

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-61017-CIV-ALTONAGA/Seltzer

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, *et al.*,

Defendants.

**PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AGAINST  
DEFENDANTS ALLSTAR DATA, LLC, NATIONAL BUSINESS LISTINGS, LLC,  
PINNACLE PRESENCE LLC, VINCENT YATES, AND DANIEL CARVER AND  
RELIEF DEFENDANTS STEPHANIE WATT AND JENNEFER RAMSEY**

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## **INTRODUCTION**

On July 3, 2018, the FTC filed an Amended Complaint adding five Defendants and two Relief Defendants. The five new Defendants all participated in, and are liable for, making false Google-affiliation claims, false threats of removal from Google, and false promises of Google keywords to sell Google “claiming and verification” services to small business owners. The Relief Defendants received proceeds from Defendants’ fraudulent sales, despite lacking any legitimate entitlement to those funds. The FTC seeks a preliminary injunction prohibiting the new Defendants from continuing this scam, appointing a Receiver over the new Corporate Defendants, freezing the assets of the new Defendants, and freezing limited assets of the Relief Defendants.

## **STATEMENT OF FACTS**

### **I. PROCEDURAL HISTORY**

On May 7, 2018, the FTC filed its Complaint against Pointbreak Media, LLC (“Point Break”); DCP Marketing, LLC; Modern Spotlight LLC; Modern Spotlight Group LLC; Modern Internet Marketing LLC; Modern Source Media, LLC; Perfect Image Online LLC; Dustin Pillonato; Justin Ramsey; Aaron Michael Jones; Ricardo Diaz; Michael Pocker; and Steffan Molina (the “Original Defendants”). Simultaneously, the FTC filed its Motion for an *Ex Parte* Temporary Restraining Order (“TRO Motion”) and submitted overwhelming evidence in support thereof. ECF No. 5; Plaintiffs’ Exhibits (“PX”) 1-42.<sup>1</sup> On May 8, 2018, the Court granted the FTC’s TRO Motion, finding “good cause to believe [the Original] Defendants have engaged in and are likely to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C.

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<sup>1</sup> Plaintiffs’ Exhibits 1-42 are attachments to Plaintiff’s TRO Motion (ECF Nos. 5-2 through 5-15). Plaintiffs’ Exhibits 43-45 are attachments to Plaintiff’s Supplemental Brief in Support of Entry of a Preliminary Injunction (ECF Nos. 53-1, 53-2, 53-3). Plaintiffs’ Exhibits 46-54 are attachments to this Motion.

§ 45(a),” and that the FTC was “therefore likely to prevail on the merits.” ECF No. 12 at 2. The Court appointed a temporary receiver over the Original Corporate Defendants and imposed an asset freeze on all of the Original Defendants.

After entry of the TRO, Defendants Ricardo Diaz, Steffan Molina, and Perfect Image Online stipulated to entry of preliminary injunctions against them. *See* ECF Nos. 40, 58. On June 6, 2018, the Court held a preliminary injunction hearing addressing the remaining ten Original Defendants. After the hearing, the Court entered a preliminary injunction against those defendants, again finding that there was good cause to believe that they violated Section 5 of the FTC Act and that the FTC was “likely to prevail on the merits of this action.” ECF No. 64 at 2. The Court also found that “a preliminary injunction with an asset freeze, the continued appointment of the Receiver, and other equitable relief is in the public interest.” *Id.* at 3.

Based on information obtained through the TRO, on July 3, 2018, the FTC filed an Amended Complaint. ECF No. 109. The Amended Complaint added the following new Defendants and detailed their roles in the Defendants’ unlawful conduct: National Business Listings, LLC (“National Business Listings”); Pinnacle Presence LLC (“Pinnacle Presence”); Allstar Data, LLC (“Allstar Data”); Daniel Carver; and Vincent Yates.<sup>2</sup> The Amended Complaint also added Relief Defendants Stephanie Watt and Jennefer Ramsey.

## **II. THE NEW CORPORATE DEFENDANTS**

The Amended Complaint added National Business Listings, Pinnacle Presence, and Allstar Data as new Corporate Defendants. National Business Listings and Pinnacle Presence

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<sup>2</sup> The Amended Complaint also added two new counts, alleging violations of the FTC’s Telemarketing Sales Rule. Specifically, Count III alleges that the Defendants initiated or caused the initiation of calls delivering prerecorded messages, and Count IV alleges that the Defendants initiated or caused the initiation of calls to phone numbers registered on the National Do Not Call Registry. The FTC does not rely upon those counts as support for this Motion.

are the two most recent entities that Defendants have used to deceptively sell Google “claiming and verification” services to consumers. Allstar Data is controlled solely by Defendant Justin Ramsey, has no employees, has commingled funds with its co-Defendants, and leases the Deerfield Beach office space from which the Defendants operated.

**A. National Business Listings, LLC**

Based on evidence gathered at the Defendants’ 550 Fairway Drive office, the Receiver concluded that “Defendants Dustin Pillonato and Justin Ramsey were operating a previously unknown entity, National Business Listings LLC.” ECF No. 57 at 1 (Executive Summary ¶ 2). The evidence confirms that National Business Listings sold claiming and verification services using the same deceptive practices as its predecessors. Tellingly, for example, the office contained sales scripts on which “Point Break” or “Kivanni” was crossed out and replaced with “National Business Listings.” *See, e.g.*, PX 43 (ECF No. 53-1) at 27-29, 39-43; *see also* ECF No. 57 at 18 (¶ 61) (stating that the Receiver found sales scripts that “appear to be the same or very similar to those that the FTC referenced or attached in its pleadings”).

