

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA**  
Harrisonburg Division

CONSUMER FINANCIAL PROTECTION  
BUREAU; COMMONWEALTH OF  
MASSACHUSETTS; THE PEOPLE OF  
THE STATE OF NEW YORK, by LETITIA  
JAMES, Attorney General of the State of New  
York; and COMMONWEALTH OF  
VIRGINIA, *EX REL.* MARK R. HERRING,  
ATTORNEY GENERAL,

Case No. 5:21-cv-00016

*Plaintiffs,*

v.

NEXUS SERVICES, INC.; LIBRE BY NEXUS,  
INC.; MICHEAL DONOVAN; RICHARD  
MOORE, and EVAN AJIN,

*Defendants.*

**DEFENDANTS' MOTION TO DISMISS COMPLAINT FOR  
LACK OF SUBJECT-MATTER JURISDICTION**

Defendants Nexus Services, Inc., Libre by Nexus, Inc., Michael Donovan, Richard Moore, and Evan Ajin, file this Motion requesting that this Court dismiss this case for lack of subject matter jurisdiction for the following principal reasons, inter alia:

1. These Defendants are not covered persons or related persons, or service providers, as required under the Consumer Financial Protection Act (12 U.S.C. 5481(6)) because these Defendants are subject to regulations of state insurance agencies and do not engage in the business of financial goods and services;

2. The Virginia Attorney General does not have jurisdiction over Nexus, under Va. Code § 59.1-199, inter alia, for nearly the same reasons set forth regarding the Consumer Federal Protection Bureau (“CFPB”); and
3. After declaring the CFPB lacks jurisdiction over Defendants, this Court should decline to exercise supplemental jurisdiction over the remaining state law claims brought by the Attorney Generals of Massachusetts and New York. *Carnegie-Mellon Univ. v. Cobill*, 484 U.S. 343, 351, 108 S. Ct. 614, 619, 98 L. Ed. 2d 720 (1988)

### **INTRODUCTION**

The most salient point regarding the hyperbolic, inaccurate, and flat-out false allegations contained in the CFPB’s Complaint is the following: absent—conspicuously so—from the CFPB’s Complaint is the actual true fact that every time a Libre Program Participant has testified under oath regarding allegations of consumer fraud, three different, well-respected arbitrators (one a former judge) concluded that zero fraud took place. (See Exhs. 1, 2, 3.) Significantly, the conclusion that no fraud took place also included the consensus amongst all three arbitrators that these Defendants did not violate the Virginia Consumer Protection Act, because zero—with emphasis on the term zero—evidence demonstrated any remote violation. *Id.*

Specifically, one arbitrator stated that “Respondent [Libre by Nexus] **did not commit fraud in violation of Virginia law**, including [sic] common law fraud and the VCPA.” (See Ex. 1, Arbitration Award, *Juan Francisco Narvaez-Molina vs. Libre by Nexus Inc., et al.*) This same

arbitrator addressed claims that match Plaintiffs' bogus claims of assault and battery regarding ankle bracelet monitoring, by stating:

“As to Claimant’s claim of battery under Virginia law relating to the impact of a monitoring device upon him, in fact, Claimant agree in the contract to wear the monitoring device. Accordingly, the impact of the device upon Claimant’s leg **did not constitute “an unwanted touching which is neither consented to, excused, nor justified.”** Thus, Claimant’s wearing of the device, which he agreed to wear, **did not constitute battery. Accordingly, Claimant’s claims are denied.”**

*Id.*

Like the first arbitrator, the second arbitrator also found no fraud, finding zero evidence/proof of misrepresentation, while reasoning that the contract which these Plaintiffs allege is so misleading actually “was not a misrepresentation” at all:

“The **VCPA** [Virginia Consumer Protection Act], however, still **requires proof**, in misrepresentation cases,” that there actually be a misrepresentation (or in concealment cases that there has been concealment), and misrepresentations are not actionably unless the claimant proves “the elements of reliance and damages.” *Id.* (*citing* Va. Code § 59.1-204(A)). Here, there is no dispute that this was a “consumer transaction” subject to the VCPA. But Mr. Portillo Morales **has not proven** the misrepresentation or concealment his VCPA claims require...But assuming that an alleged misrepresentation or concealment of a party’s “true purpose” could be construed as misrepresenting its benefits, **this contract was not a misrepresentation.”**

(**Compare** Ex. 2, Arbitration Award, *Carlos Roberto Portillo Morales v. Libre by Nexus Inc., et al*, **with** Ex. 6, Complaint at issue in all three arbitrations, claiming violation of the Virginia Consumer Protection Act, Common Law Fraud, Virginia Construction Fraud, and Battery in a 210-paragraphed complaint.)

Turning the focus back to other theories alleged under the VCPA by the plaintiff, this second arbitrator considered three principle allegations made by the plaintiff: “(1) they [Libre

by Nexus] did not provide Mr. Portillo Morales the contract in advance of his release; (2) presented the contract as something Mr. Portillo Morales was obligation to accept (because Ms. Quintanilla-Jimenez had already signed it) and; (3) created the impression that he was not free to do what he pleased that reinforced the view that he had no choice but to sign.”

*Id.* Upon careful consideration of the evidence, including the alleged victims’ testimony about the events at issue, this second arbitrator concluded “**none of these events** constituted “deception, fraud, false pretense, false promise, or misrepresentation...Not provided the contract to Mr. Portillo Morales while he was in ICE detention **does not** meet any of these descriptions...**He was not deceived. And there is no evidence that Ms. Quintanilla-Jimenez was either.**” *Id.*

Pausing here, and significantly, this second arbitrator’s conclusions and findings also directly contradict numerous vague and conclusory allegations made by the CFPB in this case, such as the false allegation that Nexus pretended to be the government, and the false allegation that Nexus allegedly threatened to send Program Participants back to jail if they did not pay. (See Compl., ¶¶ 35, 40, 55-60.) In that vein, while noting that many of plaintiff’s “fraud” allegations did not constitute deceit, but merely **constituted facts**—this second arbitrator stated:

“I **fully credit Mr. Portillo Morales’ testimony** that he was afraid that eventually he was be sent to immigration and would lose the \$2,590 he had already paid and reject Libre’s assertion that this all “must have seemed like an attractive proposition to” him. Post-Hearing Br. at 2...But (sadly) this **was fact**, not deceit.... **There is no evidence that Libre claimed to be the government.** (The contract, Ex. C-6 § 1.2, says it is not). **Nor did it threaten to turn him in to the Government. And it is not false** to say that if he did not sign the contract, Libre would expect to contact its lawyers, or deceptive to leave him with the impression that,

if he refused to sign, he faced the possibility of “eventually” being returned to detention and losing his \$2,590. He did. Libre’s conduct and approach can be criticized in many ways. **But it was the actual circumstances, not deception, fraud or falsity about them, that placed Mr. Portillo Morales in this situation.”** *Id.*

Ultimately, all allegations were dismissed because as this second arbitrator reasoned: if the plaintiff failed to establish violations under the “more lenient standards” of the Virginia Consumer Protection Act, allegations under Common law fraud, constructive fraud, and battery must fail too:

“Common Law Fraud, Constructive Fraud and Battery. **As these circumstances do not make out a violation of the more lenient standards of the VCPA, they also do not meet the stricter standards for common law or constructive fraud.** In addition, as Mr. Portillo Morales notes, “consent is generally a defense to a claim of battery,” and he has not proven the consent was fraudulently induced. Also, as Mr. Portillo Morales did not prove his claim against the entity Respondents (Libre by Nexus Inc. and Nexus Services Inc.), he has not proved his claim against the individual Respondents, Michael P. Donovan and Richard E. Moore, whose personal involvement in the events were not the subject of any evidence.” *Id.*

That established, as if two arbitrators rejecting allegations of consumer fraud was not enough to deter well-respected lawyers (with the law firm Hughes Hubbard and Reed LLP and the Legal Aid Justice Center) from continuing to go forward with bogus claims, a third arbitrator drove home the point that Defendants did not commit consumer fraud, or any fraud whatsoever. This third arbitrator stated, “Claimant has **failed** to prove by a preponderance of evidence that he is entitled to recovery on his claims under the CVPA, on his claim for battery, or on his claim that the Contract is unconscionable. Claimant has **not** suffered damages on his claims.” (Ex. 3, Arbitration Award re Edwin Geovany, *Alvarenga Serrano v. Libre by Nexus Inc., et al.*)

In sum, the above resounding losses with respect to false allegations of fraud (consumer or otherwise) means that every time a so-called victim (who the CFPB and other Plaintiffs purport to represent) actually testified under oath to present evidence through an extremely reputable lawyer and “activist organization”—the Defendants in this case, prevailed. That fact leaves little wonder to the following point: the CFPB and these Attorney Generals never, not one-time, in their Complaint, (1) name one person; (2) provide an actual quote of an alleged misrepresentation; or (3) otherwise provide this Court with the specificity required to allege claims that sound in fraud. These Defendants will address that issue in a separate motion. (*See e.g., Consumer Fin. Prot. Bureau v. Prime Mktg. Holdings, LLC*, No. CV1607111BROJEMX, 2016 WL 10516097, at \*6 (C.D. Cal. Nov. 15, 2016) (holding CFPB must comply with 9(b) for claims that allege defendant participated in a unified course of fraudulent conduct, such as allegations of purposeful deception and claims of intentional misrepresentations.)

**A. CFPB has no jurisdiction because in a four-year desperate fit of throwing everything imaginable at Defendants, these Attorney Generals have provided proof positive that the CFPB has no subject-matter jurisdiction in this case**

This Court should note that each attorney general in this case has been so-called investigating consumer fraud against these Defendants for over two years. Having no case at all, during that same time period, each one of these Defendants coordinated with their respective Departments of Insurance, whose respective Directors have argued that these Defendants are *subject* to the regulation of their respective Insurance Agency. Each of these agencies, both the Virginia Bureau of Insurance and the California Department of Insurance, have taken a dogged stance, insisting that these Defendants are *supposedly* engaged in the

business of insurance. That is relevant to the fact that the CFPB knows full well that it can only bring a lawsuit under the CFPA against a “covered person,” and excluded from its jurisdiction of covered persons are person engaged in “the business of insurance.” *See* 12 U.S.C. § 5481(15)(C); see also 12 U.S.C. § 5517.

In fact, the CFPB’s regulations expressly state that “the Bureau shall have no authority to exercise any power to enforce this Title with respect to a person regulated by a State insurance regulator,” and the phrase a person regulated by a state insurance regulator is defined as “any person that is engaged in the business of insurance and subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.”

Here, and trust to this Court, every Plaintiff knows that both the California Department of Insurance and the Virginia Bureau of Insurance have *subjected* these Defendants to their respective regulatory power, as evidenced by the attached regulatory agreements that have forced Nexus to modify its business practices to comply with insurance regulations. Specifically, the California Department of Insurance, while subjecting and maintaining its insurance-regulatory power over these Defendants, states “the Commissioner **retains jurisdiction** to ensure that Respondent complies with the terms of this Stipulation and Waiver for a period of thirty-six (36) months. Nothing contained in this Stipulation and Waiver shall prevent the Department from taking action at any time to enforce this Stipulation and Waiver...” (See Ex. 4, Agreement with the California Department of Insurance.) Relevantly, the Virginia Bureau of Investigation, while also subjecting and maintaining its insurance-regulatory power over these Defendants, states that “[b]ased on its investigation, the **Bureau alleges** that since approximately 2014, Defendants and their employees, while unlicensed by

the Bureau to **transact the business of insurance, acted as insurance agents** in soliciting, negotiating, and selling through Libre **surety insurance** in the form of immigration surety bonds.” (See Ex. 5, Agreement with the **Virginia Bureau of Insurance**.)

The attached agreements leave no doubt that both the **Virginia Bureau of Insurance** and California Department of Insurance have *subjected* these Defendants to their respective regulatory powers because, *according to them*, these Defendants are “transacting the business of insurance.” (See Ex. 5.) The CFPB will have to explain this jurisdictional-based omission, and many others, at the hearing on this matter.

### **GENERAL LEGAL STANDARD**

Motions to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) raise “the fundamental question of whether a court has jurisdiction to adjudicate the matter before it.” *S.C. Elec. & Gas Co. v. Randall*, 331 F. Supp. 3d 485, 491 (D.S.C. 2018). There is no presumption of jurisdiction and the court regards “the pleadings’ allegations as mere evidence on the issue and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.” *Id.* The moving party prevails if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law. *Id.*

### **ARGUMENT AND CITATION TO AUTHORITY**

Section I argues that the CFPB does not have jurisdiction over these Defendants because the CFB does not have jurisdiction over persons subjected to regulation by any state insurance agency. 12 U.S.C. §§ 5481(6)(B), 5517. Section II argues that the CFPB does not have jurisdiction because these Defendants do not offer or provide a financial good or service.

12 U.S.C. §§ 5531(a) 5491(a). After establishing that the CFPB has no jurisdiction over the Defendant companies, Section III will show that the CFPB consequently has no jurisdiction over Michael Donovan, Richard Moore, and Evan Ajin, as individually named Defendants. 12 U.S.C. § 5481(25)(C)(i)-(ii). From that point, the remaining sections argue that the Virginia Attorney General state law claims under the Virginia Consumer Protection Act, *inter alia*, must be dismissed for similar reasons given with respect to the CFPB. The Defendants then request that this Court refuse to exercise its supplemental jurisdiction over the remaining claims brought by the Attorney Generals of New York and Massachusetts. Va. Code § 59.1-199; *Cobill*, 484 U.S. at 351, 108 S. Ct. at 619; see also 28 U.S.C.A. § 1367 (stating, “[t]he district court may decline to exercise supplemental jurisdiction over a claim under subsection(a) if...the district court has dismissed all claims over which it has original jurisdiction....”)

## **I. Nexus is Exempt from CFPB Regulation by 12 U.S.C. § 5481(6)(B) and 12 U.S.C. § 5517**

Foremost, this Complaint is a bold attempt by the CFPB to broadly expand its already nearly unfettered authority. There are hundreds of organizations across the country that do fall within the CFPB's broad authority. These Defendants, however, are simply not included in that authority.

### **A. Legal Standard**

By law, the CFPB is authorized “to take any action ... to prevent a **covered person** or service provider” from committing unfair, deceptive, or abusive acts or practices. 12 U.S.C. § 5531(a). Unfortunately, the CFPB, in their zeal to loudly proclaim their false and inflammatory allegations, has filed this action in haste. The CFPB lacks the authority to even

bring the subject action because neither Nexus Services, Inc. nor Libre by Nexus, Inc. are covered persons under the CFPB's own regulations. The CFPA, from which the CFPB derives its regulatory authority, defines a covered person as "(A) any person that engages in offering or providing a consumer financial product or service..." 12 U.S.C. § 5481(6). The CFPA goes on to state "the term financial product or service does not include—(i) the business of insurance." 12 U.S.C. § 5481(15)(C). The CFPA further defines the business of insurance as "the writing of insurance or the **reinsuring of risks by an insurer**, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons." 12 U.S.C. § 5481(3).

Congress, making the limitation on the CFPB's authority perfectly, and unmistakably clear, did not rely solely on § 5481(15)(C)'s exclusion of persons engaged in the activities related to the writing of insurances regarding the definition of covered persons. Instead, Congress wrote into the CFPA § 5517, entitled **Limitations** on authorities of the Bureau. 12 U.S.C. § 5517. Significantly, § 5517 specifically states that "the Bureau shall have **no** authority to exercise any power to enforce this title with respect to a **person regulated** by a State insurance regulator." 12 U.S.C. § 5517(f)(1). Relevantly, the CFPA defines a person regulated by a State insurance regulator as "any person that is engaged in the business of insurance and subject to regulation by **any State** insurance regulator, but only to the extent that such a person acts in such capacity." 12 U.S.C. § 5481(22).

**B. Subjecting Nexus to regulation by the Virginia and California State Insurance Agencies demonstrates unequivocally that Nexus is exempt from CFPB Regulation**

Under the plain language of the CFPA, Nexus Services, Inc. and Libre by Nexus, Inc. (collectively “Nexus”) is exempt from CFPB regulation. While Nexus vehemently denied, and still denies, that it is a business of insurance, or that it is subject to any State insurance regulator, Nexus has been hauled before the Bureau of Insurance in Virginia and Department of Insurance in California, being accused by both of transacting the business of insurance without proper authority conferred on them by each states’ respective Insurance Agency. (Exhs. 4, 5.) In doing so, these Department of Insurance have undoubtedly subjected Nexus to their jurisdiction, and to this day, both Department of Insurances are actually, in fact, regulating these Defendants, by maintaining jurisdiction over Nexus for enforcement purposes. *Id.*

Indeed, these Department of Insurances have demanded that Nexus adjust its business model in order to comply with respective insurance laws. *Id.* Consequently, under the plain language of the CFPA, Nexus is not a covered person subject to CFPB regulation and thus the CFPB’s authority is limited to exclude any ability to regulate these Defendants. 12 U.S.C. §§ 5481(3)(B), 5517(f)(1).

Further, the CFPB is not entitled to any *Chevron* deference to any alternative interpretation as the statute in question is simply unambiguous. *See Dickenson-Russell Coal Co., LLC v. Sec’y of Labor*, 747 F.3d 251, 256 (4th Cir. 2014) (ruling on *Auer* deference under the same standard to grant the CFPB such deference in the face of such an unambiguous statute “would permit the agency, under the guise of interpreting a [statute], to create *de facto* a new [statute].” *Id.* (citing *Chase Bank USA, N.A. v. McCoy*, 562 U.S. 195, 211, 131 S. Ct. 871, 882,

178 L. Ed. 2d 716 (2011)). Consequently, this Court lacks subject matter jurisdiction over the CFPB claims and the Complaint should be dismissed in its entirety.

## **II. Nexus is not a covered person because it does not offer or provide a financial good or service**

Even if Nexus were not excluded from the definition of covered person, and even if the CFPA did not expressly deny the CFPB the authority to regulate Nexus, as it is currently subject to a State insurance regulator, the CFPB still lacks jurisdiction over these Defendants.

### **A. Legal Standard**

The CFPB is tasked with regulating the offering and provision of "consumer financial products or services" under the federal consumer financial laws. 12 U.S.C. § 549l(a). The CFPB has authority to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a "consumer financial product or service," or the offering of a consumer financial product or service. 12 U.S.C. § 5531(a).

In fact, "Covered person" means:

- (A) any person that engages in offering or providing a consumer financial product or service; and
- (B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.

12 U.S.C. § 5481(6). Importantly, the definition of a covered person under 12 U.S.C. § 5481(6) incorporates the defined term "consumer financial product or service." This term, in pertinent part, is defined by a laundry list of financial products or services, with the condition that such

products or services must be offered or provided for use by consumers primarily for personal, family, or household purposes. 12 U.S.C. § 5481(15).

