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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

vs.

NEOVI, INC., d/b/a NEOVI DATA
CORPORATION and QCHEX.COM, et al.,

Defendants.

CASE NO. 06-CV-1952 JLS (JMA)

**ORDER HOLDING DEFENDANTS
IN CONTEMPT OF JANUARY 7,
2009 FINAL ORDER AND
ORDERING SANCTIONS**

On September 16, 2008, the Court granted summary judgment in favor of Plaintiff, Federal Trade Commission (“FTC”) against Defendants Neovi, G7 Productivity Systems, Thomas Villwock, and James M. Danforth (“Defendants”). (SJ Order, ECF No. 105.) In that Order, the Court held that security failures in Defendants’ Internet banking services constituted violations of the FTC Act. Subsequently, the Court ordered Defendants to disgorge \$535,358 in revenue and permanently enjoined them from “creating or delivering any check for a consumer” without undertaking measures to protect consumers, which were specifically detailed in that Order. (Final Order, ECF No. 117.) Defendants appealed these Orders.

On October 15, 2009, the FTC filed an application for an order to show cause why Thomas Villwock, James M. Danforth, G7 Productivity Systems, iProlog Corporation, and FreeQuick Wire Corporation (collectively, “Contempt Defendants”) should not be held in contempt of the Final

1 Order. (App. for Order to Show Cause (“OSC”), ECF No. 156.) The Court issued an OSC, but
2 stayed the hearing pending the Ninth Circuit’s decision on Defendants’ appeal. (ECF Nos. 170,
3 177.) The Ninth Circuit affirmed the Court’s rulings. *FTC v. Neovi*, 604 F.3d 1150 (9th Cir.
4 2010). On April 27, 28, August 31, and September 1, 2011, the Court held a contempt hearing.
5 The parties then filed a joint designation of the record with evidentiary objections (Joint
6 Designation of Record (“JDR”), ECF No. 252), proposed findings of fact (Defs.’ Proposed
7 Findings of Fact (“DFF”), ECF No. 253; Pl.’s Proposed Findings of Fact (“PFF”), ECF No. 264),
8 “closing” memoranda of points and authorities (Defs.’ Opp’n to Contempt, ECF No. 253; Pl.’s
9 Mem. ISO Contempt, ECF No. 258) and replies (Defs.’ Reply, ECF No. 269; Pl.’s Reply, ECF No.
10 268). The matter was fully briefed and deemed submitted on December 12, 2011. The Court has
11 carefully considered the arguments and evidence proffered. For the following reasons, the Court
12 finds by clear and convincing evidence that the Contempt Defendants are in civil contempt of the
13 Court’s January 7, 2009 Final Order, and awards appropriate sanctions.

14 **LEGAL STANDARD**

15 A district court has inherent power to enforce compliance with its orders through civil
16 contempt. *Spallone v. United States*, 493 U.S. 265, 276 (1990); 18 U.S.C. § 401(3). In
17 determining whether civil contempt is warranted, the focus of the inquiry is whether “defendants
18 have performed all reasonable steps within their power to insure compliance with the court’s
19 orders.” *Stone v. City of San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992), *cert. denied*, 506 U.S.
20 1081 (1993) (internal quotations omitted). Thus, “[o]ne need not commit an unlawful act in order
21 to be liable for” contempt—one need only disobey a court order. *NLRB v. Laborer’s Int’l Union*
22 *of N. Am.*, 882 F.2d 949, 954 (5th Cir. 1989).

23 The party moving for contempt bears the burden of establishing by clear and convincing
24 evidence that the contemnors violated a specific and definite order of the Court. *See Balla v.*
25 *Idaho State Bd. of Corrections*, 869 F.2d 461, 466 (9th Cir. 1989). “The burden then shifts to the
26 contemnors to demonstrate why they were unable to comply.” *FTC v. Affordable Media, LLC*,
27 179 F.3d 1228, 1239 (9th Cir. 1999). The contemnors’ good faith or intent in attempting to
28 comply with the order is immaterial. *See Stone*, 968 F.2d at 856-57.

