speculative. The FTC takes issue with the fact that owners of the Corporate Defendants have taken "draws" from the profits. [FTC TRO Mem. at 68.] But it has made that argument previously and was soundly rejected:

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
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> As a threshold matter, there is no support for the FTC's assertion that an asset freeze is necessary to prevent Defendants from secreting away assets. Contrary to the FTC's assertions, the fact that Defendants Hurley and Dove have withdrawn funds from Merchant Services Direct's corporate accounts in the past is not improper. As Defendants correctly note, members of an LLC are free to make withdrawals from corporate accounts at their discretion. It also bears noting that Defendants have been in business since 2008 and currently have approximately 7,500 paying customers. It seems rather unlikely that Defendants will make any attempt to "cut and run."

Merch. Servs. Direct, LLC, 2013 WL 4094394, at *4.

The FTC then notes that there have been transfers of funds outside the United States. [FTC TRO Mem. at 63.] But the FTC cannot (and does not) argue that overseas transfers are impermissible (or that some Defendants live overseas). *See generally* 31 U.S.C. § 5314 (only imposing recordkeeping requirement for foreign transactions).

The FTC also makes the bold claim that its investigator concluded that "Defendants carry out their operations to avoid law enforcement scrutiny." [FTC TRO Mem. at 68.] This opinion is based on the investigator's belief that there were "Fraud Indicators." [Goldstein Decl. ¶¶ 262–68 (PX08).] But the "Fraud Indicators" that the FTC claims support ceasing all operations of the Corporate Defendants (and their access to funds to continue their business operations, living expenses and legal counsel) are, in a word, remarkable. The "Fraud Indicators" are nothing more than the following:

- The Corporate Defendants "use multiple names for the same product or service, either consecutively or contemporaneously" (Goldstein Decl., Par. 264), which, citing nothing, the FTC's investigator claims: "helps maintain false credibility with their victims" and "lowers the number of complaints a law enforcement agency might receive." [Goldstein Decl. ¶ 264.]

- "[M]any of the entities used to establish Google Ads accounts *appear to be fronted by a straw person* and "The creation of at least 17 separate Google Ads accounts for the same service *appears* to have no legitimate business purpose" and "many of the entities used to establish Google Ads accounts *appear to be fronted by a straw person* (Goldstein Decl. ¶¶ 265–66), when there is nothing "fraudulent" about the use of Google's ad service. [*See* Factual Background.]

- The Corporate Defendants have "multiple names and addresses" and "many" of them "have no physical connection" [FTC TRO Mem. at 68], *i.e.*, they operate remotely (which is common).[51]

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[51] How Many Companies Are Fully Remote? [2026 Stats] ("Remote work isn't just a passing trend, it's a permanent shift in how companies operate worldwide."); *id.* ("Sources indicate that around 16% of companies worldwide operate as fully remote organizations, showing that

- The Corporate Defendants have "multiple and continuous merchant bank accounts" (*id.*), which is a recognized practice and prudent in circumstances such as those of the Corporate Defendants.[52]

Without concrete evidence to substantiate its assertions, the FTC resorts to requesting that the Court continue to freeze all assets based only on "FTC's experience" that "Defendants often withdraw funds from bank accounts and move or shred documents upon learning of impending legal action." [FTC TRO Mem. at 68][53] But beliefs, suspicions and unrelated "experience" do not meet the standard of proffering evidence of a "likelihood of dissipation" of assets.

3. Alleged Consumer Harm of $172 Million.

Equally flawed is the FTC's claim that every asset of every Defendant should be frozen because it has confirmed that Defendants purportedly have "stolen" or "bilked" from consumers "almost $200 million dollars." [FTC TRO Mem. at 1, 49.] The FTC claims that this is so because "Defendants' credit repair scheme is wholly premised on collecting illegal advance fees from consumers for services they fail to deliver." [*Id.* at 63.] The FTC's premise simply is wrong.

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fully remote work remains a minority model but an increasingly influential part of the global business landscape.").