National Business Listings, like its predecessors, made the same three core misrepresentations that the FTC detailed in its TRO Motion (ECF No. 5 at 2-8) and that the Court has already found likely were false: Defendants were affiliated with Google, consumers’ businesses were at risk of removal from Google, and consumers would receive keywords for which their businesses would appear prominently in search results. For example, in one call transcribed by the Receiver, a National Business Listings sales agent stated:

The name of our company is National Business Listings. What we are is we’re an authorized Google My business representative for Google. The reason why Google will never give you a call, as you know, they have, they have billions of people on their search engine. It’s nearly impossible for them to reach out to everybody. So there’s four companies like us that are authorized to do so. And to be honest with you, Mike, there’s about 90

companies that do it altogether, but there's only four that are actually authorized to do so.

ECF No. 57 at 31 (¶ 98). Earlier in the same call, a different agent touted National Business Listings's keywords: "Now this is the most important part. This is what is going to get you the added visibility . . . . This is the 'key words.' . . . So if someone searches for a financial advisor, they are going to be able to find your listing on the first page." *Id.* at 30 (¶ 95). On a different call, a National Business Listings sales agent told a consumer, "you are actually at risk of being removed from [Google]." *Id.* at 28 (¶ 86) (alteration in original). Both the keyword promise and the removal threat originally appeared in the Point Break sales script, which National Business Listings now uses. *See* PX 43 (ECF No. 53-1) at 39 ("Over the next 6-8 months businesses that are not claimed and verified with Google run the risk of possibility being removed from the search engine or pushed so far down the search engine that no one will find you."); *id.* ("Part of the claiming and verification process is registering your keywords, so you come up prominently when someone is searching for your goods and services.").

**B. Pinnacle Presence LLC**

Based on evidence gathered at Defendants' 4730 NW 2nd Avenue office and interviews with Defendants Steffan Molina and Daniel Carver, the Receiver concluded that Molina and Carver "were operating a previously unknown entity, Pinnacle Presence LLC, along with [Original] Defendant Perfect Image Online LLC." ECF No. 57 at 1 (Executive Summary ¶ 3). In fact, the Receiver's Report states that "employees confirmed that Perfect Image and Pinnacle Presence were one and the same, that they continued to provide the same services, have the same employees and owners, and that they had started using the name Pinnacle Presence only one week earlier." *Id.* at 10 (¶ 26).



As was the case with Point Break and National Business Listings, the FTC and the Receiver found sales scripts and other documents on which Original Defendant Perfect Image Online was crossed out and replaced with new Defendant Pinnacle Presence. *See, e.g.*, PX 43 (ECF No. 53-1) at 61. Unsurprisingly, the FTC and the Receiver also found substantial evidence that Pinnacle Presence, like its predecessors, used false claims of affiliation with Google, false threats of removal from Google, and false promises of Google keywords to sell Google “claiming and verification” services. The Receiver’s Report, for example, quotes a Pinnacle Presence sales agent telling one consumer that “your Google listing is up for removal from the search engine.” ECF No. 57 at 29 (¶ 89). Furthermore, the FTC and the Receiver found scripts instructing Pinnacle Presence employees to identify Pinnacle Presence as an “Authorized Google My Business Agency.” *See, e.g.*, ECF No. 57 at 21 (¶ 71); PX 43 (ECF No. 53-1) at 65. Another sales script directed sales agents to tell consumers that “keywords” are “one of the most important parts of the verification process” and will “get directly associated with your business listing.” ECF No. 53-1 at 49.

**C. Allstar Data, LLC**

Defendant Justin Ramsey has used Allstar Data to further the Defendants’ common enterprise, including by leasing office space and paying employees. Allstar Data has no employees, and Ramsey is its sole owner, manager, officer, and bank signatory. ECF No. 138 at ¶ 186 (admitting allegations in First Amended Complaint, ECF No. 109, that Ramsey is Allstar Data’s “sole owner, manager, and officer” and that Allstar Data has no employees); PX 36 (ECF No. 5-14) at 9-13. Ramsey, through Allstar Data, assumed control of the lease at Defendants’ 550 Fairway Drive office space. *See* ECF No. 56-3 at 4-6 (Ex. N). On at least one occasion, Ramsey used Allstar Data to pay the Defendants’ employees. Specifically, Ramsey used the

Allstar Data checking account to send a check marked “payroll” to DCP Marketing, which then paid Defendants’ employees. PX 39 (ECF No. 5-15) at 49-59. Allstar Data also received at least \$68,000 from Point Break, including some payments labeled “distributions,” despite the fact that Allstar Data was not a Point Break owner. PX 46 (Agarwal) ¶ 8; PX 52 at 3-8; PX 49 (Erickson) at 42 (identifying Point Break’s owners).

### **III. THE NEW INDIVIDUAL DEFENDANTS**

Vincent Yates and Daniel Carver are longtime employees of the common enterprise with the authority to control National Business Listings and Pinnacle Presence, respectively.

