

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICHAEL RANDO, a/k/a Mike Singles,
individually and as an officer of Prosperity
Training Technology LLC, Elite Customer
Services, LLC, Digital Business Scaling
LLC, First Coast Matchmakers Inc., First
Coast Matchmakers LLC, and Financial
Consulting Management Group LLC, et al.,

Defendants.

Case No. _____

**DECLARATION AND CERTIFICATION OF PLAINTIFF'S COUNSEL
PURSUANT TO FED. R. CIV. P. 65(b) IN SUPPORT OF PLAINTIFF'S *EX
PARTE* MOTIONS FOR TEMPORARY RESTRAINING ORDER AND TO
TEMPORARILY SEAL ENTIRE CASE FILE AND DOCKET**

I, Hong Park, declare as follows:

1. I am over eighteen years of age and am a citizen of the United States. I am an attorney for the Federal Trade Commission ("FTC") in the above-captioned action. I am a member in good standing of the bar of the state of Maryland and the District of Columbia, and I am authorized to practice in this Court on behalf of the FTC pursuant to Local Rule 2.01 of the Middle District of Florida. My business address is 600 Pennsylvania Avenue, NW, Mail Stop CC-9528, Washington, DC

20580. The following facts are known to me either personally or upon information and belief, and, if called as a witness, I would competently testify thereto.

2. I submit this certification pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure in support of (1) Plaintiff's *Ex Parte* Motion For Temporary Restraining Order With Asset Freeze, Immediate Access To Documents And Premises, And Appointment Of A Receiver With Order To Show Cause Why The Court Should Not Issue A Preliminary Injunction ("TRO Motion") and (2) Plaintiff's *Ex Parte* Motion to Temporarily Seal Entire Case File and Docket.

3. Pursuant to Fed. R. Civ. P. 65(b)(1), this Court may issue a TRO without notice to Defendants if the facts show that immediate and irreparable injury will result to the movant if notice is given and if movant's counsel "certifies in writing any efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b)(1).

4. The FTC has not provided Defendants with notice of this action or of the TRO Motion, and for the reasons stated below, the interests of justice require that the FTC's motion be heard *ex parte*.

I. Defendants' Deceptive Conduct

5. The evidence set forth in the TRO Motion and accompanying exhibits, which I have personally reviewed, show that Defendants have engaged in, and are likely to continue to engage in, deceptive acts and practices to deprive consumers of substantial amounts of money.

6. For the past several years, Defendants have defrauded consumers into purchasing their bogus credit repair services and money-making opportunity. Through numerous YouTube videos, telemarketing calls, and other means, Defendants lure consumers desperate for credit with false promises of boosting their credit scores, often touting improved scores in the high 700s or in the 800s within months or even days. Defendants' credit repair tactics entail false or misleading statements to credit reporting agencies and others, which federal law prohibits. Defendants also pitch their credit repair scheme as a money-making opportunity, falsely promising consumers they can earn millions legally by operating a copycat scheme. The evidence shows that Defendants' services are neither lawful nor effective. Further, the evidence shows that Defendants have duped consumers into paying hundreds or thousands of dollars for their deceptive and illegal services.

7. Defendants' scheme is pure fraud, and they are aware of it. As explained in the TRO Motion, Defendants brazenly purchased assets to further their illegal scheme from an individual who, at the time of the purchase, faced a pending lawsuit by the FTC for the same misconduct. Defendants have also used aliases and bogus shell companies to hide their conduct.

8. Defendants' conduct violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Covid-19 Consumer Protection Act, Pub. L. No. 116-260, 134 Stat 1182, § 1401, the Credit Repair Organizations Act, 15 U.S.C. §§ 1679-1679j, the FTC's Telemarketing Sales Rule, 16 CFR Part 310, and the FTC's Business Opportunity Rule, 16 CFR Part 437.