1 The district court has wide latitude and a broad range of civil contempt sanctions at its
2 disposal, such as “fine[s], imprisonment, receivership, and a broader category of creative, non-
3 traditional sanctions.” *United States v. States of Tenn.*, 925 F. Supp. (W.D. Tenn. 1995); *see also*
4 *Hook v. Arizona*

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1 was essentially built from the rubble of Neovi's bankruptcy in October 2007. (PFF ¶¶ 2, 48-49; SJ
2 Order 3.) Additionally, Villwock describes himself as a "business consultant" for Contempt
3 Defendant G7 Productivity Systems ("G7"), but he exerts considerable control over the operations
4 of G7 and is considered by its employees to be the *de facto* President. (PFF ¶¶ 3, 33-47; SJ Order
5 3; 604 F.3d at 1154 n.4.) Along with Defendant Danforth, Villwock helped launch another check
6 creation and delivery website known as "freequickwire.com," and served as the President of the
7 FreeQuick Wire Corporation ("FQW"). (PFF ¶¶ 5, 97; SJ Order 3.)

8 *(ii) James Danforth*

9 Contempt Defendant James Danforth ("Danforth") was Neovi's Chief Operating Officer,
10 ("COO"), Treasurer, Secretary, and registered service agent. (SJ Order 2; PFF ¶ 9.) Among other
11 things at Neovi, he managed Qchex. (SJ Order 2.) Danforth is also the President of iProlog,
12 having served previously as its COO, and has been an officer of G7 since 2000, serving in many
13 roles as Executive Vice President ("EVP"), Chief Financial Officer ("CFO"), Secretary, and
14 registered service agent. (PFF ¶¶ 10-12); 604 F.3d at 1154 n.4. As mentioned above, Danforth
15 helped launch the FQW website and was COO of the FQW corporation. (PFF ¶ 14.)

16 *(iii) G7 Productivity Systems*

17 Contempt Defendant G7 is a California corporation that produces check software, ink, and
18 paper—including VersaCheck® 2010 and 2012 software, VersaCheck® paper, VersaInk™, and
19 Validation Codes—for sale to U.S. retailers and consumers through its website, www.g7ps.com.
20 (SJ Order 2; PFF ¶¶ 15, 19-21.) At least through March 2011, G7 also controlled the Qchex
21 website as well as the website www.versacheck.com. (PFF ¶¶ 22-23, 26-29.)

22 ***B. Post-Final Order Defendants***

23 *(i) iProlog Corporation*

24 Neovi declared bankruptcy in October 2007 and subsequently went out of business;
25 Villwock and Danforth established iProlog Corporation the very next day, hiring the same
26 employees, using the same equipment and office location, conducting Neovi's former business
27 activities, and paying for many expenses using G7 funds. (SJ Order 3; PFF ¶¶ 49, 52-56); 604
28 F.3d at 1153 n.2. Although not a named Defendant in the underlying action, the Court and parties

1 were aware of iProlog's involvement in Defendant's check creation and delivery scheme at the
2 time of the Summary Judgment Order and Final Order. (*See* SJ Order 3); 604 F.3d at 1153 n.2.

3 *(ii) FreeQuick Wire Corporation*

4 On November 8, 2007, Defendants Villwock and Danforth formed FreeQuick Wire
5 Corporation ("FQW"), with Danforth as the COO, Villwock as President, and Villwock's
6 daughter, Diana Villwock, as the corporation's sole director. (PFF ¶¶ 95-96, 105.) The purpose of
7 FQW was to hold the FQW website. (PFF ¶ 97.) Although FQW was directed to appear and show
8 cause why it should not be held in contempt by the Court's OSC, FQW has not entered an
9 appearance in these contempt proceedings. (*See* OSC, ECF No. 170; Pl.'s Mem. ISO Contempt 2
10 n.1.)