A “covered person,” however, does not include “a person who is a merchant, retailer, or seller of any **non**financial good or service”; therefore, a person who is a merchant, retailer, or seller of any **non**financial good or service is expressly excluded from CFPB jurisdiction and thus the CFPB is prohibited from “exercising rulemaking, supervisory, enforcement or other authority over said persons. 12 U.S.C. § 5517(a)(1).” Consequently, in addition to being regulated by a State insurance regulator, these Defendants are not “covered person[s]” because the goods and services at issue are nonfinancial goods and services. *Id.*

**B. The CFPB has engaged in an audacious jurisdictional grab as evidenced by its attempt to regulate person who deal solely in non-financial goods and services, which are exempt from CFPB jurisdiction.**

No matter how much the CFPB distorts the facts in its Complaint, those facts will always unambiguously demonstrate that Nexus deals only with non-financial goods and services. 12 U.S.C. § 5517(a)(1). Nexus is not a bank, nor does it lend money, and certainly Nexus is not a “financial company.” Nexus does not offer or sell consumer financial products. Nexus does not extend nor offer credit to Program Participants of any kind, nor does it make loans. Program Participants pay service fees to Nexus, including Nexus’ monthly program fees, which may have included fees for Nexus’ former GPS monitoring program. (See Ex. 7, Affidavit used by these Defendants regarding a Motion brought against the CFPB during its “investigation” of Defendants.) In exchange for the fees paid by the Program Participants, Nexus provides a wide range of services for its Program Participants, which include the

following:

1. At all hours of the day or night, Nexus picks up the Program Participants from the detention centers, many of which are remote<sup>1</sup>. This is particularly important in cold weather states in which Program Participants are released in the same clothes they were arrested in and are prohibited from reentering the facility once they have been released. Program Participants are provided mobile phones to contact their families and to facilitate their reentry into society and are also provided essential toiletries. Frequently, Nexus provides clothing, food, shelter and ultimately the transport of undocumented people released from ICE custody to their families. This begins to provide some humanity back to the individuals after they have endured a process which utterly strips all humanity and dignity from them.
2. Nationwide logistics call and support centers are available 24 hours a day to help Program Participants with various needs, including such basic concepts as paying a water bill. Many Program Participants have never lived in housing that requires payment of a water bill or other utilities.
3. Investigative services regarding those individuals who may seek to harm its Program Participants. Many of Nexus' Program Participants are abused and are afraid to come forward for fear of involving the police and Nexus helps them

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<sup>1</sup> To be clear, bonded immigrants are immediately provided access to a cell phone by a Nexus employee upon release to permit them to call their families. Nexus provides transportation assistance from this time until the immigrant reaches their family, whether that includes travel by car, bus, or even airplane, wherein Nexus facilitates travel under the immigrants release papers. Throughout this process, the immigrant has access to a phone to contact his family.

interface and report transgressions so their concerns can be heard.

4. Travel services for Program Participants, sometimes across the country, to ensure that they appear at their hearings and provide professional staff to escort them to meetings with deportation officers. These staff escorts often result in the Program Participants being allowed to avoid a deportation and remain free to work on their case.
5. Computer and English language training assistance.
6. Help with medical expenses.
7. Counseling, life coaching and pre-paid telephone services.
8. Assistance during hurricanes and other natural disasters.

Those facts in mind, Nexus is not a “covered person” under the CFPA § 5481(6) because Nexus merely provides “nonfinancial goods or services” within the meaning of 12 U.S.C. § 5517(a), by merely facilitating Program Participants through the immigration bond process. (See Ex. 7.) The CFPB cannot point this Court to one objectively and reasonably viewed good or service that Nexus offers that is anything but non-financial in nature and reality. *Id.* Consequently, the CFPB does not have authority over these Defendants. To escape this reality, these Plaintiffs may argue that Nexus is an affiliate or service provider to a covered person, but that argument fails, too.

Under 12 U.S.C. § 5481(6)(B), in order to be subject to the CFPB's authority, Nexus would need to be an “affiliate” of any covered person. The term “affiliate” means any person that controls, is controlled by, or is under common control with another person. 12 U.S.C. § 5481(6). Nexus has zero relation with the third-party bonding companies with whom it deals,

other than on a contractual basis. And, Nexus certainly does not control, nor are they controlled, or under common control with, any of these third-party bonding companies.

Even if Nexus was affiliated with these bonding companies, they are not a “service provider.” The term “service provider” means “any person that provides a material service *to a covered person* in connection with the offering” of a financial product or service, “including a person that - (i) participates in designing, operating, or maintaining the consumer financial product or service; or (ii) processes transactions relating to the consumer financial product or service.” 12 U.S.C. § 5481(26) (emphasis added). Simply put, in order to be a “service provider” an entity must provide such services to a “covered person.”

Again, the bonding companies with which Nexus deals are not covered persons. As previously stated, and worth arguing for the up-teeth time, pursuant to 12 U.S.C. § 5517(f), the CFPB has no authority to exercise any power “with respect to a person regulated by a State insurance regulator.” The bonding companies with which Nexus transacts or transacted business are regulated by state insurance regulators, at least with respect to immigration surety bonds obtained by Program Participants and are therefore not subject to CFPB authority and cannot be covered persons. Because these bonding companies are not covered persons, Nexus cannot be “service provider[s].” Thus, the Complaint should be dismissed in its entirety because the CFPB does not have the authority to prosecute the present Complaint and thus this Court lacks subject matter jurisdiction.

### III. As Nexus is Exempt from CFPB regulation, Donovan, Moore, and Ajin cannot be related parties

The CFPB asserts claims against Michael Donovan (“Donovan”), Richard Moore (“Moore”), and Evan Ajin (“Ajin”) as related parties to Nexus. (ECF 1, ¶¶ 20-22.) Specifically, the CFPB asserts that Donovan, Moore, and Ajin are officers or directors of Nexus, have exercised managerial responsibility for Nexus and participated in their conduct, and are thus related persons under § 5481(25)(C)(i),(ii). *Id.* 12 U.S.C. § 5481(25) defines the term related person to mean “(i) any director, officer, or employee with managerial responsibility for, or controlling shareholder of, or agent for, such **covered person**; (ii) any shareholder, consultant, joint venture partner, or other person, ... who materially participates in the conduct of affairs of such **covered person**.” 12 U.S.C. § 5481(25)(C)(i)-(ii). For the reasons states in § II *supra*, Nexus is not a covered person, and therefore Donovan, Moore, and Ajin cannot be related persons as defined by the CFPA. *Id.* As such, this Complaint should be dismissed in its entirety.

### IV. Nexus is Excluded from Regulation under the Virginia Consumer Protection Act by Va. Code § 59.1-199

Foremost, Plaintiffs CFPB and the Attorney General of Virginia are collaterally estopped from claiming that these Defendants violated the Virginia Consumer Protection Act because that issue has been litigated over and over, and each time Nexus has prevailed—resoundingly. (See Exhs 1-3.)<sup>2</sup> *Qorvis Commc'ns, LLC v. Wilson*, 549 F.3d 303, 309 (4th Cir. 2008) (holding binding arbitrations are enforceable by court order); *Meridian Imaging Sols., Inc. v. OMNI Bus. Sols. LLC*, 250 F. Supp. 3d 13, 27 (E.D. Va. 2017) (noting that numerous cases stand for the

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<sup>2</sup>These arguments will be made at the next stage of litigation if Defendants do not prevail on this current Motion.

proposition that the legal concepts of collateral estoppel and issue preclusion apply to binding arbitration.)

That established, Va. Code § 59.1-199 of the Virginia Consumer Protection Act states that “[n]othing in this chapter shall apply to: ... (D) ... insurance companies regulated and supervised by the State Corporation Commission.” Va. Code § 59.1-199(D). As has been stated in § II *supra*, Nexus has been regulated and supervised by the Bureau of Insurance for the State Corporation Commission for its **Bureau-of-insurance deemed** business actions as an insurance company. As such, Nexus, and its officers and employees Donovan, Moore, and Ajin, are excluded from regulation under the Virginia Consumer Protection Act. *Id.* This Court therefore lacks subject matter jurisdiction over the claims of the Commonwealth of Virginia and thus this Complaint should be dismissed in its entirety.

**V. With the only Federal Claims Dismissed, this Court should Decline to Exercise Supplemental Jurisdiction over the Remaining State Law Claims**

This Court enjoys wide latitude in determining whether to retain jurisdiction over state claims when all federal claims have been extinguished. *Shanaghan v. Cabill*, 58 F.3d 106, 110 (4th Cir. 1995). Declining to exercise supplemental jurisdiction where all federal claims have been dismissed is consistent with the general principle that federal jurisdiction is limited. *Boone v. Duke Energy Carolinas, LLC*, No. 3:09-CV-122-RJC-DSC, 2009 WL 3839342, at \*2 (W.D.N.C. Nov. 12, 2009). As the Supreme Court has noted, where the federal claim has been dismissed this Court has a powerful reason to choose not to exercise jurisdiction.” *Cobill*, 484 U.S. at 351, 108 S. Ct. at 619. As such, and in light of this Court’s lack of jurisdiction over the federal claims (as well as the state law claims brought by the Virginia Attorney General), this

Court should decline to exercise supplemental jurisdiction and dismiss this case in its entirety.

Id; see also 28 U.S.C.A. § 1367.

## **VI. Conclusion**

For the reasons argued throughout this brief, Defendants ask that this Court dismiss the CFPB's Complaint against Defendants in its entirety.

Respectfully submitted this 1<sup>st</sup> day of March 2021,

/s/ Mario B. Williams

Mario B. Williams (VSB # 91955)

## **NDH LLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 1<sup>st</sup> day of March 2021, I have served a true and correct copy of the foregoing **DEFENDANTS' MOTION TO DISMISS COMPLAINT FOR LACK OF SUBJECT-MATTER JURISDICTION** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record, including:

<p><i>Attorneys for the Consumer Financial Protection Bureau</i></p> <p>Hai Binh T. Nguyen  Donald R. Gordon  Kara K. Miller  Email: haibinh.nguyen@cfpb.gov  Email: donald.gordon@cfpb.gov</p>	<p><i>Attorneys for the Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General</i></p> <p>David B. Irvin  Erin E. Witte  Stephen J. Sovinsky  Erin Boyd Ashwell  Mark R. Herring  Samuel Towell  Email: dirvin@oag.state.va.us  Email: ewitte@oag.state.va.us  Email: ssovinsky@oag.state.va.us  Email: eashwell@woodsrogers.com  Email: mherring@oag.state.va.us  Email: stowell@oag.state.va.us</p>
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/s/ Mario B. Williams  
Mario B. Williams (VSB #91955)

# Exhibit 1

**AMERICAN ARBITRATION ASSOCIATION**

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**In the Matter of:**

Edwin Geovany Alvarenga Serrano,

*Claimant*

v.

Case No. 01-20-0000-5224

Libre by Nexus Inc., Nexus Services Inc.,

Michael P. Donovan, and Richard E. Moore,

*Respondents.*

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**FINAL AWARD**

I, Judge Christine O. C. Miller (Ret.) (the “Arbitrator”), having been designated in accordance with the arbitration agreement entered into by Claimant Edwin Geovany Alvarenga Serrano (“Mr. Alvarenga” or “Claimant”) and Respondent Libre by Nexus Inc. (“LBN” or “Respondent”); and having been duly sworn; and after holding a hearing on September 29, 2020, via a Zoom conference platform, in accordance with the Consumer Arbitration Rules of the American Arbitration Association (the “AAA”); and having reviewed and considered the transcript of the hearing and the exhibits and briefs submitted to me by counsel for the parties— James H. Boykin, Stephen R. Halpin, III, and James Canfield of Hughes Hubbard & Reed LLP and Kelly Poff Salzmänn of the Legal Aid Justice Center representing Claimant and John M. Shoreman of McFadden & Shoreman and Mario B. Williams of NDH LLC representing Respondents, do hereby AWARD, as follows:

Claimant brings this action under the Virginia Consumer Protection Act, Va. Code Ann. §§ 59.1-196 – 59.1-207 (the “VCPA”), specifically §59.1-200(A), to recover for alleged fraudulent acts or practices committed by Libre and its officers or agents in connection with Respondent Libre by Nexus’s (“LBN”) <sup>1</sup> provision of services in connection with assisting Mr. Alvarenga in obtaining a bonded release from detention by the U.S. Immigration and Customs Enforcement.

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<sup>1</sup>Respondent Libre by Nexus Inc. is the Respondent involved in the operative facts.

To state a claim under the VPCA a plaintiff must allege a fraudulent misrepresentation of fact. An allegation of a misrepresentation of fact must include the elements of fraud: a false representation of material fact made intentionally and knowingly with intent to mislead, reliance by the party misled, and resulting damage.

*Galloway v. Priority Imports Richmond, LLC*, 26 F. Supp. 236, 244 (E.D. Va. 2019) (citation and quotation marks omitted).

LBN operates a program for the bonded release from detention and tracking of illegal immigrants seeking asylum in the United States. Mr. Alvarenga charges that LBN misrepresented that it provides services to LBN's Program Participants with certain uses or benefits and by concealing material facts from Mr. Alvarenga to create the false impression that he was obligated to become a Program Participant. He also claims that LBN's requirement that Mr. Alvarenga constitutes a battery and that the parties' Contract for Services (the "Contract") is unconscionable.

Although LBN's Contract provides for several "charges and fees." CX 17, § 2. Among these are "Set Up Fees," include a one-time fee, fee paid to bonding companies. CX 17 § 2.2. "Program Fees" are mandatory monthly fees that are not for the cost of the bond and vary depending upon the amount of the bond. CX 17 § 2.3. Mr. Alvarenga's Set Up fees of \$3,975.00 were paid by his sister, who signed the Contract as guarantor prior to Mr. Alvarenga's release. The Contract set the monthly Program Fees at \$450.00 for 34 months, or \$15,300.00, CX 17 § 2.8.4, and Mr. Alvarenga signed the Contract at around 10:00 p.m. on the night of his release from detention and transport by LBN to its offices. A total of \$1,200.00 in Program Fees was paid before Mr. Alvarenga's sister stopped making payments.

Claimant contends that the Program Fees should be viewed as severable; that Mr. Alvarenga signed the Contract in the belief that, if he did not, he would be returned to detention; that he was given the Contract to review only after his release while at the offices of LBN; that he was too tired to read it; that he did not fully understand what he was signing at the time, although he listened to a video that LBN contends explained the Contract and the Program; and that the Program Fees were discretionary with LBN and not for Mr. Alvarenga's benefit.

On cross-examination, Mr. Alvarenga acknowledged the admissions in the following allegations of the Complaint/Demand:

139. Mr. Alvarenga did not have \$12,500 to pay his bond but was desperate to be released from detention. He heard about [LBN] from another person in the detention center and asked his sister, Sandra Alvarenga-Serrano, a resident of Virginia, to call the company to learn more.

140. Over the phone, [an LBN] representative told Sandra and [LBN] would pay Mr. Alvarenga's bond and in exchange, she and Mr.

Alvarenga would need to sign a contract, make an up-front payment of \$3,490, and pay \$450 per month for 34 months as “interest on the loan.” The [LBN] representative also told her that Mr. Alvarenga would be required to wear a GPS monitor.

Respondents complain that the Arbitrator should not indulge Claimant’s argument based on severability because it was first raised at the hearing, Mr. Alvarenga having abandoned a series of specific fraudulent misrepresentations alleged in the Complaint originally filed in Virginia Circuit Court and referred to arbitration as the Demand. Respondents’ point is well taken, but the Arbitrator considers that Claimant’s position suffers from a more fundamental flaw: he cannot parse the consideration in the Contract. The “Program” is defined as the services provided to Mr. Alvarenga by LBN, CX 17 § 1.3, and the Contract states that he or his guarantor “must pay” the several types of charges and fees listed, *id.* § 2.2.

Mr. Alvarenga urges that the two fees are separate, that the Set Up Fees were paid before his release, and that the Program Fees are not supported by any binding undertaking to render Program Services to him, thereby rendering the Contract illusory. However, the consideration in the Contract covers a program for securing the bonded release from detention and monitoring compliance and is not divisible. Severability must be assessed in terms of the parties’ situation and the object they had in view and intended to accomplish. *See Schuiling v. Harris*, 286 Va. 187, 193 (2013). The testimony of Evan Agin, LBN’s Vice President Operations and Corporate Secretary, was fully credible that Set-Up Fees covered the cost of the bond and that Program Fees covered overhead, profit, and costs of monitoring.

Section 4.1 of the Contract, “Your Duties As A Program Participant,” states in full:

You must wear and keep charged the GPS equipment assigned to You. You understand that this equipment allows [LBN] and its technology partners to monitor Your physical location and for so long as You are a Program Participant You consent to such monitoring.

This provision imposes duties on both parties. The benefit ostensibly runs to LBH, although it is clear that LBH is bound on its obligation for the full amount of the bond during a Program Participant’s release, and release is for the benefit of Claimant. *See also* CX 17 §3.2. By this provision Mr. Alvarenga also consented to wear a monitoring device, which defeats his claim for battery. Mr. Agin discredited Mr. Alvarenga’s testimony that he was tethered to the GPS device in bed while it was charging.

Mr. Alvarenga’s claim based on unconscionability of the contract is problematic, in that LBN has taken the position that it has “elected not to enforce its rights in this regard.” Resps’ Br. at 18. Actually, Respondents attempt to counterclaim for the remaining \$14,100.00 in unpaid Program Payments was foreclosed when the Arbitrator denied their untimely attempt to counterclaim for it one day before the hearing commenced. *See* email from Arbitrator dated Sept. 29, 2020 (denying counterclaim as

“patently untimely”). Contrary to Respondents’ assertion that Mr. Alvarenga does not seek rescission of the contract, Paragraph 203 of the Complaint/Demand does list in the prayer for relief rescission “of any purported contract” between LBN and Claimant.

“Unconscionability is a narrow doctrine that requires a plaintiff to show an inequality . . . so gross as to shock the conscience.” *Galloway*, 426 F. Supp. at 244 (citation and internal quotation marks omitted). Based on the testimony of Mr. Avin, the Arbitrator cannot find that the sliding scale of compensation for services other than the bond amount is so gross as to shock the conscience. Claimant emphasized the discretionary nature of all the Program Services that LBN listed as its “Role” in the Program, CX 16 §§ 5.5-5.1, after arranging for his bond, picking him up at the detention center, making travel arrangements, and providing a restaurant meal and a cell phone with a number of prepaid minutes, *id.* §§ 5.1-5.4. As discussed above, the consideration under the Contract cannot be parsed. The payment of the bond fee, which was accomplished before Mr. Alvarenga signed the Contract and after his sister had signed it as guarantor, cannot be severed from the Contract as a whole. Mr. Agin credibly explained that items such as overhead and profit in connection with obtaining the bond and other Program services such as monitoring the GPS device are included in the sliding-scale Program Fees.

