

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CORNERSTONE AND COMPANY, LLC, et
al.,

Defendants.

Case No.

UNDER SEAL

**PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER WITH
EQUITABLE RELIEF AND ORDER TO SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Local Rule 65.1(a), Plaintiff Federal Trade Commission, hereby applies to this Court for a temporary restraining order ("TRO") with other equitable relief. In support of the motion, Plaintiff states as follows:

1. Plaintiff brings this action to halt Defendants' unfair public disclosures of consumers' sensitive personal information on the internet. As part of their business of buying and selling consumer debt, Defendants have posted on a public website debt portfolios containing the sensitive personal information of more than 42,000 consumers. The information Defendants have exposed includes, but is not limited to, consumers' bank account, credit card,

and drivers' license numbers, the names of consumers' banks, consumers' birth dates, and contact information for consumers and their employers. This exposure of consumers' sensitive information has placed consumers at substantial risk of identity theft and concomitant financial account fraud, invasion of privacy, and job loss. Defendants' conduct also exposes consumers to other persons or entities attempting to collect the purported debt unlawfully even though those entities will not have purchased or acquired the authority to collect the debt.

2. As a result of the foregoing, Defendants are engaged in ongoing violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

3. Plaintiff therefore seeks a TRO:

a. Temporarily restraining and enjoining Defendants from disclosing any Protected Information without first implementing reasonable safeguards to maintain and protect the privacy, security, confidentiality, and integrity of such Protected Information;

b. Temporarily restraining and enjoining Defendants from disclosing or benefiting from any Protected Information that any Defendant disclosed prior to date of entry of TRO and without having implemented reasonable safeguards to maintain and protect the privacy, security, confidentiality, and integrity of such Protected Information;

c. Requiring Defendants and any person hosting or otherwise controlling any Internet content, server, or website that contains Protected Information posted by or on behalf of any Defendant to immediately take steps to ensure that the Protected Information on any website, blog, or social media service is no longer viewable or accessible by persons using the Internet; prevent the alteration, destruction, or erasure of any Internet content, servers, or websites that contain Protected Information posted by or

on behalf of the Defendants; and implement reasonable safeguards to maintain and protect the privacy, security, confidentiality, and integrity of any Protected Information;

d. Requiring Defendants to provide notification to each person whose Protected Information they disclosed without implementing and using reasonable safeguards to maintain and protect the privacy, security, confidentiality, and integrity of such Protected Information;

e. Restraining and enjoining Defendants and certain third parties from destroying or concealing documents;

f. Authorizing expedited discovery from Defendants and third parties, for the purpose of discovering information about Defendants' identities, assets, and/or business activities;

g. Requiring Defendants to show cause why this Court should not issue a preliminary injunction extending such temporary relief pending an adjudication on the merits; and

h. Providing for other equitable relief.

4. Pursuant to Fed. R. Civ. P. 65(b) and Local Civil Rule 65.1(a)(1), Plaintiff has provided actual notice to Defendants as of the time of making this application, and has provided copies of all pleadings and papers filed in this action to date. A certificate of counsel pursuant to Local Civil Rule 65.1(a)(1) accompanies this motion.

5. A memorandum in support of TRO and proposed TRO are filed concurrently.

WHEREFORE, Plaintiff respectfully requests that this Court grant this motion by entering the proposed TRO.

Dated: August 27, 2014

Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF PLAINTIFF'S APPLICATION FOR TEMPORARY
RESTRAINING ORDER WITH EQUITABLE RELIEF AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

TABLE OF CONTENTS

I. INTRODUCTION1

II. FACTS2

 A. Defendants2

 B. Defendants’ Unfair Disclosures of Sensitive Consumer Information3

III. A TEMPORARY RESTRAINING ORDER SHOULD ISSUE AGAINST DEFENDANTS6

 A. This Court Has the Authority to Grant the Requested Relief6

 B. The FTC Meets the Standard for Granting a Government Agency’s Request for a Temporary Restraining Order and Preliminary Injunction.....8

 C. The FTC is Likely to Succeed on the Merits of its Claim that Defendants Have Engaged in Unfair Acts or Practices9

 1. Defendants’ Business Practices Cause or Are Likely to Cause Substantial Injury to Consumers10

 2. The Harm Defendants Have Inflicted Is Not Outweighed By Any Countervailing Benefits14

 3. Consumers Cannot Reasonably Avoid the Harm Defendants Inflict15

 D. The Equities Weigh In Favor Of Granting Injunctive Relief15

IV. THE SCOPE OF THE PROPOSED TRO IS NECESSARY AND APPROPRIATE IN LIGHT OF DEFENDANTS’ UNLAWFUL CONDUCT17

 A. Conduct Relief18

 B. Disabling Access to Internet Content Containing Protected Information19

 C. Notification to Consumers20

 D. Preservation of Records21

 E. Financial Statements and Limited Expedited Discovery21

V. CONCLUSION22

TABLE OF AUTHORITIES**Cases**

<i>Benham Jewelry Corp. v. Aron Basha Corp.</i> , 1997 WL 639037 (S.D.N.Y. Oct. 14, 1997)	22
<i>Boland v. Fortis Constr. Co.</i> , 796 F. Supp. 2d 80 (D.D.C. 2011)	7
<i>CFTC v. Hunt</i> , 591 F.2d 1211 (7th Cir. 1979).....	17
<i>Council on Am.-Islamic Relations v. Guabatz</i> , 667 F. Supp. 2d 67 (D.D.C. 2009)	11
<i>Doe v. United States</i> , 487 U.S. 201 (1988).....	21
<i>Fed. Express Corp. v. Fed. Espresso, Inc.</i> , 1997 WL 736530 (N.D.N.Y. Nov. 24, 1997)	22
<i>Fed. Sav. & Loan Ins. Corp. v. Dixon</i> , 835 F.2d 554 (5th Cir. 1987)	22
<i>Five-Star Auto Club</i> , 97 F. Supp. 2d 502 (S.D.N.Y. 2000).....	17, 18
<i>FTC v. 1268957 Ontario Inc.</i> , No. 1:01-cv- 00423-JEC (N.D. Ga. Feb. 13, 2001).....	20
<i>FTC v. Accusearch Inc.</i> , 570 F.3d 1187 (10th Cir. 2009).....	10
<i>FTC v. Affordable Media, LLC</i> , 179 F.3d 1228 (9th Cir. 1999)	9
<i>FTC v. Amy Travel Serv., Inc.</i> , 875 F.2d 564 (7th Cir. 1989).....	6
<i>FTC v. Beatrice Foods Co.</i> , 587 F.2d 1225 (D.C. Cir. 1978).....	9
<i>FTC v. Cantkier</i> , No. 1:09-cv-00894-CKK (D.D.C. June 25, 2009).....	7, 19
<i>FTC v. Gem Merch. Corp.</i> , 87 F.3d 466 (11th Cir. 1996).....	6
<i>FTC v. Global Web Solutions, Inc.</i> , No. 1:03-cv-2031-HHK (D.D.C. Oct. 3, 2003).....	7
<i>FTC v. Graco</i> , No. 11-cv-02239, 2012 WL 3584683 (D.D.C. Jan. 26, 2012)	8
<i>FTC v. H.N. Singer, Inc.</i> , 668 F.2d 1107 (9th Cir. 1982).....	6, 7, 18
<i>FTC v. J.K. Publ'ns, Inc.</i> , 99 F. Supp. 2d 1176 (C.D. Cal. 2000)	15
<i>FTC v. Lancaster Colony Corp.</i> , 434 F. Supp. 1088 (S.D.N.Y. 1977).....	9
<i>FTC v. Mallett</i> , 818 F. Supp. 2d. 142 (D.D.C. 2011)	8, 9, 16
<i>FTC v. Neovi, Inc.</i> , 604 F.3d 1150 (9th Cir. 2010).....	10
<i>FTC v. One or More Unknown Parties Doing Business as American Bill Pay Organization and American Benefits Foundation</i> , No. 1:14-cv-01414 (D.D.C. Aug. 21, 2014).....	7
<i>FTC v. One or More Unknown Parties Falsely and Deceptively Advertising the Weight-Loss Product Known as Maxiline</i> , No. 1:00-cv-03035-ESH (D.D.C. Dec. 20, 2000).....	7