[52] Multiple Merchant Accounts: Is It Best For Business in 2026? ("noting that one instance "**When Separate MIDs Make Sense"** is "risk isolation" because [c]hargeback ratios are tracked by MIDs. Therefore, separating MIDs protects the processing capabilities of one line if the other line experiences chargebacks.") (emphasis added); Multiple Merchant Accounts For Online Credit Card Processing ("Businesses in high-risk industries prefer to search for multiple merchant accounts. They continually search for additional modes of payment processing to maintain proper cash flow. Companies search for numerous merchant accounts primarily because they do not want their credit card processing account to be terminated without having a backup."); 6 Reasons You Should Be Using Multiple Merchant Accounts ("High chargeback volumes are also common with high risk businesses and can increase costs with your provider. Multiple merchant accounts can allow you to disperse inevitable chargebacks and reduce the volume per account to lower your ratio and save you money.").

[53] *Compare with FTC v. Affordable Media*, 179 F.3d 1228, 1236–37 (9th Cir. 1999) ("Given the Andersons' history of spiriting their commissions away to a Cook Islands trust, which was intentionally designed to frustrate United States courts' powers to grant effective relief to prevailing parties, the district court's finding regarding the likelihood of dissipation is far from clearly erroneous."); *FTC v. Kutzner*, 2016 WL 9277319, at *10 (C.D. Cal. Aug. 24, 2016) ("The Court finds that the fund transfers effected shortly after the Receiver took control of Brookstone/Advantis demonstrate that Defendant Foti is likely either to dissipate claimed assets or render monetary damages unrecoverable.").

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4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

At the outset, the FTC cannot justify its freeze of assets as necessary to preserve its ability to seek disgorgement of allegedly unlawful profits. As the Supreme Court held in 2021, the FTC has no authority for such disgorgement as a remedy under Section 13(b) of the FTC Act. *AMG Capital Mgmt., LLC v. FTC*, 593 U.S. 67, 70 (2021). As the FTC concedes, the basis of its request for a total freeze of assets rests instead entirely on Section 19 of the FTC Act, [*see* FTC TRO Mem. at 61], and Section 19 limits the FTC to seeking relief for "consumer redress." *FTC v. Elegant Sols., Inc*, 2022 WL 2072735, at *3 (9th Cir. June 9, 2022) (Section 19 does not authorize "disgorgement" that "exceed[s] redress to consumers").

Yet, the FTC has made no effort to establish that it could recover $172 million in "consumer redress" under Section 19; indeed, given the relatively small number of complaints and requests for refunds, the overwhelming evidence is contrary to any such allegation of consumer redress. Also, the single post-*AMG* decision relied on by the FTC is of no assistance because the issue of liability under Section 19 already had been established. *FTC v. Noland*, 2021 WL 4318466, at *5 (D. Ariz. Sept. 23, 2021) ("This isn't a case where there are remaining questions about § 19 liability."). Further, although the FTC represents that "numerous courts" have granted asset freezes after the *AMG* decision [FTC TRO Mem. at 52 n.17], it fails to advise the Court that in *none* of those cases was the FTC required to justify the amount of consumer loss alleged because those decisions were either initial *ex parte* TRO orders or stipulated orders. *See FTC v. NERD Sols. Inc*., 2026 U.S. Dist. LEXIS 101300, at *1 (C.D. Cal. Apr. 27, 2026) (*ex parte* TRO order); *FTC v. Fin. Educ. Servs., Inc*., 2022 U.S. Dist. LEXIS 240887 (E.D. Mich. May 24, 2022) (*ex parte* TRO order); *FTC v. Automators LLC*, 2023 U.S. Dist. LEXIS 150791, at *2 (S.D. Cal. Aug. 25, 2023) (joint motion to extend TRO); *FTC v. Panda Ben. Servs., LLC*, 2025 U.S. Dist. LEXIS 94845, at *1 (C.D. Cal. May 14, 2025) (stipulated injunction); *FTC v. BCO Consulting Servs., Inc.*, 2023 U.S. Dist. LEXIS 114437, at *2 (C.D. Cal. May 22, 2023) (stipulated injunction). In sum, the FTC has no factual or legal basis for claiming a prospective award of $172 million in "consumer redress" under Section 19 of the FTC Act.

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

The fundamental error in this argument is that, despite the FTC's deep-seated disdain of credit repair organizations (and apparently these Defendants), there is zero evidence that the Corporate Defendants somehow received $172 million from consumers for "bogus services." This theory also is negated by the fact that the Corporate Defendants provided substantial financial benefits to their customers. *See* Factual Background. In addition, the FTC acknowledges (as it must) that the Corporate Defendants' contracts state the exact opposite. [FTC TRO Mem. at 42 (noting "the express language in the written contracts that fees are not charged until after work is completed").]