II. *Ex Parte* Relief Is Warranted

9. As explained further in the TRO Motion, there is good cause to believe that immediate and irreparable harm will occur if the FTC's filings are not under seal and Defendants receive advance notice of any aspect of this action. The evidence of pervasive fraud in Defendants' credit repair scheme, their attempt to obscure their operation through the use of numerous corporate entities, the personal responsibility of the individual defendants for that fraud, as well as Defendants' brazen disregard of the law, strongly suggest a substantial risk that, if Defendants receive advance notice of the action, they will destroy or conceal evidence, and dissipate or withdraw and conceal assets obtained through their fraudulent scheme. Thus, in the absence of sealing, the FTC's ability to obtain, and this Court's ability to provide, complete and effective final relief will be irreparably harmed.

10. In the FTC's experience, when given notice of an impending law enforcement action, defendants engaged in similar schemes have withdrawn funds from bank accounts and moved or destroyed inculpatory documents. The following examples, provided upon information and belief, illustrate some of the cases in which defendants who received advance notice of the FTC's filing of, or intent to file, an action alleging consumer fraud immediately took steps to dissipate or conceal assets and/or destroy documents.

11. In districts within the Eleventh Circuit, on information and belief, the following has occurred:

a. In *FTC v. All Us Marketing LLC*, No. 6:15-CV-1016-JA-KRS (M.D. Fla. 2015), after obtaining an *ex parte* TRO and asset freeze, the FTC discovered that one of the individual defendants had received notice of the TRO and instructed a friend to liquidate a corporate account subject to the freeze. This conduct resulted in the misappropriation of over \$58,000, most of which was never recovered.

b. In *FTC v. Latrese & Kevin Enterprises Inc.*, No. 3:08-cv-1001-MMH-JK (M.D. Fla. 2012), the FTC sought and obtained an *ex parte* TRO with an asset freeze in connection with a motion to show cause why the defendants should not be held in contempt. After being personally served with the TRO, one defendant withdrew \$19,000 from accounts he failed to disclose to the receiver. To avoid being held in contempt of the TRO, the defendant returned some, but not all, of the money.

c. In *FTC v. Prime Legal Plans*, No. 0:12-cv-61872-RNS (S.D. Fla. 2012), the FTC obtained an *ex parte* TRO with asset freeze and appointment of a receiver. Within hours of learning of the action, the defendants moved approximately \$1.7 million to bank accounts belonging to several non-party individuals, at least \$200,000 of which was never recovered.

d. In *FTC v. Fereidoun "Fred" Khalilian*, No. 1:10-cv-21788 (S.D. Fla. 2010), the FTC obtained an *ex parte* TRO with asset freeze against defendants accused of operating a telemarketing scam. After being served with the TRO, defendant Fred Khalilian directed his employee to withdraw \$70,000 from a

frozen corporate account. The defendant eventually returned some, but not all, of the money. Additionally, defendant attempted to remove tens of thousands of dollars' worth of furniture and other valuables from his luxury apartment that were paid for with proceeds of the scam. The receiver, however, became aware and was able to halt the defendant's activities with the assistance of law enforcement.

e. In *FTC v. Global Mktg. Group, Inc.*, No. 06-cv-2272 (M.D. Fla. 2006), the FTC obtained an *ex parte* TRO with asset freeze and served the order on banks where the defendants were known or suspected to have accounts. After being served with the TRO, one defendant successfully withdrew over \$500,000 from accounts previously unknown to the FTC. Most of these funds were wired to offshore bank accounts. The defendant was ultimately held in contempt and fled the country after failing to appear at a show cause hearing.

f. In *FTC v. Access Res. Servs., Inc.*, No. 0:02-cv-60226 (S.D. Fla. 2002), a defendant who learned about the FTC's action attempted to dissipate \$579,600 by paying off the mortgage on his residence.

g. In *FTC v. Leisure Time Mktg., Inc.*, No. 6:00-cv-1057-ACC (M.D. Fla. 2000), the court entered a TRO against the defendants with immediate access to the business premises. After an individual defendant was served and acknowledged his obligation to preserve assets and documents, that defendant ordered individuals to remove boxes of documents from one of the business

premises. However, a police officer assisting the FTC in the immediate access saw this activity, and the FTC was able to contact the defendant's counsel and have the documents returned. That individual defendant also attempted to hide certain documents on the business premises in a room where FTC staff was informed that no business records were stored. Because the FTC had immediate access to the business premises, the FTC found these documents.

