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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DISRUPTION THEORY LLC, a limited liability company, also d/b/a inmatecall.com and inmatecallsolutions.com,

EMERGENT TECHNOLOGIES LLC, a limited liability company, also d/b/a inmatecall.com and inmatecallsolutions.com,

MARC GRISHAM, a/k/a Mark Grisham, individually and also d/b/a inmatecall.com and inmatecallsolutions.com, and as Manager of Disruption Theory LLC, and

COURTNEY GRISHAM, a/k/a Courtney Brooks, individually and also d/b/a inmatecall.com and inmatecallsolutions.com, and as President, Director, and Ultimate Beneficial Owner of Disruption Theory LLC,

Defendants.

Case No. 20-CV-06919-VC

PLAINTIFF FTC'S NOTICE OF MOTION, MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT MARC GRISHAM, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date: August 26, 2021
Hearing Time: 10:00 a.m.
Via Zoom Videoconference

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Raymond Manzo	1	Defendant Marc Grisham's Responses to FTC's First Set of Requests for Admission
Raymond Manzo	2	Defendant Marc Grisham's Responses to FTC's First Set of Interrogatories

PLEASE TAKE NOTICE that on August 26, 2021 at 10:00 a.m., Plaintiff Federal Trade Commission (“FTC” or “Commission”) will move for summary judgment and permanent injunction (“Proposed Order”) against Marc Grisham (“Defendant”) for violations of Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), as alleged in Counts I and II of its Complaint for Permanent Injunction and Other Equitable Relief.

This motion is made pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Civil Rule 56. This motion is supported by the following Memorandum of Points and Authorities, concurrently filed exhibits, all pleadings and other documents on file in this action, and all argument and evidence as may be presented to the Court at the time of the hearing.

The uncontroverted evidence establishes the material facts, about which there is no genuine issue, to support a finding that Defendant is liable as a matter of law. As alleged in Counts I and II of the Complaint, Defendant violated Section 5(a) of the FTC Act in connection with the offer and sale of inmate calling plans by misrepresenting that he: (1) provided consumers with access to an unlimited number of minutes for a set period at a set price; and (2) was affiliated with telecommunications companies. The FTC is entitled to summary judgment against Defendant.

To remedy the harm Defendant caused to consumers and to prevent future law violations, the FTC requests that the Court enter the Proposed Order banning Defendant from offering inmate calling services to consumers.

I. INTRODUCTION

This matter is a straightforward deceptive advertising case. Marc Grisham, Courtney Grisham, and two companies under their control, Disruption Theory LLC and Emergent Technologies LLC, (collectively, “Defendants”) offered and sold inmate calling plans to friends and families of incarcerated individuals by falsely promising “unlimited minutes” and by posing as telecommunications companies that provided inmate calling services to correctional facilities under contract (“Specialized Service Providers”). The undisputed evidence establishes that Mr. Grisham’s conduct violated Section 5 of the Federal Trade Commission Act, 15 U.S.C § 45(a). His admissions also establish that he ran the unlawful operation and knowingly made these false

representations that collected \$1.2 million from consumers from 2015 to 2020. There is no genuine issue as to any material fact establishing his violations of Section 5 of the FTC Act and his personal liability for these violations. The FTC is entitled to summary judgment on all counts and seeks entry of the Proposed Order banning Mr. Grisham from offering inmate calling services to consumers to prevent future law violations and further consumer harm.

II. PROCEDURAL BACKGROUND

On October 5, 2020, the FTC filed a complaint and *ex parte* motion for a temporary restraining order. Dkt. 1 (“Complaint”); Dkt. 4 (“TRO Motion”). On October 6, 2020, the Court issued a temporary restraining order against all Defendants, which prohibited them from making misrepresentations to consumers. Dkt. 9. Following a hearing on October 20, 2020, the Court extended the TRO. Dkt. 17. Discovery closed on May 17, 2021,¹ the deadline for dispositive motions is July 22, 2021, and the last day for hearings on dispositive motions is set for August 26, 2021. Dkt. 67. Trial is set for September 13, 2021. *Id.* In light of the trial schedule set in this matter, Plaintiff respectfully requests a prompt ruling and also remains available to appear for a hearing before August 26, 2021.

III. STATEMENT OF MATERIAL FACTS AS TO WHICH THERE EXISTS NO GENUINE ISSUE TO BE TRIED

A. Defendant Marc Grisham

Mr. Grisham sold inmate calling services to consumers through his websites inmatecall.com and inmatecallsolutions.com (“Inmate Call Websites”). Declaration of FTC Investigator Raymond Manzo in Support of Motion for Summary Judgment (“Manzo Decl.”), Ex. 1, at 7; Dkt. 60 ¶ 9. Mr. Grisham controls both websites and registered and renewed both domain registrations. Dkt. 60 ¶ 36. He also formed and controls the two corporate defendants, Disruption Theory LLC (“Disruption Theory”) and Emergent Technologies LLC (“Emergent Technologies”), which were used to process payments for the Inmate Call Websites. Manzo Decl., Ex. 2, at 5-6.