#### **A. Vincent Yates**

Yates identified himself as National Business Listings’s sole manager and registered agent in the company’s February 2018 incorporation papers. PX 47 (Gales) at 6-8. He is also the sole signatory on at least one of its bank accounts. PX 53 at 6-7. Employees of National Business Listings confirmed Yates’s leadership role, telling the Receiver that the company’s 550 Fairway Drive office space “was overseen by Pillonato, Ramsey, and Vincent Yates.” ECF No. 57 at 8 (¶ 18). In fact, on the morning that the Receiver assumed control of Defendants’ business premises, Yates was at Ramsey’s house with Ramsey and Pillonato. PX 48 (Perlman) at 4; ECF No. 49, Ex. A (Affidavit of Ivan Lopez) ¶¶ 5-10. He subsequently helped Ramsey and Pillonato flee Ramsey’s house with two laptops after being served with the Complaint and TRO. ECF No. 49, Ex. A ¶¶ 8-10. Shortly thereafter, National Business Listings transferred \$13,000 to OnPoint Media Group, LLC, a company purportedly managed by an individual named Summer Pillonato and, like National Business Listings, headquartered at 550 Fairway Drive. PX 54 at 2-5; PX 53 at 11-12; PX 47 (Gales) at 15. Although Yates apparently did not assume a controlling role in the common enterprise until his February 2018 formation of National Business Listings, he

worked as a sales agent for Point Break starting no later than August 2017. ECF No. 138 at 23 (¶ 104).<sup>3</sup> The Defendants' call management software identifies Yates as a "closer." ECF No. 56-5 at 7.

**B. Daniel Carver**

Daniel Carver, with Steffan Molina, operated Pinnacle Presence and Perfect Image Online from the Defendants' 4730 NW 2nd Avenue office. ECF No. 57 at 1 (Executive Summary ¶ 3). The Receiver identified Carver as an owner of both companies. *Id.* at 10, 42 (¶¶ 28, 156-157). Carver told the Receiver that public records did not reflect his role at Perfect Image because of his criminal history and poor credit. *Id.* at 44-45 (¶ 171). Carver also told the Receiver that, at the time that the Court issued the TRO, Carver was in the Dominican Republic with co-Defendants Molina and Ricardo Diaz to open a new call center for Pinnacle Presence. *Id.* at 45 (¶ 173). Carver was training the call center employees. *Id.* at 48 (¶ 189).

Carver started his work for the Defendants as a sales agent and then sales manager for Defendant Michael Pocker's Modern Spotlight LLC. ECF No. 57 at 43-44 (¶ 167). Modern Spotlight LLC sold claiming and verification services from March through August 2017. ECF No. 117 at 38:19-24; 39:21-40:1. Carver recruited Molina to join the business because Carver and Pocker needed someone to open a merchant account. ECF No. 57 at 44 (¶ 168). Molina, Carver, and Pocker then formed Modern Spotlight Group LLC. *Id.* at 41 (¶¶ 150-151). Carver and Molina later left to form Original Defendant Perfect Image Online, with Carver obtaining an ownership stake and retaining his role as sales manager. *Id.* at 41, 44 (¶¶ 155, 170-171).

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<sup>3</sup> Yates began receiving weekly paychecks from Point Break in August 2017. *See* PX 52 at pp. 9-23 (checks from Point Break from August 2017 through October 2017); PX 50 at pp. 3-6 (checks from Point Break from October 2017 through November 2017); *see also* PX 51 at pp. 2-18 (checks from DCP Marketing from November 2017 through March 2018).

#### **IV. THE RELIEF DEFENDANTS**

##### **A. Jennefer Ramsey**

Jennefer Ramsey is Justin Ramsey's wife. PX 49 (Erickson) at 5. None of the Defendants' own financial disclosures identify her as an employee of any Corporate Defendant. Justin Ramsey identified her as a subcontractor for "It Works!" PX 49 (Erickson) at 5. Moreover, the Receiver "do[es] not believe that Jennefer Ramsey . . . worked for the Receivership Entities." PX 48 (Perlman) ¶ 5. Nevertheless, since January 18, 2017,<sup>4</sup> Ms. Ramsey has received at least \$55,385.05 in benefits from Point Break and Allstar Data, including \$10,407.57 in cash, \$11,774.04 in car payments, \$4,284.16 in utilities payments, and \$28,919.28 in mortgage payments.<sup>5</sup> PX 46 (Agarwal) Table 2, ¶ 10. These totals omit the value of any items purchased by Point Break or Allstar for Ms. Ramsey. *See* PX 29 (ECF No. 5-9) ¶ 38 (Allstar Data sent \$46,750 to "Diamond Exchange"); *id.* at Table 9 (listing Point Break purchases).

##### **B. Stephanie Watt**

Stephanie Watt is Dustin Pillonato's live-in companion. PX 49 (Erickson) at 25. No Defendant identifies Ms. Watt as an employee of a Corporate Defendant. In fact, according to Pillonato, Watt is a self-employed dog groomer. *Id.* The Receiver "do[es] not believe that... Stephanie Watt worked for the Receivership Entities." PX 48 (Perlman) ¶ 5. Despite her lack of

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<sup>4</sup> Although Allstar Data did not receive money directly from consumers, it did receive at least \$68,000 from Defendant Point Break, which, in turn, received over \$2 million from consumers. PX 46 (Agarwal) ¶ 8; PX 44 (ECF No. 53-2) at Tables 2, 4. The first date on which the FTC is aware of Allstar Data receiving a transfer from Point Break is January 18, 2017. As a result, the FTC has excluded any funds Ms. Ramsey received from Allstar Data prior to this date.

<sup>5</sup> Jennefer Ramsey is the sole person listed on the deed for the Ramseys' house, and both she and her husband are fully responsible for the mortgage. PX 47 (Gales) at pp. 21-24. As a result, the full amount of these mortgage payments benefitted her.

any role, since January 27, 2017,<sup>6</sup> Ms. Watt has received no less than \$56,235.49 in benefits from Corporate Defendants Point Break, DCP Marketing, and Modern Source Media, including \$43,525.00 in cash and \$12,710.49 in car payments. PX 46 (Agarwal) Table 3, ¶ 12. These totals omit the value of any items purchased by Point Break or DCP Marketing for Ms. Watt. *See* PX 29 (ECF No. 5-9) ¶ 38 (DCP Marketing sent \$46,000 to “Diamond Exchange”); *id.* at Table 8 (listing DCP Marketing purchases).