12. I am reliably informed of the following examples from other Circuits:

a. In *FTC v. American Home Servicing Center, LLC*, No. 8:18-cv-0597 (C.D. Cal. 2018), the FTC sought and obtained a TRO, asset freeze, and immediate access to the business premises. One defendant, who was present during the immediate access, informed another defendant, who was not present, about the action. The absent defendant promptly withdrew at least \$15,500 from one of the corporate accounts shortly after the receiver's arrival at the business premises.

b. In *FTC v. RevMountain, LLC*, No. 2:17-cv-02000 (D. Nev. 2017), the FTC sought and obtained a TRO with asset freeze and immediate access to multiple business premises. During the immediate access, there was a three-minute delay between when the receiver or his representatives entered two different locations. This delay allowed a defendant at the first location to instruct an employee at the second location to take a \$100,000 check drawn on the defendant's home equity line of credit before the receiver could gain access

to the second location. The check was taken to the defendant's lawyer but was not cashed because the asset freeze and TRO were in place.

c. In *FTC v. Credit Bureau Center, LLC*, No. 1:17-cv-00194 (N.D. Ill. 2017), after being served with a TRO with asset freeze, a defendant owner of an online credit reporting service attempted to withdraw frozen assets. The same defendant had retained consumers' personal information during litigation and was held in contempt for charging these consumers thousands of dollars in violation of a preliminary injunction.

d. In *FTC v. Kutzner*, No. 8:16-cv-999 (C.D. Cal. 2016), the FTC sought and obtained an asset freeze against a defendant not initially named in a complaint and *ex parte* TRO. The defendant transferred \$215,000 out of a corporate bank account not covered by the initial freeze the day after the receiver took control of the corporate entities. The court found the transfers indicative that the defendant would likely dissipate or otherwise render monetary damages unrecoverable and granted an expanded asset freeze.

e. In *FTC v. Asset & Capital Management Group*, No. 8:13-cv-01107 (C.D. Cal. 2013), one week after the Court granted, and the FTC served upon all defendants, an *ex parte* TRO that froze defendants' assets and appointed a receiver, the receiver identified an additional business site that defendants had failed to disclose despite providing repeated assurances they had disclosed all business locations. The undisclosed site turned out to be the defendants' headquarters and contained extensive business records. The receiver arrived

at the site unannounced and found a defendant and his colleague carrying folded bankers boxes to the site, clearly intent on removing materials from the premises. The receiver found evidence that desktop computers and records had recently been removed from the premises. The FTC subsequently learned that more than 60 servers and extensive records had been removed.

f. In *FTC v. E.M.A. Nationwide, Inc.*, No. 1:12-cv-02394 (N.D. Ohio 2012), the FTC filed for an *ex parte* TRO and corporate asset freeze, but the court required that notice be given to the defendants. Within a week of obtaining notice, the defendants had withdrawn more than \$152,000 from a corporate bank account.

g. In *FTC v. Transcontinental Warranty, Inc.*, No. 09 C 2927 (N.D. Ill. 2009), the FTC moved for a TRO with notice to the defendants. The notice was given, and the court granted the FTC's motion for a TRO freezing defendants' assets and appointing a receiver. However, when the receiver and counsel for the FTC arrived at the corporate defendant's premises pursuant to the TRO, hundreds of file folders with labels indicating that they contained records of the defendants' most recent transactions were found empty, five computers (including that of the corporate defendant's CFO) were allegedly stolen the night before the receiver and FTC arrived, and various third-party trade debtors of the defendants froze payments due to the corporate defendant, which resulted in extensive litigation involving the receiver and ultimately cost the receivership estate hundreds of thousands of dollars.