¹ One deposition was completed after the close of fact discovery as permitted by order of this Court.

B. Defendants in Default

Defendants Disruption Theory, Emergent Technologies, and Courtney Grisham (collectively, “Defaulting Defendants”) failed to answer the Complaint, and the clerk entered their defaults on February 22, 2021.² Dkt. 65.

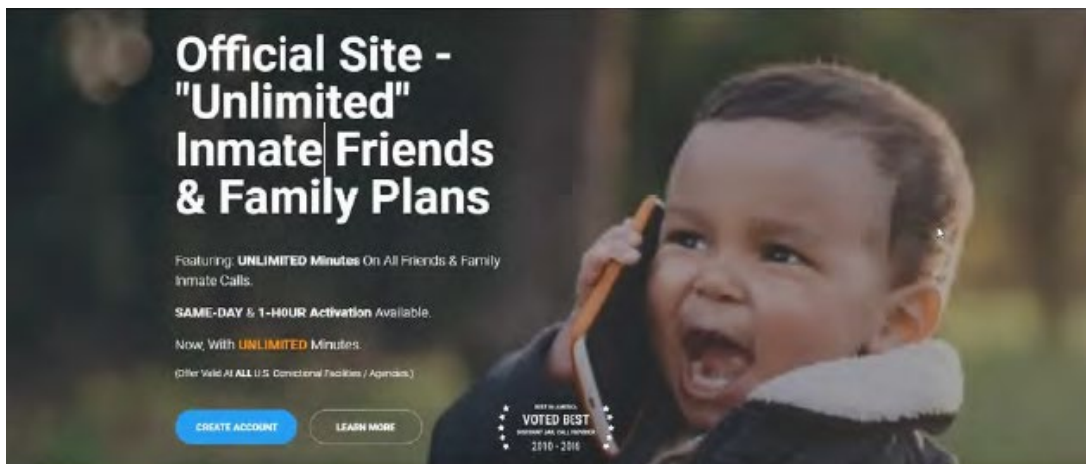
C. Defendants’ Unlawful Business Practices

Since 2015, Defendants have offered and sold inmate calling plans to friends and family members of incarcerated individuals. The FTC’s Complaint alleges that Defendants published two core misrepresentations on their websites while offering and selling their inmate calling service to consumers. Defendants (1) promised “unlimited minutes” for a set period for a set price and (2) claimed affiliations with Specialized Service Providers. The uncontroverted facts establish that each claim published on Defendants’ websites was false and likely to mislead consumers, and in fact, did mislead consumers.

1. Defendants Misled Consumers by Offering “Unlimited Minutes” Inmate Calling Plans

From 2015 to 2020, Defendants advertised inmate calling plans with “unlimited minutes” on the Inmate Call Websites. Manzo Decl., Ex. 2, at 5-6; *see also* Dkt. 4-4 at 4 (advertising in March 2015); Dkt 4-4 at 39-40 (advertising in 2018); Dkt. 4-6 at 8-9, 20-21, 23, 25, 27 (advertising in 2019 and 2020). Defendants featured the “unlimited minutes” claim on the Inmate Call Websites in differentiated font and color. Dkt. 4-6 at 20 (“**UNLIMITED Minutes**,” “1 Month of **UNLIMITED** Talk Time.”). During the relevant period, the Inmate Call Websites appeared as follows:

² In its concurrently filed Motion for Default Judgment, the FTC seeks default judgment and an order for permanent injunction against Defaulting Defendants.



Dkt. 4-6 at 15, 20.

Defendants repeated the claim to consumers throughout the purchase process. Dkt. 4-4 at 39-40, 42 (“UNLIMITED Mins”); Dkt. 4-6 at 22-23, 25-26 (“UNLIMITED Mins” and “365 DAYS OF UNLIMITED TALK”); *see also* Dkt. 4-6 at 15-16 (citing Att. M at 0:01-0:06 and Att. N at 0:01-0:04).³ Defendants’ plans cost between \$29.97 to \$89.95 for one, three, six, or 12 month terms and promised that each plan would provide “unlimited minutes.” Manzo Decl., Ex. 2, at 5-6; Dkt. 4-6 at 23-25. Defendants even told consumers that they were “Voted #1 Inmate Call Provider by U.S. families.” Dkt. 4-4 at 42; Dkt. 4-6 at 23; *see also* Dkt. 4-6 at 15-16 (citing Att. M at 0:09, Att. N at 0:06).