11 **3. Contempt Proceedings**

12 *A. Evidence Presented*

13 At the contempt hearing, the parties presented evidence through live testimony, deposition
14 testimony, declarations, and other exhibits. The evidence presented without objection included:

- 15 • Declarations in Support of Contempt of Leslie Lewis (Ex. 528), Ronald Lewis (including
16 excerpts from Supplemental Declarations) (Exs. 553, 642-43), William Burton (Ex. 596),
17 Bernadette Harding (Ex. 635), Denise Owens (Ex. 583), and Janet Wright (Ex. 634);
- 18 • Deposition testimony of James Danforth, Thomas Villwock, G7, and iProlog (subject to
19 supplementation) (Exs. 581-82, 645-51);
- 20 • In-court Testimony of Ronald Lewis, James Danforth, Thomas Villwock, and Diana
21 Villwock; and
- 22 • Other documents, including website printouts, receipts, checks, reports, emails and letters,
23 catalogs and instructions, and corporate documents such as employee lists, sales
24 summaries, tax returns and other records and filings (Exs. 1, 2, 5, 6, 7 (page 1 only), 9, 10,
25 13 (pages 2 and 3 only), 14-16, 20-22, 25, 26, 44, 45, 501-15, 517-22, 525, 529-52, 554-95,
26 597-633, 636-41, 644, 652-57, 738, 740-42, 744-49, 751-58).

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1 Other evidence was presented with objection, as follows:

- 2 • Third-party consumer complaints (Exs. 526, 527);
- 3 • Depositions and associated exhibits from six third-party consumers, Christina
4 Keheley, Audrey O’Neil, Kristy Smith, Melva Talley, Joseph Cassidy, and
5 Christine Andrews (Exs. 658-737);
- 6 • Qchex website printouts from January 2010 (Exs. 739, 743) and June 2010 (Exs.
7 514, 515);
- 8 • Plaintiff’s Dec. 4, 2009 requests for production to iProlog (Ex. 516);
- 9 • VersaCheck® 2012 and VersaCheck® for Quickbooks (Exs. 523, 524); and
- 10 • In-court Testimony of Dan Fisher.

11 ***B. Evidentiary Rulings***

12 *(i) Objections to Plaintiff’s Evidence*

13 *(a) Third-Party Consumer Complaints*

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1 relevant to the issue of the FTC's requested remedy of equitable disgorgement, and possessing
2 sufficient circumstantial guarantees of trustworthiness here, as explained in *FTC v. Figgie*, 994

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1 (b) Third-Party Consumer Depositions and Exhibits

2 The FTC also offered into evidence portions of depositions of six “consumers,” Christina
3 Keheley, Audrey O’Neil, Kristy Smith, Melva Talley, Christina Andrews, and Joseph Cassidy
4 (Exs. 658, 674, 703, 710, 732, 734), as well as the associated deposition exhibits (Exs. 659-73,
5 675-702, 704-09, 711-31, 733, 735-37). These individuals explained their experiences as victims
6 at different stages of “mystery shopper” fraud schemes, which were perpetrated using VersaCheck
7 products. The FTC argues the testimony illustrates the type and severity of consumer harm
8 created by Contempt Defendants’ products. Contempt Defendants objected on several bases.
9 First, they argued that admission of only the FTC’s selected excerpts is improper because “they
10 don’t tell the full story of how the scams actually happened.” (4/27 Hr’g Tr. 14:2-13.) Further,
11 they objected that the FTC had not shown the witnesses were unavailable to testify at the hearing,
12 and that the transcripts are irrelevant to the contempt issue before the Court. (8/31 Hr’g Tr. 16:16-
13 18.) The FTC agreed to provide the Court with the full transcripts, and suggested Contempt
14 Defendants supply counter-designations. (4/27 Hr’g Tr. 14:15-25.) The Court provisionally
15 admitted the FTC’s consumer deposition excerpts and exhibits, and also received the full
16 transcripts. (8/21 Hr’g Tr. 17:11-18.)