<i>FTC v. Pereira</i> , No. 1:99-cv-01367-AVB (E.D. Va. Sep. 14, 1999)	20
<i>FTC v. R.A. Walker & Assocs., Inc.</i> , 37 B.R. 608 (D.D.C. 1983)	6
<i>FTC v. Ryan</i> , No. 1:09-cv-00535-HHK (D.D.C. Mar. 20, 2009).....	7, 19
<i>FTC v. Stuffingforcash.com Corp.</i> , No. 1:02-cv-05022-CRN (N.D. Ill. July 16, 2002)	20
<i>FTC v. TLD Network Ltd.</i> , No. 1:02-cv-01475-JFH (N.D. Ill. Feb. 28, 2002).....	20
<i>FTC v. Travel King, Inc.</i> , 1974 WL 809 (W.D. Wash. Feb. 22, 1974)	20
<i>FTC v. U.S. Oil & Gas Corp.</i> , 748 F.2d 1431 (11th Cir. 1984).....	6
<i>FTC v. Virginia Homes Mfg. Corp.</i> , 509 F. Supp. 51 (D. Md. 1981), <i>aff'd</i> , 661 F.2d 920 (4th Cir., July 14, 1981)	20
<i>FTC v. Warner Commc'ns, Inc.</i> , 742 F.2d 1156 (9th Cir. 1984).....	16
<i>FTC v. Weyerhaeuser Co.</i> , 665 F.2d 1072 (D.C. Cir. 1981)	9
<i>FTC v. Windward Mktg., Ltd.</i> , 1997 WL 333642380 (N.D. Ga. Sept. 30, 1997).....	15
<i>FTC v. World Travel Vacation Brokers, Inc.</i> , 861 F.2d 1020 (7th Cir. 1988).....	9, 16
<i>FTC v. World Wide Factors, Ltd.</i> , 882 F.2d 344 (9th Cir. 1989)	9, 16, 17
<i>FTC v. Southwest Sunsites, Inc.</i> , 665 F.2d 711 (5th Cir. 1982).....	20
<i>Hospitality Staffing Solutions, LLC v. Reyes</i> , 736 F. Supp. 2d 192 (D.D.C. 2010).....	11
<i>In re Sci. Applications Int'l Corp. Backup Tape Data Theft Litig.</i> , Misc. No. 12-347, 2014 WL 1858458 (D.D.C. May 9, 2014)	12
<i>International Harvester Co.</i> , 104 F.T.C. 949 (1984).....	10
<i>Kemp v. Peterson</i> , 940 F.2d 110 (4th Cir. 1991).....	21
<i>Morgan Stanley DW Inc. v. Rothe</i> , 150 F. Supp. 2d 67 (D.D.C. 2001).....	11
<i>Nat'l Soc'y of Prof. Eng'rs. v. United States</i> , 435 U.S. 679 (1978)	17
<i>Orkin Exterminating Co., Inc. v. FTC</i> , 849 F.2d 1354 (11th Cir. 1988)	15
<i>Porter v. Warner Holding Co.</i> , 328 U.S. 395 (1946).....	22
<i>SEC v. Bilzerian</i> , 378 F.3d 1100 (D.C. Cir. 2004)	7
<i>SEC v. General Refractories Co.</i> , 400 F. Supp. 1248 (D.D.C. 1975).....	9
<i>SEC v. Mgmt. Dynamics, Inc.</i> , 515 F.2d 801 (2d Cir. 1975)	8
<i>SEC v. R.J. Allen & Assoc., Inc.</i> , 386 F. Supp. 866 (S.D. Fla. 1974).....	17

SEC v. Stratton Oakmont, Inc., 878 F. Supp. 250 (D.D.C. 1995) 9

SEC v. Unifund SAL, 910 F.2d 1028 (2d Cir. 1990)..... 21

Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977)9

Statutes

15 U.S.C. § 45(a) 1, 3, 10

15 U.S.C. § 45(n)..... 10

15 U.S.C. § 53(b)..... 6, 7, 8, 18

15 U.S.C. §§ 1692-1692p 13

28 U.S.C. § 1391(c)(2)..... 8

Other Authorities

Federal Trade Commission, *Court Halts Alleged Fake Debt Collector Calls from India. Grants FTC Request to Stop Defendants Who Often Posed as Law Enforcement* (Feb. 21, 2012).... 14

Federal Trade Commission, *Taking Charge: What To Do If Your Identity Is Stolen* (April 2013) 13

J. Craig Anderson, *Identity Theft Growing, Costly to Victims*, USA Today, (Apr. 14, 2013, 4:38 PM) 12

Rules

Fed. R. Civ. P. 26(d) 22

Fed. R. Civ. P. 30(a)(2)..... 22

Fed. R. Civ. P. 33(a) 22

Fed. R. Civ. P. 34(b) 22

Fed. R. Civ. P. 4(k)(1)(C) 7

Fed. R. Civ. P. 65(c) 9

Fed. R. Civ. P. 65(d)(2)..... 19

Local Civil Rule 5.4(f)..... 11

Local Civil Rule 65.1 5

I. INTRODUCTION

The Federal Trade Commission brings this consumer protection action to halt Defendants' reckless, outrageous, and unfair public disclosures of consumers' sensitive personal information on the internet. As part of their business of buying and selling consumer debt, Defendants Cornerstone and Company, LLC, and Brandon L. Lambert, its owner, have posted on a public website debt portfolios containing the sensitive personal information of more than 42,000 consumers. The information Defendants have exposed includes, but is not limited to, consumers' bank account, credit card, and drivers' license numbers, the names of consumers' banks, consumers' birth dates, and contact information for consumers and their employers. Defendants have posted the information in unprotected spreadsheets that any visitor to the website has been able to readily access, download, and exploit.