Mr. Grisham admits that his calling plans did not provide “a single minute of talk time,” and that the claim was a “marketing technique used specifically to distinguish [Defendants] from

³ Attachments M and N, video file attachments to Dkt. 4-6 (Declaration of Yasser Dandashly), were manually filed on October 5, 2020. *See* Dkt. 4-7.

[their] competition.” Dkt. 20 at 5-6; *see* Manzo Decl., Ex. 1 at 5-6 (admitting that his statements to the Court during the October 10, 2020 hearing were truthful). Indeed, consumers who bought Defendants’ inmate calling plans did not receive the promised unlimited minutes. Dkt. 4-4 at 15, 36, 74, 86; Dkt. 4-5 at 222; Dkt. 4-6 at 29-30.

Mr. Grisham also admits that consumers who purchased Defendants’ calling plans were still required to open and fund prepaid calling accounts with their correctional facility’s approved telecommunications provider. Manzo Decl., Ex. 1, at 4-5; *see also* Dkt. 4-4 at 15-16, 22-27, 35, 133, 145-48, 150-52; Dkt. 4-5 at 222 (consumers describing post-transaction instructions from Defendants to separately open and fund a prepaid account with their correctional facility’s approved Specialized Service Provider). Mr. Grisham even admits that consumers were likely to be misled by the unlimited minutes claim: “I’m not saying that [the claim] unlimited minutes doesn’t mislead some people.” Dkt. 20 at 17.

Numerous consumer accounts establish the fact that consumers were actually misled by Defendants’ false claim. Dkt. 4-4 at 59-60, 74, 85-86, 98-99, 124, 132-33, 160-62; Dkt. 4-5 at 222. For example:

- A consumer in Stockton, California stated: “Based on the website’s advertisements, I believed InmateCall’s ‘unlimited minutes’ meant my friend would be able to call me for an unlimited amount of time for an entire month if I paid a flat fee for the month . . . Based on the advertisements, I didn’t think that I had to pay per minute with the calling plan. I also didn’t think that I had to pay or open an account with a different company to use InmateCall’s unlimited calling plan.” Dkt. 4-4 at 35.
- A mother in Texas stated: “Inmate Call advertised ‘unlimited’ phone calls with inmates for a set monthly rate. This sounded like a good way to talk with my son so I used my credit card to purchase a 30-day unlimited minutes calling plan . . . Inmate Call sent me an email with ‘Sign Up Instructions’ . . . [that] instructed me to register a phone number with [the jail] and pre-pay connection fees, at a rate of \$4.50-\$17 per 15-minute call. . . . I was angry that Inmate Call lied about offering an unlimited monthly calling plan. The company’s website did not mention anything about additional costs paid to the corrections facility. . . . Inmate Call is a fraud and should be shut down.” Dkt. 4-4 at 15-16.
- A mother in New Hampshire stated: “I saw that Inmate Call offered ‘unlimited’ calling plans for a set monthly rate. This seemed like a better deal

than paying per-minute so I purchased Inmate Call’s unlimited, monthly plan. . . . but, in fact, the phone plan had never covered any of the calls that [the inmate] made to us. . . . I soon learned that this company was not even authorized to operate at my inmate’s facility so, obviously, I never received service from them. Instead I had to initiate a separate calling plan in order to receive service. However that didn’t stop Inmate Call Solutions from billing me anyway -- for services that they didn’t provide and couldn’t have provided.” Dkt. 4-4 at 4-5.

There is no dispute that Defendants represented to consumers that they provided “unlimited minutes” inmate calling plans for a set period for payment of a set price, and that the claim was false.

2. Defendants Misled Consumers by Posing as Specialized Service Providers

The Inmate Call Websites also featured the names, logos, and website addresses of three Specialized Service Providers contracted with prisons and jails to offer telephone services to incarcerated individuals – Global Tel*Link Corporation (“GTL”), Inmate Calling Solutions, LLC (“ICS”), and Securus Technologies, Inc. (“Securus”). Dkt. 4-6 at 18-21; Dkt. 4-5 at 4, 97, 108. As shown below, underneath these companies’ logos, Defendants repeated the false unlimited minutes claim:



Dkt. 4-6 at 18-19.

Mr. Grisham admits he and his companies are not affiliated with GTL, ICS, or Securus. Dkt. 4-5 at 5, 97, 108; Dkt. 60 ¶ 47. He admits that the Inmate Call Websites referenced Specialized Service Providers. Dkt. 20 at 7. He also admits that his companies Disruption Theory and Emergent Technologies did not have contracts with any correctional facility to provide inmate calling services. Manzo Decl., Ex. 1, at 5.