The alleged "consumer harm" of $172 million is also wildly inflated because it is based on an unsupported factual and legal theory that every single payment received from a consumer by the Corporate Defendants over an entire three-year period is necessary for "consumer redress" and, therefore, recoverable. This unwarranted extrapolation from its ultra thin evidence simply has no basis. This also warrants denying the extensive asset freeze sought by the FTC at this early stage:

> [T]he FTC has not meaningfully quantified the amount of damages attributable to the alleged violations. When prompted by the Court for an estimate, counsel for the FTC estimated that, while somewhat difficult to quantify, the figure was probably "in the millions of dollars." In reaching this estimate, however, counsel assumed that each and every transaction was "tainted" by the Defendants' alleged misconduct. For the reasons discussed above, the Court is not willing to make a similar assumption on the present record. Given that there has been no meaningful quantification of potential damages, the Court finds it difficult to evaluate whether an asset freeze is truly necessary in order to preserve effective relief for injured consumers.

Merch. Servs. Direct, 2013 WL 4094394, at *4.

In short, there is no support for the FTC's argument that *every* fee received by the Corporate Defendants was an "illegal advance payment" warranting the extent of its asset freeze request. [FTC TRO Mem. at 38–43.] Accepting that theory improperly would result in thousands of consumers who *benefitted* from the Corporate Defendants' services to receive any and all fees paid for helpful and important credit repair and related services. *See FTC v. Noland*, 2021 WL 5493443, at *4 (D. Ariz. Nov. 23, 2021) ("The problem with the FTC's damages methodology is that it goes beyond redressing injury to consumers and provides a potential windfall to consumers.”).

Courts have previously rejected similar overreach attempts by the FTC in seeking to freeze all assets at the onset of litigation. In *FTC v. John Beck Amazing Profits*, LLC, 2009 WL 7844076, at *3 (C.D. Cal. Nov. 17, 2009), the FTC advanced the virtually identical arguments for an asset freeze that it asserts here:

> The FTC seeks an asset freeze directed against both the corporate Defendants and the individual Defendants. The FTC contends an asset freeze is necessary to prevent dissipation of the individual Defendants' assets, which may be needed to satisfy a potential judgment of $300 million.
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> . . . .
>
> The FTC argues that because Defendants have committed fraudulent acts, Defendants will likely dissipate their assets to thwart potential collection activity. In addition, the FTC contends every available dollar should be preserved in order to satisfy Defendants' potential liability of $300 million.

Id. at *15. In reasoning directly applicable here, the Court rejected the FTC's arguments, holding that:

> Here, there is no evidence that Defendants have ever previously attempted to intentionally dissipate, hide or otherwise shelter corporate or personal assets from an effort to collect a debt or judgment against Defendants.
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> The Court finds the FTC has failed to satisfy its burden of demonstrating that an asset freeze is warranted. Courts have previously considered fraudulent activity as a factor in support of a likelihood of dissipation.
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> In this case, the only evidence in support of an asset freeze is Defendants' misleading marketing practices. If this were sufficient to support an asset freeze, one would issue in every deceptive advertising case. Given the more stringent standard of a likelihood of dissipation, the Court concludes an asset freeze is not supported by the FTC's evidence.

Id. at *15. Similarly, in *Merch. Servs. Direct*, the Court rejected the FTC's request for a preliminary injunction freezing all assets:

> [T]he FTC has not meaningfully quantified the amount of damages attributable to the alleged violations. When prompted by the Court for an estimate, counsel for the FTC estimated that, while somewhat difficult to quantify, the figure was probably “in the millions of dollars.” In reaching this estimate, however, counsel assumed that each and every transaction was “tainted” by the Defendants' alleged misconduct. For the reasons discussed above, the Court is not willing to make a similar assumption on the present record. Given that there has been no

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

> meaningful quantification of potential damages, the Court finds it difficult to evaluate whether an asset freeze is truly necessary in order to preserve effective relief for injured consumers.

Merch. Servs. Direct, 2013 WL 4094394, at *4.