17 Unlike the consumer complaints, *supra* Part B(i)(a), this evidence pertains directly to the
18 use of Contempt Defendants’ products. The Court finds that the deposition testimony of the six
19 consumers is relevant, and further that it is admissible under Federal Rule of Civil Procedure 32.
20 All six deponents live more than 100 miles from San Diego, California.¹ (*See* 8/31 Hr’g Tr. 13:5-
21 17.) Contrary to Contempt Defendants’ assertion at the hearing, the definition of an unavailable
22 witness under Rule 32(a)(4)² does not contain a requirement that the witness be unwilling to testify
23 at the hearing. (*See* 8/31 Hr’g Tr. 17:6-8.) Contempt Defendants had a full and fair opportunity to
24 cross examine these witnesses at their depositions, and—as the FTC points out—these cross-

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26 ¹ At the time of the depositions and contempt hearing, the consumer witnesses lived in
Georgia, Florida, Texas, and Pennsylvania.

27 ² Fed. R. Civ. P. 32(a)(4) provides, in pertinent part: “A party may use for any purpose the
28 deposition of a witness, whether or not a party, if the court finds: . . . (B) that the witness is more than
100 miles from the place of hearing or trial or is outside the United States, unless it appears that the
witness’s absence was procured by the party offering the deposition.”

1 examinations were quite lengthy. (Pl.'s Mem. ISO Contempt 29 n.18.) In addition, Contempt
2 Defendants have been repeatedly given the opportunity to counter-designate portions of the
3 transcripts not included in the FTC's excerpts. (4/27 Hr'g Tr. 15:24-16:3; 8/31 Hr'g Tr. 15:15-
4 16:13.) They have apparently now done so in their post-hearing briefs. For these reasons, the
5 Third-Party Consumer Depositions and Exhibits are admitted.

6 (c) Other Exhibits

7 Finally, Contempt Defendants objected to the admission of seven other exhibits at the
8 contempt hearing on the basis of relevance. (See 4/27 Hr'g Tr. 152:18-22; 4/28 Hr'g Tr. 360:22-
9 361:14.) These consist of: (1) printouts from the Qchex website, including the Homepage, the
10 "How it Works" page, the "Bank Compliant" page (with FQW ad), the "Supplies" page (selling
11 VersaCheck, VersaInk, and VersaToner products), and the "Create Checks" page (Ex. 514); (2) a
12 press release published on Forbes.com about Qchex.com, entitled "Qchex.com Publishes FREE
13 Check Creation Solutions for Microsoft(R) Word and Adobe(R) Acrobat(R)," explaining the
14 services offered by Qchex, including safety issues (Ex. 515); (3) a list of the FTC's first requests
15 for production to iProlog (Ex. 516); (4) a series of screen-shots taken from a computer installing
16 VersaCheck® 2012, including prompts to register the software using the Internet, and prompts to

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1 ongoing opportunity to evaluate the admissibility and weight of expert testimony.” (MIL Ruling
2 3, ECF No. 223) (citation omitted); *see also Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840,
3 852 (6th Cir. 2004) (“The ‘gatekeeper’ doctrine was designed to protect juries and is largely
4 irrelevant in the context of a bench trial.”); *FTC v. Connelly*, 2007 WL 6492913, at *2 n.2 (C.D.
5 Cal. Aug. 10, 2007) (“Because this is a bench trial, the Court need not preclude the experts’
6 testimony because of potential problems with the sufficiency of facts or data relied on or the
7 reliability of the methods used to formulate their opinions. Rather, the Court can evaluate the
8 experts’ testimony against the Rule 702 standard as they testify.”)