Defendants' use of Specialized Service Providers' names, logos, and website addresses deceived consumers, who believed Defendants were associated with GTL, ICS, or Securus. Dkt. 4-5 at 222-23; Dkt. 4-4 at 74; Dkt. 4-4 at 4-5. For example:

- A consumer in Byron, Illinois stated: "InmateCall put the word secure and [S]ecurus in their website name to trick people into paying them for phone time accounts for their loved ones that are in prison. The only company that we can actually get service through is Securus [T]echnologies. So this company 'Inmate Call' took \$116.51 from my bank account and gave me no service." Dkt. 4-5 at 223.
- A mother in Fayetteville, Georgia stated: "In November 2018, I went on the internet with the intention of creating an account with Securus. I put the word 'securus' in the Google search engine, and I clicked on the first link that came up. The first link went to inmatecall.com, which I thought was the Securus website because it had a list of names of different service providers, including Securus. . . . after I signed up for an account at inmatecall.com, I received an email from InmateCall at support@inmatecall.com saying that I needed to sign up with Securus. This is when I realized InmateCall and Securus were two different companies. I realized that I had not in fact visited the legitimate Securus website, and that I had not purchased anything from Securus." Dkt. 4-4 at 74.
- A mother in Modesto, California stated: "Based on statements on the website, I thought Inmate Call was IC Solutions. . . . After I purchased the unlimited calling plan . . . I called IC Solutions and spoke with a representative, who told me that IC Solutions was not affiliated with Inmate Call and that I had to pay per-minute to talk with my son." Dkt. 4-4 at 59.

There is no dispute that Defendants falsely claimed to be affiliated with Specialized Service Providers.

D. Marc Grisham Controlled and Personally Participated in the Business Practices of Corporate Defendants

Mr. Grisham admits he formed Disruption Theory and Emergent Technologies to obtain merchant accounts to process consumer payments on the Inmate Call Websites. Manzo Decl., Ex. 2, at 5. He "owned, operated, and managed" both companies. *Id.* And as the self-described Owner/President of each, Mr. Grisham oversaw the day-to-day operations of his companies, including managing their administrative duties and finances. Dkt. 60 ¶¶ 9, 34-35; Manzo Decl.,

Ex. 2, at 5-6, 8-9. He submitted an application to a financial institution to obtain services on behalf of corporate defendants. Manzo Decl., Ex. 2, at 10-11; Dkt. 60 ¶ 35. He was also a signatory on Disruption Theory's bank accounts and his personal bank account received funds from a bank account tied to Emergent Technologies. Dkt. 60 ¶ 35; Dkt. 15-1 ¶ 5. In addition, Mr. Grisham owns and controls the Inmate Call Websites, and he hired and managed employees and contractors who designed and developed the websites and their advertisements. Dkt. 60 ¶¶ 9, 36; Manzo Decl., Ex. 2, at 8-10.

Defendant does not dispute that he controlled the business activities and finances of corporate defendants.

E. Marc Grisham Knowingly Perpetrated the Scam

Mr. Grisham was notified of consumer complaints regarding Defendants' failure to provide the promised "unlimited minutes," and he received legal warnings and lawsuits regarding improper use of telecommunications companies' registered trademarks. Many consumers filed complaints about the Inmate Call Websites with the Better Business Bureau to report that they had not received the unlimited minutes Defendants had promised. Dkt. 4-5 at 221, 222. The Better Business Bureau notified Mr. Grisham of these consumer complaints using his website inmatecall.com's customer service portal. Dkt. 4-5 at 226-27. A few months later, in November 2019, Disruption Theory's merchant account was terminated due to "excessive chargebacks,"⁴ where "Service Not Provided" was the most common reason cited. Dkt. 4-6 at 28, 294. Mr. Grisham admits that all of his merchant accounts were terminated for exceeding the chargeback limit imposed by payment processors and that he had difficulty obtaining new merchant accounts. Manzo Decl., Ex. 2, at 11; Manzo Decl., Ex. 1, at 6; Dkt. 20 at 10.

Mr. Grisham and his companies were also warned and sued by Specialized Service Providers to cease improper use of their registered trademarks. ICS, GTL, and Securus each contacted Mr. Grisham demanding that his companies cease using their registered trademarks. Dkt 4-5 at 6-7, 97-98, 109, 213-16. In September 2010, ICS notified one of Mr. Grisham's

⁴ Chargebacks occur when cardholders dispute the legitimacy of a charge with their issuing bank. Dkt. 4-6 at 38.

companies that the use of ICS's trademark on inmatecallsolutions.com "creates a strong likelihood of consumer confusion" and that ICS "has evidence of *actual confusion* having already occurred among the public." Dkt. 4-5 at 213 (emphasis in original). In 2012, GTL sued another one of Mr. Grisham's companies for trademark infringement. Dkt. 4-5 at 6-7. Following a settlement to cease its misleading activities, Mr. Grisham's company resumed improper use of GTL's trademarks and was sued again in 2014. *Id.*

There is no dispute that Defendant has knowingly continued his deceptive practices since 2010.

