UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, *et al.*,

Defendants.
_______________________________________/

RECEIVER JONATHAN E. PERLMAN'S REPLY TO DEFENDANTS' DUSTIN PILLONATO AND JUSTIN RAMSEY'S RESPONSE AND OBJECTIONS TO RECEIVER'S MOTION TO COMPEL TURNOVER OF LAPTOP COMPUTERS AND CELLPHONES

Jonathan E. Perlman, ("Perlman") "Receiver" for the Receivership Defendants[1] (the "Receiver"), submits his Reply to Defendants' Dustin Pillonato ("Pillonato") and Justin Ramsey's ("Ramsey") (collectively, the "Defendants") Response and Objections ("Objection") [ECF No. 108] to Receiver's Motion to Compel Turnover of Personal Laptop Computers and Personal Cellphones (the "Motion").

1. On June 4, 2018, the Receiver filed a motion to compel Defendants to turn over laptop computers and cellphones (hereinafter "Subject Devices") containing business records of the Corporate Defendants, which the Court ordered the Receiver to obtain, secure, and preserve. [ECF No. 49]. The Defendants have never contested that the Subject Devices contain

[1] The "Receivership Defendants" or "Receivership Entities" shall mean Pointbreak Media, LLC; DCP Marketing, LLC; Modern Spotlight LLC; Modern Spotlight Group LLC; Modern Internet Marketing LLC; Modern Source Media; Perfect Image Online LLC, and their divisions, subsidiaries, affiliates, predecessors, successors, assigns, and any fictitious business entities or business names created or used by these entities, or any of them. [ECF No. 12 at p.5]. "Receivership Defendants" or "Receivership Entities" shall also include Defendants Pinnacle Presence, LLC and National Business Listing, LLC, which the Receiver identified as non-party entities that should be under the control of the Receiver. [ECF No. 55].

Receivership Defendants' business records. On June 7, 2018, the Court granted the Receiver's Motion. [ECF No. 62]. In its order, the Court required Defendants to turn over the Subject Devices to the Clerk's Office, which would maintain control of them while the parties briefed issues relating to Defendants' asserted claim to the Fifth Amendment's privilege against self-incrimination.

I. INTRODUCTION AND FACTUAL BACKGROUND

2. After this Court considered the significant evidence and argument offered by the Plaintiff, Federal Trade Commission ("FTC")[2], none of which was contested by the Defendants, the Court found in entering the Preliminary Injunction ("PI") that the Defendants have or likely will engage in acts that violate section 5(a) of the FTC Act and "that the FTC is therefore likely to prevail on the merits of this action." [ECF. No. 64, pg.2].

3. The PI further requires Defendants, upon notice to "immediately transfer or deliver to the Receiver" "[a]ll computers, electronic devices, mobile devices and machines used to conduct the business of the Receivership Entities." [ECF No. 64]. The Court further ordered the Receiver to "[t]ake exclusive custody, control, and possession of all business records of, or…under the control of, any Receivership Entity." *Id.*[3] At no time, prior to the entry of the PI, did the Defendants object to these proposed turnover provisions on the grounds asserted in the Objection.[4] Instead, at the PI hearing, the Defendants objected to certain asset freeze provisions and certain discovery rights for the Receiver.

4. There is no general Fifth Amendment protection afforded to the contents of

[2] The FTC consents to the Motion and supports the arguments raised herein.
[3] It is undisputed that the corporate Receivership Defendants do not have any Fourth or Fifth Amendment rights. *Braswell v. US*, 487 U.S. 99, 101(1988)(corporate custodian did not enjoy a Fifth Amendment privilege); *Hale v. Henkel*, 201 U.S. 43, 74-75(1906)(corporation is a creature of the state and enjoys no 5th Amendment privilege).
[4] In addition, the Defendants did not object to the PI's requirement that the Defendant provide passwords for the Subject Devices. *Id.* at pg. 21.

voluntarily recorded, pre-existing documents. Defendants ignore this well-established Supreme Court precedent by invoking a blanket Fifth Amendment privilege that the Subject Devices *may* have incriminating evidence. Yet, information that has been voluntarily recorded before demand is made cannot be treated as the fruit of any testimonial communication implicit in the act of production. The request for turnover is an act of surrender, not testimonial, and enjoys no protection from the Fifth Amendment. Again, Defendants' Objection fails to address this well-established precedent.