And, in *FTC v. Infinity Grp. Servs., Inc.*, 2009 WL 10672411, at *3 (C.D. Cal. Sept. 2, 2009), the Court denied a request for a temporary restraining order freezing all assets and expressed its concern "as the FTC seeks to freeze individual Defendant Zamani's assets." *Id.* Further, the Court expressed a separate concern in issuing "an order that will likely permanently shut down a company." *Id.*

In rejecting the FTC's arguments, the Court held: "[T]he FTC has not clearly shown that there is a[n] even a possibility of dissipation of assets or that the assets in question will be insufficient to satisfy a future judgment in this case absent ancillary relief. Any such allegations are rather conclusory." *Id.* (citation omitted). Moreover, the Court considered the facts that the defendant was not "new" to the industry nor did it simply "come on scene and start[] offering specious programs in order to capitalize on a climate of desperation and fear." *Id.* ("[Defendant] had seemingly made efforts to remedy customer dissatisfaction without knowing that it was under investigation by the FTC."); *see also cPanel, LLC v. Asli*, 719 F. Supp. 3d 1133, 1157 (D. Or. 2024) ("To sum up: this Court will grant an asset freeze against Defendants and those who are in active concert with them, but it will not issue an injunction that lacks a knowledge requirement and that indiscriminately freezes all of Defendants' assets.").

4. The FTC Has Not Satisfied Its Burden in Continuing the TRO Order Appointing a Receiver, Ordering the Cessation of All Business of the Corporate Defendants and Providing Control of All Assets to the Receiver.

Pursuant to the TRO, the Corporate Defendants (to the detriment of its current customers and now former employees) and the Individual Defendants (to their own financial detriment) have complied with the Court's TRO regarding its obligations to the Court-appointed Receiver. Defendants respectfully maintain, however, that the receivership appointment in its current form (which has resulted in the complete cessation of all business

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

operations and unfettered access and total control by the Receiver) is overbroad and unnecessary. In fact, maintaining the Receiver for an indefinite period is inconsistent with the FTC's claim that: "A neutral receiver would prevent further harm to consumers and would locate and secure assets and records without disrupting any legitimate business activity." [TRO Mem. at 63.] The immediate appointment of the Receiver has not simply "disrupted" the Corporate Defendants' business. It ended it.

The Corporate Defendants operate credit-related service businesses with employees, vendors, and contractual obligations. The Receiver has taken control of these entities and their operations. Without access to operating funds, the Corporate Defendants' businesses face immediate dissolution—not because of any adjudicated wrongdoing, but solely because of the breadth of the provisional freeze. This outcome does not serve the interests of consumers, the FTC, or the Court. If the businesses are destroyed, there will be no ongoing revenue from which to pay any restitution that might ultimately be ordered. An operating expense carve-out, by contrast, preserves going-concern value for the benefit of all parties.

The decision in *FTC v. Merch. Servs. Direct* supports the Corporate Defendants' position that the FTC's request for a continued shutdown of all business operations at the virtual onset of the litigation is unwarranted and unsupported by the limited evidence offered by the FTC and the evidence offered by Defendants. In rejecting the FTC's request for a Receiver, the Court held:

> [T]here is no evidentiary basis for appointing a temporary receiver. At oral argument, the FTC asserted that Defendants have created a "culture of fraud" which only a receiver can reverse. The Court is not persuaded. As noted above, Defendants have been in business since 2008. Over the past two years, they have taken meaningful steps toward improving customer relations. At present, they have approximately 7,500 active customers, and their customer retention rate is slightly better than the industry average. Although there is clearly room for continued improvement, the appointment of a receiver cannot be justified on the present record.
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> [T]he Court notes that granting the FTC's requested relief would seriously jeopardize Defendants' ability to stay in business. Most notably, appointing a receiver would give iPayment grounds to terminate its contract with Merchant Services Direct, thereby rendering the latter unable to service its existing customers. Given that the FTC has not established a high likelihood of success on the merits, the risk of putting Defendants out of business is unacceptable. Accordingly, the FTC's motions are denied.