The VCPA grants an award of attorneys’ fees in connection with an award under the statute if the party suffers loss as a result of a VCPA violation. Va. Code Ann. § 59.1-204(A), (B). Claimant has failed to prove by a preponderance of evidence that Respondents violated the VCPA. Although the effect of this Award will relieve Mr. Alvarenga and his guarantor of any obligation to make further payments on the Contract, *McDonald v. National Enterprises, Inc.*, 262 Va. 184, 189 (2001), that ruling is the effect of denying Respondents the right to submit a counterclaim for the unpaid monthly Program Fees.

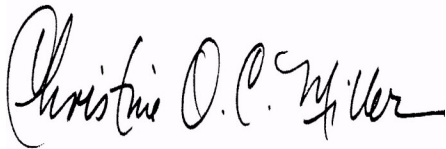
The Arbitrator finds and concludes and therefore Awards, as follows:

1. Based on the dismissal of Respondents’ counterclaim, Claimant is entitled to a declaratory judgment that neither he nor his sister, Sandra Alvarenga- Serrano, has any further liability on his contract with Respondent Libre by Nexus Inc., and both are discharged from any liability relating thereto.
2. Claimant has failed to prove by a preponderance of evidence that he is entitled to recovery on his claims under the VCPA, on his claim for battery, or on his claim that the Contract is unconscionable.
3. Claimant has not suffered damages on his claims.
4. Respondents’ Counterclaim is dismissed with prejudice.

5. Because he has not proved a violation of the VCPA, Claimant is not entitled to an award of attorneys' fees and costs.
6. The administrative fees of the AAA totaling \$1900.00, and the compensation of the Arbitrator totaling \$2,500.00 shall be borne as incurred.

This final award is in full settlement of all claims and counterclaims submitted to this arbitration. All claims not expressly granted herein are expressly denied.

November 18, 2020

A handwritten signature in black ink, reading "Christine O.C. Miller". The signature is written in a cursive, flowing style.

Judge Christine O.C. Miller (Ret.)

Arbitrator

# Exhibit 2

**AMERICAN ARBITRATION ASSOCIATION**

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In the Matter of the Arbitration between:

Case Number: 01-20-0000-5226

Juan Francisco Narvaez-Molina ("Claimant")

-vs-

Libre by Nexus Inc., Nexus Services Inc., Micheal P. Donovan, and Richard E. Moore ("Respondent")

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**AWARD OF ARBITRATOR**

I, Patricia Horan Latham, the undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into between the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the parties at an evidentiary hearing held via Zoom videoconference on August 19, 2020, do hereby AWARD as set forth below.

At the evidentiary hearing, representing Claimant Juan Francisco Narvaez-Molina: attorneys James Boykin, James Canfield, Stephen Halpin, and Kelly Salzmann, and representing Respondent Libre by Nexus Inc., Nexus Services Inc., Micheal P. Donovan, and Richard E. Moore: attorney John M. Shoreman.

The parties submitted post hearing session submissions on September 17, 2020.

This case is being administered under the Consumer Rules of the American Arbitration Association (AAA).

The Claim of Claimant is for violations of Virginia law including common law fraud and the Virginia Consumer Protection Act (VCPA). Claimant seeks damages of \$3,140 for fraud, with treble such amount under VCPA, for a total of \$9,420. Claimant also claims battery under Virginia law relating to the impact of a GPS monitoring device upon Claimant. For the battery claim, Claimant seeks \$5,400. Claimant further seeks interest, attorney's fees, and the costs of arbitration.

Respondent denies Claimant's Claim.

**FINDINGS**

In late 2018, Claimant paid "around \$6000" to be brought across the United States border. (Tr. at page 121) He was arrested for violations of United States immigration laws and was held in detention for close to two months. Understandably, Claimant wished to be released from detention. In Claimant's words: "[a]ll I wanted was to get out and be with my family." (Tr. at page 83)

Claimant's cousins, Paola Martinez Narvaez and Edwin Antonio Altamirano Narvaez, obtained the services of Respondent to help arrange for Claimant's \$12,000 bond so that Claimant could be released from detention. Respondent sent a contract to Paola Martinez Narvaez. Edwin

Antonio Altamirano Narvaez signed the contract as co-signer. Both cousins made payments to Respondent, for a total amount of \$4870. (Claimant's Exhibits 21 and 22)

Respondent offers a program for individuals in immigration detention under which it pays a percent of the bond amount to a surety company in order to release those individuals from detention and offers a range of support services, such as phone, transportation, translation, legal and medical, to the individuals released on bond. Further, in the event the surety company would be required to pay the full face amount of the bond, Respondent would be liable to the surety company for such amount.

On January 4, 2019, Claimant entered into a contract with Respondent under which he agreed to terms, including payment of certain monthly program fees: 34 payments of \$450 monthly. Claimant also agreed and consented to wear on his ankle a GPS monitoring device. Specifically, Claimant agreed to "wear and keep charged GPS tracking equipment." for the duration of the time during which he was a participant in Respondent's program. (Claimant's Exhibit C-6)

The contract was presented to Claimant in Spanish, his native language. He also was shown a 20 minute video describing the contents of the contract. Claimant signed the contract and initialed each page of the contract. He had the opportunity to read the contract and to ask questions. While Claimant has testified that he did not read the contract when it was presented to him in January 2019 and that he never has read the entire contract, in fact, he had, and continued to have, the opportunity, to read the contract.

Respondent arranged Claimant's release from a detention facility on January 4, 2019, and Claimant has remained free from detention. Also, Respondent arranged Claimant's air travel from Texas to the Washington, DC area in January 2019 at a cost of \$480. However, Claimant has not paid to Respondent amounts due under the contract. Claimant paid only two of the required 34 payments of \$450 monthly. Specifically, the March and April 2019 payments were made, and, thereafter, no further payments were made to Respondent.

As to Claimant's claim of battery under Virginia law relating to the impact of the GPS monitoring device upon him, in fact, Claimant agreed in the contract to wear the monitoring device. Further, the monitoring device stopped working by July 2019. Notes by Respondent's staff, dated July 30, 2019, state that Claimant "has not charged since July 5th" and that Claimant stated the charger light "goes from red to green and and back to red". Respondent's staff asked Claimant to send a "video of him charging" and sent a text August 1, 2019 reminding Claimant to send such video. However, the video was not received by Respondent. The device was no longer charged and, as a result, no longer functioned. Thus, it served no purpose for Claimant to continue to wear the non-working device after July 2019. (Claimant's Exhibit 20 at page 0003)

## CONCLUSIONS

The signed contract and related worksheet represent the entire agreement between the parties.

Respondent did not commit fraud in violation of Virginia law, including including common law fraud and the VCPA.

Further, as to the contract between Claimant and Respondent, Claimant paid only two of the 34 required \$450 monthly payments, and, by July 2019, the monitoring device required to be worn by Claimant was no longer charged and thus no longer functioned.

As to Claimant's claim of battery under Virginia law relating to the impact of a monitoring device upon him, in fact, Claimant agreed in the contract to wear the monitoring device. Accordingly, the impact of the device upon Claimant's leg did not constitute "an unwanted touching which is neither consented to, excused, nor justified." Thus, Claimant's wearing of the device, which he agreed to wear, did not constitute battery.

Accordingly, Claimant's claims are denied.

The administrative fees of the American Arbitration Association (AAA) totaling \$2,150.00 and the compensation of the Arbitrator totaling \$2,500.00 shall be borne as incurred.

This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

I, Patricia Horan Latham, do hereby affirm, upon my oath as Arbitrator, that I am the individual described herein and who executed this instrument, which is my Award.

A handwritten signature in black ink, appearing to read 'Patricia Horan Latham', written in a cursive style.

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Patricia Horan Latham, Arbitrator

Date: September 23, 2020

# Exhibit 3



AMERICAN  
ARBITRATION  
ASSOCIATION®

INTERNATIONAL CENTRE  
FOR DISPUTE RESOLUTION®

## AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between

Case Number: 01-20-0000-5221

Carlos Roberto Portillo Morales<sup>1</sup>

-vs-

Libre by Nexus Inc., Nexus Services Inc.,  
Micheal P. Donovan, and Richard E. Moore

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### AWARD OF ARBITRATOR

I, Merrill Hirsh, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the parties, and having been duly sworn, and having duly heard the Parties' proofs, allegations and arguments, each represented by counsel, at a video evidentiary hearing held on October 15, 2020 and in post-hearing briefing,<sup>2</sup> do hereby, issue the AWARD, below. For the reasons I explain there, I find that, although Mr. Portillo Morales suffered in many different ways from the experience that gave rise to this Claim, he has not proven the violations he alleges.

### Findings

Mr. Portillo Morales came to the United States from El Salvador in 2007, when he was 18. He is not fluent in English and testified in Spanish with a translator.

On July 3, 2018, police came to Mr. Portillo Morales' home in Woodbridge, Virginia asking for someone who was living in the same place. Mr. Portillo Morales told the police that she was not there, but the police did not believe him and asked for his papers and social security number. After he refused to give his social security number, the police arrested him on charges of swearing in public, intoxication and making a false report to police and turned Mr. Portillo Morales over United States Immigration and Customs Enforcement ("ICE"). ICE sent him to its immigration detention center in Farmville, Virginia.

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<sup>1</sup> The Claim and the Complaint it incorporates incorrectly identify Claimant as Carlos Morales Portillo. This caption corrects the error.

<sup>2</sup> With his November 13, 2020 brief, Mr. Portillo Morales submitted three additional exhibits. Ex. C-19 is a transcript of the *Narvaez-Molina* arbitration that resulted in the Award Respondents submitted on the eve of our hearing. Mr. Portillo Morales's brief indicates that he offers Ex. C-19 merely to substantiate his arguments for distinguishing *Narvaez-Molina* (and not for the truth of the testimony). I considered C-19 for this limited purpose as part of argument and have, in any event, resolved this case based on the proof adduced here and not in that proceeding. Exs. C-18 and C-20 are records concerning Mr. Portillo Morales's arrest and plea and a November 6, 2020 settlement between Libre by Nexus and the Virginia State Corporation Commission). Mr. Portillo Morales should not have submitted these post-hearing exhibits without obtaining leave. But as a practical matter, these exhibits are not material to my decision, in any event.

The conditions at the Farmville center were horrible. Mr. Portillo Morales was chained by his hands and feet, and treated like “trash.” An immigration judge ordered that he be released on \$8,000 bond. But Mr. Portillo Morales did not have the \$8,000.

While at the facility, Mr. Portillo Morales heard that Libre could help. He contacted Libre, and, in order to get the process started, arranged to pay Libre \$2,590. Libre also told him that someone else would need to sign in order for him to be released. A friend, Ada Quintanilla-Jimenez, agreed to be the co-signer and guarantor. Libre sent the contract to her (but not to him). While Mr. Portillo Morales was still in detention, she told him he would also need to make monthly payments of \$375 to Libre and would need to wear a GPS monitoring device. She signed the Spanish-language version of the contract on July 26, 2018.

Because of the need to obtain a missing form, Mr. Portillo Morales was not released until the evening of August 17, 2018. He left the Farmville facility at sometime between 8:00-9:00 p.m. and after some additional delays, Libre’s representative took him and another person released that day to a McDonald’s for dinner. Mr. Portillo Morales was not shackled. However, during the time there, Libre’s representative scolded Mr. Portillo Morales for going to the bathroom without clearance as he could flee from the premises. At the time, Mr. Portillo Morales was also carrying no money.

Libre’s representative then drove Mr. Portillo Morales to an office in Tyson’s Corner, Virginia. Mr. Portillo Morales arrived at 2:00 a.m., and his family was there to meet him. But Libre’s representative said that before Mr. Portillo Morales left the office, he needed to come upstairs and listen to an audio tape. The tape was in Spanish and described the contract Libre expected Mr. Portillo Morales to sign. These are standard procedures that Libre requires of all Program Participants. Mr. Portillo Morales asked questions about the contract. He was told that he needed to sign the contract that night, and if he did not sign, he would have to deal with Libre’s legal team, and that he “would never win.” There is no evidence that Libre told Mr. Portillo Morales that if he did not sign, he was going to be brought up on charges, and the contract stated that Libre “is not a governmental agency.” Ex. C- 6, §1.2. However, he was afraid that, if he did not sign, it would be seen by the authorities and eventually he would be sent to immigration and would lose the \$2,590 he had already paid. No Libre Program Participant has ever refused to sign the contract.

Section 1.2 of the contract defines “Program” to mean “the services that Libre provides to You,” Ex. C-6 § 1.2, and also identifies “several different types of charges and fees.” including “Set Up Fees” and “Monthly Program Fees.” *Id.* § 2.1. The contract defines “Set Up Fees” as “one-time charges by Libre to gather information about You and Your Co-Signer, coordinate with the bonding company, make arrangements for Your release from detention, and coordinate and set up travel arrangements to move you from the detention facility to meet Your family or friends.” *Id.* §2.2. In Mr. Portillo Morales’ case, this fee was the original \$2,590 he needed to arrange to pay before Libre would come to get him.

The contract defines “Program Fees” as “recurring monthly charges by Libre that You must pay,” and states that “[v]ariations in Monthly Program Fee reflect the difference in your total bond amount.” *Id.* §2.3. Section 2.8.3 specifies that for a bond between \$7,500 and \$9,999, the Program Participant agrees to make 24 monthly Program Fee payments of \$375 (although the monthly payments could terminate if Program Participant puts up the collateral for the bond) and then to pay an additional \$50 per month until the bond is canceled. The Program Participant also agrees to wear a GPS tracking device if the bond is more than \$5,000, and requires the Program Participant to keep the GPS equipment charged and in good condition. *Id.* Sections 3.2 & 4.

Libre is “not a bonding company,” *id.* §1.2, and, in exchange, Libre does not provide a bond. Instead, Libre promises to “assist” the Program Participant “with finding a [separate] bonding company through our relationship with bail agents with which Libre has entered into arrangements to indemnify against losses

associated with” the bond. *Id.* §5.1. Libre also agrees to pick up the Program Participant “from the detention center and make travel arrangements for [the Program Participant] to meet with [his/her] family and friends,” *id.* § 5.2, to “treat” the Program Participant after release to a meal at a restaurant, §5.3, and to give the Program Participant a cell phone with prepaid minutes. *Id.* §5.4.

There are also several things the contract says that Libre “may (but is not required to)” do, after these events take place – including giving the Program Participant up to \$20 per travel day after release; answering questions about the contract; providing transportation to some immigration appearances and a referral for free legal services; and retaining an attorney on behalf of the bonding company or surety to appeal a deportation order. *Id.* §§ 5.5-5.11. Also, Libre “may, in its sole discretion, remove the GPS tracking equipment” if certain conditions are met. *Id.* §3.3.

The contract also states that “[t]his Agreement shall be Effective on the date that it is signed by the Program Participant or the Co-Signer/Guarantor (***whichever is earlier***)” (emphasis added). *See* Ex. C-6 §15. Ms. Quintanilla-Jimenez, had signed the contract on July 26, 2018. Although there is no evidence that the parties discussed the view at the time, Libre’s view (expressed by its witness and Vice President of Operations for Nexus Services, Evan Ajin) is that the Co-Signer/Guarantor’s signature, by itself, created an effective contract and that Section 15 of the Contract would make this apparent to the Program Participant.

Mr. Portillo Morales read part, but not all, of the Spanish-language version of contract that night, initialed every page and signed, Ex. C- 9, and Libre’s representative put the GPS monitor on his ankle. Mr. Portillo Morales also took the contract home and looked at the contract afterwards. He cannot identify anything he was told that was inaccurate about the contract.

Mr. Portillo Morales lost his job, and was ridiculed and bullied, because he had to wear the GPS monitor on his ankle. He made one of the monthly \$375 payments, but stopped when he lost his job. He reported in to Libre approximately weekly, but appears to have stopped after April 2019. Ex. C-17. He stopped recharging the GPS monitor in July 2019, *id.*, but was still wearing the monitor at his October 15, 2020 hearing in this matter.

During opening statement, counsel for Mr. Portillo Morales asked that I order the GPS monitor be removed. Counsel for Libre said that his client had been trying to contact Mr. Portillo Morales for some time to get the monitor removed and had no objection to having it removed. Counsel agreed to speak and to arrange to have the monitor removed.

### Issues

This Claim does not seek an adjudication of all possible wrongs or all possible legal theories. The issue is not whether the immigration system is fair either generally or to Mr. Portillo Morales. It is not whether Libre’s business model is bad or good, or whether regulators should permit this type of contract or permit it on these terms.

The Claim, the Court Complaint it incorporates and Mr. Portillo Morales’ arguments both at hearing and in his brief also make clear that the issue is not whether the contract the parties entered into could be voidable (under common law theories like unconscionability or duress) or unlawful (because the bargain it strikes in fact violates state regulatory requirements). Similarly, the Response to the Claim, the absence of a counterclaim and Libre’s brief afterwards make clear that Respondents have not asked me to decide whether they could now enforce this contract to obtain damages or other relief from Mr. Portillo Morales.

Instead, the parties ask me to determine whether the Respondents violated the Virginia Consumer Protection Act, Va. Code §59.1-196 *et seq.* (VCPA), or engaged in fraud, constructive fraud or battery under Virginia common law. I do not reach or resolve any other arguments that might exist under the circumstances or determine the extent to which my decision might operate either to support or to bar these arguments. I conclude only that Mr. Portillo Morales fails to prove the arguments he makes.

### Conclusions

The VCPA's "proscription of conduct by suppliers in consumer transactions extends considerably beyond fraud." *Owens v. DRS Automotive Phantomworks, Inc.*, 764 S.E.2d 256, 260 (Va. 2014). "Proof of fraud in a consumer transaction is alone sufficient to establish a violation of the VCPA, but the legislative purpose underlying the VCPA was, in large part, to expand the remedies afforded to consumers and to relax the restrictions imposed upon them by the common law." *Id.* One difference is that, unlike common law, "a plaintiff must prove a violation of the VCPA by a preponderance of the evidence rather than by clear and convincing evidence." *Ballagh v. Fauber Enterprises, Inc.*, 773 S.2d 366, 370 (Va. 2015). Another is that the VCPA "clearly does not require the consumer to prove in every case that misrepresentations were made knowingly or with the intent to deceive." *Owens*, 764 S.E.2d at 260.

"The VCPA, however, still requires proof, in misrepresentation cases," that there actually be a misrepresentation (or in concealment cases that there has been concealment), and misrepresentations are not actionable unless the claimant proves "the elements of reliance and damages." *Id.* (citing Va. Code § 59.1-204(A)).