F. Defendants' Conduct Harmed Consumers

Hundreds of consumers reported Defendants' deceitful conduct to the FTC, Better Business Bureau, and state attorneys general. Dkt. 4-5 at 221; Dkt. 4-6 at 44, 375-424. Defendants' false claims induced at least 12,000 consumer purchases that funneled \$1.2 million of ill-gotten gains into Defendants' pockets. Dkt. 4-6 at 9; Manzo Decl., Ex. 1, at 7. Consumers describe their experiences with Defendants as follows:

- "How can this be legal? . . . I'm disabled & don't have money to throw away that I can use for food & medication . . . I want to stop Inmate Call from hurting other families." Dkt. 4-4 at 99, 102.
- "I believe Inmate Call Solutions is committing a fraud by charging people for unlimited calling plans that they can't provide." Dkt. 4-4 at 163.
- "I am submitting this declaration to the Court because I want to stop Inmate Call from cheating people during these desperate times." Dkt. 4-4 at 125.

Defendants also refused to provide consumers with refunds, despite promising a money-back guarantee on the Inmate Call Websites. Dkt 4-6 at 26 (inmatecall.com: "Refunds may be requested within 7 days of purchase."); Dkt. at 4-4 at 59 ("The website also stated that . . . Inmate Call would refund my money if there was any issue."); Dkt. at 4-4 at 16 ("I ultimately submitted at least seven refund requests to Inmate Call. To date, Inmate call has not returned any of my money."); Dkt. 4-4 at 36 ("I did not receive a refund"); Dkt. 4-4 at 62 ("I still have not received a refund from Inmate Call."); Dkt. 4-4 at 61 ("I would like my refund im [sic] not a rich

person.”); *see also* Dkt. 4-4 at 87. Numerous consumers had to seek relief from their banks or credit card companies. Dkt. 4-4 at 75 (“Since InmateCall would not respond to my multiple requests for a refund, I disputed the charge with my credit card company.”); *see also* Dkt. 4-4 at 89.

As one of many aggrieved consumers stated: “Inmate Call added a bad experience onto a bad experience. The company preys on people who are already at their most vulnerable.” Dkt. 4-4 at 89.

IV. LEGAL ARGUMENT

A. Summary Judgment Standard

Summary judgment should be rendered if the pleadings, discovery and materials on file, and any affidavits, show that “there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those which “might affect the outcome of the suit,” and the Court views the evidence in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *FTC v. Stefanchik*, 559 F.3d 924, 927 (9th Cir. 2009). The FTC routinely seeks and is granted summary judgment in its cases. *See, e.g., FTC v. Stefanchik*, 559 F.3d at 929; *FTC v. Wellness Support Network, Inc.*, 2014 U.S. Dist. LEXIS 21449 (N.D. Cal. Feb. 19, 2014); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010), *aff’d*, *FTC v. Inc21.com Corp.*, 475 Fed. Appx. 106 (9th Cir. filed Mar. 30, 2012); *FTC v. Medlab*, 615 F. Supp. 2d 1068 (N.D. Cal. 2009).

B. Summary Judgment is Appropriate on All Counts

The FTC alleged two counts of Defendant’s violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a). Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. 45(a). An act or practice is deceptive if Defendant: (1) made a representation; (2) that was likely to mislead consumers acting reasonably under the circumstances; (3) in a way that was material. *FTC v. Stefanchik*, 559 F.3d at 928; *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1199 (9th Cir. 2006). Deceptiveness is measured by the “net impression” of a defendant’s representations. *Cyberspace.com, LLC*, 453 F.3d at 1200; *see*

also *FTC v. John Beck Amazing Profits, LLC*, 2010 U.S. Dist. LEXIS 147113, *7 (C.D. Cal. Sept. 15, 2010) (“for several decades courts have successfully used the net-impression approach to determine the deceptiveness of advertising.”) (internal citations omitted). Express claims are presumptively material and consumer reliance upon express claims is preemptively reasonable. *FTC v. Sage Seminars, Inc.*, 1995 U.S. Dist. LEXIS 21043, at *7 (N.D. Cal. Nov. 2, 1995) (citing *In re Cliffdale Assocs. Inc.*, 103 F.T.C. 100, 168 (1984)); see also *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994). Proof of actual deception, while not required, is “highly probative to show that a practice is likely to mislead consumers acting reasonably under the circumstances.” *Cyberspace.com, LLC*, 453 F.3d at 1201. The uncontroverted evidence establishes that the FTC has proved all three elements for each count and is entitled to summary judgment as a matter of law on each.

1. Count I: False Unlimited Minutes Claim

The FTC has proved all three elements for Count I. First, there is no genuine issue of material fact that Defendants claimed to provide “unlimited minutes” inmate calling plans for a set period for payment of a set price. Defendants repeated this express claim throughout the consumer’s transaction.

