

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

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, *et al.*,

Defendants.

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST
DEFENDANTS DUSTIN PILLONATO AND JUSTIN RAMSEY**

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INTRODUCTION

From November 2016 through entry of the Court's May 2018 temporary restraining order, Defendants Dustin Pillonato and Justin Ramsey, operating through Defendant Pointbreak Media, LLC ("Pointbreak" or "Pointbreak Media") and related corporate entities (collectively, the "Pointbreak Defendants"¹), targeted consumers with hundreds of millions of robocalls, including tens of millions of illegal robocalls to phone numbers on the National Do Not Call Registry. They used these robocalls and live sales agents to convince small business owners to pay hundreds of dollars for otherwise-free Google "claiming and verification" services. Specifically, the Pointbreak Defendants told business owners that they were affiliated with Google, threatened business owners with removal from Google, and promised to link "keywords" to the owners' businesses in search results. These statements were all false. Defendants then sold their already-defrauded customers a search engine optimization "Citation Program" using false promises of top placement in search results. Even more egregiously, when Pointbreak Media needed cash after its merchant account was terminated, Pillonato and Ramsey simply wrote unauthorized checks to the company from hundreds of its customers' bank accounts. Because there is no genuine dispute regarding any material fact, the FTC is entitled to judgment as a matter of law, including monetary relief for injured consumers and a permanent injunction against Pillonato and Ramsey to protect future consumers.

STATEMENT OF FACTS

I. POINTBREAK DEFENDANTS' DECEPTIVE SALES PRACTICES (COUNT I)

The Pointbreak Defendants' scam proceeded in three stages. First, the Defendants found their victims by using threatening robocalls claiming to be from a "service provider[] for Google" and urging consumers to speak with a sales agent to avoid having their business removed from, or marked permanently closed by, Google. Second, Pointbreak Defendants pitched Google "claiming and verification" services to business owners who spoke to live sales agents. Third, Pointbreak Defendants sold their enrolled customers a "Citation Program" by guaranteeing top placement in search results. The claims made by Defendants to consumers at each stage were deceptive.

¹ The "Pointbreak Defendants" are Pointbreak Media, LLC, DCP Marketing, LLC, Modern Source Media, LLC, Modern Spotlight LLC, Modern Spotlight Group LLC, Perfect Image Online LLC, and National Business Listings, LLC.

A. Pointbreak Defendants’ Robocalls Claimed an Affiliation with Google and Threatened Consumers with Removal from Google.

Consumers received Pointbreak Defendants’ robocalls weekly, or even daily, for months on end. Plaintiff’s Statement of Undisputed Material Facts (“SUMF”) ¶ 4. These robocalls usually claimed that the caller was affiliated with Google and that Google intended to remove the business from search results or mark it permanently closed. SUMF ¶¶ 5, 7. For example, one Pointbreak Media robocall stated, in relevant part:

Hi, this is Jennifer Taylor, data service provider for Google and Bing. This is an urgent message for the business owner. We have tried numerous times to contact you through mail and now by telephone regarding your Google listing webpage. This is your final notice. *If you do not act soon, Google will label your business as permanently closed.* Press one now to speak with me or another Google specialist.

Did you know that 74 percent of your customers search online before making a purchase? If your Google listing is shut down, you will lose on all of those potential customers.

SUMF ¶ 5 (emphasis added). Modern Spotlight Group, LLC (“Modern Spotlight Group”)—another Pointbreak Defendant—used a more succinct, but equally threatening, message: “Your Google Business listing may be inactive. Immediate action is required. Please press one to speak with a representative and avoid being removed from Google. Please press eight to be removed from this list.” SUMF ¶ 7. Defendants admitted that they made the first robocall, and their co-Defendant Michael Pocker confirmed that they knew about the second. SUMF ¶¶ 5, 7.

B. Pointbreak Defendants’ Live Sales Agents Reaffirmed the Robocalls’ Claims and Added Promises of Google Keywords.

The Pointbreak Defendants transferred business owners who pressed one in response to their robocalls to live sales agents in a Boca Raton or Deerfield Beach call center. They then sold those business owners Google “claiming and verification” services by making three false claims that: (1) Defendants are affiliated with Google or authorized to act on Google’s behalf; (2) the owner’s business is at risk of removal from Google; and (3) Defendants provide businesses with Google “keywords” for which they will appear prominently in search results.

1. Claims of Affiliation or Authorization to Act on Behalf of Google

The Pointbreak Defendants’ sales agents routinely made claims that the Pointbreak Defendants were Google contractors, “Google Business Partners,” or “authorized Google My Business agencies.” SUMF ¶ 13. Sales scripts used by Modern Spotlight Group and Perfect

Image Online LLC (“Perfect Image”), for example, directed agents to call themselves an “authorized Google My Business” agency or representative. *Id.* Although Pointbreak Media’s script did not contain a similar misrepresentation, its sales agents never corrected the robocalls’ misstatement that Pointbreak was a Google “service provider.” *Id.* On many calls, moreover, the sales agents went beyond the scripts, describing Pointbreak as “like the umbrella under Google,” a “third party basically contracted by Google,” or a company that works “directly parallel with Google.” *Id.* Unsurprisingly, a former employee explained that Pointbreak Media trained employees to call the company an “affiliate branch or a subsidiary that Google hires.” *Id.* Pillonato and Ramsey invoked their Fifth Amendment privilege against self-incrimination in response to all questions regarding these claims. *See infra* Argument Section II (appropriate to draw adverse inference).²

2. Threats of Removal from Google

Building on their robocalls’ threats of permanent closure or removal from Google, Pointbreak Defendants started their live sales calls by again threatening business with removal from Google. Pointbreak Media’s script, for example, declared, “The reason for the call is our system shows your Google Listing . . . has not been claimed or verified. Over the next 6-8 months businesses that are not claimed and verified . . . run the risk of possibility [sic] being removed from the search engine or pushed so far down the search engine that no one will find you.” SUMF ¶ 10. The Modern Spotlight Group and Perfect Image scripts similarly explained that “your business has not been claimed or verified on Google. Which is causing your listing to NOT display, or display IMPROPERLY, and MAY be at risk of being removed.” *Id.*

Frequently, Pointbreak Defendants’ sales agents resorted to the same threats later in their calls. For example, when an FTC investigator asked what would happen if she declined, the agent responded, “[Y]ou are going to be running the risk of possibly being removed from Google. Google [gave] you a time slot to verify your business . . . and you did not meet that.” SUMF ¶ 11. When the investigator declined, the agent told her to “[h]ave fun being removed

² Defendants Ramsey and Pillonato have stated without support (ECF Nos. 138, 139 ¶¶ 50-51) that they barred Pointbreak Media’s sales agents from claiming to work for Google. That statement is belied by the facts. SUMF ¶ 13. It is also irrelevant because, even if Pointbreak Media’s sales agents did not claim to work for Google, the company’s robocalls expressly mislabeled the company a “service provider for Google.” SUMF ¶ 5. It is undisputed that Pointbreak Media’s sales script did not correct this lie. SUMF ¶ 13.

from the internet” and hung up. *Id.* Pillonato and Ramsey admitted telling consumers that failing to claim their listings created a risk of removal from Google. ECF Nos. 138-139 ¶¶ 60-61.

3. Keyword Promises

The Pointbreak Defendants told consumers that claiming and verifying their businesses would not only prevent removal from Google, but also would allow the businesses to “register” or “claim” certain keywords. The Pointbreak Media script, for example, told consumers that “registering your keywords” would result in the business “com[ing] up prominently when someone is searching for your goods and services.” SUMF ¶ 14. Similarly, Modern Spotlight Group and Perfect Image told consumers that it was “VERY IMPORTANT . . . to make sure the correct keywords are implemented” and that “the KEYWORDS” were “one of the most important parts of the verification process.” *Id.* Defendants promised many businesses that they would receive first-place or first-page placement when users searched for their keywords. For example, Pointbreak Media told one special needs teacher that her company would be the top result for “dyslexia” and “homeschooling.” SUMF ¶ 15. Similarly, Modern Spotlight Group told an FTC investigator that “[t]he minute someone types in [a keyword], . . . I’ll immediately have them directed to you.” *Id.* Pointbreak Defendants sometimes went even further by claiming that the assigned keywords would be unique to the owner’s business. *Id.* Pillonato and Ramsey invoked the Fifth Amendment in response to all questions regarding the Pointbreak Defendants’ keyword promises. SUMF ¶ 15. *See infra* Argument Section II (appropriate to draw adverse inference).