9 Contempt Defendants called Dan Fisher to testify at the contempt hearing on September 1,
10 2011. (8/1 Hr’g Tr. 120:21-210:2.) As the Court indicated at the hearing, his testimony about the
11 industry of check creation, validation, and fraud was of minimal relevance to the sole issue
12 presently before the Court—whether Contempt Defendants have violated the Final Order.
13 Consequently, the Court admits Mr. Fisher’s testimony, and may rely on his expert opinion where
14 appropriate, but notes that it finds his opinions of limited utility here.

15 **4. Violations of the Final Order**

16 Based on all of the evidence before the Court, The FTC alleges that Contempt Defendants
17 violated the Final Order through FQW, VersaCheck software, and the Qchex.com Templates, and
18 continue to violate it through VersaCheck software and gValidate.com. (*See generally* Pl.’s Mem.
19 ISO Contempt.) The FTC argues these violations cause substantial consumer harm, and that
20 Contempt Defendants should pay compensatory and coercive sanctions.

21 In order to establish Contempt Defendants’ liability for civil contempt, the FTC must show
22 by clear and convincing evidence that the Contempt Defendants are bound by and have violated a
23 specific and definite Order of the Court. *See Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510,
24 517 (9th Cir. 1992). As discussed below, the Court finds that the FTC has met this burden.

25 **A. Contempt Defendants are Bound by the Final Order**

26 The Final Order binds “Defendants, their officers, agents, servants, employees, attorneys,
27 and those persons in active concert or participation with them who receive actual notice of this
28 Order by personal service or otherwise.” (Final Order 4.) Further, Federal Rule of Civil

1 Procedure 65(d) provides that a permanent injunction is binding on a party with actual notice,
2 including those individuals related to a party, as described by the Court in the Final Order.

3 Through the individual Defendants Villwock and Danforth, all of the Contempt Defendants
4 had actual notice of the Final Order. As already discussed, *supra* Part 2, Contempt Defendants
5 Villwock and Danforth operated and controlled all three corporate Defendant businesses. Further,
6 the Court agrees with the FTC that the corporate Contempt Defendants G7, iProlog, and FQW
7 operate as a “maze of interrelated companies” forming a “common enterprise,” *see FTC v. J.K.*
8 *Publ’ns, Inc.*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000), such that all Defendants are “in active
9 concert or participation” with each other under the terms of the Final Order. Contempt Defendants
10 Villwock and Danforth exercise a common control over these corporate entities, illustrated by the
11 commingling of funds and operations, including control of websites, accounts, and employees; the
12 routine performance of work by an employee of one corporation for the other corporation; and the
13 integration of technology between the corporations, including software. (*See* Pl.’s Mem. ISO
14 Contempt 4 n.2.) Contempt Defendants’ attempts to obfuscate these interdependent relationships,
15 largely by shifting blame onto Defendant Villwock’s daughter or brother, were simply not credible
16 or convincing.

17 Contempt Defendants also attempt to escape the scope of the Court’s Final Order by
18 asserting that the Qchex.com and FQW websites are no longer in operation as check creation or
19 delivery services. (8/31 Hr’g Tr. 144:22-145:4; 9/1 Hr’g Tr. 110:19-22.) Both of these websites
20 now redirect to the VersaCheck website, which, they claim, they have no control over. It is
21 undisputed that the VersaCheck line of software remains on the market and available for use by
22 consumers, including VersaCheck® 2010 and 2012, and that new versions of the software,
23 including VersaCheck® X1, continue to be developed and sold at versacheck.com, a website
24 nearly identical to the former g7ps.com website. (9/1 Hr’g Tr. 109:23-110:1, 111:3-24; Exs. 504,
25 755, 756.) Although Contempt Defendants argue again and again that they no longer have any
26 control over VersaCheck products, the Court rejects these unsupported and incredible assertions.
27 The “new” corporate face of the operation, Global BizForce, has hired exclusively former
28 employees of iProlog or G7, and even uses the same ink supplier as G7—Diversified Nano

1 Corporation, owned by Villwock's brother. (PFF ¶¶ 120, 125-139, 140, 142-46.) Indeed,
2 Contempt Defendants Villwock, Danforth, and iProlog continue to "work actively" with the new
3 company, including consulting on software architectures and website technologies. (PFF ¶¶ 122-
4 23, 559-60.) Global BizForce and iProlog even share office space. (PFF ¶¶ 561-62.) The Court
5 finds that all Contempt Defendants had notice of and are bound by the Final Order with regard to
6 their activities creating and delivering checks for consumers using this interrelated web of
7 companies. As the scheme currently in operation, this Order focuses on the VersaCheck line of
8 software products.