Second, the undisputed facts show that Defendants did not provide the promised unlimited minutes, and according to Defendant’s admission, did not provide even “a single minute of talk time.” Dkt. 20 at 6.

Third, although the express claim is presumed material and consumer reliance on the false claim is also presumptively reasonable, the FTC has also provided consumer declarations stating that the false claim of unlimited minutes induced purchases and actually deceived consumers. See *supra* Section III.C.1. Thus, the FTC is entitled to summary judgment on its Count I allegation that Defendant deceived consumers in violation of Section 5 of the FTC Act.

2. Count II: False Claims of Affiliation with Specialized Service Providers

The FTC has proved all three elements for Count II. First, there is no genuine issue of material fact that Defendants used the names, logos, and trademarks of Specialized Service Providers, Inmate Calling Solutions, LLC, GTL, and Securus, on the Inmate Call Websites.

Second, Mr. Grisham admits Defendants were not affiliated with these companies, and declarations from all three companies confirm that fact. The claim is unquestionably false.

Third, although an express claim is presumptively material and consumer reliance also presumptively reasonable, the FTC has provided consumer declarations confirming that the false claims induced purchase and actually deceived consumers. *See supra* Section III.C.2. Thus, the FTC is entitled to summary judgment on its Count II allegation that Defendant deceived consumers in violation of Section 5 of the FTC Act.

C. Marc Grisham is Personally Liable for Injunctive Relief

An individual is liable for and subject to injunctive relief for a corporation's violations of the FTC Act if the individual "participated directly in the acts or practices or had authority to control them." *FTC v. Marshall*, 781 F. App'x 599, 602 (9th Cir. 2019) (quoting *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997)). An individual's status as a corporate officer and his "authority to sign documents on behalf of the corporation" are sufficient to demonstrate "requisite control over the corporation." *Id.* at 602. Bank signatory authority or acquiring services on behalf of a corporation also evidences authority to control. *FTC v. USA Fin., LLC*, 415 F. App'x 970, 974-75 (11th Cir. 2011). The FTC need not show intent to defraud. *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1102 (9th Cir. 2014).

As discussed above in Section III.D, there is no genuine issue of material fact that Mr. Grisham controlled the business activities and finances of the corporate defendants. Mr. Grisham admits he formed, owned, and managed the business activities and finances of Disruption Theory and Emergent Technologies, which were both created to process payments for the Inmate Call Websites. He also owned and managed the Inmate Call Websites containing the false claims at issue. Defendant's admissions conclusively establish that there is no genuine issue of any material facts establishing Mr. Grisham's control of and personal participation in the corporate defendants' violation of the law.

D. Marc Grisham Has Not Articulated a Valid Defense

Defendant's response to the overwhelming evidence points the finger at non-party conduct or focuses on baseless arguments, none of which even approximate a valid affirmative

defense. *See* Dkt. 60 at 9-10.

First, Defendant focuses on the conduct of non-parties, specifically of Specialized Service Providers' alleged monopolization of the inmate calling industry. Dkt. 78 at 3-4. However, the conduct of non-parties does not exonerate *Defendant's* misrepresentations to consumers.

Second, Defendant also focuses on an interpretation of the "unlimited minutes" claim that strains credulity. Defendant claims that his companies "provided [consumers] with a VOIP phone number that they could use for unlimited minutes." *Id.* at 4. Defendant has presented no evidence to support his claim. Regardless, consumers would not be able to receive unlimited minutes for a fixed price because calls necessarily incur per-minute charges. *See* Dkt. 60 ¶¶ 17, 19 (admitting calls are charged per-minute at varying rates). The undisputed evidence establishes that Defendant's Inmate Call Websites specifically advertised unlimited minutes *calling plans* not VOIP phone numbers. In fact, the overwhelming consumer testimony establishes that VOIP phone numbers were not part of the Inmate Call Websites' advertising or the reason for consumer purchase.

E. The Relief Sought is Appropriate in Light of Marc Grisham's Violations of the FTC Act

The FTC seeks injunctive relief banning Defendant from offering inmate calling services to remedy Defendant's violations and restrict his future conduct to prevent further consumer harm. Section 13(b) of the FTC Act provides that "in proper cases the Commission may seek and after proof, the court may issue, a permanent injunction." 15 U.S.C. § 53(b). A permanent injunction restraining conduct is justified when there is "some cognizable danger of recurrent violation," or some reasonable likelihood of future violations. *FTC v. Digital Altitude, LLC*, 2018 U.S. Dist. LEXIS 224949, at * 12 (C.D. Cal. July 26, 2018) (citing *U.S. v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953)).