Following the keyword discussion, Defendants revealed that there is a “one-time fee,” usually \$300-600. SUMF ¶ 16. They accepted payment by credit card or by generating a remotely created check (“RCC”)³ using bank account information provided by business owners.

C. Pointbreak Defendants Sold Their Victims an Additional “Citation Program” by Guaranteeing Top Search Placement.

Within days of the initial sale, a “senior business analyst” emailed or called Defendants’ customers and claimed that he or she “would like to discuss your page in greater detail.” SUMF ¶ 17. On this follow-up call, the “senior business analyst” instead sold the “Citation Program.” The analyst started the sales pitch by repeating the misrepresentation that it was “a very important step you took by claiming your Google listing . . . [b]ecause over the next few months

³ An RCC is a check that is not created by the paying bank and that does not bear the payer’s signature. 12 C.F.R. § 229.2(fff). Rather, the payee (here, Pointbreak Media) creates the check.

businesses that aren't claimed are just going to be pushed down to the point that they won't be seen at all." SUMF ¶ 18. Later in the call, the analyst explained—contrary to representations made on the initial sale—that claiming and verifying a business listing is not sufficient to ensure prominent search placement. *Id.* Rather, the analyst added, the consumer's business was not showing up because it had a poor "online visibility score" that Google uses "to determine your ranking." *Id.* Specifically, the analyst claimed that "Google's nothing but a giant robot" that goes to "52 directories . . . to decide who's credible and relevant." *Id.* The analyst closed by guaranteeing success: "This isn't something we think is going to work. This is something we know is going to work. *It works every single time without exception.* . . . It's increasing your coverage every month. It's also increasing your ranking *so you're coming up at the very top of the search . . .*" SUMF ¶ 18 (emphasis added). A former Pointbreak Media co-owner confirmed that the company used the script containing these quotes. SUMF ¶ 17. The Pointbreak Defendants charged an up-front fee of up to \$949.99 and recurring monthly charges of \$99.99 or \$169.99 for the Citation Program. SUMF ¶ 17.

D. The Claims Used by the Pointbreak Defendants to Sell Their "Claiming and Verification" and "Citation Program" Services Were False or Misleading.

The claims made by Pointbreak Defendants were false or misleading. Specifically, (1) Google was never affiliated with any of the Defendants, (2) Google does not remove unclaimed or unverified businesses from its search results or mark them permanently closed, (3) Defendants did not provide business owners with Google "keywords," and (4) Defendants could not provide top search placement to Citation Program enrollees. Google itself has confirmed the falsity of these statements in Rule 30(b)(6) deposition testimony and in employee declarations.

First, Google's Rule 30(b)(6) designee confirmed that (1) Google had no affiliation or association with the Pointbreak Defendants, (2) Google had not contracted with the Pointbreak Defendants to provide services to Google, (3) Google did not approve, sponsor, or endorse the Pointbreak Defendants' services, and (4) no Pointbreak Defendant was a "service provider" for Google or an "authorized Google My Business agency." SUMF ¶ 19. Thus, Defendants' claims of being an affiliate or agent of Google are patently false. In fact, Pillonato and Ramsey have admitted that the Pointbreak and Modern Source had no affiliation with Google. *Id.*

Second, Google does not remove a business from search results, or label it "permanently closed," because the business's owner has not claimed and verified the business. SUMF ¶ 20. Additionally, the Pointbreak Defendants made their removal threats even to businesses that

already had claimed and verified listings. SUMF ¶ 12. For example, an FTC investigator claimed and verified a listing for an undercover business. *Id.* Modern Spotlight Group nevertheless charged him \$599 to “avoid removal” from Google. *Id.* In any event, Pillonato admitted that Google search results often include unclaimed businesses. SUMF ¶ 20.

Third, Pointbreak Defendants did not provide Google “keywords,” much less unique keywords, to business owners. In fact, Google confirmed that “claiming” keywords is not part of claiming and verification at all. SUMF ¶ 21. Additionally, the fulfillment company that Pointbreak Media hired to provide services⁴ to its customers confirmed that it did not submit “keywords” to Google—because it was impossible to do so. *Id.* Unsurprisingly, as Pillonato admitted, Pointbreak’s customers “saw 0 benefits” and “got 0 results.” *Id.*

Fourth, Defendants’ guarantees of top search placement to Citation Program enrollees are false. In fact, as Defendant Pillonato now admits and as Google’s witnesses have confirmed, no third party can guarantee first-page placement in Google search results. SUMF ¶ 22. Nor is Defendants’ description of how they would achieve top placement consistent with how Google’s algorithm actually works. Google’s Rule 30(b)(6) designee confirmed that Google does not look simply to 52 directories to “determine who’s relevant.” *Id.* Pillonato and Ramsey have admitted to possessing no documents that would support their guarantees of top placement. *Id.*

II. POINTBREAK MEDIA’S UNAUTHORIZED BILLING (COUNT II)

Pointbreak Media’s unlawful conduct went beyond fraudulent sales to unauthorized billing. On October 20, 2017, Bank of America Merchant Services terminated the merchant account through which Pointbreak Media had processed credit card payments. SUMF ¶ 32. Within days, Pillonato and Ramsey, apparently in need of cash, began writing unauthorized remotely created checks to Pointbreak Media from consumers’ bank accounts. Specifically, Pointbreak Media took \$100 each from at least 280 consumers’ accounts between October 23-27, 2017. SUMF ¶ 32. Pillonato and Ramsey deposited these checks into two checking accounts at different banks, one of which they opened at Wells Fargo on October 21, 2017. SUMF ¶¶ 2, 32.⁵

⁴ Despite Pointbreak Media’s reliance on third-party vendors, they still failed to provide the promised services to many of their customers. SUMF ¶ 21. At one point, in fact, Pointbreak Media had a backlog of up to 2,000 clients for which it had never provided claiming and verification services. SUMF ¶ 21.

⁵ With respect to Counts II-IV of the FTC’s First Amended Complaint, alleging unauthorized billing and TSR violations, the FTC seeks to hold Pillonato and Ramsey individually liable only

Overwhelming evidence confirms that Pointbreak Media lacked authorization to generate and deposit these checks. First, consumers have affirmed that the \$100 charges were unauthorized. SUMF ¶ 33. Second, Defendants did not charge \$100 for any of the services that they sold. In fact, prior to depositing 280 unauthorized \$100 checks, only three of the over 1,000 checks that Pointbreak Media had deposited were for \$100. *Id.* Similarly, just 39 of Pointbreak Media’s previous 7,000-plus credit card transactions were for \$100. *Id.* Third, Pointbreak Media wrote the checks within days of losing its stream of credit card income. *Id.* Fourth, although Pillonato and Ramsey claim without support in their Answers that the checks were for “deferred payments” (ECF Nos. 138, 139 ¶ 97), two of their former partners could identify no reason for \$100 charges and confirmed that Pointbreak did not take \$100 “deferred payments” from consumers. SUMF ¶ 33. Fifth, the contracts that Pointbreak Media asked its customers to sign did not authorize these payments. *Id.* Sixth, when asked at their deposition about the \$100 checks, Pillonato and Ramsey invoked their Fifth Amendment privilege against self-incrimination because the answers would have incriminated them. SUMF ¶ 34; *see infra* Argument Section II (appropriate to draw adverse inference).

III. POINTBREAK MEDIA’S UNLAWFUL TELEMARKETING (COUNTS III-IV)

Pointbreak Media initiated a staggering amount of unlawful robocalls. Specifically, over just seven weeks in July and August 2017, the company placed **75 million robocalls** to consumers, including **15 million** to phone numbers on the National Do Not Call Registry (the “DNC Registry”). SUMF ¶ 6. On many occasions, Pointbreak Media placed over one million calls in a single day to phone numbers on the DNC Registry. *Id.* Pillonato and Ramsey have produced no evidence indicating that any of these calls reached business owners, much less that all of them did. Meanwhile, the FTC has provided sworn declarations from non-business owners who received Pointbreak Media’s unlawful robocalls. SUMF ¶ 8.

IV. THE EVOLUTION OF POINTBREAK DEFENDANTS’ COMMON ENTERPRISE

Pillonato and Ramsey primarily conducted their scam through Pointbreak Media, LLC. SUMF ¶¶ 2, 35. From November 2016 until November 2017, Pointbreak Media sold both the

for Pointbreak Media, LLC’s wrongdoing. It is only for Count I, alleging deceptive sales, that the FTC seeks to hold Pillonato and Ramsey liable for the entire common enterprise.

“claiming and verification” and Citation Program services described above. SUMF ¶ 2. The company garnered over \$2.2 million in revenues during this time period. SUMF ¶ 35.