Defendants' acts and omissions constitute unfair practices in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a). In addition to putting their victims at serious risk of identity theft and concomitant financial account fraud, Defendants have publicly branded their victims as debtors, regardless of whether their purported debts have been verified. Defendants have thereby placed these consumers in jeopardy of other serious harms, such as the loss of employment and employment opportunities.

Defendants' unwitting victims cannot reasonably avoid injury because they are unlikely to discover that Defendants have openly disclosed their information and that the information has been publicly accessible for at least four months. Moreover, even if they discovered Defendants' unlawful disclosures, they are unlikely to be capable of stopping the spread of their information across the internet and into the hands of persons who can exploit the information for their own financial gain. Defendants have caused and are likely to continue to cause vast harm that is not outweighed by any compelling countervailing benefit from the disclosures. Defendants easily

could have averted the harm at virtually no cost by redacting, encrypting, or password-protecting the information, or by offering to make the information available to potential purchasers through secure means outside of the website. Instead, Defendants have posted the sensitive information on the website without taking reasonable and appropriate measures to protect its confidentiality.

A temporary restraining order (“TRO”) is necessary to immediately halt Defendants’ illegal practices and protect the consumers whose personal information has been, and remains, vulnerably exposed. The proposed TRO filed herewith would enjoin Defendants’ illegal conduct, require the immediate removal of the information from all websites on which it appears, provide for notifying the victims of the disclosures, and authorize expedited discovery to determine the scope of Defendants’ publication of consumers’ sensitive information. This relief is critical to prevent further harm to injured consumers and preserve the Court’s ability to provide effective final relief.

II. FACTS

A. Defendants

Defendants are debt brokers that have failed to take reasonable and appropriate precautions to protect consumers’ sensitive personal information in the course of selling portfolios of purported past-due payday loan, credit card, and other debt for eventual collection by third-party collectors. The information that Defendants have disclosed includes the sensitive personal information of individuals living in all 50 states, Puerto Rico, the Virgin Islands, and overseas military bases. Declaration of Michael B. Goldstein, attached as Exhibit A (hereinafter, “Ex. A”), ¶ 16. It also includes the information of at least 150 District of Columbia residents.

Id.

Cornerstone and Company, LLC, is a California limited liability company formed in June 2010. *Id.* ¶¶ 26-29 & Att. B. Its registered business address is 6600 Jurupa Avenue, Suite

216, Riverside, California 92504. *Id.* ¶ 30 & Att. C. It operated under the name William-Lee Management & Recovery Firm, LLC, for one year, then changed its name to Cornerstone in June 2011. *Id.* ¶¶ 27, 29 & Att. B. It continues to use an email address associated with William-Lee Management. *Id.* ¶ 10. Cornerstone's corporate registration documents describe its business as "Financial Advice & Recovery." *Id.* ¶ 28 & Att. B. As discussed below, it buys and sells consumer debt.

Brandon Lee Lambert owns Cornerstone, is a principal of the company, and buys and sells consumer debt on its behalf. *Id.* ¶¶ 10, 28 & Att. B. Since February 2014, he has used a public website to sell, or attempt to sell, Defendants' debt portfolios, including at least 12 debt portfolios that he posted to the website in a manner that has disclosed sensitive consumer information. *Id.* ¶¶ 10-13, 15 & Att. A. Lambert is a resident of Lake Stevens, Washington. *Id.* ¶ 33.

B. Defendants' Unfair Disclosures of Sensitive Consumer Information

Defendants have violated Section 5 of the FTC Act, 15 U.S.C. § 45(a), by failing to take reasonable and appropriate measures to protect sensitive consumer information when selling purported consumer debt on the internet. Since at least February 2014, Defendants have marketed their debt portfolios online, using one or more websites that serve as interactive marketplaces for the debt collection and debt brokering industries. Ex. A ¶¶ 4, 9-10. One such website has been public and accessible to anyone with internet access. *Id.* ¶ 4. Through at least August 21, 2014, visitors to the website have been able to view messages and download any attachments without registering with the website. *Id.* ¶¶ 4, 13.

Individuals who become members of the site -- simply by providing an email address and password -- also have been able to create profile pages and post comments and information. *Id.* ¶4. As a general practice, member debt sellers have posted summary

descriptions of the portfolios they are offering, identifying the type of debt (for example, payday loans), the age of the debt, number of accounts in the portfolio, and the total face value of the debt. *Id.* ¶ 8. The sellers then provide their contact information for interested buyers to contact them for further information through means outside the website. *Id.*

Defendant Lambert joined the website in February 2014 and immediately began posting messages offering Defendants' debt portfolios for sale. *Id.* ¶ 9. In a number of instances, Lambert also has posted the actual portfolios Defendants have for sale, posting them in the form of downloadable Excel spreadsheets attached to his messages. *Id.* ¶¶ 11-13. While Defendants on occasion have omitted or redacted some fields of sensitive consumer information from the spreadsheets, Defendants have left other fields of sensitive information in open view. *Id.* ¶¶ 15, 18 & Att. A. Defendants have posted at least 12 portfolios to the website this way, thereby exposing the sensitive personal information of more than 42,000 consumers.¹ *Id.* ¶¶ 11-12, 15 & Att. A.