9 ***B. The Final Order is Specific and Definite***

10 As described by the Ninth Circuit, the Final Order required Qchex to "disgorge \$535,358
11 in revenue and permanently enjoined [Qchex] from operating any similar business without taking
12 appropriate, specified measures to protect consumers." *FTC v. Neovi*, 604 F.3d at 1153.
13 Specifically, Defendants are prohibited from "creating or delivering any check for a customer,
14 unless they perform the verification procedures identified" in the Final Order. *See id.* at 1160.
15 These procedures include identity and account verification, as well as disclosure of contact
16 information on checks created.

17 Although Contempt Defendants argue that they are not "sophisticated" and thus cannot be
18 expected to have understood the provisions of the Final Order, they do not specifically argue that
19 any of the required procedures are unclear. Instead, Contempt Defendants argue that they cannot
20 violate the Final Order through the VersaCheck software because it is not a web-based check
21 creation and delivery system, like Qchex. (Def.'s Opp'n to Contempt 13.) VersaCheck, in their
22 estimation, is not a service but a *product*, outside the scope of the Final Order. (*Id.*) However, as
23 indicated by the clear provisions of the Final Order, this is a distinction without a difference. The
24 Final Order is not limited to the drafting and printing of checks for customers. Instead, by
25 defining "create a check" and "deliver a check," the Final Order specifically applies to "any
26 involvement in the creating, designing, composing, drawing, or writing on paper or electronic
27 media a check drawn on a specific financial institution" or "any involvement in the . . . e-mailing,
28 sending, or transmitting by any other method a check drawn on a specific financial institution."

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(Final Order 3.) The Court agrees with the FTC that the Final Order, which does not apply merely to “web-based systems,” but rather to “check creation,” by its plain language reaches beyond schemes exactly like Qchex. Contempt Defendants have failed to offer any convincing arha5sp(22)TjT*sw

1 [e]ngage a monitor that has been agreed to by both Defendants and Plaintiff, and
2 establish and utilize procedures that the monitor has approved as effective to
verify:

- 3 a. the identity of each prospective customer; and
4 b. the authority of each such customer to draw funds on a financial
5 account before creating an account for that customer with any of
the Defendants.

6 ***PROVIDED, however,*** that, in addition to the record keeping provisions
7 described in section VI, paragraph F of this Order, Defendants, for a period of
8 eight (8) years from the date of entry of this Order, shall create and maintain
9 documents (either in paper or electronic format) that demonstrate that Defendants
10 have performed the verification procedures set forth in both paragraphs 1 and 2
together, or those in paragraph 3 alone. Defendants shall be responsible for any
and all fees and expenses incurred to comply with this order, including, without
limitation, any and all fees and expenses related to engaging third parties and a
monitor.

11 (Final Order 6.) It is undisputed that Contempt Defendants have not engaged a third party or
12 monitor to provide identity and account control verification services as specified. (*See* Ex. 646,
13 Danforth Dep. 43:23-44:5.) Nor do Contempt Defendants use the alternative method of account
14 control verification allowed under the Final Order—random deposits with consumer confirmation.
15 Accordingly, as discussed below, Contempt Defendants are in direct violation of the identity
16 and account verification provisions of the Final Order.