In July or August 2017, Pillonato and Ramsey allowed co-Defendant Michael Pocker,⁶ then the owner of co-Defendant Modern Spotlight LLC (“Modern Spotlight”), to use Pointbreak Media’s merchant account for a 30% fee. SUMF ¶ 27. Modern Spotlight hawked claiming and verification services to consumers using the same three misrepresentations as Pointbreak Media. SUMF ¶¶ 4-15. When Modern Spotlight became Modern Spotlight Group in September 2017, it stopped sharing the merchant account, but began selling its claiming and verification customers’ data to Pointbreak Media. SUMF ¶ 27.

In mid-November 2017, Pointbreak stopped making sales to customers, forcing other Pointbreak Defendants to fill its shoes. SUMF ¶ 28. Specifically, Pillonato registered “Point Break” as the fictitious name of his company, DCP Marketing, LLC (“DCP Marketing”). *Id.* He also acquired a DCP Marketing merchant account with the same “Point Break” alias and used that account to continue recurring charges of Pointbreak Media’s Citation Program enrollees. *Id.* At the same time, Pillonato and Ramsey formed a new entity, Modern Source Media, LLC (“Modern Source”), in which they were equal partners. SUMF ¶¶ 1, 28. Modern Source and Pocker’s Modern Spotlight Group swapped offices, with Modern Spotlight Group retaining many Pointbreak Media employees and Modern Source keeping others. SUMF ¶ 28. For the ensuing three months, Modern Source and Modern Spotlight Group acted as two parts of what was in practice a single business. Modern Spotlight Group sold claiming and verification services to consumers using Pointbreak’s former employees and office space, and Modern Source sold the Citation Program to the same consumers. SUMF ¶¶ 28-29. The relationship was mutually exclusive: Modern Source only sold to Modern Spotlight Group customers, and Modern Spotlight Group only provided its customers’ information to Modern Source. SUMF ¶ 29. One sales agent referred to the entities as “sister companies.” *Id.*

⁶ Including Pocker, there are 18 Defendants and Relief Defendants other than Pillonato and Ramsey. Eight of those Defendants are in default for failure to answer the FTC’s Complaint or First Amended Complaint. *See* ECF Nos. 101-104, 156-159. The FTC will file a motion for default judgment against those Defendants. The remaining ten Defendants have signed proposed settlements that FTC counsel has or will recommend for Commission approval. The Court has stayed the case as to these ten Defendants. *See* ECF Nos. 210, 212, 215, 227.

The Modern Source-Modern Spotlight Group relationship continued until early February 2018, when co-Defendants Molina and Carver took Modern Spotlight Group’s employees, scripts, and customers and formed Perfect Image. SUMF ¶ 30. For a few weeks in February and early March 2018, Perfect Image continued to sell leads to Modern Source. *Id.* When that relationship ended, Pillonato- and Ramsey-controlled National Business Listings started selling claiming and verification services using the same script as Pointbreak and the same office as Modern Source. SUMF ¶¶ 30, 31.

V. PILLONATO AND RAMSEY’S PERVASIVE ROLE IN THE COMMON ENTERPRISE

Defendants Pillonato and Ramsey led the Pointbreak Defendants. They founded Pointbreak Media and were owners and managers of the company throughout its existence. SUMF ¶ 2. They also ran the company on a day-to-day basis and combined to own at least 59% of it at all times. *Id.* Pillonato managed Pointbreak Media’s Citation Program upsells and maintained its customer relationship database. *Id.* Ramsey trained and oversaw the “opener and closer agents” who sold claiming and verification services. *Id.* Ramsey and Pillonato helped draft Pointbreak’s sales scripts. SUMF ¶ 9. Moreover, Ramsey wrote at least one Pointbreak robocall script. SUMF ¶ 5. Pillonato and Ramsey also controlled the company’s finances. They were the lone signatories on Pointbreak Media’s bank accounts, and Ramsey opened two merchant accounts for Pointbreak Media. SUMF ¶ 2.

Pillonato and Ramsey’s leadership role extended beyond Pointbreak Media. For example, they were the sole owners of managers of Modern Source, which was a continuation of the Citation Program portion of Pointbreak Media’s business. SUMF ¶¶ 1, 17. Modern Source purchased leads exclusively from Modern Spotlight Group and Perfect Image, and Pillonato and Ramsey knew those entities’ sales practices. SUMF ¶¶ 7, 27, 29-30. Pillonato was the sole owner of DCP Marketing, and Pillonato and Ramsey operated National Business Listings. SUMF ¶ 1.

ARGUMENT

I. LEGAL STANDARD

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). “[T]he mere existence of *some* alleged factual dispute between the

parties will not defeat an otherwise properly supported motion for summary judgment, the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Although the evidence must be viewed in the light most favorable to the non-moving party, that party has a “duty to present affirmative evidence to defeat a properly supported motion for summary judgment.” *Tomasini v. Mt. Sinai Med. Ctr. of Fla., Inc.*, 315 F. Supp. 2d 1252, 1257 (S.D. Fla. 2004) (internal citation omitted).

II. IT IS APPROPRIATE TO DRAW ADVERSE INFERENCES FROM PILLONATO AND RAMSEY’S FIFTH AMENDMENT INVOCATIONS.

Pillonato and Ramsey invoked their Fifth Amendment privilege against self-incrimination in response to effectively all questions regarding their unlawful conduct. *See, e.g.*, SUMF ¶¶ 1, 1 n.1, 5, 8, 9, 12, 15, 18, 22, 24, 28, 30, 31, 32, 34. The Eleventh Circuit has held that “the trier of fact may take an adverse inference against the parties to a civil action refusing to testify on Fifth Amendment grounds.” *United States v. Two Parcels of Real Prop.*, 92 F.3d 1123, 1129 (11th Cir. 1996). In fact, courts “routinely” draw adverse inferences when a party invokes the privilege. *SEC v. Monterosso*, 746 F. Supp. 2d 1253, 1262 (S.D. Fla. 2010). Specifically, the Court may infer that the witness’s answers would have been unfavorable to that witness. *Hamilton Grp. Funding, Inc. v. Basel*, 311 F. Supp. 3d 1307, 1316 (S.D. Fla. 2018). The inference is particularly appropriate “if it would have been natural under the circumstances to object to the [accusation] in question.” *Coquina Inv. v. TD Bank, N.A.*, 760 F.3d 1300, 1310 (11th Cir. 2014) (quoting *Baxter v. Palmigiano*, 425 U.S. 308, 319 (1976)). An adverse inference is proper where, as here,⁷ the FTC “adduce[d] other proof regarding [the] matter.” *SEC v. Calmes*, 2010 WL 11505260, at *4 (S.D. Fla. Nov. 19, 2010). Accordingly, here it is appropriate for the Court to infer that for each Fifth Amendment invocation, the answer to the question would have been unfavorable to Pillonato and Ramsey.

III. THE FTC IS ENTITLED TO SUMMARY JUDGMENT AGAINST DEFENDANTS PILLONATO AND RAMSEY ON ALL COUNTS.

There is no genuine dispute as to any material fact regarding (1) the Pointbreak Defendants’ violations of the FTC Act through their deceptive sales, (2) Pointbreak Media’s violation of the FTC Act through its unauthorized billing of consumers, (3) Pointbreak Media’s violation of the Telemarketing Sales Rule (“TSR”) through its calls to phone numbers on the

⁷ In its Statement of Undisputed Material Facts, the FTC has cited corroborating evidence in addition to the Defendants’ related Fifth Amendment invocation.

DNC Registry, and (4) Pointbreak Media's violations of the TSR through its unlawful robocalls. Because Ramsey and Pillonato had authority to control, directly participated in, and knew of the unlawful acts, they are individually liable for the Pointbreak Defendants' wrongdoing.

A. The Pointbreak Defendants Violated the FTC Act and the Telemarketing Sales Rule.

The Pointbreak Defendants acted as a common enterprise in the sale of Google "claiming and verification" and search engine optimization ("SEO") services. Those sales violated Section 5 of the FTC Act's prohibition on deceptive acts or practices. Additionally, Pointbreak Media's unauthorized billing violated Section 5's prohibition on unfair acts or practices, and Pointbreak Media's robocalls to phone numbers number on the DNC Registry violated the TSR.

1. The Pointbreak Defendants Operated as a Common Enterprise.

"[A] corporate entity can be held liable for the conduct of other entities where the structure, organization, and pattern of a business venture reveal a common enterprise or a maze of integrated business entities." *FTC v. Lanier Law, LLC*, 715 F. App'x 970, 979 (11th Cir. 2017) (internal quotation marks omitted). To determine whether a common enterprise exists, courts consider, *inter alia*, whether the businesses "share office spaces and employees, commingle funds, coordinate advertising efforts, and operate under common control." *Id.* In this case, these factors confirm that the Pointbreak Defendants operated as a common enterprise.