For these consumers, the information made public in the unprotected Excel spreadsheets has included, but not been limited to, the consumer's first or last name; birth date; address; telephone number(s) (including cell phone numbers); email address; bank name; bank account number; bank routing number; employer name; employer or other reference contact information; and the type, age and amount of the consumer's purported debt. *Id.* ¶¶ 15-16 & Att. A. For one portfolio, the information also has included consumers' driver's license numbers; for another

¹ Defendants appear to have disclosed the sensitive information of at least an additional 5,000 consumers. A post Defendants submitted to the website on March 6, 2014 offered three portfolios for sale, but by July 2014, had only two portfolios attached. The word "SOLD," was next to the summary description of the absent portfolio, suggesting the portfolio had been removed from the website once sold. Defendants' summary description of the absent portfolio said that it contained 5,000 consumer accounts. *Id.* ¶ 17.

portfolio, it has included consumers' credit card account numbers. *Id.* ¶ 15 & Att. A. Moreover, although Defendants redacted some identifying information from the spreadsheets, the redaction was minimal and much of the redacted information could be easily discerned based on other, disclosed information. *Id.* ¶ 18. For example, in many instances in which Defendants redacted consumers' last names, they listed the consumers' email addresses which, for many consumers is simply a combination of their first and last names. *Id.*

Defendants' disclosure of the sensitive personal information is unnecessary and unfair. As discussed above, debt sellers readily market their portfolios on the website without disclosing consumers' sensitive information. Indeed, the website's terms of service specifically require that users "will not post, email or make available any content" on the website "in a manner that includes personal or identifying information about another person without that person's explicit consent." *Id.* ¶ 6.

Through their actions, Defendants have created a treasure trove for individuals scouring the web for information they can exploit. For at least four months, any visitor to the website could view and download this personal information. And, while the website has restricted public access in the last few days since the FTC notified Defendants of its pending action last week pursuant to Local Civil Rule 65.1, there is no reason to believe that Defendants' posts have been removed from the website and placed beyond the reach of any third party who registers for access to the site. *See id.* ¶ 20. Moreover, traffic counters on the website show that visitors already have accessed Defendants' posts containing the exposed portfolios more than 190 times. *Id.* ¶ 19. As a result, the consumers' information has surfaced through routine internet searches, such as those that potential employers might conduct to screen job candidates. *See id.* ¶ 23.

III. A TEMPORARY RESTRAINING ORDER SHOULD ISSUE AGAINST DEFENDANTS

To immediately halt Defendants' illegal practices and prevent continued consumer harm, the Court should issue a TRO enjoining Defendants' unfair conduct, requiring the immediate removal of consumers' sensitive information from the internet, providing for other ancillary relief, and ordering Defendants to show cause why a preliminary injunction should not issue.

A. This Court Has the Authority to Grant the Requested Relief

"Section 13(b) [of the FTC Act, 15 U.S.C. § 53(b)] gives the Commission authority to seek, and gives the district court the authority to grant, permanent injunctions," and "[i]t is clear that, because the district court has the power to issue a permanent injunction to enjoin acts and practices that violate the law enforced by the Commission, it also has authority to grant whatever preliminary injunctions are justified by the usual equitable standards." *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982).² This "unqualified grant of statutory authority . . . carries with it the full range of equitable remedies . . ." *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996) *accord* *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431 (11th Cir. 1984) (*per curiam*); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir. 1989). *See also* *FTC v. R.A. Walker & Assocs., Inc.*, 37 B.R. 608, 609 n.2 (D.D.C. 1983) (denying motion of debtor-

² This action is not brought pursuant to the first proviso of Section 13(b), which addresses the circumstances under which the FTC can seek preliminary injunctive relief before or during the pendency of an administrative proceeding. Because the FTC brings this case pursuant to the second proviso of Section 13(b), its complaint is not subject to the procedural and notice requirements in the first proviso. *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984) ("Congress did not limit the court's powers under the [second and] final proviso of § 13(b) and as a result this Court's inherent equitable powers may be employed to issue a preliminary injunction, including a freeze of assets, during the pendency of an action for permanent injunctive relief."); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982) (holding that routine fraud cases may be brought under second proviso, without being conditioned on first proviso requirement that the FTC institute an administrative proceeding).

defendants to modify previously-issued TRO imposing asset freeze). The power of the Court pursuant to Section 13(b) is not limited to injunctive relief; rather, it includes the authority to grant any ancillary relief necessary to accomplish complete justice. *Singer* at 1112-14.

Courts in the District of Columbia repeatedly have exercised their authority to grant TROs with ancillary equitable relief in FTC cases.³ As set forth in this memorandum and its supporting exhibits, similar relief is warranted here.

This Court also has personal jurisdiction over the Defendants, and venue is proper in the District. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes service on a defendant “wherever it may be found,” thereby providing for nationwide service. *See also* Fed. R. Civ. P. 4(k)(1)(C) (providing that “[s]erving a summons or filing a waiver of service establishes personal jurisdiction over a defendant . . . when authorized by a federal statute”). The courts of this Circuit have made clear that, in assessing personal jurisdiction in an action arising under a federal statute that authorizes nationwide service of process, the relevant inquiry is whether the defendant has minimum contacts with the United States. *SEC v. Bilzerian*, 378 F.3d 1100, 1106 n.8 (D.C. Cir. 2004) (“This circuit has held that the requirement of ‘minimum contacts’ with a forum state is inapplicable where the court exercises personal jurisdiction by virtue of a federal statute authorizing nationwide service of process. . . . minimum contacts with the United States suffice.”); *Boland v. Fortis Constr. Co.*, 796 F. Supp. 2d 80, 89 (D.D.C. 2011). Indeed, this

³ *See, e.g.,* *FTC v. One or More Unknown Parties Doing Business as American Bill Pay Organization and American Benefits Foundation*, No. 1:14-cv-01414 (D.D.C. Aug. 21, 2014); *FTC v. Cantkier*, No. 1:09-cv-00894-CKK (D.D.C. June 25, 2009); *FTC v. Ryan*, No. 1:09-cv-00535-HHK (D.D.C. Mar. 20, 2009); *FTC v. Global Web Solutions, Inc.*, No. 1:03-cv-2031-HHK (D.D.C. Oct. 3, 2003); *FTC v. Mountain View Sys., Ltd.*, No. 1:03-cv-00021-RMC (D.D.C. Jan. 7, 2003); *FTC v. One or More Unknown Parties Falsely and Deceptively Advertising the Weight-Loss Product Known as Maxiline*, No. 1:00-cv-03035-ESH (D.D.C. Dec. 20, 2000).

District has exercised personal jurisdiction in at least two FTC matters applying this standard. *See FTC v. Mallett*, 818 F. Supp. 2d. 142, 147 (D.D.C. 2011) (exercising personal jurisdiction where defendant resided in the United States and actively solicited business around the country); *FTC v. Graco*, No. 11-cv-02239, 2012 WL 3584683 (D.D.C. Jan. 26, 2012) (finding personal jurisdiction over two corporate defendants with *de minimis* sales in the district).