5. The Defendants' claim of violation of their Fourth Amendment rights is equally unavailing. After the Motion was filed, the Defendants' knowingly and voluntarily, through counsel, did not object to the provision of the PI they now claim violates their constitutional right. In addition, Defendants have utterly failed to establish any reasonable expectation of privacy in the business records which was compelled to be produced by the PI entered after the equivalent of a probable cause showing. In short, the Motion does not violate Defendants' Fourth Amendment rights.

II. LEGAL ARGUMENT AND SUPPORTING FACTS

A. THE FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION DOES NOT EXTEND TO THE CONTENTS OF VOLUNTARILY CREATED DOCUMENTS SOLELY BECAUSE DEFENDANTS ARE COMPELLED TO SURRENDER THE LAPTOPS AND CELLPHONES TO THE RECEIVER.

i. The Defendants' have failed to meet their burden because the blanket assertion of the Fifth Amendment privilege is insufficient to invoke the privilege.

6. As a threshold matter, Defendants' blanket assertion of the Fifth Amendment privilege against self-incrimination is insufficient to secure the protections of the privilege. *See United States v. Argomaniz*, 925 F. 2d 1349, 1356 (11th Cir. 1991) ("It is true that a blanket refusal to produce records or to testify will not support a fifth amendment claim") (citing *United*

States v. Roundtree, 420 F. 2d 845, 852 (5th Cir. 1969)); *Anglada v. Sprague*, 822 F. 2d 1035, 1037 (11th Cir. 1987) (rejecting a blanket invocation of the Fifth Amendment privilege); *Sallah v. Worldwide Clearing LLC*, 855 F. Supp. 2d 1364, 1370-71 (S.D. Fla. 2012) (J. Rosenbaum) ("It is well established that a person may not make a blanket objection to testifying or producing records, based on her Fifth Amendment privilege"). Rather, the privilege must be asserted on a document by document basis. *Sallah*, 855 F. Supp. 2d at 1371. [5]

7. Here, Defendants have clearly failed to meet their burden that they are entitled to invoke the Fifth Amendment privilege against self-incrimination. *See United States v. Argomaniz*, 925 F. 2d 1349 (11th Cir. 1991); *Anglada v. Sprague*, 822 F. 2d 1035 (11th Cir. 1987). Defendants' Objection consists of a blanket Fifth Amendment objection that they have a "real and genuine fear of criminal prosecution."[6] Similarly, on May 11, 2018, Defendants' attorney Mitchell Roth stated that they refused to turn over the laptops to the Receiver because they "*may* potentially have incriminating evidence."[7] Defendants have not argued nor presented any evidence in their Response that the Subject Devices, in fact, only contain incriminating evidence.

8. Even assuming Defendants' had articulated their Fifth Amendment claims as to specific data or categories of data, they have failed to argue or establish the requisite showing

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[5] An individual, however, can make a single Fifth Amendment objection to multiple requests (which Defendants have done) only if "all of which implicate self-incrimination concerns." *Id.* Therefore, the ban on blanket Fifth Amendment objections prevents a person from raising the Amendment without specifically considering whether the information sought may actually raise a "substantial and real hazard of self-incrimination." *Sallah*, 855 F. Supp. 2d at 1371; *Argomaniz*, 925 F. 2d at 1353.

[6] Defendants also claim that the electronic devices were purchased with their own personal funds without offering any evidence to support this claim. Notably, each failed to identify any of the Subject Devices on their respective sworn financial disclosures. At the PI hearing, Receiver brought this omission to the Court's attention and despite promises to amend, Defendants have not served any amended financial disclosures. Moreover, under the PI, since it is uncontested that the Subject Devices contain business records, the Receiver is entitled to image the Subject Devices regardless of who purchased them.

[7] Within minutes of being served in this case, the Defendants fled Ramsey's home with the Subject Devices and refused to turn them over. [ECF No. 49, Ex. A].

that turnover of the Subject Devices is testimonial in nature and protected by the Fifth Amendment.

ii. The Fifth Amendment does not extend to the compelled surrender of pre-existing, voluntarily created documents.

9. The Fifth Amendment provides that "[n]o person shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. The protections of the Fifth Amendment thus come into play only "when the accused is compelled to make a *testimonial* communication that is incriminating." *Fisher v. United States*, 425 U.S. 391, 408 (1976). *See United States v. Hubbell*, 530 U.S. 27, 34 (2000) ("The word 'witness' in the constitutional text limits the relevant category of compelled incriminating communications to those that are 'testimonial' in character").