### **ARGUMENT**

The provisions of the previous preliminary injunctions should be extended to the new Defendants. In particular, the FTC seeks an order barring the new Defendants from continuing their deceptive conduct, imposing an asset freeze on the new Defendants, imposing a limited asset freeze on the Relief Defendants, and appointing a receiver over Allstar Data, LLC.<sup>7</sup> As set forth below, the evidence overwhelmingly supports entry of the proposed preliminary injunction.

#### **I. THE EVIDENCE JUSTIFIES ENTRY OF A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION.**

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to seek, and this Court to grant, preliminary and permanent relief enjoining violations of the FTC Act. *See FTC v. Gem Merch. Corp.*, 87 F.3d 466, 469 (11th Cir. 1996) (“[A] district court may order preliminary relief, including an asset freeze, that may be needed to make permanent relief possible.”). “[I]n determining whether to grant a preliminary injunction under section 13(b), a district court must (1) determine the likelihood that the FTC will ultimately succeed on the

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<sup>6</sup> The FTC is unaware of any money that DCP Marketing received directly from consumers or from Point Break prior to January 27, 2017. Accordingly, the FTC excluded pre-January 27 transactions between DCP Marketing and Stephanie Watt.

<sup>7</sup> The Receiver has already deemed National Business Listings and Pinnacle Presence to be Receivership Entities. *See* ECF No. 55. Neither entity objected to that designation. The attached proposed Preliminary Injunction confirms those entities’ status as Receivership Entities.

merits and (2) balance the equities.” *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1217-18 (11th Cir. 1991); *see also FTC v. IAB Mktg. Assoc., LP*, 746 F.3d 1228, 1232 (11th Cir. 2014). The FTC need not establish irreparable harm. *IAB Mktg. Assoc., LP*, 746 F.3d at 1232.

Here, the FTC satisfies both prongs of the preliminary injunction standard. First, as with the Original Defendants, the FTC is overwhelmingly likely to prove its deception and unfairness counts against the new Defendants. The FTC is also likely to prove that the Relief Defendants have no legitimate claim to the funds they received from the Defendants. Second, the equities favor issuing a temporary restraining order to protect the public from ongoing harm and to preserve the Court’s ability to provide complete redress to consumers.

**A. The FTC is Likely to Prevail on the Merits.**

To support entry of a preliminary injunction, the FTC need only present evidence that it “likely will prevail,” rather than evidence that would justify a “final determination.” *Univ. Health*, 938 F.2d at 1218. The FTC satisfies this standard by establishing “some chance of probable success on the merits.” *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989). The evidence used to support such a showing can include “affidavits and hearsay materials.” *Levi Strauss & Co. v. Sunrise Int’l Trading*, 51 F.3d 982, 985 (11th Cir. 1995).

Here, as described below, the evidence overwhelmingly establishes that the FTC is likely to prevail. First, National Business Listings and Pinnacle Presence violated the FTC Act through their deceptive sale of Google “claiming and verification” services. Second, those companies and Allstar Data, LLC are jointly and severally liable for each other’s and the other Corporate Defendants’ wrongdoing because they were part of Defendants’ common enterprise. Third, new Defendants Vincent Yates and Daniel Carver are also jointly and severally liable because they had authority to control and knowledge of the common enterprise’s unlawful acts. Finally,

Relief Defendants Ramsey and Watt received money or other items of value from the common enterprise to which they were not entitled; thus, those benefits should be disgorged.

**1. National Business Listings and Pinnacle Presence Violated the FTC Act Through Their Deceptive Sale of Claiming and Verification Services.**

National Business Listings and Pinnacle Presence violated the FTC Act’s prohibition on “deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a)(1). Deception occurs when: (1) defendants make a representation or omission; (2) that is likely to mislead consumers acting reasonably; and (3) that representation or omission is material to consumers’ decisions. *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1266-67 (S.D. Fla. 2007). As described above, National Business Listings and Pinnacle Presence sold Google “claiming and verification” services using the same misrepresentations—and frequently the same scripts—as Original Defendants Point Break; Modern Spotlight Group LLC; and Perfect Image Online. The Court has already found that those Defendants likely violated the FTC Act. ECF No. 64 at 2. The same is true here.

Specifically, the evidence establishes all three elements of unlawful deception. First, National Business Listings and Pinnacle Presence made the misrepresentations described above. In particular, both the FTC and Receiver have presented evidence that both companies claimed an affiliation with Google, threatened business owners with removal from Google, and promised business owners keywords for which they would appear prominently in search results. *See supra* Statement of Facts (“SOF”) § II.A-B.

Second, those claims are likely to mislead consumers acting reasonably because they are false. *See, e.g., FTC v. Nat’l Urological Group*, 645 F. Supp. 2d 1167, 1190 (N.D. Ga. 2008) (“To demonstrate that a claim is likely to mislead a reasonable consumer, the FTC may . . .

demonstrate . . . that the express or implied message conveyed by the ad is false.” (internal quotation marks omitted)). In fact, three declarations from a Google employee confirm that the Defendants’ threats of removal from Google and promises of Google keywords are false. *See* PX 3; PX 4; PX 5 (ECF No. 5-3) ¶ 4 (“Google does not remove business listings from search results because they are unclaimed or unverified.”); *id.* ¶ 6 (Google “does not allow business owners to ‘claim’ specific keywords to business listings . . .”). The Court agreed that the FTC is likely to prove that these claims were false. ECF No. 64 at 2.