To determine the scope of permanent injunctions with the purpose of preventing future violations, courts look to the (1) seriousness and deliberateness of the violation; (2) ease with which the false claim may be transferred to other products or services; and (3) defendant's

history of prior violations. *Grant Connect*, 763 F.3d at 1105 (citation omitted). The analysis considers “circumstances as a whole and not to the presence or absence of any single factor.” *FTC v. John Beck Amazing Profits, LLC*, 888 F. Supp. 2d 1006, 1012 (citing *Sears, Roebuck & Co. v. FTC*, 676 F.2d 385, 392 (9th Cir. 1982)). Evidence that defendant’s violation is “predicated upon systematic wrongdoing, rather than isolated occurrences” favors injunctive relief. *FTC v. Gill*, 71 F. Supp. 2d 1030, 1047 (C.D. Cal. Nov. 2, 1999) (citation omitted). Courts have “routinely imposed some form of ‘fencing in,’ barring violators from participating in certain lines of business or forms of marketing.” *John Beck*, 888 F. Supp. 2d at 1011-12 (citing *FTC v. Gill*, 265 F.3d 944, 957-58 (9th Cir. 2001)).⁵

1. Ban on Offering Inmate Calling Services

All three factors weigh in favor of specific fencing-in relief banning Mr. Grisham from offering or selling inmate calling services. First, Mr. Grisham knowingly engaged in deceptive conduct for a decade, undeterred by consumer complaints and lawsuits about such conduct. As described above in Section III.E, Mr. Grisham ignored consumers’ complaints that they had not

⁵ See, e.g., *FTC v. Hoyal & Assocs.*, 2021 U.S. App. LEXIS 17481, at *5 (9th Cir. June 9, 2021) (ban on direct mail marketing due to “defendants’ record showing a ‘willingness to flout the law’ in a substantially similar manner over a decade”); *FTC v. Elegant Sols., Inc.*, 2020 U.S. Dist. LEXIS 137774, at *36, 40-41 (C.D. Cal. July 6, 2020); *FTC v. Gill*, 265 F.3d at 957-58 (ban on engaging in the credit repair business due to defendants’ “history of corporate shape-shifting to evade investigations”); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d at 1009-10 (ban on billing customers by placing charges on telephone bills); *FTC v. Dinamica Financiera LLC*, 2010 U.S. Dist. LEXIS 88000, *48-49, 58 (C.D. Cal. Aug. 19, 2010) (ban on mortgage loan modification and foreclosure relief services); *FTC v. Assail, Inc.*, 2008 U.S. Dist. LEXIS 130128, at *15-16 (W.D. Tex. Dec. 4, 2008) (ban on sale of home mortgage or home mortgage refinance-related services); *FTC v. 120194 Canada, Ltd.*, 2007 U.S. Dist. LEXIS 12657, at *19-21, 30 (N.D. Ill. Feb. 12, 2007) (barring defendants from selling credit-related products or services); *FTC v. Check Enf’t*, 2005 U.S. Dist. LEXIS 34349, at *12, 28 (D.N.J. July 15, 2005) (ban on debt collection activities); *FTC v. Bay Area Bus. Council, Inc.*, 2004 U.S. Dist. LEXIS 6192, at *38, 41-42 (N.D. Ill. Apr. 8, 2004) (ban on telemarketing in US and on sale of credit-related products); *FTC v. Consumer Alliance, Inc.*, 2003 U.S. Dist. LEXIS 17423, at *23, 26 (N.D. Ill. Sept. 29, 2003) (ban on all telemarketing in United States and ban on sale of credit-related products because there was “no evidence in the record that defendants ever provided anything of value to a large class of persons upon which they preyed”); *FTC v. Medicor, LLC*, 2002 U.S. Dist. LEXIS 16220, *4 (C.D. Cal. July 18, 2002) (banning defendants from marketing any work-at-home medical billing opportunities).

received the promised unlimited minutes, and he turned a blind eye to high chargeback rates that led to termination of his merchant accounts and difficulty obtaining new merchant accounts. In addition, Mr. Grisham was warned and sued by Specialized Service Providers regarding his improper use of their trademarks but nevertheless continued improper use of those marks. *See supra* Section III.E. Moreover, the amount of consumer harm underscores the deliberate, persistent nature of his conduct. From 2015 to 2020, Mr. Grisham's undeterred violations of the law collected \$1.2 million from consumers. For many consumers, the economic loss was significant. *See, e.g.*, Dkt. 4-4 at 135 ("I am a single working mom who is still recovering from damage done by Hurricane Michael. InmateCall should not be allowed to cheat people and steal their hard earned money.").