10. The Fifth Amendment does not apply to the contents of voluntarily prepared documents. *Hubbell*, 530 U.S. at 35-36[8]. The United States Supreme Court has consistently held that when a person has voluntarily created a document, they may be compelled to produce the document even though it may contain incriminating information. *See, e.g.*, *United States v. Doe*, 465 U.S. 605, 612 n. 10 (1984). In *Hubbell*, the Supreme Court reaffirmed "the settled proposition that a person may be required to produce specific documents even though they contain incriminating assertions of fact … because the creation of those documents was not 'compelled within the meaning of the privilege." 530 U.S. at 35-36; *In re Grand Jury Subpoena Duces Tecum Dated March 25, 2011*, 670 F. 3d 1335, 1342 (11th Cir. 2012).

11. Additionally, the Fifth Amendment privilege against self-incrimination does not

[8] To the extent any of the Subject Devices contain data or communications generated in the first instance after the Temporary Restraining Order was entered and which consist of valid individual attorney client communications, the Receiver of course acknowledges that such communications must be walled off from review and that production of the Subject Devices would not constitute a waiver of any such valid individual attorney client communications.

apply to incriminating evidence that was generated prior to the demand that this evidence be produced. *Fisher*, 425 U.S. 391 (holding that papers which were voluntarily prepared prior to the issue of the summons could not contain compelled testimonial evidence). Thus, once an individual chooses voluntarily to prepare a written account, the act of preparation serves as an effective waiver of the Fifth Amendment protections, and the resulting document is a physical object that can be acquired. *See Doe*, 465 U.S. at 610-11.

12. Although the very act of production may have some testimonial quality sufficient to trigger Fifth Amendment protection, the Supreme Court has repeatedly held that the Fifth Amendment privilege is not triggered when the government seeks to compel the production of physical evidence, even when that production necessitates only a person's physical act of production. *See Hubbell*, 530 U.S. at 43 (citing *Doe v. United States*, 487 U.S. 201, 2010 n. 9 (1988)). *See also In re Grand Jury*, 670 F. 3d at 1345 (11th Cir. 2012); *Sallah*, 855 F. Supp. 2d at 1372. "The touchstone of whether an act of production is testimonial is whether the government compels the individual to use "the contents of his own mind" to explicitly or implicitly communicate some statement of fact. *Hubbell*, 530 U.S. at 43 (citing *Curcio v. United States*, 354 U.S. 118, 128 (1957)).

13. Here, regardless of the incriminating nature of the *contents* of the documents on the Subject Devices, the Supreme Court has directed that a Fifth Amendment inquiry into the compelled production of documents focuses on the *act* of production itself. The Receiver's request is not a question of testimony but of surrender.[9] *See Fisher*, 425 U.S. at 411 ("Where the

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[9] It is well established that not all acts of production have communicative aspects such that they will be deemed testimonial. *See e.g., Schmerber v. California*, 384 U.S. at 764-65 (concluding that furnishing a blood sample is not testimonial); *United States v. Dionoso*, 410 U.S. 1, 7 (1973) (holding that producing a voice exemplar is not testimonial); *United States v. Wade*, 388 U.S. 218, 222-23 (holding that standing in a lineup is not testimonial); *Gilbert v. California*, 388 U.S. 263, 266 (1967) (concluding that providing a handwriting exemplar is not testimonial). Each of these cases make clear that nontestimonial physical acts

existence and location of the subpoenaed documents are a 'foregone conclusion' and the witness 'adds little or nothing' by conceding he has the documents, there is no Fifth Amendment privilege against production because the production becomes a 'question ... not of testimony but of surrender.'"). Further, the act of producing these devices does not require Defendants to reveal the contents of their mind or exercise any judgment or discretion to comply with the requests; instead, they are merely surrendering the laptops and cellphones to the Receiver as required by the PI.

14. The Defendants' Objection is rebuked by *Sallah v. Worldwide Clearing LLC,* 8 55 F. Supp. 2d 1364 (S.D. Fla. 2012), where the court held that the defendant's acts of production of certain documents did not violate her Fifth Amendment privilege against self-incrimination. In *Sallah*, the defendant objected to several requests for production on Fifth Amendment grounds. The court interpreted "the contents of his own mind" to mean an exercise of discretion and decision-making. Under this framework, the *Sallah* Court overruled the defendant's Fifth Amendment objection finding that "neither the production of tax records nor that of contracts requires [the defendant] to make any judgment calls or exercise discretion in determining what is responsive to the request." *Id.* at 1374.