First, the Pointbreak Defendants shared office space. Pointbreak, Modern Spotlight Group, and DCP Marketing all operated from 951 Broken Sound Parkway in Boca Raton. SUMF ¶ 31. Modern Spotlight, Modern Spotlight Group, Modern Source, DCP Marketing, and National Business Listings all operated from 550 Fairway Drive in Deerfield Beach. *Id.*

Second, the Pointbreak Defendants shared employees. After Pointbreak ceased operations, Modern Spotlight Group and DCP Marketing (on behalf of Modern Source) began paying at least 26 employees whom Pointbreak had paid within the previous two weeks. SUMF ¶ 28. One of those Modern Source employees, Dustin Lynch, declared on a December 2017 call that he had "been with these guys for almost two years now," despite the fact that Modern Source had formed less than two months prior. SUMF ¶ 29. Lynch added that the "old name" was "Pointbreak." *Id.* Separately, in February 2018, Daniel Carver and Steffan Molina took all but two Modern Spotlight Group employees to run Perfect Image. SUMF ¶ 30.

Third, the Pointbreak Defendants commingled funds. For example, Modern Spotlight and Pointbreak Media shared a merchant account. SUMF ¶ 27. Additionally, after Pointbreak

lost its merchant account, DCP Marketing continued billing consumers for recurring charges previously processed by Pointbreak Media. SUMF ¶ 28. DCP Marketing deposited into its own account RCCs that identified Pointbreak Media as the payee. *Id.*

Fourth, the Pointbreak Defendants coordinated advertising efforts. Pointbreak Media and National Business Listings used identical scripts to sell Google “claiming and verification” services, as did Modern Spotlight Group and Perfect Image. SUMF ¶¶ 9, 10. Modern Source and Pointbreak used identical scripts to sell the Citation Program. SUMF ¶ 17. Modern Spotlight Group, Pointbreak, and Modern Source also used nearly identical customer contracts and welcome emails. SUMF ¶ 29. Additionally, Modern Spotlight Group and Perfect Image both provided their customers’ information to Modern Source. SUMF ¶¶ 29, 30.

Fifth, the Pointbreak Defendants were under common control. Pillonato and/or Ramsey controlled Pointbreak Media, DCP Marketing, Modern Source, and National Business Listings. Pocker controlled Modern Spotlight and Modern Spotlight Group, both of which had close relationships with the Pillonato and Ramsey-controlled companies. SUMF ¶ 27. Molina was an officer of both Modern Spotlight Group and Perfect Image. *Id.* Carver was a sales manager for Modern Spotlight and Modern Spotlight Group, and co-owned Perfect Image. *Id.* Defendants’ own employees confirmed the common enterprise. On one December 2017 call, for example, a Modern Spotlight Group sales agent stated that Modern Spotlight Group and Pointbreak had “merged companies.” SUMF ¶ 29. On another call, Dustin Lynch described Modern Source and Modern Spotlight Group as “sister compan[ies].” *Id.*

2. The Pointbreak Defendants Violated Section 5 of the FTC Act Through Their Deceptive Sales of “Claiming and Verification” and “Citation Program” Services.

The Pointbreak Defendants’ deceptive conduct violated the FTC Act, which prohibits “deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a)(1). Deception occurs when: (1) defendants make a representation or omission; (2) that is likely to mislead consumers acting reasonably; and (3) that representation or omission is material to consumers’ decisions. *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1266-67 (S.D. Fla. 2007). Here, the evidence establishes all three elements.

First, Pointbreak Defendants made a series of false representations to consumers on robocalls and in scripted sales pitches. Specifically, to sell Google listing “claiming and verification” services, Defendants represented that they were Google affiliates, that businesses

were at risk of removal from Google, and that Defendants would provide businesses with Google “keywords.” *See supra* Statement of Facts Section I.A-B. To sell their Citation Program, Defendants represented that they could provide top placement in search results. *See supra* Statement of Facts Section I.C.

Second, these representations were likely to mislead consumers because they were false. *See, e.g., FTC v. Nat’l Urological Grp.*, 645 F. Supp. 2d 1167, 1190 (N.D. Ga. 2008) (FTC may “demonstrate that a claim is likely to mislead” by proving the “message conveyed by the [claim] is false.” (internal quotation marks omitted)). As confirmed by Google, Defendants’ customers, and Ramsey and Pillonato themselves, Defendants had no affiliation with Google, falsely threatened consumers with removal from Google, did not provide Google-linked keywords, and did not place customers on the first page of Google search results. *See supra* Statement of Facts Section I.D. Consumers confirmed that Defendants’ false claims misled them. SUMF ¶ 23.

Third, the misrepresentations were material. “A claim is considered material if it involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding a product.” *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992) (internal quotation marks omitted). Furthermore, express claims and deliberately made implied claims “are presumed to be material.” *Transnet*, 506 F. Supp. 2d at 1267; *FTC v. NPB Advertising, Inc.*, 218 F. Supp. 3d 1352, 1358 (M.D. Fla. 2016). Express claims “directly represent the fact at issue,” while implied claims “do so in an oblique or indirect way.” *Kraft*, 970 F.2d at 318 n.4.

Here, the Pointbreak Defendants’ misrepresentations were all express claims or, at least, deliberately made implied claims. For example, the Pointbreak Defendants expressly represented that they were an “authorized Google My Business Agency” or “service providers” for Google and that businesses “run the risk of [possibly] being removed from Google.” *See supra* Statement of Facts Section I.A-B. As a result, Defendants’ false claims are presumed to be material. Even absent this presumption, Defendants’ claims clearly are important to consumers’ purchasing decisions and, therefore, are material. In the absence of these threats and promises, it is unlikely that business owners would pay hundreds of dollars for otherwise-free services. *See Thompson Med. Co. v. FTC*, 104 F.T.C. 648 (1984) (claims regarding “central characteristics,” such as cost, “of a product or service” are presumed material), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986). In fact, consumers confirmed that the false claims caused them to purchase Defendants’ services. SUMF ¶ 23.

3. Pointbreak Media Violated the FTC Act by Taking Money from Consumers' Bank Accounts Without Authorization.

In addition to barring deception, the FTC Act also prohibits “unfair” “acts or practices in or affecting commerce.” 15 U.S.C. § 45(a)(1). An act or practice is unfair if it (1) causes or is likely to cause substantial injury, (2) that consumers could not reasonably avoid, and (3) the injury is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n); *see also Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1364-65 (11th Cir. 1988). Unsurprisingly, courts routinely find that taking money from consumers without authorization is an unfair act or practice.⁸ Here, Pointbreak Media wrote a series of unauthorized checks to itself from its customers' bank accounts. *See supra* Statement of Facts Section II. As in other cases of unauthorized billing, the evidence satisfies all three elements of unfairness.

First, Pointbreak's unauthorized billing caused “substantial injury” to consumers. “An injury may be sufficiently substantial . . . if it does a small harm to a large number of people, or if it raises a significant risk of concrete harm.” *Am. Fin. Serv. Ass'n v. FTC*, 767 F.2d 957, 972 (D.C. Cir. 1985) (quoting FTC, *Policy Statement on Unfairness* (Dec. 17, 1980), <http://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>). In this case, Defendants caused “substantial injury” by stealing \$100 from at least 280 consumers.

Second, consumers could not reasonably avoid Pointbreak's unauthorized billing because they did not know about it in advance. “In determining whether consumers' injuries were reasonably avoidable, courts look to whether the consumers had a free and informed choice.” *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1158 (9th Cir. 2010). Here, consumers had no choice at all and no opportunity to avoid the injury.

Third, there was no countervailing benefit to consumers or competition from Pointbreak's unauthorized billing. “[W]hen a practice produces clear adverse consequences for consumers that are not accompanied by an increase in services or benefits to consumers or by benefits to competition, the unfairness of the practice is not outweighed.” *FTC v. Windward Marketing, Ltd.*, 1997 WL 33642380, at *11 (N.D. Ga. Sept. 30, 1997). In this case, consumers received

⁸ *See, e.g., FTC v. Direct Bens. Grp., LLC*, 2013 WL 3771322, at *13-14 (M.D. Fla. July 18, 2013) (agreeing that Defendants had engaged in unfair practice by “obtaining consumers' bank account information and debiting those accounts without the consumers' consent”); *FTC v. Windward Mktg., Ltd.*, 1997 WL 33642380, at *13 (N.D. Ga. Sept. 30, 1997); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 1003-05 (N.D. Cal. 2010).; *FTC v. Ideal Fin. Sols., Inc.*, 2015 WL 4032103, at *8 (D. Nev. June 30, 2015).

nothing in exchange for the money that Defendants took from them, and Defendants' theft created no benefit to competition. *See FTC v. JK Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1203 (C.D. Cal. 2000) (practice of charging debit card numbers without authorization created harm not outweighed by "any benefits to consumers or competition").