Here, there is no dispute that this was a "consumer transaction" subject to the VCPA. But Mr. Portillo Morales has not proven the misrepresentation or concealment his VCPA claims require.

**Va. Code § 59.1-200(A)(5).** Mr. Portillo Morales' first asserts that Respondents violated Va. Code § 59.1-200(A)(5) by "misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits," because the contract misrepresented benefits Libre was providing by concealing Libre's "true purposes." He argues that, if we understand the "Set-Up" fees to cover the cost of the services Libre had already provided Mr. Portillo Morales at the time he arrived in Tysons, heard the audio and signed the contract, then the "Monthly Program Fees" must have been paid only for the services (like giving him spending money, transporting him to court appearances, and recommending a lawyer), that Libre (1) was not obligated to provide (because the contract says that it "may (but is not required to)" do these things); and (2) did not, in fact, provide to Mr. Portillo Morales. Mr. Portillo Morales urges that the contract, itself, misrepresented the "purpose" of the Monthly Program Fees to be a benefit to him when they were not, and concealed its "true purposes."

It is not clear that Libre's "true purpose" for demanding a fee is a representation of "quantities, characteristics, ingredients, uses, or benefits," the contract provided. Va. Code § 59.1-200(A)(5). The statute does not use the word "purpose," and it is not obvious that a party's purpose in entering a contract is material. *Cf. Galloway v. Priority Imports Richmond, LLC*, 426 F. Supp. 3d 236, 244 (E.D. Va. 2019) ("Galloway also has not pointed to any court decision in which the enforceability of an arbitration agreement turned on the intent a party had for including the agreement in the contract").

But assuming that an alleged misrepresentation or concealment of a party's "true purpose" could be construed as misrepresenting its benefits, this contract was not a misrepresentation. The contract does not say that "the only purpose for which we charge the Monthly Program Fees is for the identified services we are yet to provide you and do not have to provide." It says that the "Program" is "the services that Libre provides to You." Ex. C-6 § 1.2. It also states the "Program Fees" are "recurring monthly charges by Libre

that You must pay” (*period*), and that “[v]ariations in Monthly Program Fee reflect the difference in your total bond amount.” *Id.* §2.3. The difference between the “Set-Up Fees” and the “Program Fees,” is that the “Set-Up Fees,” are one-time and have to be paid in advance, and while they purport to be, in part, to “coordinate with the bonding companies,” and “make arrangements for Your release from detention,” §2.2., they do not purport to cover the risk incurred in Libre guaranteeing the bond. There are not two contracts. There is one. And the Monthly Program Fee is, indeed, paid for services Libre provides, as Libre is unwilling (or unable) to provide any service without these fees.

Moreover, even if this were a misrepresentation or omission, there is no evidence that Mr. Portillo Morales relied on it or suffered damages because of it. He did not testify that, when he saw the contract, he was under the impression that he was going to receive the services that the contract said Libre “may (but is not required to)” provide, or that he agreed to pay the Monthly Program Fee because of those services. To the contrary, Ms. Quintanilla-Jimenez had already told him *before* he had Libre assist in his release or saw the contract that he would have to make the \$375 monthly payments and to wear the GPS monitor.

**Va. Code Ann. § 59.1-200(A)(14).** Mr. Portillo Morales’s other VCPA theory fails for similar reasons. Mr. Portillo Morales argues that that Respondents violated Va. Code Ann. § 59.1-200(A)(14), which bars “using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction,” because (1) they did not provide Mr. Portillo Morales the contract in advance of his release; (2) presented the contract as something Mr. Portillo Morales was obligated to accept (because Ms. Quintanilla-Jimenez had already signed it) and; (3) created the impression that he was not free to do what he pleased that reinforced the view that he had no choice but to sign. But none of these events constituted “deception, fraud, false pretense, false promise, or misrepresentation.”

1. Not providing the contract to Mr. Portillo Morales while he was in ICE detention does not meet any of these descriptions. I accept Mr. Portillo Morales’ testimony that Libre did not discuss the contract with him while he was in detention. But Ms. Quintanilla-Jimenez did obtain the contract and told him he would need to make \$375 monthly payments and wear a GPS monitor. He was not deceived. And there is no evidence that Ms. Quintanilla-Jimenez was either.

2. Nor did the fact that Ms. Quintanilla-Jimenez had already signed the contract make it deceptive. Mr. Portillo Morales cites Mr. Ajin’s testimony that he understood (and would expect a Program Participant also to understand) that the “Effective Date” provision of the contract, C-16, §15, made the contract effective when “Co-Signer/Guarantor” signed the contract regardless of whether the Signer also signed. Mr. Portillo Morales urges that this is incorrect because, under Virginia case law, if someone signs a document only as a guarantor and the primary obligor never assumes the obligation “then there is also none on the guarantor.” *McDonald v. Nat’l Enterprises, Inc.*, 262 Va. 184, 189 (2001) (*citing Bourne v. Bd. of Sup’rs of Henrico Cnty.*, 161 Va. 678, 684 (1934)).

I have doubts both about whether Mr. Ajin’s construction of the “Effective Date” provision is correct or obvious to a reader, and whether the case law Mr. Portillo Morales cites fully addresses the relevant relationship among the parties. But assuming Mr. Portillo Morales is correct, a party’s mistaken belief that a reader would understand a contract to operate in a certain way does not make it “deceptive” to send the contract. There is also no evidence that Libre ever discussed with Mr. Portillo Morales how it believed the “Effective Date” provision operated; or that Mr. Portillo Morales read the provision that way (or read this provision at all) before he signed the contract; or that he relied on that understanding.

3. Finally, Mr. Portillo Morales urges that the experience – after being detained under horrible conditions without the financial ability to make bond; and having to make arrangements to leave before the contract was signed; of being released without money and depending on Libre for dinner at McDonald’s and

transportation home, being scolded for going to the bathroom; arriving at 2:00 a.m. and having Libre insist on listening to an audio tape and signing a contract right there before being released to family and threatened with facing lawyers if he did sign – left Mr. Portillo Morales with the impression that had no practical choice but to sign. I fully credit Mr. Portillo Morales’ testimony that he was afraid that eventually he would be sent to immigration and would lose the \$2,590 he had already paid and reject Libre’s assertion that this all “must have seemed like an attractive proposition to” him. Post-Hearing Br. at 2.

But (sadly) this was fact, not deceit. After Mr. Portillo Morales already made arrangements with Libre, paid \$2,590, being released and being driven for hours from Farmville to Tyson’s Corner, Mr. Portillo Morales actually did not have a practical choice at that point, but to sign the contract. There is no evidence that Libre claimed to be the government. (The contract, Ex. C-6 §1.2, says it is not). Nor did it threaten to turn him in to the Government. And it is not false to say that if he did not sign the contract, Libre would expect to contact its lawyers, or deceptive to leave him with the impression that, if he refused to sign, he faced the possibility of “eventually” being returned to detention and losing his \$2,590. He did. Libre’s conduct and approach can be criticized in many ways. But it was the actual circumstances, not deception, fraud or falsity about them, that placed Mr. Portillo Morales in this situation. See *PHC-Martinsville, Inc. v. Dennis*, 2017 WL 4053898 at \*2 & n.5 (Va. Sept. 14, 2017) (as Dennis had not pled or proven duress, his “objectively reasonable belief that he was having a life-threatening major attack,” which left him in no position to bargain with the Hospital or reject the terms of the Contract,” has “no bearing on whether [he] Dennis manifested his assent to the Contract”).


**Common Law Fraud, Constructive Fraud and Battery.** As these circumstances do not make out a violation of the more lenient standards of the VCPA, they also do not meet the stricter standards for common law or constructive fraud. In addition, as Mr. Portillo Morales notes, “consent is generally a defense to a claim of battery,” and he has not proven the consent was fraudulently induced. Also, as Mr. Portillo Morales did not prove his claim against the entity Respondents (Libre by Nexus Inc. and Nexus Services Inc.), he has not proved his claim against the individual Respondents, Michael P. Donovan and Richard E. Moore, whose personal involvement in the events were not the subject of any evidence.

The administrative fees of the American Arbitration Association (AAA) totaling \$2,400 shall be and the compensation of the arbitrator totaling \$2,500 shall be borne as incurred, subject to any rights Mr. Portillo Morales may have as set forth in Section 6.9 of Ex. 6 or any other agreement between the parties.

This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

December 8, 2020

Date

  
Merril Hirsh, Arbitrator

# Exhibit 4

CALIFORNIA DEPARTMENT OF INSURANCE  
LEGAL DIVISION  
Edward Wu, Bar No. 233946  
Angie Chang, Bar No. 296786  
300 S. Spring Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90013  
Tel: (213) 346-6631  
Fax: (213) 897-8261

Attorneys for the  
CALIFORNIA DEPARTMENT OF INSURANCE

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of the Cease and Desist Order  
against:

File Nos.: IE201800349

LIBRE BY NEXUS, INC.,

**ORDER ADOPTING STIPULATION AND  
WAIVER**

Respondent

WHEREAS, Libre by Nexus, Inc. ("Respondent"), is not currently licensed by the  
California Department of Insurance; and

WHEREAS, a Cease and Desist Order dated December 19, 2019 was issued against  
Respondent; and

WHEREAS, Respondent signed and entered a Stipulation and Waiver to the Cease  
and Desist Order previously served upon Respondent, whereby as part of said Stipulation and  
Waiver, Respondent acknowledges that the allegations contained in the Cease and Desist Order  
would be grounds for the Insurance Commissioner to seek monetary penalties against Respondent;  
and

WHEREAS, Respondent waives its right to a hearing and stipulates to entry of  
this Order;

//

1 NOW, THEREFORE, IT IS ORDERED that the terms of the Stipulation and Waiver are  
2 adopted by the Insurance Commissioner and such Stipulation and Waiver shall be binding on  
3 Respondent.

4 IN WITNESS WHEREOF, I have set my hand and affixed my official seal this 9<sup>th</sup> day of July,  
5 2020.

6 This Order shall be effective immediately.

7  
8 RICARDO LARA  
9 Insurance Commissioner

10  
11 By: Michael Tancredi  
12 MICHAEL TANCREDI  
13 Assistant Chief Counsel  
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1 CALIFORNIA DEPARTMENT OF INSURANCE  
 2 LEGAL DIVISION  
 Edward Wu, Attorney  
 SBN 233946  
 3 Angie Chang, Attorney  
 SBN 296786  
 4 300 S Spring Street, South Tower, 12<sup>th</sup> Floor  
 Los Angeles, CA 90013  
 5 Telephone: (213) 346-6631

6 **BEFORE THE INSURANCE COMMISSIONER**  
 7 **OF THE STATE OF CALIFORNIA**

10 In the Matter of the Cease and Desist Order  
 11 against:

12 LIBRE BY NEXUS, INC.,  
 13 Respondent.

File No. IE201800349

Stipulation and Waiver

14 TO THE DEPARTMENT OF INSURANCE OF THE STATE OF CALIFORNIA:

15 Respondent Libre by Nexus, Inc. (herein referred to as "Respondent" or "Libre") and  
 16 Libre's parent company, Nexus Services, Inc. hereby do enter a Stipulation and Waiver to the Cease  
 17 and Desist Order served in the above-entitled matter and does hereby stipulate as follows:

- 18 1. Respondent acknowledges receipt of a copy of the Cease and Desist Order dated  
 19 December 11, 2019;
- 20 2. Without admitting or agreeing that it has engaged in wrongdoing, Respondent  
 21 acknowledges that the allegations contained in said Cease and Desist, would be  
 22 grounds for the Insurance Commissioner to seek monetary penalties against Libre  
 23 in the amounts specified in the Cease and Desist Order;
- 24 3. Although Respondent previously submitted a Request for a Hearing in this matter,  
 25 and such request has been stayed upon the motion of Libre, Libre hereby waives the  
 26 right to a hearing, and all other rights which may be accorded pursuant to Chapter  
 27 5, Part 1, Division 3, Title 2 (Sections 15000-11528, inclusive) of the Government  
 28 Code of the State of California, and by the California Insurance Code and those  
 rights stated in the Cease and Desist Order;

1           4.       In settlement of the allegations contained in said Cease and Desist, but without  
2           admission thereof, and in lieu of the California Department of Insurance (herein  
3           referred to as "Department") seeking the monetary penalties enumerated in the  
4           Cease and Desist Order against Respondent and/or Nexus Services Inc., Respondent  
5           hereby agrees to:

- 6           a.   Cease forwarding, remitting, or handling as an intermediary or otherwise, any  
7           premium moneys being paid by a consumer to a licensed bail bonds agent in  
8           California for the placement of an immigration detention bail bond;
- 9           b.   Cease being present and or involved in the negotiation of contracts for the  
10          placement of immigration detention bail bonds between consumers and licensed  
11          bail bonds agents in California;
- 12          c.   Libre shall not otherwise engage in any actions that constitute procuring or  
13          financing premium moneys on behalf of a consumer;
- 14          d.   If Libre is contacted by a person present in California or a resident of California  
15          seeking to contract the services of Libre, Libre will first refer the person to a  
16          licensed California bail bond agent for the negotiation and transacting of an  
17          immigration detention bail bond and wait until the price and terms of the  
18          immigration detention bail bond have been determined without the involvement  
19          of Libre before contracting with the person for any of Libre's services'.
- 20          e.   When Libre makes referrals to a licensed California bail bond agent, Libre shall  
21          provide lists of all Federally approved and California licensed bail bond agents  
22          in a geographical area and under any circumstance shall provide a list of at least  
23          three or more California licensed bail bond agents;
- 24          f.   Libre has not and shall not accept any monetary commission or fee for referrals  
25          it makes to Federally approved and California licensed bail bond agents;
- 26          g.   Cease advertising in California in any medium, method or channel, unless said  
27          advertising clearly and conspicuously discloses that Libre is not licensed in  
28          California by the Insurance Commissioner in any capacity and that none of  
              Libre's services and or products sold in California is considered insurance or  
              bail bond;

- 1           h. All of Libre's written contracts, materials and advertising shall clearly disclose  
2           that Libre is not licensed in California by the Insurance Commissioner in any  
3           capacity and that Libre's clients are not purchasing insurance or bail bond from  
4           Libre;  
5           i. Libre's contracts with its clients in California shall clearly and conspicuously  
6           state that all moneys paid to Libre are for non-insurance and non-bail bond  
7           services, and that Libre's clients' relationship with Libre is separate and distinct  
8           from the contractual relationship the client may have with the bail bond agent  
9           and surety company.  
10          j. Libre shall ask all clients whether they prefer contracts to be in English or  
11          Spanish and to provide contracts in the language chosen by the client;  
12          k. Libre shall immediately cease requiring any California program participants,  
13          enrolled after the date of this Stipulation, to wear body-affixed GPS monitoring  
14          devices;  
15          l. In recognition of Libre's commitment to launch an application-based system for  
16          coordinating supportive services, Libre shall cease requiring any California  
17          program participants enrolled prior to the date of this Stipulation to wear body-  
18          affixed GPS monitoring devices no later than October 31, 2020;  
19          m. Libre shall issue \$5.5 million in credits on a pro rata basis to all California  
20          program participants who currently are in arrears or owe money to Libre, within  
21          30 days of execution of this Stipulation;  
22          n. For all California program participants who do not have outstanding debt owed  
23          to Libre and have had an I-391 issued, Libre shall issue individual refunds in the  
24          amount of \$420, within 30 days of execution of this Stipulation;  
25          o. Libre agrees to reimburse the Department fifteen-thousand dollars (\$15,000) for  
26          costs, within thirty (30) days from the date it receives an invoice from the  
27          Department's Accounting Division, with said payment being sent to the  
28          following: California Department of Insurance, Division of Accounting, 300  
        Capitol Mall, 13<sup>th</sup> Floor, Sacramento, CA, 95814, which, for the avoidance of

doubt, is solely for the purpose of reimbursement of the Department's costs and in no way represents a monetary penalty or fine;


p. For a period of thirty six (36) months from the date of the Order adopting this Stipulation and Waiver, Libre agrees to submit to reasonable examination of all business records related to California business by the Department including but not limited to California client files, procedure manuals, and documentation related to its business in California including any contracts or documents related to its relationship with bail bond agents and surety companies, at a time, place and via a method and frequency to be determined by the Department, provided 60 days advance notice to Libre. The Insurance Commissioner agrees that such information shall not be used to cause the deportation of Libre's clients or shared with Immigration Customs Enforcement ("ICE") or any other agency that may share such information with ICE. To the extent that ICE or any other agency attempts to obtain such information provided by Libre to the Insurance Commissioner by subpoena or other request, the Insurance Commissioner agrees to provide notice to Libre and the opportunity to object at least 10 days before any response is owed by the Insurance Commissioner.

5. This Stipulation is made without trial or adjudication of any issue of fact or law by a court at law or equity, or finding of liability or fact of any kind, and no party to this agreement shall make contrary representations. This Stipulation is not intended by the parties to constitute evidence against Libre in, or provide any basis for, any action brought by any person or entity for any violation of common law, any federal or state statute or regulation, or constitute evidence in, or provide any basis for, any defenses, claims, or assertions by or on behalf of current or former Libre clients. Neither this Stipulation, nor any negotiations, statements, or documents related thereto shall be offered or received in any legal or administrative process, proceeding, or action, as an admission, evidence, proof of, or to establish any violation of, liability under, wrongdoing in connection with, or applicability of any statute, rule or regulation, except as expressly allowed by state law.

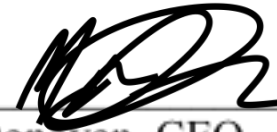
6. Respondent acknowledges that California Insurance Code § 12921(b)(1) requires the Commissioner or a delegate to approve the final settlement of this matter. Both the settlement terms and conditions contained herein and the acceptance of those terms and conditions are contingent upon such approval.
7. Respondent acknowledges that this Stipulation and Waiver is freely and voluntarily executed by Respondent.
8. Neither Libre nor Nexus Services, Inc. concedes liability, fault, violation of federal, state or local law or regulation, or any other wrongdoing on the part of Libre, nor does this Stipulation and Waiver constitute any admission of such.
9. The Parties stipulate and agree that this agreement is entered into and governed by the laws of the state of California as of the date of execution. The Parties do not waive or otherwise forego any rights or remedies that may be available in the future.
10. The Commissioner retains jurisdiction to ensure that Respondent complies with the terms of this Stipulation and Waiver for a period of thirty-six (36) months. Nothing contained in this Stipulation and Waiver shall prevent the Department from taking action at any time to enforce this Stipulation and Waiver if the Department believes that Respondent is not in compliance with its terms and conditions.

Respondent declares the above to be true under penalty of perjury under the laws of the State of California, and executes this document on the \_\_\_\_\_ day of July, 2020.