Here, Defendant Cornerstone is a California limited liability company based in Riverside, California. Ex. A ¶¶ 13-14 & Att. B. Its owner, Defendant Lambert, resides in Lake Stevens, Washington. *Id.* ¶ 31. Accordingly, there is no question that Defendants are located in the United States and therefore have sufficient minimum contacts for the Court to exercise personal jurisdiction. Further, venue is proper in the District of Columbia because Defendants transacted business in this district, and corporate defendants reside in this district for venue purposes. *See* 15 U.S.C. § 53(b)(2) (venue is proper where a defendant resides or transacts business or if the interests of justice require adding another defendant as a party, irrespective of whether venue is otherwise proper); 28 U.S.C. § 1391(c)(2) (deeming a corporate defendant “to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced”).

B. The FTC Meets the Standard for Granting a Government Agency’s Request for a Temporary Restraining Order and Preliminary Injunction

Because the FTC acts as “a statutory guardian charged with safeguarding the public interest,” *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975), courts consider only two factors to determine whether to grant a temporary or preliminary injunction in a Section 13(b) case: (1) the likelihood that the FTC ultimately will succeed on the merits; and

(2) the balance of the equities at stake.⁴ *FTC v. Weyerhaeuser Co.*, 665 F.2d 1072, 1081-82 (D.C. Cir. 1981); *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999); *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346 (9th Cir. 1989); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988). Generally, the FTC “meets its burden on the likelihood of success issue if it shows preliminarily, by affidavit or other proof, that it has a fair and tenable chance of ultimate success on the merits.” *FTC v. Beatrice Foods Co.*, 587 F.2d 1225, 1229 (D.C. Cir. 1978) (quoting *FTC v. Lancaster Colony Corp.*, 434 F. Supp. 1088, 1090 (S.D.N.Y. 1977)). As set forth in this memorandum, the FTC has amply demonstrated that it will ultimately succeed on the merits of its claims and that the balance of equities favors injunctive relief.⁵

C. The FTC is Likely to Succeed on the Merits of its Claim that Defendants Have Engaged in Unfair Acts or Practices

The FTC’s Complaint alleges that, by disclosing consumers’ sensitive information on the internet, Defendants have engaged in unfair business practices in violation of Section 5 of the

⁴ Although the standard for preliminary injunctive relief under Section 13(b) differs from the four-part test typically applied to private litigants, the FTC also meets that standard. *Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) (noting the standard for a government agency “is quite different from the common law equity basis for an injunction and no showing of irreparable injury is required”); *SEC v. Stratton Oakmont, Inc.*, 878 F. Supp. 250, 255 (D.D.C. 1995) (noting that government agency may obtain injunction without showing irreparable harm or inadequacy of other remedies); *SEC v. General Refractories Co.*, 400 F. Supp. 1248, 1254 (D.D.C. 1975); *see also FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999) (FTC need not show irreparable harm). Vulnerable consumers will continue to be injured by Defendants’ unfair practices. Moreover, the public interest in ensuring the enforcement of federal consumer protection laws is strong. *Mallett*, 818 F. Supp. 2d at 149. Without the requested relief, the public will suffer irreparable harm from the continuation of Defendants’ unfair and unlawful conduct.

⁵ No security is required for issuance of a temporary restraining order or preliminary injunction in this case because the FTC is an agency of the United States. *See Fed. R. Civ. P. 65(c)*.

FTC Act. Section 5 prohibits, in part, “unfair . . . acts or practices in or affecting commerce.” 15 U.S.C. § 45(a)(1). An act or practice is unfair if: (1) it causes or is likely to cause substantial injury to consumers; (2) the harm to consumers is not outweighed by countervailing benefits; and (3) the harm is not reasonably avoidable by consumers. 15 U.S.C. § 45(n).⁶ *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1155 (9th Cir. 2010) (“Under § 5 of the FTC Act, an unfair practice or act is one that ‘causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.’”) (quoting 15 U.S.C. § 45(n)); *FTC v. Accusearch Inc.*, 570 F.3d 1187, 1193 (10th Cir. 2009) (“To be ‘unfair,’ a practice must be one that ‘[1] causes or is likely to cause substantial injury to consumers [2] which is not reasonably avoidable by consumers themselves and [3] not outweighed by countervailing benefits to consumers or to competition.’”) (quoting 15 U.S.C. § 45(n)).

Here, the FTC has shown that Defendants have posted consumers’ sensitive personal information on the internet repeatedly without taking reasonable measures to protect the privacy, security, confidentiality, and integrity of the information, and has further shown that the information has been accessed repeatedly. *See infra* at 3-5. As discussed below, this conduct satisfies all of the elements required to establish unfairness under Section 5 of the FTC Act.

1. Defendants’ Business Practices Cause or Are Likely to Cause Substantial Injury to Consumers

Defendants’ disclosure of thousands of consumers’ sensitive personal information already has caused, or is likely to cause, substantial harm to these consumers and threatens to

⁶ *See also* Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science, and Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction, appended to *International Harvester Co.*, 104 F.T.C. 949, 1064 (1984) (“Unfairness Statement”).

continue to do so. Specifically, Defendants' unlawful conduct has caused substantial harm and injury to consumers' privacy and is likely to cause substantial additional harm, such as identity theft, including existing and new account fraud, and other consumer injury.

This Court and others repeatedly have recognized that the actual or threatened unlawful, unauthorized disclosure of confidential information, such as the sensitive personal information here, constitutes a substantial injury and irreparable harm sufficient to warrant entry of a temporary restraining order. *See, e.g., Hospitality Staffing Solutions, LLC v. Reyes*, 736 F. Supp. 2d 192, 200 (D.D.C. 2010) ("This court has recognized that the disclosure of confidential information can constitute an irreparable harm because such information, once disclosed, loses its confidential nature," (granting motion for preliminary injunction)); *Council on Am.-Islamic Relations v. Guabatz*, 667 F. Supp. 2d 67, 76-77 (D.D.C. 2009) (holding former employee's actual and threatened disclosure of plaintiff charity's donor list and confidential employee personal information constituted irreparable harm sufficient to warrant *ex parte* TRO prohibiting further disclosure); *Morgan Stanley DW Inc. v. Rothe*, 150 F. Supp. 2d 67, 77-78 (D.D.C. 2001) (disclosure of plaintiff's confidential client list by former employee to a competitor constitutes irreparable harm; "If clients begin to feel that their personal information is not safe with the plaintiff, this development might well lead to a loss of trust and goodwill.").⁷ Defendants' unjustified and unauthorized disclosure of the sensitive information of thousands of unsuspecting consumers easily constitutes substantial injury and irreparable harm warranting a grant of the relief that the Commission seeks here.

⁷ The Court's own rules guard the privacy of the information at issue here by requiring that all personal identifiers, including dates of birth and financial account numbers, be excluded or redacted from all documents filed electronically. Local Civil Rule 5.4(f).