4. Pointbreak Media Violated the Telemarketing Sales Rule by Placing Calls to Phone Numbers on the National Do Not Call Registry.

The Telemarketing Sales Rule prohibits telemarketers from initiating, and sellers⁹ from causing telemarketers to initiate, telephone calls to numbers "on the [DNC Registry] to induce the purchase of goods or services." 16 C.F.R. § 310.4(b)(1)(iii)(B). Here, Pointbreak Media placed tens of millions of phone calls to phone numbers on the DNC Registry. SUMF ¶ 6. Specifically, the undisputed evidence establishes that, in just seven weeks in July and August 2017, Pointbreak Media placed just shy of 15 million such unlawful calls.

Pillonato and Ramsey previously have argued (ECF No. 177-1) that these calls are exempt from the TSR because of the so-called "business-to-business exception," which protects "calls between a telemarketer and any business to induce the purchase of goods or services." 16 C.F.R. § 310.6(b)(7). Because this provision is an "exemption[] to the general rule," it "is treated as an affirmative defense for which [the defendant] bears the burden of proof." *United States v. Dish Network, LLC*, 75 F. Supp. 3d 942, 1008 (C.D. Ill. 2014). Therefore, in this case, Defendants could claim the exemption only if they could prove that each of their at least 15 million calls to phone numbers on the DNC Registry were to businesses. They have produced no such evidence in discovery. The FTC, meanwhile, has submitted declarations from call recipients confirming that their phone numbers were *not* business numbers. SUMF ¶ 8.

5. Pointbreak Media Violated the Telemarketing Sales Rule by Placing Robocalls.

The TSR also prohibits telemarketers from initiating, and sellers from causing telemarketers to initiate, "any outbound telephone call that delivers a prerecorded message." 16 C.F.R. § 310.4(b)(1)(v). Here, all of Pointbreak Media's 75 million calls in seven weeks

⁹ Pointbreak Media was both a "telemarketer" and a "seller" under the TSR. It was a seller because, in connection with telemarketing, it sold services to customers. *See* 16 C.F.R. § 310.2(dd) (defining seller as "any person . . . who provides . . . services to the customer in exchange for consideration"). It was a telemarketer because it initiated outbound telephone calls to customers. *See* 16 C.F.R. § 310.2(ff) (defining "telemarketer" as "any person who . . . initiates or receives telephone calls to or from a customer").

delivered prerecorded messages. SUMF ¶¶ 5, 6, 8. Thus, every call violated the TSR. For the same reason as explained above, the business-to business exception does not apply.

B. Defendants Pillonato and Ramsey Are Individually Liable for the Pointbreak Defendants' Violations of the FTC Act and Telemarketing Sales Rule.

Pillonato and Ramsey are liable for both injunctive and monetary relief for the Pointbreak Defendants' unlawful practices if they (1) "participated directly in the practices or acts or had the authority to control them" and (2) "had some knowledge of the practices." *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 470 (11th Cir. 1996). Here, the evidence satisfies both elements with respect to Pillonato and Ramsey's role in the Pointbreak Defendants' unlawful acts or practices.

1. Pillonato and Ramsey's Authority to Control or Direct Participation

The FTC satisfies the participation or control prong by proving *either* authority to control or direct participation. Here, both prongs are easily satisfied.

First, Pillonato and Ramsey had authority to control. Specifically, "[a]n individual's status as a corporate officer gives rise to a presumption of ability to control a small, closely-held corporation." *Transnet*, 506 F. Supp. 2d at 1270. That presumption is difficult to rebut. *Id.* at 1270 ("A heavy burden of exculpation rests on the chief executive and primary shareholder of a closely held corporation whose stock-in-trade is overreaching and deception.") The FTC may also prove authority to control by establishing "active involvement in business affairs and the making of corporate policy." *FTC v. IAB Mktg. Assocs., LP*, 746 F.3d 1228, 1233 (11th Cir. 2014).

Here, there is no genuine dispute about Pillonato and Ramsey's authority to control. They admitted to serving as officers of closely-held Pointbreak Media, Modern Source, and DCP Marketing, SUMF ¶ 1, and therefore presumptively had the authority to control these companies and the common enterprise. *See FTC v. Spectrum Res. Grp., Inc.* 107 F.3d 877 (Table), 1997 WL 103406, at *2-3 (9th Cir. Mar. 6, 1997) (holding individuals who each owned one half of the common enterprise jointly and severally liable for the revenues of the entire enterprise); *FTC v. Tax Club, Inc.*, 994 F. Supp. 2d 461, 472-73 (S.D.N.Y. 2014) (individuals who served as officers of some entities within a common enterprise had authority to control the entire enterprise). Additionally, as described in Statement of Facts Section V, *supra*, overwhelming evidence proves that Pillonato and Ramsey actually controlled the Pointbreak Defendants.

Moreover, even absent authority to control, Pillonato and Ramsey are liable because they directly participated in all of the Pointbreak Defendants' unlawful conduct. First, Pillonato and

Ramsey trained and supervised sales agents and drafted deceptive sales and robocall scripts. SUMF ¶¶ 2, 5, 9. Second, Ramsey endorsed the unauthorized \$100 checks, and text messages between Pillonato and Ramsey confirm that they engineered this scheme. SUMF ¶¶ 32, 34. Third, Pillonato and Ramsey participated in the unlawful robocalls to phone numbers on the DNC Registry by, for example, providing the phone numbers to be called. SUMF ¶ 2.

2. Pillonato and Ramsey's Knowledge

Individual Defendants have “knowledge” of unlawful practices if they (1) had “actual knowledge of material misrepresentations” or other unlawful conduct, (2) were “reckless[ly] indifferen[t] to the truth or falsity of such misrepresentations,” or (3) had an “awareness of a high probability of fraud” and intentionally avoided knowing the truth. *See FTC v. Wilcox*, 926 F. Supp. 1091, 1104 (S.D. Fla. 1995). “An individual’s degree of participation in the business is probative of knowledge.” *FTC v. Partners in Health Care Ass’n*, 189 F. Supp. 3d 1356, 1367 (S.D. Fla. 2016). In particular, an individual’s “pervasive role and authority” for a defendant creates a “strong inference” that the individual had knowledge. *See FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1082 (C.D. Cal. 2012), *aff’d in part and vacated in part on other grounds*, 815 F.3d 593 (9th Cir. 2016). Evidence of a “pervasive role” includes serving as principal owners and officers, drafting telemarketing scripts, controlling the businesses’ finances, and overseeing its activities. *FTC v. Amy Travel Serv.*, 875 F.2d 564, 574-75 (7th Cir. 1989).

Defendants Pillonato and Ramsey plainly had pervasive roles in the common enterprise. As in *Amy Travel*, they were principal owners and officers of various Pointbreak Defendants, drafted telemarketing scripts for Pointbreak Defendants, controlled Pointbreak Defendants’ finances, and oversaw Pointbreak Defendants’ activities on a day-to-day basis. SUMF ¶¶ 2, 3, 5, 9. Additionally, even separate from the knowledge that the Court should infer from Pillonato and Ramsey’s pervasive role, the evidence demonstrates that they had actual knowledge, or at least were recklessly indifferent to, the unlawful practices described above.

a) Knowledge of Deceptive Sales

Pillonato and Ramsey knew that the Pointbreak Defendants made deceptive sales. Aside from their supervision of Pointbreak Defendants’ sales practices, SUMF ¶¶ 2, 5, 9, they also knew or were at least aware of a high probability that those practices deceived consumers, SUMF ¶¶ 24-26. They both, for example, monitored consumers’ overwhelmingly negative reviews of Pointbreak Media, which included complaints about Defendants’ deception. SUMF ¶