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Merch. Servs. Direct, 2013 WL 4094394, at *4; *see also FTC v. Home Assure, LLC*, 2009 WL 1043956, at *20 (M.D. Fla. Apr. 16, 2009) ("Additionally, the asset freeze is overbroad in scope and entirely immobilizing in its effect on other legitimate activities of these Defendants."); *FTC v. FTN Promotions, Inc.*, 2008 WL 151888, at *1–9 (M.D. Fla. Jan. 15, 2008) (allowing for a "plan of continued operation[,]" holding that "it does not seem to me that at this point-which is an early stage of the case-the telemarketing business should be completely shut down. Consequently, consideration has been given to a modified, and less extensive, telemarketing business that could be operated under the oversight of the receiver who has previously been appointed in this case").[54]

Indeed, the FTC's extreme position in this case is inconsistent with the position it took previously in an action *where it claimed consumer harm of $300 million*. *John Beck Amazing Profits*, 2009 WL 7844076, at *15 ("[W]ith respect to the corporate Defendants, the FTC proposes that the corporate Defendants be permitted to retain control of their business, but be placed under the review and scrutiny of a monitor."). The *Beck* case is instructive because, even though the Court ordered *some* injunctive relief, it expressly allowed the corporate defendants to remain in business with only a Court-appointed monitor who would *not* have direct control over the business or its assets:

> As detailed further in the preliminary injunction order, the appointed monitor would be charged with observing Defendants' business practices to ensure that the corporate Defendants are complying with the preliminary injunction. The monitor can also observe whether the corporate Defendants' assets are properly

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[54] Courts addressing the scope of a receivership in other contexts have reached the same conclusion that a business should not be shut down entirely. *See, e.g.*, *Otero v. Vito*, 2008 WL 4004979, at *4 (M.D. Ga. Aug. 25, 2008) ("The legitimate business activities of the Defendants can continue to take place under the Receiver's supervision. The Receiver will be empowered to manage and maintain all assets to preserve them for the benefit of all parties. He will also be empowered to take possession of all financial records in order to locate and recover assets that may have been concealed, transferred, or dissipated. He will be required to keep records of all his activities and be responsible to the Court. Any activities of the Receiver that the parties find to be objectionable can be brought to the attention of the Court."); *In re Teknek, LLC*, 343 B.R. 850, 882 (Bankr. N.D. Ill. 2006) ("The Court in this case has not ordered the receiver to take possession and management control of the defendant's business operation but instead has instituted a limited receivership with oversight, auditing, and clearance authority described further in the related order. Thus, in the specifics of the nonpossessory receivership fashioned, the Court has already attempted to preserve any legitimate interests these five defendants may ultimately have at the conclusion of the litigation. The receivership should preserve value for whomever is ultimately entitled to it.").

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4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

> spent on ordinary and necessary business expenses. The monitor would not have direct control over Defendants' business operations or assets, but if a violation of the preliminary injunction were observed, the FTC would be authorized to seek an appropriate remedy from the Court.

Id. at *16.

The *Beck* court is not alone in exercising a court's inherent authority to resort to other, less restrictive injunctive relief measures than a blanket freeze. To avoid the drastic consequences of an asset freeze such as that sought by the FTC, courts will use their inherent authority to resort to other, less restrictive injunctive relief measures than a blanket freeze. *See, e.g.*, *Vemma Nutrition Co.*, 2015 WL 11118111, at *10 (finding that less drastic measures could accomplish the same goal of an asset freeze while allowing defendants to resume operating their business with their associated bank accounts under the supervision of a receiver); *FTC v. Millennium Telecard, Inc.*, 2011 WL 2745963, at *13 (D.N.J. July 12, 2011) (modifying a prior order that imposed a complete asset freeze when the receiver was capable of overseeing a plan that would allow the defendant to operate in a profitable and compliant manner while preserving all available assets); *see also FTC v. Dutchman Enters., LLC*, 2009 WL 10698040, at *6 (D.N.J. Feb. 11, 2009) ("[I]ssuing a preliminary injunction will effectively close down the Defendants' business. Therefore, the balancing of the equities favors denying the motion for preliminary injunction."); *see generally Flo-Con Sys., Inc. v. Leco Corp.*, 845 F. Supp. 1576, 1583 (S.D. Ga. 1993) ("A more workable solution than the blanket prohibition requested by Flo–Con is to require that Leco remit monthly payments to the registry of the Court similar to those it would make under a license agreement. Requiring the submission of such monthly payments assures compensation to Flo–Con if it prevails on the merits but avoids the problems associated with a blanket injunction—that is, it allows Leco to continue its presence in the marketplace and preserves the benefits of competition.").[55]