First, the website posts to which Defendants appended the spreadsheets already have been viewed more than 190 times by third parties, meaning that each consumer's sensitive personal information has been disclosed repeatedly without authorization. *See* Ex. 1 ¶ 19. In each instance, Defendants have caused substantial harm and injury to the consumers' privacy. *See, e.g., In re Sci. Applications Int'l Corp. Backup Tape Data Theft Litig.*, Misc. No. 12-347, 2014 WL 1858458, at *9-*10 (D.D.C. May 9, 2014) (discussing minimum requirement of disclosure or access by a third party to establish an invasion of privacy). Manifestly, the unauthorized disclosure and invasion of more than 42,000 consumers' privacy more than satisfies the "substantial injury" prong of the unfairness test. Absent temporary and preliminary injunctive relief, there is a substantial and imminent threat that third parties will continue to access consumers' sensitive information without authorization, thereby causing additional injury.

Second, in addition to violating consumers' privacy, Defendants' public posting of consumers' personal information without reasonable safeguards exposes consumers to the substantial likelihood of identity theft, including existing and new account fraud, and related consumer harms. The sensitive personal information that Defendants have disclosed is extremely valuable to identity thieves. *See* J. Craig Anderson, *Identity Theft Growing, Costly to Victims*, USA Today, (Apr. 14, 2013, 4:38 PM), <http://www.usatoday.com/story/money/personalfinance/2013/04/14/identity-theft-growing/2082179>) (noting a single credit card account number can fetch sale prices ranging from ten to several hundred dollars each). In turn, consumers whose credit or debit card information is used in fraudulent transactions frequently suffer consequences such as bounced checks, the shutdown of utilities, and debt collection harassment. Victims of identity theft also can have damaged credit reports, difficulty or inability obtaining credit, insurance, or mortgages, denial of

employment and, in extreme circumstances, can even be arrested for crimes someone else committed in their names. See Federal Trade Commission, *Taking Charge: What To Do If Your Identity Is Stolen* (April 2013) available at <http://www.consumer.ftc.gov/articles/pdf-0009-taking-charge.pdf>.

Third, this case presents additional injury that is unique to debt collection consumers. The public branding of a consumer as a debtor can result in harm to the consumer's reputation and employment.⁸ Notably, a Google search using a consumer's email address or other information from the spreadsheets in most cases has turned up the spreadsheet in which the consumer's information appears. Ex. 1 ¶ 22. Accordingly, someone who is screening job applicants or performing a security check can discover that a consumer allegedly owes a payday loan or other debt. The potential employer may then take adverse action against the consumer because of it, regardless of whether the consumer actually owes the debt or has had a chance to exercise his or her statutory right to dispute it.

Furthermore, Defendants' practices expose these consumers to attempts to collect their purported debts unlawfully by persons or entities who may not have purchased or acquired the authority to collect the debts, a practice sometimes referred to as "phantom" debt collection. See *Id.* ¶ 25. In phantom debt collection cases, criminals and other unscrupulous individuals contact consumers suspected of owing a debt and then typically employ unlawful and deceptive means to coerce payment from them. *Id.* Perpetrators of phantom debt collection schemes often employ

⁸ For this reason, the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p ("FDCPA"), bars debt collectors from disclosing consumers' purported debts to third parties in most instances (15 U.S.C. § 1692c(b)), and provides consumers with the right to challenge and obtain validation of their purported debts (15 U.S.C. § 1692g). The FDCPA also specifically prohibits the publication of so-called debtors' lists. 15 U.S.C. § 1692d(3).

high-pressure collection tactics, including repeatedly calling consumers and third parties, then do not (and, indeed, cannot) provide verification that they are entitled to collect the debts, or continue to pressure consumers to pay even after they have already paid the amounts demanded. *Id.*; see also Federal Trade Commission, *Court Halts Alleged Fake Debt Collector Calls from India, Grants FTC Request to Stop Defendants Who Often Posed as Law Enforcement* (Feb. 21, 2012), available at <http://www.ftc.gov/news-events/press-releases/2012/02/court-halts-alleged-fake-debt-collector-calls-india-grants-ftc>. Consumers who end up paying unauthorized collectors such as these may not receive an enforceable discharge of the debt or any benefit on their credit report. And, it harms debt collectors who may later legitimately purchase those same debts by making their collection efforts more difficult or impossible. The information posted by Defendants on the internet is an open invitation to this sort of wholesale fraud.⁹

2. **The Harm Defendants Have Inflicted Is Not Outweighed By Any Countervailing Benefits**

Here, there is simply no countervailing benefit to either consumers or competition that results from Defendants' unreasonable practices, especially since there were no-cost and low-cost remedies available, such as encrypting or password protecting the portfolios. Indeed, if anything, Defendants likely have harmed themselves as well consumers by posting the portfolios

⁹ The recent change to the website to require membership access does not affect the conclusion that Defendants' practices have caused or are likely to cause consumer harm. See Ex. 1 ¶¶ 20-21. First, the website is under no compulsion to continue to restrict access and can remove its newly-imposed sign-in requirements at any time. Second, anyone with an unverified name and an email address can establish a membership and access the information that likely remains exposed on the website. *Id.* ¶ 21. Third, the information has been in the public domain on the known website, and possibly others on which Defendants or third parties posted it, since at least March 2014. *Id.* ¶ 15 & Att. A. Absent the relief requested here, neither the Court nor the FTC will be able to track the spread of the information, secure its removal from any other public sites, or fully remedy Defendants' violations of law.

on the public website without any reasonable safeguards in place. In doing so, Defendants have eased the way for any unscrupulous viewer of their postings to simply steal the information and contact consumers to collect the alleged debts.

3. Consumers Cannot Reasonably Avoid the Harm Defendants Inflict

The third prong of the unfairness test requires the Court to consider if consumers can reasonably avoid the harm that Defendants cause. If consumers do not have a “free and informed choice that would have enabled them to avoid the unfair practice,” the injury was not reasonably avoidable. *FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1201 (C.D. Cal. 2000) (quoting *FTC v. Windward Mktg., Ltd.*, 1997 WL 333642380, at *11 (N.D. Ga. Sept. 30, 1997) and citing *Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354, 1365 (11th Cir. 1988)).

In this case, consumers not only lack a “free and informed choice” to avoid Defendants’ unfair practices, they have no choice at all. These consumers did not provide their sensitive information to Defendants or authorize them to display it on a public website. No reasonable consumer, if given a free choice, would willingly offer up his or her sensitive personal information to identity thieves, persons bent on account fraud, potential employers, and those who are merely curious about the consumers’ private affairs. These consumers, however, are unlikely to discover that Defendants possess, and have been openly broadcasting, their sensitive information and, even if they discovered the disclosures, they are unlikely to be capable of effecting the removal of the information from the internet. Accordingly, consumers cannot reasonably avoid the harm that Defendants’ practices cause.