24. Pillonato also monitored the company’s credit card chargeback rate, which he deemed “horrible” and which Ramsey and Pillonato tried to remedy by hiring a “chargeback response service.” SUMF ¶ 25. Co-Defendant Ricardo Diaz suggested to Pillonato that they could address chargebacks by “tighten[ing] up the [quality control],” including by telling consumers that “we are not Google.” SUMF ¶ 25. Diaz, however, was concerned that this might result in fewer sales. *Id.* Similarly, an employee warned Pillonato that saying that businesses would be removed from Google “might be an issue” and that Pointbreak could not make promises of “1st page visibility.” SUMF ¶ 26. An employee of Pointbreak’s fulfillment company told both Pillonato and Ramsey that keywords were not part of claiming and verification. SUMF ¶ 26. Pillonato and Ramsey each invoked the Fifth Amendment in response to all questions regarding their knowledge of these deceptive practices. *See, e.g.*, SUMF ¶¶ 5, 7, 12, 15, 22, 27.

b) Knowledge of Unauthorized Billing

Pillonato and Ramsey knew that Pointbreak Media stole money from its customers’ checking accounts. Ramsey, for example, endorsed each one of the checks at issue. SUMF ¶ 32. Additionally, Pillonato and Ramsey discussed the checks. For example, in one October 27-28 conversation—immediately after Pointbreak Media wrote the checks— Ramsey asked Pillonato when the checks would appear in their account. SUMF ¶ 34. When asked about their knowledge of these checks, Pillonato and Ramsey both invoked the Fifth Amendment. *Id.*

c) Knowledge of Telemarketing Sales Rule Violations

Given the staggering volume of TSR violations, Pillonato and Ramsey were at least “recklessly indifferent” to whether they called numbers on the DNC Registry. This reckless indifference is highlighted by their reliance on co-Defendant Aaron Jones for do-not-call compliance. SUMF ¶ 8. A Central District of California court banned Jones from telemarketing after he defaulted in a case in which the FTC alleged that he made 40.3 million illegal calls. *See FTC v. Jones, et al.*, No. 17-cv-00058 (C.D. Cal.), Dkt. Nos. 1, 88. Additionally, text messages and deposition testimony confirm that Ramsey and Pillonato actually knew that their calls reached non-businesses and numbers on the DNC Registry. *See* SUMF ¶ 8. Moreover, when asked about the TSR violations, Pillonato and Ramsey again invoked the Fifth Amendment. *Id.*

IV. EQUITABLE MONETARY RELIEF AND AN INJUNCTION ARE NECESSARY TO REMEDY PILLONATO AND RAMSEY’S PAST VIOLATIONS AND TO PREVENT FUTURE VIOLATIONS.

The FTC seeks monetary relief to remedy Pillonato and Ramsey’s past violations of the FTC Act and a permanent injunction to protect the public in the future. Section 13(b) of the FTC Act gives courts authority to grant “ancillary relief necessary to accomplish complete justice.” *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984). This includes authority to order restitution and disgorgement of unlawfully obtained funds. *Partners in Health Care*, 189 F. Supp. 3d at 1370. Section 13(b) also provides that the FTC may obtain permanent injunctions for violations of “any provision of law enforced by the FTC.” 15 U.S.C. § 53(b). Here, because Pillonato and Ramsey are jointly and severally liable for consumer injury, the appropriate equitable monetary relief is the full amount that consumers paid the Pointbreak Defendants. In addition, because there is a cognizable danger that Pillonato and Ramsey will re-violate the FTC Act and the TSR, permanent injunctions are necessary to protect future consumers.

A. Pillonato and Ramsey Are Jointly and Severally Liable for the Full Amount Consumers Paid.

The Pointbreak Defendants’ gross revenues, less refunds and chargebacks, is the appropriate measure of monetary relief. The Eleventh Circuit has repeatedly held that where, as here, Defendants have made material and widespread misrepresentations, the Court presumes that each and every customer relied on those misrepresentations when purchasing Defendants’ products. *See, e.g., McGregor v. Chierico*, 206 F.3d 1378, 1388 (11th Cir. 2000). Once this compensatory baseline is established, Defendants bear the burden of proving offsets to the compensatory baseline. They must do so by proving that individual consumers were not injured by their unlawful conduct. *See, e.g., FTC v. Bronson Partners, LLC*, 654 F.3d 359, 369 (2d Cir. 2011). Here, Pointbreak Defendants’ revenues for the relevant time period total \$3,383,194.21.¹⁰ SUMF ¶ 35. Thus, a judgment and order to pay in this amount is appropriate.

B. The Proposed Bans and Fencing-In Relief Are Necessary to Protect Consumers.

Section 13(b) of the FTC Act authorizes courts to issue permanent injunctions when a defendant violates any law enforced by the FTC and is likely to continue to violate such laws.

¹⁰ The FTC does not seek Modern Spotlight’s pre-July 2017 revenues, Perfect Image’s post-February 2018 revenues, or any revenues of co-Defendant Pinnacle Presence LLC. The FTC also does not seek monetary relief for Pointbreak Media’s TSR violations (Counts III and IV).

See, e.g., FTC v. USA Fin., LLC, 415 F. App'x 970, 975 (11th Cir. 2011); *see also United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953) (to issue a permanent injunction, Court must only determine that there is “some cognizable danger of a recurrent violation, something more than the mere possibility which serves to keep the case alive”). Not only does Pillonato and Ramsey’s egregious misconduct in this case alone necessitate strong injunctive relief, but their history of ignoring court orders heightens the risk of recurrent violations and, therefore, the need for bans on telemarketing, SEO, remotely created payment orders, and misrepresentations.

In early 2017, Ramsey stipulated to a permanent injunction resolving a prior FTC lawsuit against him. SUMF ¶ 36. The injunction, *inter alia*, (1) barred Ramsey from calling numbers, including business numbers, on the DNC Registry and (2) required him to clearly and conspicuously disclose the seller’s identity in any telemarketing call. SUMF ¶ 36. At the time that Ramsey agreed to these provisions, however, he already was violating them through this scheme. Specifically, Ramsey violated his Order tens of millions of times by calling numbers on the DNC Registry, SUMF ¶ 6, and hundreds of millions of times by placing robocalls that did not disclose the identity of the seller, instead misrepresenting the seller as a Google affiliate. Ramsey’s disregard for his Order is unsurprising. For example, Ramsey previously admitted that he knew nothing about a case filed against his company in Mississippi because, upon receiving a document that said “Attorney General of Mississippi,” he simply “threw it in the garbage.” SUMF ¶ 36.

Pillonato is in violation of a Florida state court order. That order settled a case in which the Florida Office of the Attorney General accused Pillonato of “actively control[ing] and direct[ing]” a technical support scam. SUMF ¶ 36. The order bars Pillonato from, among other things, “using any false or misleading statement to induce any person to pay for goods and services”—a provision that the Pointbreak Defendants clearly violated. SUMF ¶ 36.

CONCLUSION

For the foregoing reasons, the FTC respectfully requests that the Court grant the FTC summary judgment against Pillonato and Ramsey on all counts in its First Amended Complaint and enter the attached proposed final order of permanent injunction and monetary judgment.

Respectfully submitted,

Dated: December 18, 2018

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CERTIFICATE OF SERVICE

I hereby certify that, on December 18, 2018, a true and correct copy of the foregoing was served on all counsel or parties of record on the Service List, via the method indicated below.

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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.

[PROPOSED] FINAL ORDER OF PERMANENT INJUNCTION AND MONETARY JUDGMENT AS TO DEFENDANTS DUSTIN PILLONATO AND JUSTIN RAMSEY

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its First Amended Complaint for Permanent Injunction and Other Equitable Relief (“First Amended Complaint”) pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105. On December 18, 2018, Plaintiff filed a Motion for Summary Judgment Against Defendants Dustin Pillonato (“Pillonato”) and Justin Ramsey (“Ramsey”), including supporting declarations, deposition testimony, and other exhibits. Having considered that motion and any oppositions thereto, the Court finds that there is no genuine dispute as to any material fact, and the FTC is entitled to judgment against Pillonato and Ramsey as a matter of law.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

A. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

B. Venue is proper as to all parties in this district under 28 U.S.C. § 1391(b)(2), (b)(3), and (d), and 15 U.S.C. § 53(b).

C. The First Amended Complaint states a claim upon which relief may be granted pursuant to Section 13 of the FTC Act, 15 U.S.C. § 53, and Section 6 of the Telemarketing Act, 15 U.S.C. § 6105.

D. On _____, 2019, this Court granted the FTC's Motion for Summary Judgment against Defendants Pillonato and Ramsey.

E. Defendants Pillonato and Ramsey's activities are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

F. Defendants Pointbreak Media, LLC, DCP Marketing, LLC, Modern Spotlight LLC; Modern Spotlight Group LLC; Modern Source Media, LLC; Perfect Image Online LLC; and National Business Listings, LLC (collectively, "Pointbreak Defendants") formed a common enterprise. *See, e.g., FTC v. Lanier Law, LLC*, 715 F. App'x 970, 979 (11th Cir. 2017) ("[A] corporate entity can be held liable for the conduct of other entities where the structure, organization, and pattern of a business venture reveal a common enterprise or a maze of integrated business entities."). Here, the undisputed facts establish that the Pointbreak Defendants shared office space, employees, sales scripts, and owners and control people, including Pillonato and Ramsey. They also commingled funds.