h. In *FTC v. Asia Pacific Telecom, Inc.*, No. 10-cv-3168 (N.D. Ill. 2010), the FTC obtained an *ex parte* TRO freezing the defendants' assets and prohibiting them from destroying documents. After being served with the TRO, one of the individual defendants deleted an email account used to conduct many of the illegal practices at issue in the FTC's complaint. The defendant took this step despite being served with a discovery request by the FTC for documents in the account and despite multiple demands from the court-appointed receiver for access to the account. The court ultimately held the defendant in contempt for deleting the account in violation of the TRO.

i. In *FTC v. Connelly*, No. 8:06-cv-701 (C.D. Cal. 2006), the FTC requested an *ex parte* TRO with asset freeze against all defendants. The court declined to issue an asset freeze against two of the three individual defendants and issued an order to show cause why an asset freeze should not issue as to them. Within 24 hours, the defendant whose assets were frozen and one of the other defendants then withdrew at least \$750,000, some of which was subject to the asset freeze and more than \$300,000 of which was never recovered. The judge subsequently extended the asset freeze over all defendants.

j. In *FTC v. 4049705 Canada Inc.*, No. 1:04-cv-4694 (N.D. Ill. 2004), Canadian authorities executed a search warrant on the business premises of Canadian defendants. The FTC subsequently filed its complaint and motion for a temporary restraining order with asset freeze, and provided notice to the

defendants. The FTC later discovered that the defendants had made several substantial money transfers after receiving notice of the FTC's action but before the asset freeze was imposed.

k. In *FTC v. Unicyber Tech., Inc.*, No. 2:04-cv-1569 (C.D. Cal. 2004), the FTC obtained an *ex parte* TRO with asset freeze and appointment of a receiver. Shortly after the defendant was served with the TRO, he directed his wife to violate the asset freeze by transferring \$405,000 of corporate funds to her father. With the assistance of the receiver, the FTC was able to recover these funds.

l. In *FTC v. Nat'l Consumer Counsel*, No. 04-cv-0474 (C.D. Cal. 2004), the FTC obtained an *ex parte* TRO with asset freeze and prohibition against destruction of business records against all defendants, and appointment of a temporary receiver over all but one of the corporate defendants. One individual defendant deleted electronic files on the defendants' shared network server by accessing his account through a computer under the control of the corporate defendant not under the receivership.

m. In *FTC v. QT, Inc.*, No. 1:03-cv-3578 (N.D. Ill. 2003), defendants, after notice of a TRO with asset freeze, withdrew and transferred more than \$2 million dollars from banks that had not yet received notice of the asset freeze.

n. In *FTC v. Hanson Publ'ns, Inc.*, No. 1:02-cv-2205 (N.D. Ohio 2002), Canadian defendants transferred \$105,000 from a U.S. account to a

Canadian account within two days of receiving service of the TRO. Because this violated the TRO, the court later secured return of this money, making its return a precondition to release of attorney fees.

o. In *FTC v. Physicians Healthcare Dev., Inc.*, No. 2:02-cv-2936-RMT (C.D. Cal. 2002), the court issued a TRO with asset freeze and prohibition against destruction of records, and the defendants were served with the TRO the same day. The next day when FTC staff went to the defendants' offices to review business records, they found that documents had been shredded and that computers and other business records had been removed from the premises. Witnesses advised FTC staff that, on the day of the hearing on the TRO, they observed the defendants' employees removing computers and other items from the business premises. The removed records were never recovered.

p. In *FTC v. SkyBiz.com, Inc.*, No. 4:01-cv-396-CVE-FHM (N.D. Okla. 2001), within days of the service of the TRO with an asset freeze provision, one of the primary defendants convinced an overseas trustee to withdraw \$1 million from the offshore account of a foreign affiliate. Because a domestic correspondent bank had been served with the TRO, it refused to transfer the funds. The money in the offshore account was preserved, and ultimately used to provide \$20 million for consumer redress.