D. The Equities Weigh In Favor Of Granting Injunctive Relief

Once the FTC establishes the likelihood of its ultimate success on the merits, preliminary injunctive relief is warranted if the Court, weighing the equities, finds that relief is in the public interest. The public interest in halting Defendants’ reckless and unfair practices far outweighs

any interest Defendants may have in continuing to market their portfolios by unnecessarily disclosing swaths of sensitive personal information, exposing consumers to the likelihood of identity theft and other financial harms, and violating their privacy. In balancing the equities between the parties, the public equities receive far greater weight. *FTC v. Warner Commc 'ns, Inc.*, 742 F.2d 1156, 1165 (9th Cir. 1984); *FTC v. World Wide Factors, Ltd.*, 882 F.2d at 347; *World Travel Vacation Brokers*, 861 F.2d at 1030. The public interest is especially strong in the context of the enforcement of consumer protection laws. *Mallett*, 818 F. Supp. 2d at 149.

Here, Defendants have posted the personal information of more than 42,000 consumers on a public website. Defendants have absolutely no need to publicly disclose consumers' sensitive personal information in this unreasonable and unfair manner. As discussed above and in the accompanying Declaration of Michael B. Goldstein (Ex. 1), not only do debt sellers regularly market their portfolios on the website without openly disclosing consumers' sensitive information, these Defendants also have marketed portfolios on the website without disclosing some sensitive information. *See infra* at 3-4; Ex. 1 at ¶ 8. Indeed, the website's terms of service specifically bar its members, including Defendants, from posting or making available any content in a manner that discloses "personal or identifying information about another person without that person's explicit consent." *Infra* at 5 (citing Ex. 1 ¶ 6). Accordingly, Defendants have no private interest that counterbalances the public interest at stake.

The temporary and preliminary relief sought here is in the public interest because it would enjoin Defendants' reckless disclosure of consumers' sensitive information, remove from public websites the personal information that Defendants already have posted, and require Defendants to implement and use reasonable safeguards to maintain and protect consumers' personal information in the future. As discussed above, Defendants can implement reasonable

safeguards to protect the confidentiality of consumers' information at virtually no cost to themselves.

In contrast, the private equities in this case are not compelling. Compliance with the law is hardly an unreasonable burden. *See World Wide Factors*, 882 F.2d at 347 (stating "there is no oppressive hardship to Defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment"). This is particularly true here, where Defendants' conduct indicates that, in the absence of the requested relief, Defendants are likely to continue engaging in illegal conduct, causing foreseeable, ongoing consumer injury. *See Five-Star Auto Club*, 97 F. Supp. 2d 502, 536 (S.D.N.Y. 2000) "[P]ast illegal conduct is highly suggestive of the likelihood of future violations."); *SEC v. R.J. Allen & Assoc., Inc.*, 386 F. Supp. 866, 877 (S.D. Fla. 1974) (past misconduct suggests likelihood of future violations); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir.), *cert. denied*, 442 U.S. 921 (1979). Because the proposed injunction would preclude only harmful, illegal behavior, the public equities supporting the injunctive relief outweigh any burden such relief could possibly impose on Defendants. *See, e.g., Nat'l Soc'y of Prof. Eng'rs. v. United States*, 435 U.S. 679, 697 (1978).

IV. THE SCOPE OF THE PROPOSED TRO IS NECESSARY AND APPROPRIATE IN LIGHT OF DEFENDANTS' UNLAWFUL CONDUCT

As the evidence has forcefully shown, the FTC is likely to succeed in proving that Defendants' unfair practices violate the FTC Act, and that the balance of equities strongly favors the public. Preliminary injunctive relief is thus justified. To ensure effective final relief, including for consumers harmed by Defendants' unlawful practices, the FTC requests that the Court issue an order prohibiting Defendants from engaging in the unlawful conduct, requiring the immediate removal of consumers' sensitive information from the debt collection website and

any other websites on which it appears, providing for notification to the consumer victims of the disclosure, preserving evidence, and authorizing expedited discovery. *See* Proposed TRO, Sections I-II (conduct provisions), III (removal of sensitive personal information), IV (consumer notification), V (preservation of records), VIII (limited expedited discovery).

A. Conduct Relief

To prevent new consumer injury and limit future additional harm to consumers already injured, the proposed TRO would prohibit Defendants from: (1) disclosing Protected Information without first implementing reasonable safeguards to maintain and protect the privacy, security, confidentiality, and integrity of the information; and (2) benefitting from any Protected Information that they disclosed prior to the date of the Order without having implemented reasonable safeguards to protect the information.¹⁰ Proposed TRO, Sections I and II.

The prohibitions against disclosing Protected Information without reasonable safeguards, and against benefitting from Protected Information previously unfairly disclosed, do no more than order Defendants to comply with the FTC Act. The prohibitions therefore are consistent with the Court's broad equitable authority under Section 13(b) of the FTC Act to grant ancillary relief necessary to accomplish complete justice. *Amy Travel*, 875 F.2d at 571-72; *Singer*, 668 F.2d at 1113; *Five-Star Auto Club*, 97 F. Supp. 2d at 532-39. The temporary prohibition against disclosing, using, or benefitting from the previously disclosed information also is necessary to

¹⁰ The proposed TRO defines "Protected Information" to mean certain information about an Alleged Debtor, including a consumer's name, contact information, and personal identifiers such as Social Security number, financial account number, and military identification number. An "Alleged Debtor" is defined to mean any natural person obligated or allegedly obligated to pay a debt. *See* Proposed TRO, Definitions A and K.

stem the damage caused by the prior disclosures and afford the Court the opportunity to assess the scope of injury and fashion appropriate relief.

B. Disabling Access to Internet Content Containing Protected Information

The proposed TRO also would require Defendants and any third parties hosting or otherwise controlling any internet content that contains Protected Information posted by or on behalf of any Defendant to disable public access to the Protected Information. *See Proposed TRO, Section III.* Here, the central website on which Defendants have posted the information acknowledges that posts by members, such as Defendants, “are the responsibility and domain of the member alone.” Ex. 1 ¶ 5. And, as discussed above, the Protected Information of more than 42,000 consumers has been exposed on the internet as a result of Defendants’ illegal conduct.