15. In sum, regardless of whether the Subject Devices contain incriminating evidence relating to Defendants' activities in the scheme, the business documents and data, located on the laptops and cellphones were voluntarily created prior to the Receiver's request for turnover and in complying with the requests, Defendants need not exercise any judgment or discretion. Thus, the surrender of the Subject Devices is not a testimonial communication that enjoys protection under the Fifth Amendment.

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may be distinguished from their implicit testimonial components and that compelling the acts themselves is not prohibited by the Fifth Amendment.

B. THE TURNOVER OF THE SUBJECT DEVICES DOES NOT VIOLATE DEFENDANTS' FOURTH AMENDMENT RIGHTS TO BE FREE FROM UNLAWFUL SEARCHES AND SEIZURES.

i. By consenting to the entry of the PI Defendants have waived their rights to invoke the Fourth Amendment to prevent turnover of the Subject Devices.

16. The evidentiary hearing on the PI was held on June 6, 2018, and Defendants were given the opportunity to present evidence and arguments contesting its entry and scope. Instead, in open court, Defendants **did not object** to entry of the Preliminary Injunction which includes, turnover of "[a]ll computers, electronic devices, mobile devices, and machines used to conduct the business of the Receivership entities…." Section XV. Preliminary Injunction [ECF No. 64].

17. Now, in their Objection, Defendants impermissibly collaterally attack the provisions of PI they did not object to as violating their Fourth Amendment rights. Defendants' invocation of the Fourth Amendment to prevent turnover of the Subject Devices to the Receiver has been waived and must fail.

18. The January 14, 2018, opinion by the United States District Court for the Northern District of Illinois in *FTC v. Credit Bureau Ctr., LLC*, 284 F. Supp. 3d 907, 909 (N.D. Ill. 2018), is instructive and persuasive, as the court was confronted with similar Fourth Amendment assertions as those raised by Defendants herein. In *Credit Bureau,* the FTC obtained a preliminary injunction against the defendants, (a limited liability company and individuals) for alleged violations of the Federal Trade Commission Act and other federal statutes. *Id*. at 908. After the injunction was entered, two of the *Credit Bureau* defendants argued, *inter alia*, "that the seizure or required turnover of their documents and electronic records, as well as passwords, [to the government] violates the Fourth Amendment…." *Id*. at 909. The District Court rejected defendants Fourth Amendment assertions, stating, "[d]efendants have forfeited this argument on multiple occasions, including by their failure to

object to use of these materials during the preliminary injunction hearing and their failure to object to the terms of the preliminary injunction on this basis. Even were the argument not forfeited, it lacks merit. There is no authority applying the Fourth Amendment's exclusionary rule in a civil proceeding like this one, and in any event the evidence submitted in support of the temporary restraining order and the preliminary injunction was more than sufficient to establish probable cause authorizing the Court's entry of an order permitting seizure or turnover of the materials in question." *Id*.

19. Since the Defendants, *sub judice*, also failed to object to the applicable terms of the PI, including the provisions requiring turnover of the Subject Devices and passwords, this Court should find that these Defendants, like those in *Credit Bureau*, have waived and/or forfeited their rights to assert the Fourth Amendment regarding turnover of the Subject Devices to the Receiver.[10]

ii. Defendants have no legitimate expectation of privacy where the Receiver is seeking turnover of Subject Devices used to conduct the business of the Receivership Entities.

20. Assuming arguendo the Fourth Amendment applies in the context of this civil proceeding, the Defendants must establish "standing" to invoke the protections of the Fourth Amendment and its application "depends on whether the person invoking its protection can claim a justifiable, a reasonable, or a legitimate expectation of privacy that has been invaded by government action." *Smith v. Maryland*, 442 U.S. 735, 740, (1979). A proper Fourth Amendment standing inquiry was framed by this Court in *United States v. Medina*, 158 F. Supp. 3d 1303 (S.D. Fla. 2015) (J. ALTONAGA), relying on *United States v. Hawkins*, 681 F.2d 1343, 1344–45 (11th Cir.1982) "('[A] correct analysis will show that a focus on 'standing' is not