The Google declarations also explain that the Original Defendants’ claims of affiliation with Google are false. PX 3; PX 4; PX 5 (ECF No. 5-3) ¶ 3. Additional evidence confirms that the new Defendants, like their predecessors, are unaffiliated with Google. Specifically, rather than assert that the affiliation claims are true, the new Defendants have denied—contrary to their sales scripts and recordings of their sales calls—making them at all. Carver and Molina, for example, claimed that they instructed Pinnacle Presence employees to tell customers that they were not affiliated with Google. ECF No. 57 at 13 (¶ 43). Nevertheless, Pinnacle Presence employees described the company as an “authorized Google My Business agency.” *See supra* SOF § II.B. Likewise, Christopher Paruch, a supervisor for National Business Listings, claimed that “whenever an employee told a customer that he/she was affiliated or authorized by Google, the employee was immediately fired.” *Id.* at 37 (¶ 134). Paruch, however, “failed to identify a single individual who was ever terminated for such a misrepresentation.” *Id.* at 37-38 (¶ 134). The Receiver agreed that the new Defendants’ representations of affiliation with Google were “false or misleading.” *Id.* at 1 (Executive Summary ¶ 5).

Third, the Defendants’ misrepresentations are material because they “involve[] information that is important to consumers and, hence, likely to affect their choice of, or conduct



regarding a product.” *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992) (internal quotation marks omitted); *see also Transnet Wireless Corp.*, 506 F. Supp. 2d at 1267 (express claims and deliberately made implied claims “are presumed to be material”).

**2. Pinnacle Presence, National Business Listings, and Allstar Data Are Part of the Original Defendants’ Common Enterprise.**

The FTC’s TRO Motion also presented substantial evidence proving that the Original Defendants operated as a common enterprise. Additional evidence gathered pursuant to the TRO establishes that Pinnacle Presence, National Business Listings, and Allstar Data are also part of the common enterprise and therefore jointly and severally liable for its wrongdoing.

“[A] corporate entity can be held liable for the conduct of other entities where the structure, organization, and pattern of a business venture reveal a common enterprise or a maze of integrated business entities.” *FTC v. Lanier Law, LLC*, 715 F. App’x 970, 979 (11th Cir. 2017) (internal quotation marks omitted). To determine whether a common enterprise exists, courts consider, *inter alia*, whether the businesses “share office spaces and employees, commingle funds, coordinate advertising efforts, and operate under common control.” *Id.* at 979-80. “If the structure, organization, and pattern of a business venture reveal a ‘common enterprise’ or a ‘maze’ of integrated business entities, the FTC Act disregards corporateness.” *FTC v. Washington Data Res.*, 856 F. Supp. 2d 1247, 1271 (M.D. Fla. 2012).

For the reasons explained above, Pinnacle Presence and National Business Listings plainly are just the latest in a series of entities that Defendants have used to stay ahead of law enforcement, consumers, and banks. Pinnacle Presence and National Business Listings share common control, office space, employees, and sales practices with their predecessors. *See supra* SOF § II.A-B. The defendants’ employees confirm this relationship. Employees at Defendants’ 4730 NW 2nd Avenue address, for example, explained “that [Original Defendant] Perfect Image

and Pinnacle Presence were one and the same.” ECF No. 57 at 10 (¶ 26). Similarly, the Receiver described four employee interviews conducted at 550 Fairway Drive, from which National Business Listings operated.<sup>8</sup> One employee explained that he currently worked for both National Business Listings and Modern Source Media, and previously worked for Point Break. *Id.* at 39-40 (¶¶ 146-47). Another had worked for Modern Spotlight Group, DCP Marketing, and National Business Listings. *Id.* at 39 (¶¶ 143-44). A third worked for Point Break and then for Modern Source Media. *Id.* at 38-39 (¶¶ 139-140). The last worked for National Business Listings after Point Break. *Id.* at 37 (¶¶ 131-32).

Allstar Data, LLC is also part of this common enterprise and therefore jointly and severally liable for its wrongdoing. It leased, and therefore shared, office space with National Business Listings and Modern Source Media. ECF No. 56-3 at 4-6 (Ex. N). It is also controlled by Justin Ramsey, *see supra* SOF § II.C, and therefore shares common control with many of its co-Defendants. Although Allstar Data itself has no employees, *see id.*, it has funded the Defendants’ payroll by, *see* PX 39 at 49-59. Moreover, it also has commingled funds by receiving “distributions” from Point Break. PX 52 at 3-6.

### **3. Vincent Yates and Daniel Carver Are Liable for Monetary and Injunctive Relief.**

An individual defendant is personally subject to injunctive and equitable monetary relief if he (1) “participated directly in the practices or acts or had the authority to control them” and

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<sup>8</sup> In fact, at least eight of the ten Corporate Defendants have operated, incorporated, paid rent, or held or assumed the lease for Defendants’ office space at 550 Fairway Drive. ECF No. 57 at 1 (Executive Summary ¶ 2) (Modern Source Media and National Business listings operated from this office); *id.* at 44 (¶ 169) (Modern Spotlight Group operated from this office); *id.* at 8 (¶ 16) (scripts for Point Break found in this office); PX 27 (ECF No. 5-6) at p. 42 (Modern Internet Marketing listed office as principal address); PX 51 at p. 19 (DCP Marketing paid rent); PX 31 (ECF No. 5-12) at pp. 297-311 (Modern Spotlight LLC entered into the lease); ECF No. 56-3 at pp. 4-6 (Ex. N) (Allstar Data assumed the lease from Modern Spotlight LLC).

(2) “had some knowledge of the practices.” *Gem Merch. Corp.*, 87 F.3d at 470 (quoting *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989)).