Libre by Nexus, Inc.

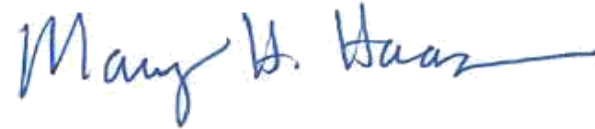
  
\_\_\_\_\_  
Micheal Donovan, CEO

Nexus Services, Inc.



Micheal Donovan, CEO

Legal Counsel for Libre by Nexus and Nexus  
Services, Inc.



Mary H. Haas  
Davis Wright Tremaine LLP

California Department of Insurance

(name and title)

# Exhibit 5

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, NOVEMBER 23, 2020

CLERK'S OFFICE  
COURT CONTROL CENTER  
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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. INS-2018-00069

NEXUS SERVICES INC.,  
LIBRE BY NEXUS INC.,  
MICHAEL PAUL DONOVAN, and  
RICHARD EDWARD MOORE,  
Defendants

SETTLEMENT ORDER

The Bureau of Insurance ("Bureau") for the State Corporation Commission of Virginia ("Commission") conducted an investigation into Nexus Services Inc. ("Nexus"), Libre by Nexus Inc. ("Libre"), Michael Paul Donovan, and Richard Edward Moore (collectively "Defendants") pursuant to § 38.2-1809 of the Code of Virginia ("Code"). Based on its investigation, the Bureau alleges that since approximately 2014, Defendants and their employees, while unlicensed by the Bureau to transact the business of insurance, acted as insurance agents in soliciting, negotiating, and selling through Libre surety insurance in the form of immigration surety bonds. The Bureau alleges that even though Defendants knew they were required to be licensed as insurance agents, they solicited, negotiated, and sold through Libre more than 1,500 immigration surety bonds in the Commonwealth of Virginia ("Virginia"), totaling over \$1.5 million in premiums paid. The Bureau further alleges that the unlicensed Defendants profited from their immigration bond business by retaining a portion of the bond premiums, along with other fees in connection with the sale of the bonds.

Based on this alleged conduct, the Bureau asserts that Defendants violated § 38.2-1822 of the Code by knowingly transacting the business of insurance without a license and acting as unlicensed insurance agents in Virginia. With respect to such violations of the Code, the Commission is authorized by § 38.2-219 of the Code to enter a cease and desist order, by § 38.2-218 of the Code to impose certain monetary penalties, and by § 12.1-15 of the Code to settle matters within its jurisdiction.

Prior to a hearing in this matter, Defendants made Motions To Dismiss and Demurrer ("Demurrer") on October 31, 2019. On December 13, 2019, the Hearing Examiner issued a ruling denying Defendants' Demurrer. On December 16, 2019, Defendants submitted an Objection to Hearing Examiner Ruling on Demurrer. Defendants also filed an Answer To Amended Rule To Show Cause on January 3, 2020 regarding the Bureau's allegations and their defenses thereto. A hearing in this matter was initially scheduled to commence on April 28, 2020, but was subsequently continued until November 9, 2020.

Defendants, while neither admitting nor denying the allegations made herein and without adjudication by the Commission at a hearing, admit to the Commission's jurisdiction and authority pursuant to § 12.1-15 of the Code to enter this Settlement Order. In order to settle all matters arising from these allegations, Defendants have made an offer of settlement to the Commission wherein Defendants will abide by and comply with the following terms and undertakings:

(1) Defendants shall pay the sum of Four Hundred Twenty-Five Thousand Dollars (\$425,000), jointly and severally, to the Treasurer of Virginia pursuant to § 12.1-15 and § 38.2-218(A)-(B) of the Code. Such payment will be made in accordance with the following payment plan:

- (a) The sum of One Hundred Thousand Dollars (\$100,000) will be paid contemporaneously with the entry of this Settlement Order;
- (b) The sum of Twenty-Five Thousand Dollars (\$25,000) will be paid by November 15, 2020; and
- (c) The sum of Twenty-Five Thousand Dollars (\$25,000) will be paid each month thereafter on or before the first business day of such month for a period of twelve (12) months after entry of this Settlement Order, commencing on December 1, 2020.

(2) Defendants shall undertake the following actions to ensure compliance with the Code and Virginia's insurance laws and regulations:

- (a) Defendants and their employees will cease collecting, receiving, forwarding, remitting, or otherwise handling, as an intermediary or otherwise, any premium monies being paid by or on behalf of customers<sup>1</sup> in Virginia for the placement of immigration surety bonds;
- (b) Defendants and their employees will cease collecting, receiving, or otherwise handling, as an intermediary or otherwise, any collateral payments by or on behalf of Virginia customers intended to secure their immigration surety bonds;
- (c) Defendants and their employees will cease being present for and/or involved in the negotiation of contracts with Virginia customers for the placement of immigration surety bonds;
- (d) Defendants and their employees will not otherwise engage in any actions that constitute procuring or financing premium monies on behalf of Virginia customers<sup>2</sup>;
- (e) If Defendants or their employees are contacted by either a Virginia resident or person present in Virginia seeking to contract Defendants' services, Defendants and their employees will first refer such person to a Virginia-licensed bonding agent for the negotiation and transacting of an immigration surety bond and wait until the price and terms of the immigration surety bond

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<sup>1</sup> For purposes of this Settlement Order, the term "customers" shall be defined to include immigrant detainees who are contracting any of Defendants' services (also known as "program participants"), co-signers of program participants' immigration surety bonds, and any other persons transacting with Defendants on behalf of program participants.

<sup>2</sup> Only the restriction related to procurement contained in Paragraph 2(d) of this Settlement Order shall not extend to charitable bonding that may be undertaken by Defendants.

have been determined without the involvement of Defendants before contracting with such person for any of Defendants' services;

- (f) Defendants will not accept any monetary commissions or other fees for referrals made to Virginia-licensed bonding agents or otherwise tied to immigration surety bond transactions;
- (g) Defendants will cease advertising in Virginia in any medium, method, or channel, unless said advertising clearly and conspicuously discloses that Defendants are not licensed in Virginia by the Bureau in any capacity and that Defendants are not legally authorized to sell products or provide services to their customers that constitute the business of insurance or surety bonds;
- (h) Defendants' written contracts, materials, and advertising shall clearly disclose (1) that Defendants are either not licensed in Virginia by the Bureau in any capacity or not licensed in any jurisdiction to conduct the business of insurance or surety bonds and (2) that Defendants are not legally authorized to sell products or provide services to their customers that constitute the business of insurance or surety bonds;
- (i) Defendants' contracts with Virginia customers shall clearly and conspicuously attest that all monies paid to Defendants are solely for products and services that do not constitute the business of insurance or surety bonds and that any relationship between a customer and Defendants is separate and distinct from the contractual relationship that customer has with any licensed bonding agent or surety company;
- (j) Defendants will cease requiring Virginia program participants enrolled after the effective date of this Settlement Order to wear GPS monitoring devices; and
- (k) Defendants will notify the Bureau by letter addressed to the Deputy Commissioner of the Agent Regulation Division, State Corporation Commission of Virginia, 1300 East Main Street, Richmond, Virginia 23219, if Defendants or any business entities or individuals affiliated with Defendants apply with the Bureau for a license to transact the business of insurance.

(3) In addition to any continuing obligation to furnish records and other information requested by the Bureau pursuant to § 38.2-1809 of the Code, Nexus, Libre, and any business entities owned, controlled, or managed by Defendants that engage in the same business as Libre shall, for a period of thirty (30) months from the entry of this Settlement Order, submit to reasonable examination by the Bureau of all business records related to the Virginia business of

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Nexus, Libre, and any business entities owned, controlled, or managed by Defendants that engage in the same business as Libre – including but not limited to Virginia customer files, financial records, and documentation related to the Virginia business of Nexus, Libre, and any business entities owned, controlled, or managed by Defendants that engage in the same business as Libre, such as contracts or documents relating to their relationship with bonding agents or surety companies – at a time and place and via a method and frequency to be determined by the Bureau, provided thirty (30) days advance notice to Defendants.

(4) In addition to any continuing obligation to furnish records and other information requested by the Bureau pursuant to § 38.2-1809 of the Code, Nexus, Libre, and any business entities owned, controlled, or managed by Defendants that engage in the same business as Libre shall, for a period of thirty (30) months from the entry of this Settlement Order, respond to inquiries from the Bureau related to the Virginia business of Nexus, Libre, and any business entities owned, controlled, or managed by Defendants that engage in the same business as Libre within a reasonable time frame to be determined by the Bureau, provided thirty (30) days advance notice to Defendants.

(5) If Defendants are found to have violated any term or provision of this Settlement Order, as set forth in Paragraphs (1) through (4) above, Defendants agree that such violation, if proven to the Commission after notice and an opportunity to be heard, would constitute failure to obey an order of the Commission, subjecting Defendants to a judgment on breach of this Settlement Order in the amount of any remaining payments due under this Settlement Order, in addition to any other available remedies.

The Bureau has recommended that the Commission accept the offer of settlement of Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of Defendants, and the recommendation of the Bureau, is of the opinion that Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of Defendants in settlement of the matter set forth herein is hereby accepted.

(2) Defendants shall fully comply with the aforesaid terms and undertakings of this settlement.

(3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate on account of Defendants' failure to comply with the terms and undertakings of this settlement. Upon notification by the Bureau that the terms and undertakings of this settlement have been completed, the Commission will consider a final order dismissing this case.

A COPY hereof shall be sent electronically by the Clerk of the Commission to:

Sean O'Connell, Esquire and Timothy E. Biller, Esquire, Counsel for Defendants, Hunton Andrews Kurth, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, [soconnell@huntonak.com](mailto:soconnell@huntonak.com), and [tbiller@huntonak.com](mailto:tbiller@huntonak.com); and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Michael Beavers.

201140044

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. INS-2018-00069

NEXUS SERVICES INC.,  
LIBRE BY NEXUS INC.,  
MICHAEL PAUL DONOVAN, and  
RICHARD EDWARD MOORE,  
Defendants

ADMISSION AND CONSENT TO SETTLEMENT

Nexus Services Inc., Libre by Nexus Inc., Michael Paul Donovan, and Richard Edward Moore (collectively, "Defendants") admit to the jurisdiction of the State Corporation Commission ("Commission") pursuant to § 12.1-15 of the Code as to the parties and subject matter hereof and, while neither admitting nor denying the allegations made herein by the Bureau of Insurance, hereby consent to the form, substance, and entry of the foregoing Settlement Order.

Defendants further state that no offer, tender, threat, or promise of any kind whatsoever has been made by the Commission or any member, subordinate, employee, agent, or representative thereof in consideration of the foregoing Settlement Order.

Date: 11/6/20

Nexus Services Inc.  
By: [Signature]

Its: Vice President

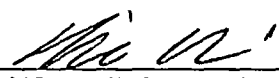
Date: 11/6/20

Libre by Nexus Inc.  
By: [Signature]

Its: Vice President

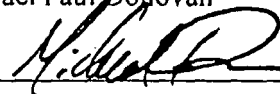
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Seen and Approved By:

  
Sean O'Connell, Esquire / Timothy E. Biller, Esquire


Date: 11/6/20

Michael Paul Donovan



Richard Edward Moore

Date: 11/6/20



Seen and Approved By:

  
Sean O'Connell, Esquire / Timothy E. Biller, Esquire

# Exhibit 6

**Case Assigned to:  
Honorable  
Clark A. Ritchie**

**VIRGINIA:  
IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY**

MARVIN EUSEBIO GARCIA-DIAZ,  
MARVIN GARCIA-SALVADOR,  
JULIO MEJIA AYALA,  
EDWIN ALVARENGA,  
JUAN FRANCISCO NARVAEZ-MOLINA,  
CARLOS MORALES PORTILLO,

Plaintiffs,

v.

LIBRE BY NEXUS INC.,  
NEXUS SERVICES INC.,  
MICHEAL P. DONOVAN, President and C.E.O. of  
Nexus Services Inc. and Libre by Nexus Inc.  
RICHARD E. MOORE, Executive Vice President of  
Nexus Services Inc. and Libre by Nexus Inc.

Defendants

JURY TRIAL DEMANDED

Case No. **CU9-4356**

FILED IN THE CLERK'S OFFICE  
ROCKINGHAM COUNTY, VA

**AUG 08 2019**  
*Heather Pearson*  
CLERK

**COMPLAINT**

**INTRODUCTION**

1. Plaintiffs bring this lawsuit to recover damages suffered as victims of a fraudulent immigration bond scheme devised by Defendants Libre by Nexus Inc. ("Libre by Nexus"), Nexus Services Inc. ("Nexus Services"), the companies' co-founder and chief operating officer, Defendant Micheal Donovan, and co-founder and Executive Vice President Richard Moore (collectively, "Libre"). Libre's business preys on immigrants in federal detention centers who are too impoverished to pay the money bond required for their release.

2. Libre attracts customers by promising to get them out of immigration detention without the need to pay the full amount of their money bond. However, in addition to a large upfront payment, Libre customers are fraudulently induced to sign documents that require them to pay exorbitant monthly fees and wear an electronic GPS ankle monitor that puts them in fear of perpetual surveillance. Libre then uses threats—based on misrepresentations about its affiliation with federal immigration authorities—to elicit payments from its customers.
3. Although Libre tells state and federal regulators that it provides “immigration bond securitization” and GPS monitoring services, in reality, Libre operates as a middleman connecting surety insurance and bail bond companies with customers in need of immigration bonds. According to Libre, state and federal regulations that govern that industry, including licensing requirements, do not apply to it.<sup>1</sup>
4. Indeed, the Virginia Attorney General, the Virginia State Corporation Commission’s Bureau of Insurance, and the federal Consumer Financial Protection Bureau are currently investigating Libre’s business practices.<sup>2</sup>
5. Libre attempts to camouflage its practices by casting itself as a champion of immigrants and a re-uniter of families, when in reality its scheme traps desperate immigrants into paying thousands of dollars, often in amounts far exceeding their bond, sometimes

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<sup>1</sup> See Petition to Set Aside or Modify Civil Investigative Demand at 3, *Nexus Services, Inc. and Libre by Nexus, Inc.*, 2017-MISC-Nexus Services, Inc. and Libre by Nexus, Inc.-0001 (September 8, 2017) (“Libre CFPB Petition”).

<sup>2</sup> See *Commonwealth of Virginia et al. v. Nexus Services, Inc. et al.*, Civil Action No. CL18002037-00 (Va. Cir. Ct. April 18, 2018); *Consumer Financial Protection Bureau v. Nexus Services, Inc. and Libre by Nexus Inc.*, Case No. 17-cv-02238 (D.D.C. Oct. 30, 2017).

sacrificing their basic necessities to do so.<sup>3</sup> In all, Libre's scheme has siphoned more than \$100 million from some of the most vulnerable immigrants and their communities since 2016.<sup>4</sup>

6. Plaintiffs are individuals who were fraudulently induced and coerced into signing agreements with Libre and have paid Libre thousands of dollars, some under direct threats by Libre agents that they will be re-arrested by immigration authorities and sent back to immigration detention. They bring claims to recover damages from Libre under the Virginia Consumer Protection Act and Virginia common law.

### **PARTIES**

7. Plaintiff Marvin Eusebio Garcia-Diaz is a native of El Salvador and resident of Alexandria, Virginia.
8. Plaintiff Marvin Balmorys Garcia Salvador is a native of El Salvador and a resident of Alexandria, Virginia.
9. Plaintiff Julio Mejia Ayala is a native of El Salvador and a resident of Herndon, Virginia.
10. Plaintiff Edwin Alvarenga is a native of Honduras and a resident of Herndon, Virginia.
11. Plaintiff Juan Francisco Narvaez-Molina is a native of Nicaragua and a resident of Manassas, Virginia.

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<sup>3</sup> See Libre by Nexus website, <https://www.librebynexus.com/> (last accessed Dec. 6, 2017) (linking to "Statement from Nexus Services CEO Mike Donovan Regarding DAPA/DACA Supreme Court Arguments" and including statements including "WE REUNITE FAMILIES").

<sup>4</sup> See *RLI Insurance Co. v. Nexus Services, Inc.*, Case No. 5:18-cv-00066 (*W.D. Va.* Nov. 28, 2018), Dkt. 138-5, 138-6, 138-13 (Nexus Services Profit and Loss Statements for 2016, 2017, and January – October 2018 showing line items for "combined client income" and "client deposit" in amounts totaling \$98,970,265).

12. Plaintiff Carlos Morales Portillo is a native of El Salvador and resident of Woodbridge, Virginia.
13. Until March 1, 2019, Defendant Libre by Nexus, Inc. was a Virginia corporation headquartered at 113 Mill Place Parkway, Verona, Virginia 24482.
14. Until March 1, 2019, Defendant Nexus Services, Inc. was a Virginia corporation headquartered at 113 Mill Place Parkway, Verona, Virginia 24482.
15. As of March 1, 2019, both Defendant Libre by Nexus, Inc. and Defendant Nexus Services, Inc. have moved their headquarters to Atlanta, Georgia, and are registered with the Virginia State Corporation Commission (“SCC”) as foreign corporations.<sup>5</sup> They continue to conduct regular business in the Commonwealth of Virginia and maintain their principle place of business at 113 Mill Place Parkway, Verona, Virginia 24482.
16. Defendant Micheal Donovan is a resident of Virginia and co-founder and President and Chief Executive Officer of Libre by Nexus, Inc. and Nexus Services, Inc.
17. Defendant Richard Moore is a resident of Virginia and co-founder and Executive Vice President of Libre by Nexus Inc. and Nexus Services Inc.

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<sup>5</sup> See *Libre by Nexus, Inc.*, Commonwealth of Virginia, State Corporation Commission, <https://sccefile.scc.virginia.gov/Business/0778842> (showing “Surrendered” status as a Virginia corporation); *Libre by Nexus, Inc.*, Commonwealth of Virginia, State Corporation Commission, <https://sccefile.scc.virginia.gov/Business/F211713> (showing registration as “Foreign Corporation”); *Nexus Services, Inc.*, Commonwealth of Virginia, State Corporation Commission, <https://sccefile.scc.virginia.gov/Business/0772800> (showing “Surrendered” status as a Virginia corporation); *Nexus Services, Inc.*, Commonwealth of Virginia, State Corporation Commission, <https://sccefile.scc.virginia.gov/Business/F211714> (showing registration as “Foreign Corporation”).