[10] The *Credit Bureau* findings regarding the sufficiency of the probable cause to support the entry of the turnover order will be discussed *infra*.

now the proper approach to the ultimate question;' rather 'the proper analysis proceeds directly to the substance of a defendant's Fourth Amendment claim to determine whether the defendant had a reasonable and legitimate expectation of privacy....' (alterations added; citation omitted))." *Medina*, 158 F. Supp. at 1307-08. In *Medina*, this Court held:

> "[A] motion to suppress must in every critical respect, *including allegations of standing*, be sufficiently definite, specific, detailed, and nonconjectural to enable the court to conclude that a substantial claim is presented." *United States v. Ford*, 34 F.3d 992, 994 (11th Cir.1994) ... Where a defendant fails to provide sufficient factual allegations to establish standing, the Court is not required to hold an evidentiary hearing. *See United States v. Cooper*, 203 F.3d 1279, 1285 (11th Cir.2000). Because Medina has not met his burden to demonstrate the legitimate expectation of privacy necessary to pursue the Motion or be entitled to a hearing, it is **ORDERED AND ADJUDGED** that the Motion **[ECF No. 81]** is **DENIED**." (emphasis in original) *Id*. at 1311.

21. Defendants assert that have standing because they "have a legitimate expectation of privacy in their personal cell phones and personal laptop computers [and] [t]hey exclusively have the right to exclude all others from viewing the contents of these items." [ECF No. 108 at p. 9]. No authority or other evidence is cited by Defendants for this broad proposition. Indeed, since Defendants were principals and employees of the Receivership entities they have no reasonable expectation of privacy in the Subject Devices to the extent they were used to conduct the business of the Receivership entities. *See City of Ontario, Cal. v. Quon*, 560 U.S. 746, 756–57, (2010) (Searches to retrieve work-related materials or to investigate violations of workplace rules are regarded as reasonable and normal and do not violate the Fourth Amendment.) Moreover, the Defendants' conduct in this case clearly reflects their acknowledgement that the Subject Devices contain Receivership Defendants' business records. *See* Motion, pgs. 4-7; Exs. A-D. Since the Receiver is seeking specific, limited information regarding the Receivership entities business operations and communications, Defendants have no expectation of privacy in those communications, and thus, no standing to assert the Fourth Amendment.

iii. The Court was presented with sufficient evidence to support turnover of the Subject Devices.

22. The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

"As the text makes clear, 'the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Brigham City v. Stuart,* 547 U.S. 398 (2006). The United States Supreme Court cases have determined that "[w]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, ... reasonableness generally requires the obtaining of a judicial warrant." *Vernonia School Dist. 47J v. Acton,* 515 U.S. 646, 653, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995). Such a warrant ensures that the inferences to support a search are 'drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.' *Johnson v. United States,* 333 U.S. 10, 14, 68 S.Ct. 367, 92 L.Ed. 436 (1948)." *Riley v. California*, 134 S. Ct. 2473, 2482, (2014).

23. It is axiomatic that the Fourth Amendment protections against unreasonable searches and seizures extends to civil matters. *Soldal v. Cook, County, Illinois*, 506 U.S. 56 (1992). While still measured against the standards of probable cause, in the civil context, reasonableness is assessed less stringently than in a criminal context. *Paramount Pictures Corp. v. Twentieth Century Fox Film Corp.,* 821 F.Supp. 82, 90 (E.D.N.Y.1993); *see also Nixon v. Administrator of General Services,* 408 F.Supp. 321, 366 (D.D.C.1976) (stating 'there is considerable authority for the proposition that a less strict and particularized government showing is necessary to comply with the Fourth Amendment's reasonableness requirement when the search is entirely 'civil' in nature') (citations omitted). "Although notions of probable cause

and specificity guide courts in the determination of the overall reasonableness of a civil search, they do not apply strictly in the case of an administrative or civil order of seizure… (citations omitted).” *Owens v. Swan*, 962 F. Supp. 1436, 1440 (D. Utah 1997).

24. While the Receiver does not agree that there is a Fourth Amendment issue presented here or that Defendants have established standing, nonetheless, the record evidence submitted to this Court meets and, in fact, exceeds the probable cause reasonableness requirement for ordering turnover of the Subject Devices.