“An individual’s status as a corporate officer gives rise to a presumption of ability to control a small, closely-held corporation.” *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1270; *see also Nat’l Urological Group*, 645 F. Supp. 2d at 1207 (same). Bank signatory authority or acquiring services on behalf of a corporation are also evidence of authority to control. *See, e.g., FTC v. USA Fin. LLC*, 415 Fed. App’x 970, 974-75 (11th Cir. 2011). Direct participation in wrongdoing—the alternative to authority to control—includes “pitch[ing] customers.” *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1271.

Here, Yates and Carver had the authority to control the common enterprise and directly participated in its wrongdoing. As the sole manager of National Business Listings, Yates presumptively had authority to control the company. PX 53 at 6-7; PX 47 (Gales) at pp. 7-8. Yates also began directly participating in the common enterprise’s wrongdoing by acting as a sales agent, initially for Original Defendant Point Break, starting no later than August 2017. *See supra* SOF § III.A. Carver, as an owner and sales manager of Perfect Image Online and Pinnacle Presence and sales manager of Modern Spotlight and Modern Spotlight Group, had authority to control those companies’ deceptive practices. Carver also directly participated in the Defendants’ wrongdoing, either himself making or directing sales agents to make the unlawful claims at issue. In fact, at the time the TRO was entered, Carver was instructing employees at a new call center to make those same deceptive claims. ECF No. 57 at 12-14 (¶¶ 41-45).

As to the second prong, individual defendants have “knowledge” of unlawful practices if they (1) “had actual knowledge of material misrepresentations,” (2) were “reckless[ly] indifferen[t] to the truth or falsity of such misrepresentations,” or (3) had an “awareness of a high

probability of fraud” and intentionally avoided knowing the truth. *See FTC v. Wilcox*, 926 F. Supp. 1091, 1104 (S.D. Fla. 1995). “An individual’s degree of participation in the business is probative of knowledge.” *FTC v. Partners in Health Care Ass’n*, 189 F. Supp. 3d 1356, 1367 (S.D. Fla. 2016). In particular, an individual’s “pervasive role and authority” for a corporate defendant can create a “strong inference” that the individual had the requisite knowledge. *See FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1082 (C.D. Cal. 2012), *aff’d in part and vacated in part on other grounds*, 815 F.3d 593 (9th Cir. 2016). Evidence of a “pervasive role” includes serving as principal owners and officers, controlling the businesses’ finances, and overseeing their activities. *Amy Travel Serv.*, 875 F.2d at 574-75.

Here, both Yates and Carver had pervasive roles in the common enterprise. Yates, with Ramsey and Pillonato, oversaw National Business Listings’s activities, and was also the company’s sole manager and bank signatory. Carver has had a pervasive role—first as sales manager and then as owner and sales manager—in four different iterations of the common enterprise: Modern Spotlight LLC, Modern Spotlight Group LLC, Perfect Image Online LLC, and Pinnacle Presence LLC. Yates and Carver also had knowledge of the common enterprises’ false claims because their roles as sales agent and sales manager, respectively, required them to make those claims or direct others to make the claims.

#### **4. The Relief Defendants Received Money from the Scam To Which They Have No Legitimate Claim.**

The FTC is likely to prevail against Relief Defendants Jennefer Ramsey and Stephanie Watt, who each received tens of thousands of dollars from the Defendants’ unlawful common enterprise. “[F]ederal courts can be employed to recover ill-gotten gains for the benefit of the victims of wrongdoing, whether held by the original wrongdoer or by one who has received the proceeds of the wrong.” *Transnet Wireless Corp.*, 506 F. Supp. 2d at 1273 (quoting *CFTC v.*

*Kimberlynn Creek Ranch*, 276 F.3d 187, 192 n.4 (4th Cir. 2002)). It is therefore proper to order equitable monetary relief against a relief defendant “where that person has (1) received ill-gotten funds; and (2) does not have a legitimate claim to those funds.” *Id.* (quoting *SEC v. Cavanaugh*, 155 F.3d 129, 136 (2nd Cir. 1998); *see also CFTC v. Int’l Berkshire Group Holdings, Inc.*, 2006 WL 3716390, at \*10, 12 (S.D. Fla. Nov. 3, 2006) (Altonaga, J.) (ordering disgorgement by relief defendants because they received funds from defendants’ “fraudulent activities,” “but do not appear to have provide any legitimate services in exchange for the payments they received”).

As described above, Relief Defendant Jennefer Ramsey received substantial transfers of cash, car payments, utilities payments, and mortgage payments from Defendants’ unlawful conduct. Relief Defendant Stephanie Watt likewise received substantial transfers of cash and car payments. Because neither provided any services to Defendants, the FTC is likely to obtain an order requiring them to disgorge the benefits they received.

**B. The Balance of Equities Favors Entering the Preliminary Injunction.**

“When a district court balances the hardships of the public interest against a private interest, the public interest should receive greater weight.” *World Wide Factors, Ltd.*, 882 F.2d at 347; *see also FTC v. USA Beverages, Inc.*, 2005 WL 5654219, at \*5 (S.D. Fla. Dec. 6, 2005) (“In balancing the equities, private concerns may be considered, but public equities must receive far greater weight.”). Here, as to the new Defendants, the balance of equities mandates entry of a preliminary injunction because the public interest in preventing consumers from falling victim to Defendants’ deceptive practices far outweighs Defendants’ interest in continuing these practices. As to the Relief Defendants, the public interest in providing redress to injured consumers outweighs the Relief Defendants’ private interest in retaining money that they did not earn.