17 At the contempt hearing, Mr. Danforth testified that the VersaCheck software does not
18 contain any process for the validation of a person's identity or that person's authority to use the
19 account over which they are writing a check before allowing check creation. (8/31 Hr'g Tr.
20 172:25-173:17.) In order to use Contempt Defendants' products to create checks, individuals
21 purchase the VersaCheck software and install it on their computers. Individual users must input a
22 valid activation code to use the software, which the software delivers to the server, where it is
23 verified against G7's list of valid codes. During that process, users have the option, but are not
24 required, to register the software with G7. But neither through code verification, registration, nor
25 any other process does the VersaCheck software implement any identity or account control
26 procedures. This failure was further substantiated by Mr. Villwock's testimony at the contempt
27 hearing, which revealed that neither he nor iProlog had taken any steps to validate that users of
28 any VersaCheck software are authorized to use the financial accounts they use with the software,

1 nor to confirm their identities. (9/1 Hr’g Tr. 75:21-77:25.) And the deposition testimony of the
2 third-party consumers Ms. Keheley and Ms. O’Neil confirm that individuals were able to create
3 checks using VersaCheck software without ever verifying their identities or their account
4 authorizations. (See PFF ¶¶ 659, 667-68, 728, 734, 741, 744, 748, 752, 755.)

5 In an attempt to excuse this admitted failure, Contempt Defendants argue that it would be
6 impossible for them to implement the Final Order’s identity and account verification requirements.
7 (Def.’s Reply 10-11.) The theory goes that “Versa

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1 Order. (9/1 Hr’g Tr. 69:6-10.) Contempt Defendants do not even attempt to explain this gaping
2 hole in their united theory of impossibility. Additionally, the Court notes that the Final Order’s
3 verification methods were adapted from methods well-accepted and widely used in the industry,
4 which undermines the proposition that these methods would render VersaCheck unmarketable.

5 Instead, it seems much more likely that these procedures are not only quite possible to
6 implement, but also preferred by most reasonable consumers, who would view them as *protections*
7 from identity theft and check fraud. And by using a method identified in the Final Order,
8 Contempt Defendants need not force consumers to divulge more information than is already
9 included on the checks they create—a name and a bank account number. Under the terms of the
10 Final Order, Contempt Defendants are in no way required to anticompetitively needle consumers
11 into divulging more information; instead, they must simply make the effort (or hire someone else)
12 to verify information already necessary for check creation with the appropriate financial
13 institution, or directly with the consumer. For these reasons, the Court rejects Contempt
14 Defendants’ excuses for noncompliance, and finds Contempt Defendants in violation of the Final
15 Order’s identity and account verification requirements.

16 *(ii) Disclosure of Contact Information*

17 In the Final Order, Contempt Defendants were further enjoined from

18 Failing to clearly and conspicuously disclose contact information for
19 Defendants, including, but not limited to, a U.S. postal address, telephone
20 number, and website or e-mail address, in Defendants’ advertising or marketing
 materials, on their Internet website(s), and on any check that they, directly or
 indirectly, create or deliver.

21 (Final Order 7.) Aside from pointing to a line of text that reads “G7 Productivity Systems” in
22 “microprint” on some of their blank check products, illegible to the naked eye, Contempt
23 Defendants have not argued that they complied with the Final Order’s requirement to disclose
24 contact information on any check they create or deliver. (See 8/31 Hr’g Tr. 177:13-179:19.)

25 Indeed, they admit that their checks do not disclose (whether clearly and conspicuously or not) any
26 contact information. And copies of the checks ~~showed that they did not disclose the information they~~

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1 523 at 38.) The demonstrative check apparently created using VersaCheck X1, proffered by
2 Contempt Defendants, indicates only “gvalidate.com” as a potential source, and so continues to
3 fall far short of providing the required information. (Ex. 21.) As above, the Court finds Contempt
4 Defendants are in violation of the Final Order’s contact information disclosure requirements.