25. Here, the FTC submitted 31 declarations in support of its request for a temporary restraining order. The declarations came from consumers (22), Google (3), investigators (2), a data analyst, a forensic accountant and an informant who worked at the Receivership Defendants. [ECF Nos. 5 and 14]. In connection with seeking the PI, the FTC submitted an additional 3 declarations. [ECF No. 53]. In addition, the FTC submitted substantial legal briefs supported by competent evidence, including audio and video files that the Defendants did not contest.[11] In response to the 35 sworn statements or declarations provided to this Court, the Defendants filed no declarations.

26. This Court’s analysis of probable cause in *United States v. Sotto,* No. 06-20322-CR, 2006 WL 8433713, at *1 (S.D. Fla. Sept. 6, 2006), *aff'd*, 380 F. App'x 852 (11th Cir. 2010), a criminal case, clearly demonstrates that ordering turnover of the Subject Devices is proper.

> “ ‘A magistrate’s determination of probable cause should be paid great deference by reviewing courts.... [S]o long as the magistrate had a ‘substantial basis for ... conclud[ing]’ that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more.’ *Illinois v. Gates*, 462 U.S. 213, 236 (1983) (internal citations omitted). Here, the affidavit presented to the Magistrate Judge contained information, including information from the confidential source, from which it could be concluded that All Medical would have records related to clients such as Project New Hope. *See, e.g., United States v. Conley*, 4 F.3d 1200, 1206 (3d Cir. 1993)(‘there was certainly probable cause to believe that business

[11] FTC’s counsel further submitted a Rule 65 Certificate to this Court. [ECF No. 7].

records ... would contain information leading to whether the other lessees or purchasers of the machines were using the machines illegally')." *United States v. Sotto,* No. 06-20322-CR, 2006 WL 8433713, at *1 (S.D. Fla. Sept. 6, 2006), *aff'd*, 380 F. App'x 852 (11th Cir. 2010).

27. The Receiver's investigation and digital forensic examinations of electronic devices confirm that Defendants used their personal cell phones to conduct Receivership entities' business. For example, the Receiver conducted a forensic device data report on the cell phone belonging to Defendant Ricardo Diaz ("Diaz).[12] The data extraction confirms that during the time frame of December 1, 2016 through February 26, 2018, a total of 2,976 text messages were exchanged between Ramsey and Diaz and that during the time frame of December 14, 2016 through April 11, 2018, a total of 1,235 text messages were exchanged between Pillonato and Diaz.[13] A cursory review of the texts confirms that the overwhelming majority of the 4,202 exchanged text messages concern the business operations of the Receivership entities.[14] Excerpts of the text messages are set forth below:

Between Diaz and Ramsey:
" But if dustin [sic] and I can't make a profit no one can" (no. 202);
"Ricardo how many total deals we do last week" (no. 574);
"We make 100k a month" (no. 795); and
"Next week we are Pointbreak" (no. 957).

Between Diaz and Pillonato:
Numerous texts regarding "chargebacks" (nos. 67, 226, 227, 230, 426, 479, 740)
Numerous texts regarding "upsells" (nos. 295,454,593)
"first time in point break google history where an office lot [sic] money" (no. 673)

28. These text messages further confirm that the evidence supporting PI meets the more stringent, heightened standard of probable cause, required for a search and seizure in a

[12] Diaz voluntarily surrendered his cell phone to the Receiver and consented to the device being imaged and searched.
[13] Defendants do not dispute that the laptops turned over contain Receivership Defendants' business records.
[14] The Receiver will provide the reports for the Court to review *in camera*.

criminal context. Certainly, there can be no credible argument that this Court did not have a substantial basis or sufficient probable cause to order turnover of the Subject Devices.

WHEREFORE, the Receiver respectfully requests this Court to enter an Order compelling Defendants Dustin Pillonato and Justin Ramsey to turnover their laptops and cellphones to the Receiver for imaging, together with such other and further relief as this Court deems just and proper.

Respectfully submitted this 17th day of July 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion was served via CM/ECF Notification and/or U.S. Mail to all parties on the attached service list on this 17th day of July 2018.

By: /s/ Gregory M. Garno
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SERVICE LIST
Federal Trade Commission v. PointBreak Media, LLC, et al.
USDC, SD Fla., Case No. 18-61017-CIV-ALTONAGA

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I further certify that, on July 17, 2018, a true and correct copy of the foregoing was also served on the parties listed below, which to the best of my knowledge are unrepresented by counsel, by the method indicated below:

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