Rule 65(d)(2) of the Federal Rules of Civil Procedure expressly binds “agents” and “other persons who are in active concert or participation with” Defendants. Moreover, on at least three prior occasions, this Court has entered temporary restraining orders at the FTC’s request requiring the removal of internet content from public access. *See FTC v. One or More Unknown Parties Misrepresenting Their Affiliation with the Making Home Affordable Program (docket later amended to FTC v. Cantkier)*, No. 1:09-cv-00894 (CKK) (D.D.C. May 15, 2009) (TRO, including expedited discovery and order to third parties to disable defendants’ paid hyperlink advertisements); *FTC v. One or More Unknown Parties Deceiving Consumers Into Seeking Home Loan Modification Through <http://bailout.hud-gov.us> and <http://bailout.dohgov.us> (docket later amended to FTC v. Ryan)*, No. 1:09-535-HHK (D.D.C. Mar. 20, 2009) (TRO, including expedited discovery and order to third parties to temporarily disable defendant’s web sites and suspend defendant’s internet domain name registrations); *FTC v. One or More Unknown Parties Doing Business as the Inst. for Int’l Licensing (docket later amended to FTC v. Mountain View Sys.)*, No. 1:03-cv-0021-RMC (D.D.C. Jan. 9, 2003) (*ex parte* TRO, including

expedited discovery and restrictions on website registrations). Other courts also have granted similar relief against other defendants who have utilized internet websites to violate the FTC Act.¹¹ The requested relief is likewise necessary here to protect injured consumers.

C. Notification to Consumers

In addition, the proposed TRO contains a notification provision directing Defendants to notify the consumer victims about Defendants' disclosure of their Protected Information and provide them with some ability to protect themselves from the resulting harms. *See* Proposed TRO, Section IV. The proposed TRO includes a Notice for Defendants to use for this purpose. *Id.*, Att. A. The Notice includes information explaining how consumers can place fraud alerts on their credit files and take other steps to protect themselves against possible account fraud and debt collection abuses.

Such remedial action is warranted in this case and is well within the Court's authority. *FTC v. Virginia Homes Mfg. Corp.*, 509 F. Supp. 51, 55 (D. Md. 1981), *aff'd*, 661 F.2d 920 (4th Cir., July 14, 1981) (unpublished) (holding that "compulsory notice is implicitly authorized by section 13(b) so long as such notice would be essential to the effective discharge of the court's responsibilities"); *FTC v. Southwest Sunsites, Inc.*, 665 F.2d 711, 722-23 (5th Cir. 1982) (same); *FTC v. Travel King, Inc.*, 1974 WL 809 (W.D. Wash. Feb. 22, 1974); *see also* 15 U.S.C. § 57b (providing the Court with the authority to "grant such relief as the court finds necessary to redress injury to consumers," including but not limited to "public notification respecting the rule

¹¹ *See, e.g., FTC v. Stuffingforcash.com Corp.*, No. 1:02-cv-05022-CRN (N.D. Ill. July 16, 2002), <http://www.ftc.gov/os/2002/07/stuffingtro.pdf>; *FTC v. TLD Network Ltd.*, No. 1:02-cv-01475-JFH (N.D. Ill. Feb. 28, 2002), <http://www.ftc.gov/sites/default/files/documents/cases/2002/03/tldtro.pdf>; *FTC v. 1268957 Ontario Inc.*, No. 1:01-cv-00423-JEC (N.D. Ga. Feb. 13, 2001); *FTC v. Pereira*, No. 1:99-cv-01367-AVB (E.D. Va. Sep. 14, 1999) <http://www.ftc.gov/sites/default/files/documents/cases/1999/09/990922tro9923264.shtm>.

violation or the unfair or deceptive act or practice”). As discussed above, the consumer victims are likely to be unaware of Defendants’ unlawful disclosures and therefore, unable to protect themselves. Notification will enable consumers to attempt to mitigate the harm Defendants’ actions have caused them, by requesting credit reports, placing fraud alerts on their credit, and being prepared for suspicious debt collection efforts.

D. Preservation of Records

The proposed TRO contains a provision directing Defendants to preserve records, including electronic records, and evidence. *See* Proposed TRO, Section V. It is appropriate to enjoin Defendants from destroying evidence and doing so would place no significant burden on them. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1040 n.11 (2d Cir. 1990) (characterizing such orders as “innocuous”).

E. Financial Statements and Limited Expedited Discovery

To preserve the possibility of consumer redress for victimized consumers or disgorgement, and to identify any purchasers of any debt portfolios that contained Protected Information that Defendants unlawfully and publicly disclosed, the FTC requests that the Court also order Defendants to make a full financial accounting and order limited expedited discovery. *See* Proposed TRO, Section VI. Attached to the proposed order are copies of proposed financial statements to be completed by Defendants. Proposed TRO, Atts. B and C.¹² Courts have upheld use of these devices, recognizing that they assist the district’s purpose of ensuring effective final relief. *See Kemp v. Peterson*, 940 F.2d 110, 113 (4th Cir. 1991) (affirming district court’s order requiring monthly accounting and financial disclosure statements).

¹² The proposed Order also includes a Consent to Release Financial Records form, which would allow the FTC to access records of accounts or assets held by foreign financial institutions. *See Doe v. United States*, 487 U.S. 201, 215 (1988).

Because the FTC has not yet been able to determine the full scope of consumer injury, including whether Defendants have posted consumer information to websites presently unknown to the FTC, or have otherwise left consumer information exposed, the proposed order also provides for limited expedited discovery. District courts may depart from normal discovery procedures and fashion discovery to meet discovery needs in certain cases, particularly ones involving the public interest. *See* Fed. R. Civ. P. 26(d), 30(a)(2), 33(a), and 34(b). This type of discovery order reflects the Court's broad and flexible authority in equity to grant preliminary emergency relief in cases involving the public interest. *See Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *Fed. Sav. & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 562 (5th Cir. 1987); *Fed. Express Corp. v. Fed. Espresso, Inc.*, 1997 WL 736530, at *2 (N.D.N.Y. Nov. 24, 1997) (early discovery "will be appropriate in some cases, such as those involving requests for a preliminary injunction") (quoting commentary to Fed. R. Civ. P. 26(d)); *Benham Jewelry Corp. v. Aron Basha Corp.*, 1997 WL 639037, at *20 (S.D.N.Y. Oct. 14, 1997) (courts have broad powers to grant expedited discovery).

V. CONCLUSION

Defendants have caused and likely will continue to cause substantial public injury by violating the FTC Act. Thus, for the above reasons, the FTC respectfully requests that this Court issue the attached proposed TRO to protect the public from further injury and help ensure effective relief for those harmed.

[SIGNATURE PAGE FOLLOWS]

Dated: August 27, 2014

Respectfully submitted,

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