### **JURISDICTION AND VENUE**

18. The Court has personal jurisdiction over Defendants pursuant to § 8.01-328.1 of the Code of Virginia because Plaintiffs' claims arise out of the Defendants' transaction of business in Virginia.
19. Subject-matter jurisdiction is appropriate under § 17.1-513 of the Code of Virginia.
20. Venue is proper under §§ 8.01-257 and 8.01-262 of the Code of Virginia
21. The Defendants' written agreement which the company used until approximately 2017, contains a forum-selection clause that gives a party bringing suit the choice of judicial or arbitral forum. Plaintiffs elect to litigate in this Court.<sup>6</sup>

### **FACTUAL ALLEGATIONS**

#### **Background on Money Bail in the Immigration-Detention Context**

22. The fertile setting for Libre by Nexus's scheme is the U.S. immigration detention system.
23. Non-citizens in removal proceedings may be held in federal custody in a system of detention centers.
24. The U.S. Immigration and Customs Enforcement ("ICE") may allow the person's release during removal proceedings. *See* 8 C.F.R. 236.1(c). ICE may require an immigrant to post an immigration bond as a condition of his or her release from custody. *See* 8 U.S.C. § 1226(a)(2)(A); 8 C.F.R. § 236.1(c)(10).

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<sup>6</sup> Section 8 of the agreement's sub-section, GPS Monitoring Disclosure Statements, states: "Any claim or dispute, whether in contract, tort, statute or otherwise . . . between [Plaintiffs] and Nexus Programs . . . shall, at the election of [Plaintiffs] or Nexus, be resolved by neutral, binding arbitration and not by a court action....[Plaintiffs] and Nexus retain the right to seek remedies in court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed, or appealed to a different court."

25. Immigration bonds may be secured by a cash deposit (“cash bonds”) or may be guaranteed by a surety company certified by the U.S. Treasury Department pursuant to 31 U.S.C. §§ 9304-9308 to issue bonds on behalf of the federal government (“surety bonds”). 8 C.F.R. § 103.6(b). Companies who wish to directly write federal bonds must apply to the Treasury’s Bureau of Fiscal Service, which reviews companies’ applications to ensure that only financially sound companies licensed by a state or federal government receive Treasury certification. The Fiscal Service publishes a list of certified companies (called “Department Circular 570”) on its website.<sup>7</sup>
26. As of the date of this filing, neither Nexus Services Inc. nor Libre by Nexus, Inc. appears on the Treasury Department Circular 570.
27. When posting an immigration bond, surety companies and their agents serve as co-obligors on the bond and are jointly and severally liable for payment in the face amount of the bond if the bond is breached.
28. Because federal regulations do not require ICE or an immigration judge to consider a person’s ability to pay a money bond, individuals in detention are frequently unable to obtain their release due to their high money bonds. In the Arlington Immigration Court, where immigration cases of Virginia residents are heard, the median bond amount is \$7,500. Moreover, bond amounts have increased dramatically in the last several years; the national median bond amount rose 50 percent from 2013 to 2018.<sup>8</sup>

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<sup>7</sup> See Department Circular 570, <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm> (last accessed Oct. 16, 2018).

<sup>8</sup> TRAC Immigration, *Three-fold Difference in Immigration Bond Amounts by Court Location* (July 2, 2018), <https://trac.syr.edu/immigration/reports/519/>.

29. The result is that thousands of individuals are held in federal immigration detention each day simply because they cannot afford to pay their money bond amount.

30. Libre's scheme targets and exploits these individuals.

### **Background on the Defendants**

31. Nexus Services Inc. is a private for-profit company formed and registered with the Virginia SCC in December 2013.

32. Libre by Nexus Inc. is a private for-profit company and wholly-owned subsidiary of Nexus Services Inc. formed and registered with the Virginia SCC in June 2014. As of 2019, Libre has grown tremendously and now operates nearly 30 offices in eight states nationwide and one office in El Salvador.<sup>9</sup>

33. Nexus Services and Libre by Nexus were Virginia corporations until March 1, 2019, when the companies relinquished their Virginia incorporation and incorporated in Georgia. Both companies are now registered as foreign corporations with Virginia's SCC. Both companies maintain a principal place of business in their Verona, Virginia office and continue to do regular business in Virginia.

34. Upon information and belief, Nexus Services and Libre by Nexus are "alter egos" of each other. Evidence produced in another lawsuit against Nexus Services and Libre by Nexus—including the affidavit of those companies' former accountant—shows that the companies comingle corporate funds, and funds generated by Libre by Nexus are regularly used to pay off Nexus Services' expenses without observing proper

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<sup>9</sup> Miller, Michael, *This company is making millions from America's broken immigration system*, The Washington Post (March 9, 2019), [https://www.washingtonpost.com/local/this-company-is-making-millions-from-americas-broken-immigration-system/2017/03/08/43abce9e-f881-11e6-be05-1a3817ac21a5\\_story.html?utm\\_term=.0baa1d6f06db](https://www.washingtonpost.com/local/this-company-is-making-millions-from-americas-broken-immigration-system/2017/03/08/43abce9e-f881-11e6-be05-1a3817ac21a5_story.html?utm_term=.0baa1d6f06db).

accounting practices for these transfers.<sup>10</sup> Nexus Services and Libre by Nexus share common officers, directors, and/or managing agents, including Defendants Donovan and Moore.

35. Defendants Donovan and Moore are co-founders of Nexus Services, Libre by Nexus, and several related corporate entities.
36. Defendant Donovan owns 51 percent of Nexus Services and is President and Chief Executive Officer for Nexus Services and Libre by Nexus. He also serves as the primary public spokesperson for the companies.
37. Defendant Moore owns 39 percent of Nexus Services, serves as Executive Vice President, and controls much of the internal operations of the companies.
38. Evan Ajin owns 10 percent of Nexus Services and serves as Vice President of Operations.
39. Upon information and belief, both Donovan and Moore have been convicted of fraud-related felonies (e.g. forgery, obtaining money by false pretense, attempted larceny, grand larceny) and both have been incarcerated. As individuals with felony convictions, Donovan and Moore are not eligible to be licensed as a bail bondsmen or to serve as agents of a bail bondsman. 6 V.A.C. 20-250-30(C)(1).
40. Upon information and belief, Defendants Moore and Donovan regularly disregard the corporate structure of both Nexus Services and Libre by Nexus for their own advantage, including taking interest-free loans from the corporations and paying personal expenses

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<sup>10</sup> See *RLI Insurance Co. v. Nexus Services, Inc.*, Case No. 5:18-cv-00066 (W.D. Va.) (the “RLI Lawsuit”).

with corporate funds, and as a result it would create an injustice to treat the corporations and the individuals as separate entities.

41. Upon information and belief, both Nexus Services and Libre by Nexus, together or separately, lack sufficient assets to provide a complete remedy for the Plaintiffs.
42. Due to the virtual inseparability of Nexus Services, Libre by Nexus, Micheal Donovan, and Richard Moore, Plaintiffs refer to all four Defendants collectively as “Libre” or “Defendants” throughout this Complaint.

### **Libre’s Agreements with Licensed Surety Companies**

43. Libre’s immigration bond scheme was devised in approximately 2012 by Defendants Donovan and Moore, inspired by their own personal experiences spending time in jail.<sup>11</sup>
44. Around that time, Libre began making agreements with licensed surety companies. The licensed surety companies, through their bonding agents, would guarantee bonds with the federal government for detained immigrants at the request of and indemnified by Libre.
45. In exchange, Libre would collect a premium on the bonds from the detained immigrant, transfer a portion of it to the licensed surety company and their agents at the bail bond company, and indemnify the surety company for any bonds forfeited (if the immigrant failed to show up at the hearing). Upon information and belief, at least a portion, if not all, of these insurance premiums was collected in violation of Virginia law governing insurance. (*See infra* ¶ 57).

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<sup>11</sup> Moyer, Justin, *He wanted to fix a broken bail system. Then Hitler emoji came his way*, The Washington Post (Aug. 1, 2016), [https://www.washingtonpost.com/local/he-wanted-to-x-a-broken-bail-system-then-hitler-emoji-came-his-way/2016/08/01/971c0f50-2800-11e6-b989-4e5479715b54\\_story.html?noredirect=on&utm\\_term=.b345e5de9ba8](https://www.washingtonpost.com/local/he-wanted-to-x-a-broken-bail-system-then-hitler-emoji-came-his-way/2016/08/01/971c0f50-2800-11e6-b989-4e5479715b54_story.html?noredirect=on&utm_term=.b345e5de9ba8).

46. The Virginia State Corporation Commission’s Bureau of Insurance is currently participating in a coordinated multistate investigation of Defendants for Libre’s unlicensed collection of insurance premiums.

**Libre Deceives Customers About the Service It Provides to Induce Them to Sign Contracts Requiring Them to Pay Exorbitant Fees**

47. Libre primarily targets Spanish-speaking customers. Beyond the fact that most immigrants in detention are Spanish-speaking, “Libre” means “free” in Spanish. Libre also runs Spanish-language advertisements in the waiting rooms of detention centers around the country.
48. Libre paints itself as a champion of immigrant rights and in the business of reuniting families.<sup>12</sup> In reality, Libre is an unlicensed middleman, embracing immigrants only to feed off of them like a parasite. As discussed above, because Libre’s founders are unable to be licensed as bondsmen themselves, the company has contracted with licensed federally-certified surety companies who, through their bail bond agents, guarantee to pay the government the bond should the immigrant fail to appear at his or her future immigration hearings. Critically, *no one*—not Libre, not the surety company, not bail bond agents—pays any money to the government to secure a detained immigrant’s release (unless or until the person’s bond is forfeited by the government).
49. Libre acts as an intermediary connecting detained immigrants to sureties and their bonding agents and intentionally obscures its role in the immigration bond process in order to induce immigrants to contract with it for its “services,” which are wholly unnecessary and have no relation to the person’s immigration case.

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<sup>12</sup> Libre by Nexus website, *supra* note 3.

50. Indeed, Defendant Donovan appears on each immigration bond form as “the person who executed a written instrument with the surety company requesting it to post bond.” *See, e.g.*, Exhibit 6 at 1.
51. Libre takes the position that federal and state laws regulating the surety insurance and bail bond industries do not apply to it, because Libre is not the company that makes the guarantees with the federal government. Because it considers itself outside the scope of such regulations, Libre charges its customers more than any licensed surety company and its bail bond agents would be allowed to charge under those statutes and requires its customers to wear and be surveilled by GPS monitoring devices, which licensed and regulated sureties in Virginia could not do.<sup>13</sup>
52. Libre leverages its unregulated business model to defraud, mislead, coerce, and profit tremendously from its consumers: detained immigrants too poor to pay their bonds, often newly-arrived asylum seekers like many of the Plaintiffs and their families. According to Libre’s financial records introduced in the RLI Lawsuit, the company collected approximately \$99 million between January 2016 and October 2018 in “client deposits” and “combined client income.”
53. In a typical consumer experience, either an immigrant in detention or their friend or family member contacts Libre, and a Libre employee explains the terms over the phone. Libre often faxes a written agreement to the friend or family member and requires them to make the up-front payment by making a cash deposit in a Libre bank account.
54. Once the friend or family member has made the up-front payment, Libre arranges to have the bond guaranteed by the surety and bail bond companies. Libre then picks up

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<sup>13</sup> Va. Code Ann. § 9.1-185.8(I).

the detained immigrant at the detention center, takes them to a fast food restaurant, and then to a Libre office.

55. At this point, customers are effectively in Libre's custody. Having just been released from immigration detention, in many cases having never been in the United States outside of the custody of immigration authorities, and far from any friends or family members, they are dependent upon Libre for food, transportation, and communication with the outside world. Many Libre customers do not speak English and are without the ability to contact a friend or family member, so they would otherwise be stranded in a country where they do not speak the local language.
56. In this environment, Libre presents immigrants with a contract—either the “Original Contract” used between 2013 and 2017 which was almost entirely in English or the “Revised Contract” used 2017 to the present (both described in detail below). Libre employees mislead customers or willfully take advantage of customers' mistaken understanding that, because bond has been posted and they have been released, the deal is already final and their signature is only a formality.
57. The Libre contract requires the person to make hundreds of dollars in monthly payments for years. The total amount required under the contract is almost always greater than the immigrant's bond amount, and far exceeds the 10-15 percent of the bond amount that a licensed bail bond company could charge under Virginia law.<sup>14</sup>
58. Libre further deceives and misleads customers by disguising the payments required by the agreement variably as a “lease” for the GPS monitor (under the Original Contract),

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<sup>14</sup> Va. Code Ann. § 9.1-185.8(I).

as “program fees” (under a Revised Contract), or by verbally describing them as a loan, or as “collateralization” or “securitization” of the immigration bond.

59. In order to further profit at its customers’ expense, Libre misleads customers into believing that a failure to comply with the contract terms and pay Libre will have consequences for their immigration cases, including re-arrest and detention. In fact, unlike licensed bail bond agents in Virginia, Libre has *no authority* under state or federal law to compel the immigrant to appear at their court hearing or deliver the immigrant back to immigration custody.

### **The Original Contract**

60. Libre has used at least two different written contracts since it began operating, each with similar but distinct terms, requirements, and descriptions of Libre’s service.
61. The contract Libre used from its founding until sometime in 2017 (hereinafter “Original Contract”) contains several deceptive and misleading components, *see, e.g.*, Exhibits 1, 2. Plaintiffs Marvin Eusebio Garcia-Diaz, Marvin Garcia-Salvador, and Julio Mejia Ayala are all parties to Original Contracts.
62. First, a consumer is required to pay up-front payments in the amount of 20% of her bond, a \$420 “advance payment,” and a \$460 “activation fee.”
63. These up-front payments are disguised bail bond premiums which Libre collects on behalf of itself and the third-party surety companies and their bail bond agents. Libre does this despite the fact that it is not licensed to solicit or collect bail bond premiums in Virginia.
64. Second, the Original Contract requires a consumer to wear and “lease” a GPS monitor, and submit to electronic surveillance. A customer is required to pay “lease” and

“monitoring service” fees in the amount of \$420 per month until the immigrant’s immigration case is complete or she pays Libre “collateral” (i.e., cash) in the full amount of the bond to “replace collateral pledged by Libre.”<sup>15</sup>

65. For the vast majority of Libre customers, this undefined term of the contract will be measured in years, not months.<sup>16</sup> As a result, many, if not most, Libre customers would eventually pay Libre fees in amounts much greater than their bond amount. And unlike in the typical surety bond context, they will not get the money back after they attend every court hearing.
66. The “Lease Agreement” section of the contract is misleadingly presented as a tripartite agreement between Libre, the customer, and an unspecified governmental “Agency.”

The first sentence of the document propounds:

“THIS LEASE AGREEMENT (hereinafter “Lease,” “Agreement” or “Lease Agreement”), dated \_\_\_\_ by and between Libre by Nexus Inc. (hereinafter referred to as “Lessor”), and \_\_\_\_\_ (hereinafter referred to as “Lessee”), and \_\_\_\_\_ Agency has an interest in electronically monitoring individuals who are either required to be or have agreed to be tracked by electronic monitoring equipment.”

67. In reality, no “Agency” or government body is ever a party to the contract.

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<sup>15</sup> See Exhibit 1 at 10 (“Payment Schedule: GPS Lease”).

<sup>16</sup> According to the Transactional Records Access Clearinghouse (“TRAC”), a data-gathering and data-research center organization at Syracuse University, the average number of days to process an immigration case has risen dramatically in recent years. In 2018, for example, the average case took 578 days. For immigrants who win their cases, however, it took an average of 1,066 days. This acute backlog in immigration cases is only getting worse. In the Arlington Immigration Court in Arlington, Virginia, the average wait time for a court date is 1,400 days (or almost four years).

68. Despite the fact that no government agency is party to the contract, the Lease Agreement nevertheless contains various lines for “Agency” signatures to reinforce the illusion that the government is party to the contract.
69. Indeed, the longest section of the Lease Agreement contains so-called “Agency Provisions” regarding use of electronic monitoring software, and another lengthy section refers to “General Provisions Applicable to Both Lessee and Agency.”
70. The clear implication of these various provisions is that the “Agency” is a governmental agency that has an interest in the customer’s compliance with the lease of the GPS monitor. The purpose of Libre’s misrepresentation that a government “Agency” is party to the contract is to instill in its customers the false impression that their compliance with the terms of the contract may lead to re-arrest, re-detention, or affect the ultimate disposition of their immigration case. By deliberately creating this false impression, Libre increases the likelihood that its customers will continue to pay the monthly fees described in the fraudulent contract and thereby fill its coffers.
71. Libre further misleads customers by conducting what it passes off as a “risk assessment.” Libre pretends to assess—on an individual basis—whether a specific customer presents a sufficient flight risk so as to require the customer to agree to lease and wear a GPS monitor (for \$420 per month) as a condition precedent to Libre posting a bond on that customer’s behalf. In reality, Libre crafted the so-called “risk assessment” so that it always produces the same result: the customer is always required to lease and wear a GPS monitor in order to secure the bond.
72. The sham “risk assessment” worked as follows. Libre used a “Risk Assessment Instrument” that purported to calculate the risk of danger or flight an individual poses

using a variety of demographic factors. It purported to assess this risk by assigning different “point” values to different, ostensibly objective, factors. Any customer whose circumstances implicated so many factors such that the combined point value was equal to or greater than 21 points was deemed to present a flight risk and was therefore required to lease and wear a GPS monitor for \$420 per month in order to secure their bond. In theory, a hypothetical customer who scored less than 21 points would not have to rent a GPS monitor. But no customer ever scored less than 21 points. Libre ensured that every one of its customers exceeded the 21 point threshold by including one sham factor in its “Risk Assessment Instrument” that was worth 22 points. Libre’s representatives always marked ‘yes’ next to this one factor regardless of that customer’s individual circumstances. In this way, every customer became a flight risk and was required to lease and wear a GPS monitor.

73. This sham factor purported to assess whether the individual faced what it referred to as a “presumption charge,” but “presumption charge” is defined neither in the contract nor in any immigration laws or regulations. For Libre’s purposes, “presumption charge” was a catch-all term that Libre created to ensure that all of its customers would score over 21 points (and therefore would be required to lease the GPS) while at the same time creating the false impression in its customer’s mind that his obligation to lease the GPS as a condition of release was the product of his own specific individual circumstances rather than something that Libre had predetermined it would require.
74. The Risk Assessment Instrument provides no mitigating factors by which the triggering of the GPS requirement can be undone. In other words, the “presumption charge” factor is dispositive and nearly all immigrants seeking release from detention through Libre,

including all plaintiffs in this suit who signed the Original Contract, were required to wear the monitor, and thus pay the “lease fees.”

75. Libre’s scheme depends on the illusion that this monitoring is essential to securing release from detention, and that it is the unique feature of Libre services that allows detainees to post bond without having to provide collateral.