**II. THE RECEIVERSHIP AND ASSET FREEZE ARE NECESSARY TO PREVENT DEFENDANTS FROM DISSIPATING ASSETS AND DESTROYING EVIDENCE.**

With the Court’s authority to grant preliminary and permanent relief enjoining violations of the FTC Act comes the power to grant “ancillary relief, including freezing assets and appointing a Receiver.” *FTC v. U.S. Oil & Gas Corp*, 748 F.2d 1431, 1432 (11th Cir. 1984); *see also St. Honore v. 2014meimei*, 2015 WL 12533111, at \*4 (S.D. Fla. Nov. 30, 2015) (Altonaga, J.) (“Requesting equitable relief invokes the district court’s inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief.” (internal quotation marks omitted)). Here, the appointment of a receiver and the imposition of an asset freeze are necessary to preserve the status quo and to maximize the amount of assets available for consumer redress.

**A. The Appointment of a Receiver Is Necessary.**

When a defendant has used deception to obtain money from consumers, “it is likely that, in the absence of the appointment of a receiver to maintain the status quo, the corporate assets will be subject to diversion and waste” to the detriment of victims. *SEC v. First Fin. Group of Texas*, 645 F.2d 429, 438 (5th Cir. 1981), *quoted in FTC v. Centro Natural Corp.*, 2015 WL 12533137, at \*3 (S.D. Fla. Jan. 26, 2015) (Altonaga, J.). The appointment of a receiver is appropriate where “there is imminent danger of property being lost, injured, diminished in value or squandered, and where legal remedies are inadequate.” *FTC v. World Patent Mktg., Inc.*, 2017 WL 3508639, at \*17 (S.D. Fla. Aug. 16, 2017) (quoting *Leone Indus. v. Assoc. Packaging*, 795 F. Supp. 117, 120 (D.N.J. 1992)).

Here, as with the Original Defendants, a Receiver is necessary to preserve evidence and assets. As the Court previously found, “[t]here is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief for consumers—including

monetary restitution, rescission, disgorgement, or refunds—will occur from the sale, transfer, destruction, or other disposition by Defendants of their assets or records unless Defendants continue to be restrained and enjoined by order of this Court.” ECF No. 64 at 3.

**B. An Asset Freeze Is Necessary.**

Courts have authority under Section 13(b) of the FTC Act to impose an asset freeze to preserve the possibility of restitution to victimized customers. *See, e.g., Gem Merch. Corp.*, 87 F.3d at 468; *U.S. Oil & Gas Corp.*, 748 F.2d at 1433-34. Courts in this District, moreover, have frequently frozen defendants’ assets in FTC enforcement actions. *See* ECF No. 5 at 15 n.17. Asset freezes against Relief Defendants are also appropriate means of preserving funds for consumer redress. *See FTC v. Centro Natural Corp.*, 2015 WL 12533137, at \*6 (S.D. Fla. Jan. 26, 2015) (Altonaga, J.) (freezing relief defendants’ assets).

In the Eleventh Circuit, “[t]here does not need to be evidence that assets will likely be dissipated in order to impose an asset freeze.” *FTC v. IAB Mktg. Assocs., LP*, 972 F. Supp. 2d 1307, 1313 n.3 (S.D. Fla. 2013).<sup>9</sup> That is because the “asset freeze is justified as a means of preserving funds for the equitable remedy of disgorgement.” *See SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734 (11th Cir. 2005). The Eleventh Circuit has recognized that the “FTC’s burden of proof in the asset-freeze context is relatively light.” *IAB Mktg. Assocs.*, 746 F.3d at 1234.

The FTC, moreover, need not conduct a tracing analysis in order to justify an asset freeze.

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<sup>9</sup> In fact, although not necessary to obtain an asset freeze, the risk of dissipation of assets in the absence of a freeze is high. Yates, for example, has already assisted Ramsey and Pillonato in evading, if not violating, the TRO’s asset freeze. Yates helped Ramsey and Pillonato flee Ramsey’s house with two laptops after a process server served Ramsey and Pillonato with the Complaint and TRO at 10:30 a.m. on May 9, 2018. PX 48 (Perlman), Ex. A; ECF No. 49, Ex. A at ¶¶ 5-10. At 12:03 p.m., National Business Listings, for which Yates is the sole signatory, transferred \$13,000 to OnPoint Media Group, LLC, for which an individual named Summer Pillonato is the sole signatory. PX 54 at pp. 2-6; PX 53 at pp. 11-12. One minute later, A1 Media Group, for which Yates is also the sole signatory, also transferred \$2,400 to OnPoint Media. PX 54 at pp. 7-11; PX 53 at pp. 16-17.

Rather, “[a]ll that is necessary . . . is a ‘reasonable approximation of a defendant’s ill-gotten gains.’” *IAB Mktg. Assocs.*, 972 F. Supp. 2d at 1315 (quoting *FTC v. Bishop*, 425 Fed. App’x 796, 798 (11th Cir. 2011)).

Here, an asset freeze is necessary to preserve the Defendants’ and Relief Defendants’ assets for consumer redress and disgorgement. If the FTC ultimately prevails, the Defendants will be “liable to the extent of their ill-gotten gains,” the proper measure of which is their revenues from the scam. *IAB Mktg. Assocs.*, 972 F. Supp. 2d at 1312. Defendants’ revenues are at least \$3.2 million. *See* PX 44 (ECF No. 53-2) ¶¶ 9, 11. To date, the Receiver has obtained over \$200,000 from the Receivership Entities. ECF No. 141 at ¶ 21. An asset freeze is therefore necessary to preserve any additional funds for consumer redress. The Relief Defendants are liable for the value of any benefits they obtained from the Defendants. The attached proposed preliminary injunction therefore directs the Receiver to release from the asset freeze those assets that are not necessary to satisfy a judgment equal to the amount of those benefits.