5 **ORDER AND AWARD OF SANCTIONS**

6 For the foregoing reasons, based on clear and convincing evidence, the Court **HOLDS**
7 Contempt Defendants in civil contempt of its January 7, 2009 Final Order permanently enjoining
8 Defendants, their officers, agents, servants, employees, attorneys, and those persons in active
9 concert or participation with them with notice of the Final Order from engaging in check creating
10 or delivery for a customer without satisfying the restrictions imposed by that Order. The Court
11 must now turn to the task of setting the appropriate sanctions for these violations.

12 Civil contempt sanctions may be imposed for two purposes: to coerce Contempt
13 Defendants into compliance with the Court’s Final Order, and to require compensation for losses
14 suffered. *United States v. United Mine Workers of America*, 330 U.S. 258, 303-04 (1947);
15 *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 1992). “Genertio8Rdm3 cu2c94.0005 Tc-

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1 *Id.* However, here the Court does not agree with the FTC's calculations as to compensatory
2 sanctions, finding the appropriate sanction for restitution or other ancillary relief to be far from
3 clear based on the record. The extent of Contempt Defendants' noncompliance with the Final
4 Order and the amount of harm caused by their refusal to implement the Final Order's required
5 verifications are difficult to quantify in large part because Contempt Defendants continue to
6 conceal their involvement by creating a shifting maze of corporations to mask their violations, and
7 by failing to comply with the disclosure of contact information requirements. To be sure, the
8 existence of harm itself is evident. Indeed, by continuing to create and operate check creation
9 services in direct violation of the Final Order, Contempt Defendants' actions cause the exact same
10 harm caused by Qchex. As explained by the Ninth Circuit, Contempt Defendants "created the
11 checks in the sense that [they] physically brought them into being—or provided the means to do
12 so—and made them appear legitimate and credible in the eyes of consumers," and in so doing,
13 Contempt Defendants "caused harm through [their] own deeds." *FTC v. Neovi*, 604 F.3d at 1157.

14 Notwithstanding the clear existence of harm caused by Contempt Defendants' actions,
15 based on the evidence currently before it the Court cannot make an exact or even approximate
16 determination of the consumer harm caused by Contempt Defendants' products and ongoing
17 violations.³ Instead, the Court has attempted to take into account Contempt Defendants' complete
18 disregard for the Court's Final Order, coupled with their troubling attempts to mislead the Court
19 and cover up their web of deceit, in calculating the appropriate coercive sanctions to award here.
20 Accordingly, the Court **HEREBY IMPOSES** sanctions as follows:

21 **Sanctions for Violating Identity and Account Verification Procedures**

22 If Contempt Defendants fail to demonstrate to the Court that they have purged their
23 noncompliance with the Final Order's identity and account verification procedures within 30 days

24
25 ³ The FTC argues that Contempt Defendants should be ordered to disgorge all revenues
26 generated since entry of the Final Order, which apparently total \$9,484,463.96, because their failure
27 to provide their contact information on the checks they create makes it impossible to calculate the
28 harm they have caused. (Pl.'s Mem. ISO Contempt 35-40.) However, the Court cannot establish a
reasonable level of certainty in these calculations, nor can it conclude based on the evidence before
it that total disgorgement of revenue is a proper method of awarding compensatory sanctions in these
circumstances. Accordingly, the Court declines to award the full amount requested by the FTC, and
focuses instead on the award of substantial coercive sanctions intended to motivate Contempt
Defendants' complete and prompt compliance, as explained below.

1 after entry of this Order, Contempt Defendants shall be required to pay a fine in the amount of
2 **\$10,000 per day** until such time as they demonstrate compliance.

3 **Sanctions for Violating Contact Information Disclosure Requirements**

4 If Contempt Defendants fail to demonstrate to the Court that they have purged their failure
5 to comply with the Final Order's contact information disclosure requirements within 30 days after
6 entry of this Order, Contempt Defendants shall be required to pay a fine in the amount of **\$5,000**
7 **per day** until such time as they demonstrate compliance.

8 In addition, to attempt restitution for consumer losses suffered as a result of Contempt
9 Defendants' utter disregard of this core a

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