76. The Original Contract contains a page titled “Conditions of Monitoring,” which warns the customer that “failure to meet program conditions may result in program participation revocation, and that my bond may be revoked and I may be remanded to the custody of the jurisdiction wherein I face charges in the above referenced case.”<sup>17</sup>

This statement is false. Libre has no relationship whatsoever with the federal government and has no authority to revoke bonds or remand any person into custody. Failure to pay Libre or adhere in any way to the contractual terms or “program conditions” has no bearing on the person’s immigration case, their immigration bond, or their ability to remain free from detention.

77. Similarly, Libre’s contract documents contain almost no mention of the consequences of the customer for defaulting on their payments, but the clear implication is that Libre will cause them to be re-detained if they do not pay. For example, one contract document called “Contract for Immigration Bond Securitization and Indemnity Agreement” states:

[The customer’s] failure to appear in court as herein required or to notify Securitizer of change of address or place of employment or issuance of a warrant for [the customer’s] arrest on criminal charges by any Court subsequent to the date of this agreement *shall be considered a breach of this agreement and the*

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<sup>17</sup> See Exhibit 1 at 5 (“Libre by Nexus Respondent Contract: Conditions of Monitoring”).

*conditions of the bond, entitling Securitizer or Surety to surrender the Defendant to the custody of the Court without return of payment of premium or any part thereof.* (emphasis added).

78. This statement is deliberately false. Libre does not have the power to arrest or surrender its customers to any court or government agency. Libre knows it does not have this power, but it profits from causing its customers to believe that it does.
79. The Original Contract is approximately 22 pages, 20 of which are in English. The English-language documents contain the vast majority of the contract terms, including the payment requirements, the term of the contract, a purported grant of consent by the immigrant to be tracked by a GPS monitoring device, a purported promissory note that takes effect if the immigrant's bond is ever forfeited, and a forum-selection clause.
80. The one or two pages that are translated into Spanish are deceptive and misleading in their own right. The pages have been poorly translated from English to Spanish, and the resulting language is confusing and misleading. In addition, the Spanish-language pages fail to convey all the essential terms of the agreement, including the amount of the required monthly "lease" payment.

#### **The Revised Contract**

81. Libre changed the terms of the transaction and rolled out a Revised Contract sometime in 2017, *see, e.g.*, Exhibits 3, 4, 5. Plaintiffs Edwin Alvarenga, Juan Francisco Narvaez-Molina, and Carlos Morales Portillo are all parties to Revised Contracts.
82. The Revised Contract describes several mandatory fees and charges that customers are required to pay: Set-Up Fees, Monthly Program Fees, Maintenance Fees, Equipment

Damage Fees, and Program Non-Compliance Fees. In addition, the Revised Contract provides for optional Bond Collateralization Payments.

83. “Set Up Fees” are up-front payments charged by Libre “to gather information about You and Your Co-Signer, coordinate with the bonding company, make arrangements for Your release from detention, and coordinate and set up travel arrangement to move you from the detention facility.” Set-Up Fees also include a “one-time fee, fees paid to third parties, travel fees, and other fees that may apply on a case by case basis.” The Revised Contract does not specify the amount of Set Up Fees but does advise that Libre “will retain \$990 of your Set-Up Fee to cover its administrative costs, including but not limited to its risk assessment.” Set Up Fees constitute, or at least include, surety insurance premiums that Libre is not licensed to collect.
84. In addition, the payment structure is changed and monthly payments are no longer disguised as a “lease,” but as “Program Fees.”
85. “Program Fees” are “recurring monthly charges by Libre that You must pay.” Program Fees are not credited to the amount of the bond and not reimbursed even if the customer appears at all her immigration court hearings. Program Fees are graduated in the amount of the bond according to the following schedule:

<b>Amount of Bond</b>	<b>Minimum Program Fee Payment</b>	<b>Max No. of Payments</b>	<b>Total</b>
Up to \$4,999	\$250	22	\$5,500
\$5,000 - \$7,499	\$350	22	\$7,500
\$7,500 – \$9,999	\$375	24	\$9,000
\$10,000 - \$14,999	\$450	34	\$15,300
\$15,000 – \$19,999	\$450	40	\$18,000
\$20,000 and Up	\$475	60	\$28,500

86. Under the Revised Contract, the required payments are divorced from the requirement to wear a GPS monitor: individuals with bond amounts of \$5,000 or greater are required to wear GPS monitors and undergo electronic surveillance; those with bond amounts of \$4,999 or less, however, are no longer required to wear the GPS monitor. Additionally, individuals who are required to wear the GPS monitor may eventually have them removed once they pay 80% of their Program Fee installment payments.
87. The Revised Contract imposes other conditional fees. For example, if a customer fails to keep the GPS monitor charged, Libre will charge a Program Non-Compliance Fee equal to the travel and lodging costs for the Libre representative to locate the individual, up to \$1,500. If a customer damages the GPS monitor, Libre may charge a \$2,500 Equipment Damage Fee. Additionally, a consumer is required to pay Maintenance Fees to Libre in the amount of \$50 per month until the person's bond is cancelled by the federal government (at the end of her immigration case). Libre requires these fees even after the person pays all the installment Program Fees or pays Libre the full amount of the bond.

### **Libre's Unnecessary, Deceptive, and Intimidating GPS Monitoring Requirement**

88. Libre's use of GPS monitoring is an unnecessary and meaningless requirement that serves only to mislead and intimidate its customers into paying the company and causes them physical pain, discomfort, and emotional distress.
89. While under GPS monitoring, customers must cope with the embarrassment and indignity of wearing a physical reminder of Libre's crippling financial toll and live under the Orwellian specter of round-the-clock surveillance of their whereabouts, often for years at a time. Customers are required to charge the ankle monitors for hours each day, during which time they are shackled to an electrical outlet. The monitors often overheat, causing burns, vibrate randomly, or make loud beeping noises without warning.
90. These GPS monitors are unnecessary and have not been ordered by any court, immigration judge, or immigration authority. In fact, ICE runs its own GPS monitoring program, which it operates free of charge for immigrants. Licensed surety and bail bond companies in Virginia would not be able to require their customers to wear GPS monitoring as a contractual condition.<sup>18</sup>
91. On top of this, on information and belief, Libre does not, and is in fact incapable of, monitoring many of its customers. Libre changed the vendor for its monitoring at least twice in the last three years, did not inform the vast majority of its customers of this at

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<sup>18</sup> See Va. Code § 9.1-185.8(B)(2) ("A licensed bail bondsman shall not: [...] Solicit [...] or extort additional consideration as a condition of obtaining, maintaining, or exonerating bail bond").

any time following any of the changes, and did not supply the vast majority of consumers with new monitors with each change.

92. Accordingly, Libre by Nexus cannot monitor the whereabouts of some customers wearing monitors from an old vendor and yet these customers still wear the monitors and make the monthly “lease” or “Program Fee” payments, believing they are necessary to secure their continued release from detention.
93. Supporting this fact, Libre does not—indeed, *cannot*—deliver an immigrant to the immigration authorities should they fail to appear for their immigration hearing.

#### **Governmental Investigations of Libre’s Business Practices**

94. As mentioned above, Libre’s scheme has drawn the attention of several federal and state regulatory agencies.
95. In October 2017, the federal Consumer Financial Protection Bureau (“CFPB”) filed a petition in federal court to force Nexus Services and Libre by Nexus to comply with a civil investigative demand (“CID”) issued to them in August of that year. In December 2018, the CFPB won a court order enforcing the CID and the investigation is ongoing.
96. The Virginia Attorney General has been investigating the company and in December 2017 filed a petition in Virginia state court to enforce its own CID. In August 2018, the Richmond Circuit Court ordered Libre to comply with the CID. That investigation is ongoing.
97. The Virginia State Corporation Commission’s Bureau of Insurance also has initiated an investigation into the company for violations of the state’s insurance code. That investigation is ongoing.

98. Other states in which Libre does business have also taken notice. The New York Attorney General's Office filed a petition to enforce its CID in March 2018. Libre also faces lawsuits filed by consumers in New York and California.<sup>19</sup>

**PLAINTIFFS' FACTUAL ALLEGATIONS**

**Marvin Balmorys Garcia Salvador and Marvin Eusebio Garcia Diaz**

99. Plaintiff Marvin Balmorys Garcia Salvador ("Mr. Garcia Salvador") and his son, Plaintiff Marvin Eusebio Garcia Diaz ("Mr. Garcia Diaz"), are citizens of El Salvador, who came to the United States seeking asylum in 2014. Both are native Spanish speakers and now live in Alexandria, Virginia.
100. In late 2016, Mr. Garcia Diaz was arrested by ICE agents and taken to Farmville Detention Center, a facility operated by Immigration Centers of America in Farmville, Virginia.
101. A bond hearing was held for Mr. Garcia Diaz and an immigration judge ordered his release subject to an \$8,000 bond.
102. Mr. Garcia Salvador was not able to afford the \$8,000 bond but wanted to get his son out of the detention center as quickly as possible. An acquaintance told him that Libre might be able to help. Mr. Garcia Salvador contacted the company by phone to learn more.
103. Over the phone, a Libre representative explained in Spanish that Mr. Garcia Salvador would need to sign a contract, make a \$2,500 up-front payment and pay \$420 per month "toward the bond" in order to cause Mr. Garcia Salvador and Mr. Garcia Diaz to believe

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<sup>19</sup> See *Quintanilla Vasquez et al. v. Libre by Nexus, Inc.*, Case No. 4:17-cv-755-CW (N.D. Cal. Feb. 15, 2017); *Rivera Pavon et al. v. Libre by Nexus, Inc.*, Case No. 1:19-cv-01264 (E.D.N.Y. Mar. 04, 2019).

that they would be repaying a loan in the same amount of the bond (\$8,000). The Libre representative did not tell Mr. Garcia Salvador and Mr. Garcia Diaz that the \$420 per month was to lease a GPS device.

104. In exchange, Libre would post the \$8,000 bond money and Mr. Garcia Diaz would be able to get out of Farmville Detention Center and return home to Alexandria. The representative did not inform Mr. Garcia Salvador that his son would be required to wear or lease a GPS ankle monitor.
105. Libre sent Mr. Garcia Salvador the 22-page Original Contract documents, which were entirely in English except for one page. *See* Exhibit 1. The page translated into Spanish notifies the reader about the up-front payments and GPS monitoring requirement but is silent about monthly rental payments.
106. The contract documents contained a “Risk Assessment Instrument” which purported to evaluate the flight risk posed by Mr. Garcia Diaz. *See* Exhibit 1 at 2. But for the sham “presumption charge” designation, Mr. Garcia Diaz would not have reached the 22 point threshold that triggers the GPS requirement and its monthly lease fee. (See ¶¶ 71-75, *supra*).
107. Mr. Garcia Salvador did not understand most of the contract because he cannot read or understand English. On March 10, 2017, relying on the terms as communicated by the Libre employee over the phone and the two pages translated into Spanish, which were consistent with those terms, Mr. Garcia Salvador signed the documents.
108. Mr. Garcia Salvador did not have \$2,500 so he borrowed the money from his sister and deposited the money into Libre’s account through SunTrust Bank, as was instructed by the Libre representative.

109. On information and belief, shortly after Mr. Garcia Salvador made the \$2,500 deposit into Libre's account, Libre arranged for bond to be posted on behalf of Mr. Garcia Diaz through a licensed bail bond company and a licensed surety company.
110. On or about March 14, 2017, after the bond had been posted, a Libre representative picked up Mr. Garcia Diaz from the Farmville Detention Center. The representative took Mr. Garcia Diaz to a Subway Restaurant and bought him something to eat before driving him to Libre's office near Tysons Corner, Virginia.
111. Mr. Garcia Salvador, who had been informed by a Libre representative that his son was being released, was at the Libre office in Tysons Corner when his son arrived. A Libre representative named "Jonathan" met them at the office.
112. Jonathan presented them with the Original Contract, which was in English, but did not explain what the pages said and simply instructed Mr. Garcia Salvador and Mr. Garcia Diaz to sign in the appropriate places. Jonathan told Mr. Garcia Salvador and Mr. Garcia Diaz for the first time that Mr. Garcia Diaz would have to wear the GPS ankle monitor. Jonathan also did not explain that the monthly payments were a purported "lease" of the GPS monitor and would not be returned to them at the conclusion of Mr. Garcia Salvador's immigration case.
113. Faced with these new onerous terms, and fearing that refusing the terms would mean Libre would take Mr. Garcia Diaz back to detention, they agreed. Mr. Garcia Diaz was outfitted with the GPS ankle monitor and instructed to charge it daily.
114. Mr. Garcia Salvador began making monthly payments to Libre in the amount of \$500 per month, higher than the amount required, in order to repay more quickly what Libre

had caused him to believe was a debt that could be repaid in full rather than a lease agreement of an unlimited term.

115. After a couple months, Libre came to Mr. Garcia Diaz's home to replace his monitor with a new one, purportedly because "it wasn't working and it wouldn't charge."
116. After several months, Mr. Garcia Salvador lost his job. He contacted Libre to find out how much more money he owed, and to find out what would happen if he could not make payments. He was shocked when the Libre representative informed him that the \$3,500 he had paid were "rental fees" for the GPS ankle monitor. The Libre employee told him that he would have to pay \$5,500 *in addition to* the \$420 monthly payments if he wished to have the GPS monitor removed from his son's ankle. Upon information and belief, Libre retained the \$80 Mr. Garcia Salvador paid each month in excess of the \$420 monthly payment without crediting it towards the threshold for GPS removal.
117. Mr. Garcia Salvador was despondent. He was already being crushed under the weight of the monthly payments. As a low-wage worker, Mr. Garcia Salvador would sometimes go without food so that he could pay \$500 to Libre. According to Libre, he was trapped: keep paying \$420 per month for potentially years until his son's immigration case concluded or come up with \$5,500 that he did not have.
118. Shortly thereafter, Mr. Garcia Salvador sought legal assistance. His last payment to Libre was in early 2018. Since then, Libre has called him repeatedly, urging him to make payments, and stopped only when Mr. Garcia Salvador notified them that he was represented by legal counsel.
119. For his part, wearing the GPS ankle monitor interfered with Mr. Garcia Diaz's daily life and caused him physical and mental suffering. He was required to charge it for three or

four hours per day, during which time he is tethered to an electrical outlet and the monitor would burn hot and hurt his skin. If Mr. Garcia Diaz did not charge the monitor, it beeped loudly. The skin on Mr. Garcia Diaz's ankle was also red and irritated by his wearing the bracelet.

**Julio Mejia Ayala**

120. Julio Mejia Ayala is a native and citizen of El Salvador who came to the United States in 2016 seeking asylum. He now lives in Virginia.
121. In approximately March 2016, Mr. Mejia Ayala was arrested by the U.S. Customs and Border Patrol officials in Texas and eventually sent to an immigration detention facility in Washington State.
122. On April 7, 2016, a bond hearing was held for Mr. Mejia Ayala and an immigration judge ordered his release subject to a \$20,000 bond.
123. Mr. Mejia Ayala could not afford to pay the \$20,000 bond and so he remained in detention for several more weeks. Fearing he would be returned to El Salvador if he did not get out of detention, he became desperate. An acquaintance told him about Libre, so Mr. Mejia Ayala decided to call Libre to find out if they could assist him in getting out of detention.
124. Around June 18, 2016, Mr. Mejia Ayala called Libre. Over the phone, a Libre representative explained that he would need to sign a contract, make a \$4,800 up-front payment consisting of a \$4,000 "interest payment," and \$800 in other fees. He was also informed that he would need to wear a GPS monitoring ankle bracelet and make \$420 monthly payments, which Libre led him to believe were to pay down a loan for the bond.

125. Libre also told him they would provide him with an immigration attorney. However, a Libre representative later told him “he did not qualify” for the immigration attorney.
126. Libre sent an English-language Original Contract to Mr. Mejia Ayala’s cousin, Samuel Mejia, who lives in Virginia, who signed the paperwork and paid \$4,800 to Libre via wire transfer.
127. The contract documents contained a “Risk Assessment Instrument” which purported to evaluate the flight risk posed by Mr. Mejia Ayala. *See* Exhibit 2 at 2. But for the sham “presumption charge” designation, Mr. Mejia Ayala would not have reached the 22 point threshold that triggers the GPS requirement and its monthly lease fee. *See* ¶¶ 71-75, *supra*.
128. On information and belief, shortly after Mr. Mejia Ayala’s cousin paid Libre \$4,800, Libre arranged for bond to be posted on behalf of Mr. Mejia Ayala through Statewide Bonding.
129. On June 24, 2016, a Libre employee picked Mr. Mejia Ayala up from immigration detention. The employee told him, “You are free from detention, but if you run, we’ll call immigration and you’ll be deported.” The employee brought him to a Burger King, and then to Libre’s office in Seattle, Washington.
130. At Libre’s office, the Libre representative presented Mr. Mejia Ayala with the English-language documents and told him to sign. Mr. Ayala cannot read English but signed and initialed the contract where he was told. The Libre representative told him that if he did not pay the \$420 monthly fee, Libre would call immigration and immigration would come to his house, arrest him, and deport him back to El Salvador.
131. He was outfitted with the GPS ankle monitor and instructed to charge it daily.

132. Once released, Mr. Mejia Ayala moved to Virginia where he began working for a landscaping company in order to pay Libre the \$420 monthly payments. However, he lost the job after a few months when his boss saw his GPS monitor and told him it was a “risk to the company” for him to be working there.
133. Mr. Mejia Ayala paid the \$420 for a few more months after losing his job, but eventually was no longer able to pay.
134. Libre began to contact him and Samuel Mejia, his cousin who cosigned the contract, demanding payment. During one of these calls, Mr. Mejia Ayala told the Libre employee that he could not afford to make a payment. The Libre employee responded that he would “have problems in immigration court if he did not make his payments,” that Libre will take him or his cousin to court or “to collections,” and his cousin will have bad credit as a result.
135. Mr. Mejia Ayala still wears the GPS ankle monitor to this day.

**Edwin Alvarenga**

136. Plaintiff Edwin Geovany Alvarenga-Serrano (“Mr. Alvarenga”) is a citizen of Honduras who came to the United States in 2018 seeking asylum. He now lives in Herndon, Virginia.
137. In early 2018, Mr. Alvarenga was arrested by immigration authorities near the U.S.-Mexico border, was taken to a detention center in McAllen, Texas, and later transferred to a detention center in Houston, Texas.
138. After passing his initial asylum interview, ICE determined he was eligible to be released from detention subject to a \$12,500 bond.