Second, the operation could be and has been easily commenced on new websites. Mr. Grisham has transferred the false unlimited minutes claim to a new website and processed payments on those websites through various LLCs. As the FTC's undercover purchase demonstrates, inmatecallsolutions.com redirected consumers to a new website securustel.net, which advertised the same "unlimited minutes" and identified Emergent Technologies as the website owner. Dkt. 4-6 at 22-24, 31; *see also* Dkt. 4-6 at 190, 193. Mr. Grisham not only formed corporate defendants to process payments for the Inmate Call Websites but has formed or served as an officer of at least five other LLCs that were also used to conduct business on the Inmate Call Websites. *See supra* Section III.A; Dkt. 4-6 at 10, 115-16 (listing LLCs formed and managed by Defendant). A ban is both "reasonably tailored" and "necessary to prevent future violations" where the "'technique of deception' could be transferred easily." *John Beck*, 888 F. Supp. 2d at 1014-1015 (citation omitted); *FTC v. Elegant Sols., Inc.*, 2020 U.S. Dist. LEXIS 137774, at *36 (C.D. Cal. July 6, 2020) (ordering ban because "uncontroverted facts illustrate a pattern of Defendants corporate repackaging and rebranding of the same fraudulent scheme.").

Third, Mr. Grisham's repeated disregard for legal warnings and lawsuits regarding his conduct indicates a likelihood of future violations. *See supra* Section III.E. Defendant's conduct is not a few isolated instances of misleading consumers but systematic wrongdoing that necessitates a ban. *See, e.g., FTC v. Gill*, 265 F.3d 944, 957 (affirming ban on engaging in credit

repair business where “real likelihood of recurring violation on the basis of [] systematic nature of misrepresentations”); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d at 1009 (banning defendant from billing consumers where defendants knowingly operated business “laced with fraud”).

2. Prohibition on Misrepresentations Relating to Affiliation and Any Material Fact

Section II of the Proposed Order permanently enjoins Defendant from making or assisting others in making material misrepresentations in the advertising, marketing, or sale of any product. Section II’s prohibitions also cover the conduct challenged in Count II of the Complaint by prohibiting misrepresentations that Defendant is affiliated with prison telecommunications providers. Given Defendant’s propensity to commit fraud and the transferability of his scheme, Section II contains appropriate fencing-in relief prohibiting misrepresentations about material facts concerning any good or service.

Courts have discretion to include “fencing-in” provisions that extend beyond the specific violations at issue in the case to prevent defendants from engaging in similar deceptive practices in the future. *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 395 (1965) (“The Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. Having been caught violating the [FTC] Act, respondents must expect some reasonable fencing in.”) (citation omitted). Reasonable fencing-in provisions serve to “close all roads to the prohibited goal, so that (the FTC’s) order may not be by-passed with impunity.” *Litton Indus., Inc. v. FTC*, 676 F.2d 364, 370 (9th Cir. 1982) (citation omitted).

Section II of the Proposed Order is necessary and appropriate because Defendant’s deception is easy to transfer to another good or service. For example, he could offer other services to incarcerated individuals, such as magazine sales. *See, e.g., FTC v. Inmate Magazine Serv. Inc., LLC*, No. 3:21cv294-TKW-HTC (N.D. Fla. Feb. 22, 2021) (FTC recently obtained a TRO with asset freeze against defendants who allegedly charged incarcerated people and their families millions of dollars for magazine subscriptions that never arrived or showed up late).⁶

⁶ https://www.ftc.gov/system/files/documents/cases/321cv294_tro.pdf.

Requiring Defendant to be truthful in his dealings with consumers is not burdensome and is, in fact, already his duty.

3. Monitoring Provisions

Sections III through VI of the Proposed Order contain reporting and monitoring provisions that are customary in Commission orders. The proposed monitoring requirements will enable the Commission to ensure compliance with the Proposed Order and deter Defendant from committing future violations. *See, e.g.*, Final Judgment at 21, *FTC v. Elegant Sols., Inc.*, No. SACV 19-1333 JVS (KESx), (C.D. Cal. July 17, 2020), Dkt. 184; *see also* *FTC v. Capital Choice Consumer Credit, Inc.*, 2004 U.S. Dist. LEXIS 31476, at *13 (S.D. Fla. May 4, 2004) (“It is well settled that ‘record-keeping and monitoring provisions . . . are also appropriate to permit the Commission to police the defendants’ compliance with the order.’” (citations omitted)).

V. CONCLUSION

Defendant deceived consumers trying to contact their loved ones behind bars and collected \$1.2 million through his unlawful practices. Mr. Grisham ignored consumer complaints and even legal action to perpetuate the multi-year scam. When payment processors realized one of his companies was a scam and notified him of that determination, Mr. Grisham simply continued his deceptive practices under a new company name. In light of the undisputed evidence establishing Defendant’s violations, the FTC respectfully requests that the Court grant summary judgment and enter the concurrently filed Proposed Order for Permanent Injunction.

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Respectfully submitted,

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