G. The Pointbreak Defendants violated Section 5 of the FTC Act, 15 U.S.C. § 45, by deceptively marketing and selling to small business owners Google "claiming and verification" and search engine optimization services.

H. Defendants Pillonato and Ramsey participated in, had authority to control, and had knowledge of the Pointbreak Defendants' deceptive marketing and sale of Google "claiming and verification" and search engine optimization services.

I. Defendant Pointbreak Media, LLC engaged in unfair practices in violation of Section 5 the FTC Act, 15 U.S.C. § 45, by writing itself unauthorized \$100 checks from at least 280 of its customers' bank accounts. Defendant Ramsey endorsed all of these checks.

J. Defendants Pillonato and Ramsey participated in, had authority to control, and had knowledge of the unauthorized checks that Pointbreak Media, LLC wrote itself from its customers' bank accounts.

K. Defendant Pointbreak Media, LLC was engaged in telemarketing, as defined by the Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.2(aa), (cc), and (dd).

L. Defendant Pointbreak Media, LLC violated the TSR, 16 C.F.R. § 310.4(b)(1)(v), by initiating or causing the initiation of telemarketing calls that delivered prerecorded messages.

M. Defendant Pointbreak Media, LLC violated the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), by initiating or causing the initiation of telemarketing calls to consumers whose telephone numbers were on the National Do Not Call Registry ("DNC Registry").

N. Defendants Pillonato and Ramsey had authority to control, participated in, and had knowledge of Pointbreak Media, LLC's unlawful telemarketing.

O. In light of Defendants Ramsey and Pillonato's conduct operation of the Pointbreak Defendants and violations of prior court orders, there is a cognizable danger that they will continue to engage in activities in violation of the FTC Act and the TSR unless permanently enjoined from such acts and practices.

P. Equitable monetary relief is warranted against Defendants Ramsey and Pillonato. The proper measure of monetary liability as to Defendants Ramsey and Pillonato is the amount that consumers paid to the Pointbreak Defendants.

Q. Consumers paid the Pointbreak Defendants at least \$3,383,194.21.

R. Defendants Pillonato and Ramsey are jointly and severally liable for equitable monetary relief in the amount of \$3,383,194.21.

DEFINITIONS

For purposes of this Order, the following definitions apply:

A. “**Defendants**” means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

B. “**Individual Defendants**” means Dustin Pillonato; Justin Ramsey; Aaron Michael Jones, a/k/a Michael Aaron Jones and Mike Jones; Ricardo Diaz; Michael Pocker; Steffan Molina; Vincent Yates; and Daniel Carver, individually, collectively, or in any combination.

C. “**Corporate Defendants**” means Pointbreak Media, LLC, also d/b/a Point Break Media, Point Break Solutions, and Kivanni Marketing; DCP Marketing, LLC, also d/b/a Point Break; Modern Spotlight LLC; Modern Spotlight Group LLC, also d/b/a/ Modern Spotlight; Modern Internet Marketing LLC; Modern Source Media, LLC, also d/b/a Modern Source; Perfect Image Online LLC; Allstar Data, LLC; National Business Listings, LLC; and Pinnacle Presence LLC, and their successors and assigns, individually, collectively, or in any combination.

D. “**Receiver**” means Jonathan E. Perlman, Esq., who the Court appointed as Receiver in Section XI of the Preliminary Injunction as to Defendants Dustin Pillonato; Justin Ramsey; Aaron Michael Jones; Michael Pocker; Pointbreak Media, LLC; DCP Marketing, LLC;

Modern Spotlight LLC; Modern Spotlight Group LLC; Modern Internet Marketing LLC; and Modern Source Media, LLC (ECF No. 64); in Section XI of the Preliminary Injunction as to Defendants Steffan Molina and Perfect Image Online LLC (ECF No. 58); and in Section XI of the Preliminary Injunction as to Defendants Allstar Data, LLC; National Business Listings, LLC; Pinnacle Presence LLC; Vincent Yates; and Daniel Carver (ECF No. 169).

E. **“Remotely Created Payment Order”** means any check, draft, remotely-created check, payment instruction, or payment order, whether in written or electronic format, that is drawn on a payor’s account, initiated or created by or on behalf of the payee, and deposited into or cleared through the check clearing system. For purposes of this definition, an account includes any financial account or credit or other arrangement that allows checks, payment instructions, or orders to be drawn against it that are payable by, through, or at a bank.

F. **“Search Engine Optimization Service or Product”** means any service, product, plan, or program represented, expressly or by implication, to improve a consumer’s rankings or visibility in search engine results or increase the quantity or quality of traffic directed to a consumer through search engine results.

G. **“Telemarketing”** means any plan, program, or campaign which is conducted to induce the purchase of goods, services, or charitable contributions, by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule.

ORDER

I. PERMANENT BAN ON TELEMARKETING

IT IS THEREFORE ORDERED that Defendants Pillonato and Ramsey, whether acting directly or through an intermediary, are permanently restrained and enjoined from:

A. participating in Telemarketing, including by consulting, brokering, planning, or advising; and

B. Owning or controlling, holding a managerial post in, consulting for, serving as an officer in, having any revenue sharing agreement with, or holding any ownership interest, share, or stock in, other than the stock of a publicly traded company, any company that participates in Telemarketing, including by consulting, brokering, planning, or advising.

II. PERMANENT BAN ON USING REMOTELY CREATED PAYMENT ORDERS TO DEBIT CONSUMER ACCOUNTS

IT IS FURTHER ORDERED that Defendants Pillonato and Ramsey are permanently restrained and enjoined, whether acting directly or through an intermediary, from debiting or attempting to debit any consumer's bank or financial account using a Remotely Created Payment Order.

III. PERMANENT BAN ON SEARCH ENGINE OPTIMIZATION SERVICES OR PRODUCTS

IT IS FURTHER ORDERED that Defendants Pillonato and Ramsey are permanently restrained and enjoined, whether acting directly or through an intermediary, from advertising, marketing, promoting, offering for sale, or selling any Search Engine Optimization Service or Product.

IV. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendants Pillonato and Ramsey; their officers, agents, servants, employees, and attorneys; and all other persons in active concert or participation with any of the foregoing, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

- A. that they are authorized by, or affiliated with, Google or any other individual or entity;
- B. that any consumer is in danger of being removed from any internet search results or marked closed by Google or any other individual or entity;
- C. any material aspect of any refund, cancellation, exchange or repurchase policy, including the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer; or
- D. any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

V. MONETARY JUDGMENT AS TO DEFENDANTS PILLONATO AND RAMSEY

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of three million, three hundred eighty-three thousand, one hundred ninety-four Dollars and twenty-one Cents (\$3,383,194.21) is entered in favor of the Commission against Defendants Pillonato and Ramsey, jointly and severally, as equitable monetary relief. Defendants Pillonato and Ramsey are ordered to pay the Commission this amount immediately upon entry of this Order.
- B. In partial satisfaction of this judgment, Defendants Pillonato and Ramsey, immediately upon entry of this Order, shall take all steps necessary to transfer possession, custody, and control of the assets listed below to the Receiver.
 - 1. White Gold Diamond Tennis Bracelet, 14 kt, 13.10 DWT, approx. 6.3cts, 7.5 inches long;
 - 2. Rolex 116333, Black Roman Numeral Dial;

3. Rolex 116334, #8N8M9651, Scramble Serial, Blue Dial;
4. Rolex 116523, #Y527218, 18kt, 99.80 DWT, Two Tone Rolex Dayton Gold Dial;
5. 3.25ct Diamond Bezel for DateJust II;
6. Hublot 45mm Unico Model 411.NM.1170.RX;
7. "Cartier Love Bracelet," 276 diamonds, 4.25 cts, 18k Yellow Gold;
8. 18k Rose Gold Rolex DayDate II;
9. Gold DayDate 2 Full Diamonds, approx 40cts;
10. Pavé "Love Bracelet" Rose Gold, 276 Diamonds, 5.5cts;
11. Diamond Cartier Nail Bracelet;
12. Matching His and Hers Rose Gold "Cartier" Style Nail Bracelets;
13. (2) Rose Gold DayDate II President Links;
14. (2) Diamond DayDate 2 Links;
15. Breitling A17364, #1395326, Breitling SuperOcean II;
16. Rolex 116244/116200 Oyster, #V764119, Rolex, Silver Dial, 2008;
17. Breitling for Bentley 6.75, White Dial;
18. Rolex 116200, #Z131385, Rolex DateJust, Black Roman Dial, 2006;
19. Gold Coins/Bullion: Canadian Gold Maple, 1ozt;
20. Gold Coins/Bullion: Gold Panda, 1ozt;
21. Gold Coins/Bullion: 1ozt 1980 Gold Maple Leaf;
22. Gold Coins/Bullion: 1 Gold Maple Leaf, 2 Gold Pandas, 1 AGE, 1 Krugg;
23. Breitling Super Avenger, Diamond Dial, Diamond Bezel, Diamond Lugs, 6ct total;