13. In the FTC's experience, defendants may also learn about a case against them from a docket monitoring service. For example, in *FTC v. Wazzu Corp.*, No. cv-99-13114 (C.D. Cal. 1999), when FTC staff arrived at the defendants' business

premises to serve a temporary restraining order, it discovered that defendants had already learned about the action against them from a monitoring service to which their counsel subscribed. The monitoring service would not have learned of the action at the time of filing if the file and docket had been temporarily sealed.

III. District Courts Regularly Grant *Ex Parte* Relief In FTC Cases

14. Courts in this district regularly issue *ex parte* temporary restraining orders in actions brought under Section 5(a) of the FTC Act. *See, e.g., FTC v. GDP Network LLC*, No. 6:20-cv-1192-WWB-DCI (M.D. Fla. July 10, 2020); *FTC v. First Choice Horizon LLC*, No. 6:19-cv-1028-PGB-LHP (M.D. Fla. June 3, 2019); *FTC v. Pointbreak Media LLC*, No. 18-cv-61017-CMA, Dkt. No. 12 (S.D. Fla. May 8, 2018); *FTC v. J. William Enterprises, LLC*, No. 6:16-cv-2123-GAP-DCI (M.D. Fla. Dec 13, 2016); *FTC v. Life Mgmt. Servs. of Orange Cty., LLC*, No. 6:16-cv-00982-CEM-GJK (M.D. Fla. June 8, 2016); *FTC v. D & S Marketing Solutions, LLC*, No. 8:16-cv-01435-MSS-AEP (M.D. Fla. June 8, 2016); *FTC v. All Us Marketing LLC*, No. 6:15-CV-1016-JA-KRS (M.D. Fla. June 22, 2015); *FTC v. E.M. Systems & Services, LLC*, No. 8:15-cv-1417-SDM-AEP (M.D. Fla. June 17, 2015); *FTC v. Worldwide Info Services, Inc.*, No. 6:14-cv-00008-CEM-DAB (M.D. Fla. Jan. 7, 2014); *FTC v. Innovative Wealth Builders, Inc., et al.*, No. 8:13-cv-00123-VMC-EAJ (M.D. Fla. Jan. 14, 2013); *FTC v. The Online Entrepreneur, Inc.*, No. 8:12-cv-2500 (M.D. Fla. Nov. 6, 2012); *FTC v. Latrese & Kevin Enterprise Inc.*, No. 3:08-cv-1001-MMH-JK (M.D. Fla. May 15, 2012); *FTC v. Direct Benefits Group, LLC*, No. 6:11-cv-01186-JA-GJK (M.D. Fla. July

19, 2011); *FTC v. National Solutions LLC*, No. 11-cv-1131-ACC-GJK (M.D. Fla. July 12, 2011); *FTC v. Vacation Property Services, Inc.*, No. 8:11-cv-595-JDW-MAP (M.D. Fla. Mar. 23, 2011).

IV. Conclusion

15. For the above reasons, as contemplated by Fed. R. Civ. P. 65(b)(1), there is good cause to believe that immediate and irreparable damage will result, including the destruction of Defendants' records and the dissipation or concealment of assets necessary for consumer redress, if Defendants receive advance notice of the FTC's TRO Motion. Thus, the FTC respectfully submits it is in the interest of justice and the public that the *ex parte* TRO Motion be heard without notice to Defendants.

16. For the same reasons, there is good cause to believe that immediate and irreparable harm will result if any of the Defendants receive premature notice of the filing of this action. Thus, the interests of justice would be served from temporarily sealing the entire file and docket in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 28, 2022, in Washington, DC.

/s/ Hong Park

Hong Park
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue NW, CC 9528
Washington, DC 20580
Tel: 202-326-2158

Fax: 202-326-3768

Email: hpark@ftc.gov

Attorney for Plaintiff

FEDERAL TRADE COMMISSION