### **CONCLUSION**

For the reasons set forth above, the FTC moves this Court to enter the attached proposed preliminary injunction.



Respectfully submitted,

Dated: August 2, 2018

/s/ Evan M. Mendelson  
Evan M. Mendelson, Special Bar No. A5502430  
Christopher J. Erickson, Special Bar No. A5502434  
Brian M. Welke, Special Bar No. A5502432  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Mailstop CC-9528  
Washington, DC 20580  
(202) 326-3320; emendelson@ftc.gov  
(202) 326-3671; cerickson@ftc.gov  
(202) 326-2897; bwelke@ftc.gov  
Fax: (202) 326-3197  
Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that, on August 2, 2018, a true and correct copy of the foregoing was served on all counsel or parties of record on the Service List, via the method indicated below.

/s/ Christopher J. Erickson  
Christopher J. Erickson

**Service List**

Aaron M. Cohen  
Aaron M. Cohen, PA  
Grand Bahamas Professional Park  
955 NW 17th Ave. Bldg. D  
Delray Beach, FL 33445  
Phone: (561) 665-8020  
Fax: (561) 665-8021  
amc@aaronmcohenpa.com  
*Counsel for Defendants Steffan Molina  
and Perfect Image Online LLC (via CM/ECF)*

Andrew N. Cove  
Cove Law  
225 South 21st Avenue  
Hollywood, FL 33020  
Phone: (954) 921-1121  
Fax: (954) 921-1621  
anc@covelaw.com  
*Counsel for Defendants Justin Ramsey  
and Dustin Pillonato, and Relief Defendants  
Jennefer Ramsey and Stephanie Watt (via  
CM/ECF)*

Mitchell N. Roth  
Roth Jackson Gibbons Condlin, PLC  
8200 Greensboro Drive  
Suite 820  
McLean, VA 22102  
Phone: (703) 485-3535  
Fax: (703) 485-3523  
mroth@rothjackson.com  
*Counsel for Defendants Justin Ramsey  
and Dustin Pillonato (via CM/ECF)*

Kenneth Joseph Ronan  
Lavalle Brown & Ronan, P.A.  
750 South Dixie Highway  
Boca Raton, FL 33432  
Phone: (561) 395-0000  
Fax: (561) 395-9093  
kenronan@lavallebrown.com  
*Counsel for Defendants Michael Pocker,  
Modern Spotlight LLC, Modern Internet  
Marketing LLC, and Modern Spotlight  
Group LLC (via CM/ECF)*

Chad Gottlieb  
DarrowEverett LLP  
101 NE Third Avenue, Suite 1500  
Fort Lauderdale, FL 33301  
Phone: (954) 278-8355  
Fax: (401) 453-1201  
CGottlieb@DarrowEverett.com  
*Counsel for Defendant Ricardo Diaz (via  
CM/ECF)*

Gregory M. Garno  
Genovese Joblove & Battista, P.A.  
100 S.E. Second Street, 44th Floor  
Miami, FL 33131  
Phone: (305) 249-2300  
Fax: (305) 349-2310  
ggarno@gjb-law.com  
*Counsel for Receiver Jonathan Perlman (via  
CM/ECF)*

Defendant DCP Marketing, LLC  
c/o Mitchell N. Roth (via email)  
(counsel for Registered Agent  
Dustin Pillonato)  
Roth Jackson Gibbons Condlin, PLC  
8200 Greensboro Drive  
Suite 820  
McLean, VA 22102  
Phone: (703) 485-3535  
Fax: (703) 485-3523  
mroth@rothjackson.com

Defendant Modern Source Media, LLC  
c/o Mitchell N. Roth (via email)  
(counsel for Registered Agent  
Dustin Pillonato)  
Roth Jackson Gibbons Condlin, PLC  
8200 Greensboro Drive  
Suite 820  
McLean, VA 22102  
Phone: (703) 485-3535  
Fax: (703) 485-3523  
mroth@rothjackson.com

Defendant Allstar Data, LLC  
(via U.S. mail)  
c/o Agents and Incorporations, Inc.  
1201 Orange Street, Suite 600  
Wilmington, DE 19801

Defendant Pinnacle Presence LLC  
(via U.S. mail)  
c/o Michael Mayhall  
2025 Lavers Circle, Apt. D101  
Delray Beach, FL 33444

Defendant Daniel Carver  
(via U.S. mail)  
19632 Backnine Drive  
Boca Raton, FL 33498

Defendant Pointbreak Media, LLC  
c/o Gregory M. Garno (via email)  
(counsel for Receiver Jonathan Perlman)  
100 S.E. Second Street, 44<sup>th</sup> Floor  
Genovese Joblove & Battista, P.A.  
100 S.E. Second Street, 44th Floor  
Miami, FL 33131  
Phone: (305) 249-2300  
Fax: (305) 349-2310  
ggarno@gjb-law.com

Defendant Aaron Michael Jones  
(via U.S. mail)  
66 Hawking  
Irvine, CA 92618

Defendant Vincent Yates  
(via U.S. mail)  
7661 120th Avenue N  
West Palm Beach, FL 33412,  
*and*  
(via U.S. Mail)  
701 S. Swinton Ave.  
Delray Beach, FL 33444

Defendant National Business Listings, LLC  
(via U.S. mail)  
c/o Vincent Yates  
7661 120th Avenue N  
West Palm Beach, FL 33412,  
*and*  
(via U.S. Mail)  
c/o Vincent Yates  
701 S. Swinton Ave.  
Delray Beach, FL 33444