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[55] The FTC's reliance on *Int'l Controls Corp. v. Vesco*, 490 F.2d 1334 (2d Cir. 1974) and *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082 (2d Cir. 1972) is curious. In *International Controls*, the Second Circuit noted that "any disruption in operations" is "an element to be considered by the district court in evaluating the appropriateness of an asset freeze."). 490 F.2d at 1351. And in *Manor Nursing*, the Second Circuit noted that: "Freezing assets under certain circumstances, however, might thwart the goal of compensating investors if the freeze were to cause such disruption of defendants' business affairs that they would be financially destroyed."

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4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

This same result should be more than sufficient here. If the Court has concerns about some aspects of the operations of the Corporate Defendants, at most, it should appoint a monitor. Granting the FTC's requested relief puts the Corporate Defendants out of business indefinitely (if not permanently) and unfairly precludes Defendants from serving thousands of existing customers. This is not the result that should occur for a business that (1) has been in operation for years (in some cases since 2016); (2) provided unquestioned benefits to thousands of consumers; and (3) has a robust compliance program.

Defendants propose a limited and transparent mechanism: the Corporate Defendants, through the Receiver, would submit a monthly operating budget, subject to the Receiver's review and approval. This structure provides multiple layers of protection—precisely the kind of "less drastic measures" that courts have adopted. In all, the Court should adopt this oversight mechanism and set aside the total asset freeze.

IV. THE COURT SHOULD MODIFY THE TRO TO ALLOW THE PAYMENT OF LIVING EXPENSES.

The FTC's lack of evidence leads to the conclusion that it sought a total freeze of all assets to impair the personal lives of the Individual Defendants as well as hinder their defense of the FTC's claims. *Home Assure, LLC*, 2009 WL 1043956, at *21 ("In the given circumstances, it appears to me that the FTC's present pursuit against these two Defendants is more about tying up their financial wealth to fund its claim for restitution than about protecting the public against their ongoing or further deceptive activity."). Numerous courts have carved out of an asset freeze funds for living expenses and the payment of legal fees. *See, e.g.*, *Gianni Versace, S.p.A. v. Awada*, 95 F. App'x 224, 226 (9th Cir. 2004) (holding that preliminary injunction was not overbroad because: "The district court expressly considered the impact of an asset freeze on Appellants. Accordingly, the district court declined to freeze all of Appellants' assets. The court instead required Appellants to report and account to a special master the location and transfer of their assets. The court took other steps to minimize the

458 F.2d at 1106. Both of these considerations are present here and support denying the FTC's requested relief.

impact on Appellants, such as making provisions for ordinary living and business expenses."); *Johnson*, 572 F.3d at 1086 ("Given that the freeze on Couturier's assets is limited to those in which Plaintiffs have an equitable interest and does not extend to normal living expenses and legal fees, the district court correctly balanced the relative hardships."); *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (holding no evidence of hardship where: "the district court stipulated in the injunction that the Marcoses may use their assets to cover normal living expenses and legal fees.").[56]

This principle and result are not merely equitable—they have constitutional dimensions. A freeze that denies an individual the means to meet basic necessities raises serious due process concerns, particularly where, as here, the freeze was entered *ex parte* and no adjudication of liability has occurred. *See United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993) ("Our precedents establish the general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them of property.").

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4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

V. THE COURT SHOULD ALSO MODIFY THE TRO TO ALLOW THE PAYMENT OF LEGAL FEES.

A court exercising equitable jurisdiction has inherent power to fashion provisional remedies ancillary to its authority to provide final equitable relief. *Reebok Int'l, Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 559 (9th Cir. 1992). This includes the authority to modify an asset freeze to release funds for the payment of reasonable legal defense costs. *See FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 348 (9th Cir. 1989) (allowing defendants to have assets unfrozen for payment of reasonable attorneys' fees).

[56] *See also SEC v. Dalius*, 2018 WL 11363498, at *6 (C.D. Cal. Oct. 11, 2018) ("The SEC does not seek to freeze a narrow, defined list of bank accounts, but broadly requests to freeze all of Defendants' property, in whatever form, and from whatever source. The proposed asset freeze would conceivably extend to Dalius's normal living expenses and legal fees. *Cf. Johnson*, 572 F.3d at 1085–86 (granting limited asset freeze that permitted defendant to cover normal living expenses and legal expenses). The proposed relief does not match the purported harm.