24. Rolex 116880, #Z9715053, Stainless Steel Rolex Yachtmaster II Model 116680;
25. TAG Heuer Ladies' Link, MOP Diamond Dial with Factory Diamond Bezel;
26. Breitling Super Avenger, #2167190; Breitling Super Avenger Stainless Steel with White Dial;
27. Gold Coins/Bullion: (7) 1 ozt Pamp Bars;
28. Cartier Roadster XL Chronograph;
29. Rolex 178274, #M323508, Mid Size 31mm DJ;
30. Rolex Deepsea Dweller, #M870981, with extra link;
31. Rolex 326935, #G95367T0, 18kt, 169.80 DWT, Rolex 18k Rose Gold Sky-Dweller;
32. Rolex 116244/116200, #V764119, Oyster, Silver Dial, 2008;
33. SS Yachtmaster II;
34. Panerai PAM000 #L0277/1000, Men's Panerai Pam000, Black Dial, Brown Leather Strap;
35. Rolex 116300, #Scramble, Rolex DateJust II, Black Diamond Dial with 3.25 ctw Bead Set Diamond Bezel Set in 18kwt;
36. Rolex 116300, #Scramble, Rolex DateJust II, Silver Arabic Dial with Purple Numbers, 3.25 ctw Bead Set Diamond Bezel Set in 18kwt;
37. Men's Two Tone 41mm Rolex DateJust Model 116333 G Serial, Slate Dial, with Green Roman Numerals;

38. (2) 18k Yellow Gold Dog Tag Pendants with 18kgw Beaded Necklace, 40 inches long;
39. Hublot King Power Titanium, 48mm;
40. Audemars Piguet Royal Oak OffShore, 44mm Carbon Ceramic;
41. Rolex Yachtmaster II Two tone, Model 116618;
42. Rose Gold, DayDate President, Oyster Bracelet, Factory Diamond Dial, 36mm;
43. New Rolex Yacht-Master II, Two Tone, Rose;
44. Breitling A17364, #1395326, Breitling SuperOcean II;
45. 1.01ct E/SI1 GIA Certified Cushion Cut Diamond;
46. 14k White Gold Cushion shape diamond halo semi mount totaling .68cts for 1.01 ct GIA (6212749823) Cushion Cut Diamond;
47. Rolex 116810LV, #063E29Q7, Green Ceramic Submariner 116610LV, dated Nov. 2015;
48. Rolex 116610, X0239F623, Stainless Steel Rolex Submariner 116610, Black Dial/Black Bezel, with 3 extra links;
49. 18k Rose Gold Diamond Bezel for Rolex DayDate;
50. 18K White Gold Diamond Cartier Style Love Bracelet;
51. Complete AP ROO 42mm Navy;
52. Hublot King Power Bayern Munich FC;
53. Breitling with Diamond Bezel; and
54. All items that are or were possessed, owned, or held for the benefit of Defendants Pillonato or Ramsey, and that are or were contained in a safe.

C. The Receiver shall liquidate all assets transferred to the Receiver pursuant to this Order. After payment to the Receiver of any expenses approved by the Court, all proceeds from the liquidation of those assets shall be paid to the Commission. The Receiver is excused from the requirements of 28 U.S.C. § 2001 and 28 U.S.C. § 2004 in connection with any pending or contemplated sale by the Receiver.

D. Any entity or person, including Pillonato and Ramsey or any financial institution, holding Defendants Pillonato and Ramsey's assets must transfer those assets to the Commission or Receiver, in accordance with instructions provided by a representative of the Commission, within seven days of receiving notice of this Order.

E. Defendants Ramsey and Pillonato shall take all steps necessary to assist in the transfer of all frozen assets, including those identified in Subsections B and C. In the event that it is necessary to execute additional documents to transfer, liquidate, or assign Defendant Pillonato and Ramsey's assets or any other assets surrendered under this Order, Defendants Pillonato and Ramsey shall execute such documents within three days of a request from a representative of the Commission.

F. The freeze against the assets of Defendants Pillonato and Ramsey pursuant to the May 8, 2018 Temporary Restraining Order [ECF No. 12], the May 21, 2018 Order Extending the Temporary Restraining Order [ECF No. 23], and the June 7, 2018 Preliminary Injunction [ECF No. 64] is modified only with respect to Defendants Pillonato and Ramsey. Specifically, once all of Defendant Pillonato and Ramsey's frozen assets are transferred in accordance with Subsections A, B, and C, the asset freeze will dissolve with respect to Defendants Pillonato and Ramsey.

G. Defendants Pillonato and Ramsey's Taxpayer Identification Numbers (such as their Social Security Numbers), which they previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

H. Defendants Pillonato and Ramsey grant to the Commission all rights and claims they have to any assets currently in the possession, custody, or control of the Receiver, and to any other asset of any Corporate Defendant.

I. Defendants Pillonato and Ramsey relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

J. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the First Amended Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants Pillonato and Ramsey have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VI. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants Pillonato and Ramey; their officers, agents, employees, and attorneys; and all other persons in active concert or participation with any of the foregoing, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly:

- A. failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Defendants Pillonato and Ramsey must provide it, in the form prescribed by the Commission, within 14 days.
- B. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained or used prior to entry of this Order in connection with the marketing and sale of Google "claiming and verification" and search engine optimization services;
- C. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants Pillonato and Ramsey each obtain acknowledgments of receipt of this Order:

- A. Defendants Pillonato and Ramsey, within 7 days of entry of this Order, each must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 10 years after entry of this Order, Defendants Pillonato and Ramsey, for any business that either of them, individually or collectively with each other or any other Defendant, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Defendants Pillonato or Ramsey delivered a copy of this Order, he must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants Pillonato and Ramsey each make timely submissions to the Commission:

A. One year after entry of this Order, Defendants Pillonato and Ramsey each must submit a compliance report, sworn under penalty of perjury. Each compliance report must:

1. identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences;
2. identify all business activities, including any business for which the Defendant submitting the report performs services, whether as an employee or otherwise, and any entity in which such Defendant has any ownership interest;
3. describe in detail the submitting Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership;
4. identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with the Defendant submitting the report;
5. identify submitting Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
6. describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which the Defendant submitting the report must describe if he knows or should know due to his own involvement);
7. describe in detail whether and how the Defendant submitting the report is in compliance with each Section of this Order; and

8. provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 20 years after entry of this Order, Defendants Pillonato and Ramsey each must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. name, including aliases or fictitious name or residence address;
2. title or role in any business activity, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity;
3. any designated point of contact; and
4. the structure of any entity that he has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Defendants Pillonato and Ramsey each must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against him within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of

America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Pointbreak Media, X180031.

IX. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants Pillonato and Ramsey each must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, for any business that Defendants Pillonato or Ramsey, individually or collectively with each other or any other Defendants, is a majority owner or controls directly or indirectly, he must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. a copy of each unique advertisement or other marketing material, including sales scripts.

X. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants Pillonato and Ramsey's compliance with this Order, including any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, Defendants Pillonato and Ramsey each must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69. Notwithstanding the provisions of Local Rule 26.1(i), the Commission is not required to provide notice to Defendants Pillonato or Ramsey of, or make available for inspection by Defendants Pillonato or Ramsey, any objections, documents, electronically stored information, or things received in response to a subpoena.

B. For matters concerning this Order, the Commission is authorized to communicate directly with Defendants Pillonato and Ramsey. Defendants Pillonato and Ramsey each must permit representatives of the Commission to interview any employee or other person affiliated with him who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants Pillonato and Ramsey or any individual or entity affiliated with any of them, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Defendants Pillonato and Ramsey, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

XI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

DONE AND ORDERED in Miami, Florida, this ____ day of _____, 20____.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record
Justin Ramsey (*pro se*)
Dustin Pillonato (*pro se*)