The Ninth Circuit has specifically endorsed this principle in the context of government enforcement actions. In *CFTC v. Noble Metals Int'l, Inc.*, the court held that "[d]iscretion must be exercised by the district court in light of the fact that wrongdoing is not yet proved [at the TRO stage] when the [defendants'] application for attorney fees is made." 67 F.3d 766, 775 (9th Cir. 1995). In *Federal Savings & Loan Insurance Corporation v. Ferm*, the Ninth Circuit approved release of attorneys' fees subject to limitations enforced through in camera review of bills. 909 F.2d 372, 375 (9th Cir. 1990). These decisions establish that pre-judgment release of legal fees is not merely permissible but expected where a defendant's assets have been frozen and the defendant requires funds to mount a defense.

Numerous district courts have followed this precedent. In *SEC v. Schooler*, the court observed that "[t]aken to its logical conclusion, this argument would require a defendant wishing to successfully oppose an asset freeze to either obtain pro bono counsel, represent him or herself pro se, or have a third party pay for the attorney fees; such a requirement cannot be squared with Ninth Circuit precedent." 2015 WL 11233061, at *2 (S.D. Cal. Mar. 27, 2015). Another example is illustrated by *FTC v. Asset & Capital Mgmt. Grp.*, in which the Court authorized the release of funds for the payment of living expenses and attorneys' fees. No. 8:13-cv-01107, Dkt. 92, Civil Minutes at *1 (C.D. Cal. Nov. 4, 2013).

The need for legal defense funding in this case is acute. The FTC has brought a multi-defendant enforcement action raising complex statutory and factual issues under the FTC Act, the CROA, and related statutes. Defendants face potential liability for consumer redress and injunctive relief. Adequate legal representation is essential not only to Defendants' interests but to the Court's interest in a fully briefed and fairly adjudicated proceeding.

The blanket asset freeze has left Defendants without access to any funds to pay counsel. This is especially problematic for the Corporate Defendants, which as legal entities are incapable of representing themselves in court and must appear through counsel. *See Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201–02 (1993) ("It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel."). Without access to legal defense

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

funds, the Corporate Defendants face the prospect of default—not because they lack meritorious defenses, but because they lack the means to articulate them.

Denying Defendants access to legal defense funds would not merely prejudice Defendants—it would undermine the integrity of these proceedings. A court that freezes all of a defendant's assets and then proceeds to adjudicate the merits without providing any mechanism for the defendant to retain counsel cannot be confident that the resulting judgment rests on a full and fair presentation of both sides. The equities, the precedent, and the interests of justice all favor the modest relief requested here.

Relief Requested

There is nothing equitable about the current *status quo*. Based on an *ex parte* TRO Motion, supported by only a handful of customer complaints and former employee grievances, the FTC brought about the complete shutdown of a reputable provider of credit-related services, cost four hundred employees their jobs, and likely harmed rather than helped thousands of consumers whom the FTC is sworn to protect. At the same time, the FTC has obtained an exceedingly broad asset freeze order that has left individuals without the resources necessary to pay their bills and fund their legal defense. The Defendants are open to reasonable restraints while they prepare for a trial on the merits, including the appointment of a monitor for the Company, but they cannot endure the ongoing hardships to their business and personal lives.

For the foregoing reasons, Defendants respectfully request that the Court deny the FTC's TRO Motion and request for a preliminary injunction.

DATED this 20th day of August, 2026.

FAEGRE DRINKER BIDDLE & REATH LLP

By: s/ Kathryn E. Bettini
Kathryn E. Bettini
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251

Richard L. Scheff
FAEGRE DRINKER BIDDLE & REATH LLP
One Logan Square, Suite 2000

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850

Philadelphia, Pennsylvania 19103
Attorneys for Defendants

Filed electronically with the Court and served on parties of record by the Court's CM/ECF system this 20th day of August, 2026.

s/ Mary Ann Villa

Faegre Drinker Biddle & Reath LLP
4800 North Scottsdale Road, Suite 2200
Scottsdale, Arizona 85251
(480) 643-1850