139. Mr. Alvarenga did not have \$12,500 to pay his bond but was desperate to be released from detention. He heard about Libre from another person in the detention center and asked his sister, Sandra Alvarenga-Serrano, a resident of Virginia, to call the company to learn more.
140. Over the phone, a Libre representative told Sandra that Libre by Nexus would pay Mr. Alvarenga's bond and in exchange, she and Mr. Alvarenga would need to sign a contract, make an up-front payment of \$3,490, and pay \$450 per month for 34 months as "interest on the loan." The Libre representative also told her that Mr. Alvarenga would be required to wear a GPS monitor.
141. Sandra implored the Libre representative to reduce the monthly payments because \$450 per month was a huge sum of money based on her income, but the Libre representative refused.
142. Libre sent Sandra the Revised Contract documents by fax. On May 14, 2018, relying on the Libre representative's statements, Sandra signed the documents and paid Libre by Nexus \$3,490. She also paid Libre approximately \$500 for Mr. Alvarenga's flight from Texas to Virginia.
143. On information and belief, shortly after Sandra paid Libre the up-front payment, Libre arranged for the bond to be guaranteed on behalf of Mr. Alvarenga through a licensed bail bond company and a licensed surety company.
144. On May 15, 2018, a Libre representative named Andy picked up Mr. Alvarenga from the detention center in Houston. The representative took Mr. Alvarenga to a fast food restaurant and then to a Libre office. By the time they arrived, it was late in the evening.

145. At the office, a Libre representative presented Mr. Alvarenga with the Libre contract and reiterated that he would be required to make monthly payments of \$450 for 34 months “for the money we lent you” and wear the GPS monitor. The Libre employee also told him he would have to call to report in to the company every 15 days.
146. The employee also showed him a video in Spanish describing the requirements.
147. Faced with these onerous terms, and fearing that refusing to agree to them would mean he would be returned to detention, Mr. Alvarenga signed the documents. Mr. Alvarenga was outfitted with the GPS ankle monitor and instructed to charge it for 90 minutes every day.
148. Mr. Alvarenga stayed the night at a hotel arranged by Libre and took a flight to Virginia the next day.
149. Since that time, Mr. Alvarenga has struggled to pay Libre each month. Even though he needs the money to pay an immigration attorney to represent him in his asylum case, he paid Libre each month for four or five months because he feared he would be arrested and returned to detention if he failed to pay. Sometimes he had to pay late, and a Libre employee told him he had to pay a \$10 surcharge each time he paid late.
150. Starting around January 2019, Mr. Alvarenga could no longer afford to pay Libre and support himself at the same time. He called Libre and asked if they would lower the payments but they refused and said, “You have to pay.”
151. Libre representatives have also contacted Sandra Alvarenga and told her, “You signed the contract. You have to pay until you’ve paid everything.”
152. Wearing the GPS monitor interferes with Mr. Alvarenga’s daily life and causes him physical and mental suffering. He often cannot sleep or gets woken up in the middle of

the night because of the discomfort of the device. He continues to wear the GPS monitor to this day.

**Juan Francisco Narvaez-Molina**

153. Plaintiff Juan Francisco Narvaez-Molina (“Mr. Narvaez”) is a citizen of Nicaragua who came to the United States in 2018 seeking asylum. He now lives in Manassas, Virginia.
154. In late 2018, Mr. Narvaez was arrested by immigration authorities and taken to a detention center in Livingston, Texas.
155. In December 2018, the Department of Homeland Security gave Mr. Narvaez a \$12,000 bond.
156. Mr. Narvaez was not able to afford the \$12,000 bond but was desperate to be released from detention. He called his cousin, Paula, a resident of Virginia, who heard about Libre by Nexus from a friend. She called the company by phone to learn more.
157. Over the phone, a Libre representative named “Hugo” told Paula in Spanish that Libre by Nexus would pay Mr. Narvaez’s bond and, in exchange, Mr. Narvaez would need to sign a contract, make an upfront payment in the amount \$4500, make monthly payments, and wear a GPS ankle monitor.
158. Neither Paula nor Mr. Narvaez had the money to pay Libre even the up-front payment, and so Paula contacted her brother, Edwin Altamirano, a resident of Virginia. Paula and Edwin pooled their money to come up with the \$4500.
159. Libre sent the Revised Contract documents via fax to Edwin Altamirano in Virginia. On January 4, 2019, relying on Hugo’s representations to Paula and communicated to him, Edwin Altamirano signed the documents without reading them and paid Libre \$4500.

They also paid Libre \$500 for a plane ticket for Mr. Narvaez to get from from Texas to Virginia.

160. On information and belief, shortly after Edwin Altamirano paid Libre \$5,000, Libre arranged for the bond to be guaranteed on behalf of Mr. Narvaez through a licensed surety bail bond company and a licensed surety company.
161. On or about January 7, 2019, a Libre representative picked up Mr. Narvaez from the detention center. The representative took Mr. Narvaez to a Libre office.
162. At the office, a Libre representative presented Mr. Narvaez with the Libre contract and told him for the first time that he would be required to make monthly payments of \$450 for 34 months “for the ankle bracelet,” plus an additional \$50 maintenance fee. The representative told him that if he could not pay one month, “the debt is just going to accumulate and build up.” Mr. Narvaez was told that if he wished to pay down the \$12,000 debt for the bond, he would need to make payments in addition to the \$500 per month.
163. Faced with these new onerous terms, and fearing that refusing to agree to them would mean he would be returned to detention, Mr. Narvaez signed the documents. Mr. Narvaez was outfitted with the GPS ankle monitor and instructed to charge it for 90 minutes every day.
164. Mr. Narvaez made two monthly payments of \$500 after being released from detention. Paying Libre is a struggle for Mr. Narvaez, but he tried to make payments because he feared he would be arrested and returned to detention if he failed to pay. Mr. Narvaez and his family have paid Libre a total of \$6000.

165. Wearing the GPS monitor interferes with Mr. Narvaez's daily life and causes him physical and mental suffering, including making it difficult for him to sleep. He still wears the GPS monitor to this day.

**Carlos Portillo Morales**

166. Plaintiff Carlos Portillo Morales ("Mr. Morales") is a native of El Salvador who came to the United States seeking asylum in 2007. He is a resident of Woodbridge, Virginia.
167. On July 4, 2018, Mr. Morales was arrested at his home in Woodbridge, Virginia, for a misdemeanor by the Prince William County police and taken to the local police station. Due to an agreement Prince William County has with ICE, instead of being released, he was transferred directly to ICE custody and brought to Farmville Detention Center in Farmville, Virginia.
168. On July 10, 2018, ICE initiated deportation proceedings against Mr. Morales and determined that he should be released from detention pending resolution of his case if he could pay an \$8,000 bond.
169. Mr. Morales has an extremely limited income and was not able to afford the \$8,000 bond and remained in detention for two more weeks.
170. An acquaintance told him that Libre might be able to help. Mr. Morales had his friend, Ada Quintanilla, a resident of Virginia, contact the company by phone to learn more.
171. Over the phone, a Libre employee explained to Ada that it would post Mr. Morales' bond if he paid \$2,590 up front, as well as additional monthly payments.
172. Mr. Morales did not have \$2,590 so members of his family in El Salvador sent the money and on or about July 26, 2018, Ada deposited the money into Libre's account at a local bank, as was instructed by the Libre representative.

173. After Ada paid Libre almost \$2,600, Mr. Morales stayed in the Farmville Detention Center for over three weeks waiting for Libre to post his bond. Mr. Morales called Libre repeatedly attempting to figure out what was happening and was told by Libre representatives that “there was a problem with his paperwork.”
174. Eventually, on August 18, 2018— 23 days after he had paid Libre— Libre arranged for bond to be posted on behalf of Mr. Morales through the licensed bail bond company Statewide Bonding.
175. A Libre representative picked up Mr. Morales from the Farmville Detention Center and took him to Libre’s office near Tysons Corner, Virginia. By the time they arrived at the office, it was after midnight. The representative played for Mr. Morales an audio recording about Libre in Spanish and presented him with a Revised Contract to sign.
176. The Libre representative told Mr. Morales for the first time that he would have to wear a GPS ankle monitor and pay \$375 per month for 23 months “for the \$8,000.” By this, Mr. Morales believed that Libre had loaned him the bond amount, which he was required to repay over a term of months. Fearing that he would be taken back to detention if he refused, he signed the contract.
177. Mr. Morales was outfitted with the GPS ankle monitor and instructed to charge it for an hour daily. He was also instructed to call Libre every week to “report.”
178. Mr. Morales began making monthly payments to Libre in the amount of \$375 per month in order to repay what Libre had caused him to believe was a debt to Libre. Mr. Morales was only able to pay Libre for one month after he was released because he has extremely little income. Because he is behind on paying Libre, he receives texts and phone calls demanding payment. He called Libre each week to “report.” Mr. Morales

fears Libre because he believes that Libre can know where he is at all times due to the GPS monitor.

179. To date, Mr. Morales has paid Libre approximately \$3,000.

180. Wearing the GPS ankle monitor interferes with Mr. Morales' daily life and causes him physical and mental suffering. He is required to charge it for an hour per day. The skin on Mr. Morales' ankle is also red and irritated by his wearing the bracelet. Wearing the GPS monitor also causes problems at home and at work because his colleagues believe that he is a target of immigration enforcement. It causes him embarrassment to wear it among family and friends. Mr. Morales wears the GPS monitor to this day.

### **CLAIMS**

#### **Claim I**

#### **Virginia Consumer Protection Act Va. Code § 59.1-196 *et seq***

181. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of this Complaint as though fully set forth herein.

182. Section 59.1-200(A) of the Virginia Consumer Protection Act (VCPA) prohibits fraudulent acts or practices committed by a supplier in connection with a consumer transaction. Such prohibited acts or practices include, without limitation:

- a. misrepresenting goods or services as those of another, Va. Code § 59.1-200(A)(1);
- b. misrepresenting the source, sponsorship, approval, or certification of goods or services, Va. Code § 59.1-200(A)(2);
- c. misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another, Va. Code § 59.1-200(A)(3);

- d. misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits, Va. Code § 59.1-200(A)(5);
- e. advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised, Va. Code § 59.1-200(A)(8);
- f. misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed, Va. Code § 59.1-200(A)(10);
- g. using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction, Va. Code § 59.1-200(A)(14); and
- h. violating any provision of Va. Code § 18.2-178 (obtaining money or signature, etc. by false pretense), Va. Code § 59.1-200(A)(57).

183. At all times relevant hereto, each Defendant was a “supplier,” and each transaction between Defendant and each Plaintiff was a “consumer transaction,” as those terms are defined in the VCPA, Va. Code § 59.1-196 *et seq.* (“VCPA”).

- a. A “supplier” is “a seller, lessor or licensor who advertises, solicits or engages in consumer transactions, or a manufacturer, distributor, or licensor who advertises and sells, leases or licenses goods or services to be resold, leased or sublicensed by other persons in consumer transactions.” Va. Code § 59.1-198. Here, Libre sells unlicensed surety services and immigration bond “program” services. Under the terms of Libre’s Original Contract, Libre leased GPS monitors to consumers for which they charged monthly rent payments. Under

the terms of Libre's Revised Contract, Libre provided GPS monitors and related services, for which it charged a monthly program fee..

- b. A "consumer transaction" includes "the advertisement, sale, lease, license or offering for sale, lease or license of goods or services to be used primarily for personal, family or household purposes." Va. Code § 59.1-198. Here, Libre advertised, sold, leased, offered for sale or offered for lease goods or services for the personal or household purpose of securing a consumer's release from immigration detention.

184. Defendants' acts and practices as alleged above were deceptive, fraudulent, and misleading and violate the VCPA. Defendants have violated the Virginia Consumer Protection Act, Va. Code § 59.1-200(A), by engaging in the acts or practices described herein in connection with consumer transactions with the Plaintiffs, including but not limited to:

- a. Defendants knowingly and intentionally led Plaintiffs to believe that the transactions between Plaintiffs and Libre were loans in the face amount of their bonds, and that the monthly payments to Libre were payments towards these loans, rather than GPS lease payments or program fees. This was accomplished through specific misrepresentations to each Plaintiff, for example, that they were paying money "towards the bond" or as "interest on the loan," Va. Code § 59.1-200(A)(5), (14), (57);
- b. With respect to Plaintiffs Garcia Salvador, Garcia Diaz, and Mejia Ayala Defendants fraudulently and deceptively, through misrepresentations and misleading statements, induced and coerced Plaintiffs to wear GPS monitoring

ankle bracelets. Defendants violated this section through the use of the Original Contract's sham Risk Assessment Instrument and the omission of key contractual provisions from the Spanish language summary of the terms of the agreement; Va. Code § 59.1-200A(2), (5), (14);

- c. Both the Original and Revised Contracts constitute deceptions designed to evade state and federal regulation of the bail bond and surety insurance industries in order to enable Libre to impose conditions and charge fees beyond what entities licensed under those regulations would be permitted by law to impose and charge, specifically by requiring consumers to wear GPS monitors, Va. Code § 59.1-200A (14);
- d. Defendants misrepresented to Plaintiffs that they were, in fact, being monitored by GPS while Defendants continued to charge Plaintiffs for this "service." In reality, Libre changed its GPS vendors several times without informing Plaintiffs or telling them to remove their GPS monitors which they could no longer track. They continued to collect money each month from customers as lease payments for entirely ornamental monitors, Va. Code § 59.1-200(A)(10), (14), (57);
- e. With respect to Plaintiffs Garcia Diaz, Garcia Salvador, Narvaez, and Morales Defendants advertised and offered their service to Plaintiffs' friends or family members over the phone on certain terms. Once Plaintiffs' friends or family members agreed and paid Defendants the required up-front payment, and after Plaintiffs were effectively in Defendants' custody, Defendants demanded new and more onerous terms under the implied threat that Defendant would be

returned to detention if they did not agree, Va. Code § 59.1-200(A)(8), (14), (57);

- f. With respect to Plaintiffs Garcia Salvador, Garcia Diaz, and Mejia Ayala Defendants misrepresented their affiliation with immigration authorities through frequent reference to an “Agency” in Libre’s Original Contract, by explicit or implicit threats that failure to comply with Libre’s contractual requirements will result in re-detention or will affect Plaintiffs’ immigration cases, Va. Code § 59.1-200A(3), (14);
- g. With respect to Plaintiffs Garcia Salvador, Garcia Diaz, and Mejia Ayala Defendants knowingly provided English-language contract documents and misleading Spanish “translations” to Spanish-speaking consumers with an intent to mislead them regarding the contents of those contracts, Va. Code § 59.1-200(A) (14), (57);
- h. Defendants misrepresented and misled Plaintiffs to believe that Defendants had paid money to the U.S. Government to secure Plaintiffs’ release from detention when they did no such thing, and were not authorized to post bonds with the federal government, Va. Code § 59.1-200(A)(1), (2), (5), (14), (57)

185. Defendants made these misrepresentations and misled Plaintiffs willingly and knowingly.

186. Plaintiffs reasonably relied on Defendants’ misrepresentations which caused them to pay Libre thousands of dollars, suffer extreme financial hardship, caused them to forego basic life necessities such as food and rent, suffer bodily injury, restrain their liberty and freedom of movement, and experience extreme fear, anxiety and emotional distress.

**Count II**  
**Virginia Common Law Fraud**

187. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of this Complaint as though fully set forth herein.
188. In Virginia, common law fraud is a false representation or concealment of a material fact made intentionally and knowingly with the intent to mislead, upon which the plaintiff relied which caused them harm. *State Farm Mut. Auto. Ins. Co. v. Remley*, 270 Va. 209, 218, 618 S.E.2d 316, 321 (2005); *Van Deusen v. Snead*, 247 Va. 324 (Va. 1994)
189. Defendants committed fraud when:
- a. Defendants knowingly and intentionally led Plaintiffs to believe that the transactions between Plaintiffs and Libre were loans in the face amount of their bonds, and that the monthly payments to Libre were payments towards these loans, rather than GPS lease payments or program fees. This was accomplished through specific misrepresentations to each Plaintiff, for example, that they were paying money “towards the bond” or as “interest on the loan”;
  - b. With respect to Plaintiffs Garcia Salvador, Garcia Diaz, and Mejia Ayala Defendants fraudulently and deceptively, through misrepresentations and misleading statements, induced and coerced Plaintiffs to wear GPS monitoring ankle bracelets. Defendants accomplished this fraud through the use of the Original Contract’s sham Risk Assessment Instrument and the omission of key contractual provisions from the Spanish language summary of the terms of the agreement,

- c. Both the Original and Revised Contracts constitute deceptions designed to evade state and federal regulation of the bail bond and surety insurance industries in order to enable Libre to impose conditions and charge fees beyond what entities licensed under those regulations would be permitted by law to impose and charge, specifically by requiring consumers to wear GPS monitors,
- d. Defendants misrepresented or concealed the fact from Plaintiffs that they were, in fact, being monitored by GPS while Defendants continued to charge Plaintiffs for this “service.” In reality, Libre changed its GPS vendors several times without informing Plaintiffs or telling them to remove their GPS monitors which they could no longer track. They continued to collect \$420 lease payments, or program fees in varying amounts, each month from customers as payments for entirely ornamental monitors;
- e. With respect to Plaintiffs Garcia Diaz, Garcia Salvador, Narvaez, and Morales, Defendants advertised and offered their service to Plaintiffs’ friend or family member over the phone on certain terms. Once Plaintiffs’ friend or family member agreed and paid Defendants the required up-front payment, and when Plaintiffs were effectively in Defendants’ custody, Defendants demanded new and more onerous terms and concealed the fact that Plaintiffs could not be returned to detention, even if they refused to sign the written contract, leading Plaintiffs to mistakenly believe that Defendants would return them to detention if they did not agree;

- f. With respect to Plaintiffs Garcia Diaz, Garcia Salvador, and Mejia Ayala Defendants misrepresented their affiliation with immigration authorities through frequent reference to an “Agency” in Libre’s Original Contract, by concealing this fact despite Plaintiffs’ evident belief to the contrary, and by explicit or implicit threats that failure to comply with Libre’s contractual requirements will result in re-detention or will affect Plaintiffs’ immigration cases;
  - g. With respect to Plaintiffs Garcia Diaz, Garcia Salvador, and Mejia Ayala Defendants knowingly provided English-language contract documents and misleading Spanish “translations” to Spanish-speaking consumers knowingly concealing and with an intent to mislead them regarding the contents of those contracts.
  - h. Defendants misrepresented, misled, and concealed material facts which led Plaintiffs to believe that Defendants had paid money to the U.S. Government to secure Plaintiffs’ release from detention when they did no such thing, and were not authorized to post bonds with the federal government;
190. Plaintiffs reasonably relied on Defendants’ misrepresentations and concealments of material fact which caused them to pay Libre thousands of dollars, suffer extreme financial hardship, caused them to forego basic life necessities such as food and rent, suffer bodily injury, restrain their liberty and freedom of movement, and experience extreme fear, anxiety and emotional distress.

**Count III**  
**Virginia Constructive Fraud**

191. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of this Complaint as though fully set forth herein.
192. In Virginia, “the elements of a cause of action for constructive fraud are a showing by clear and convincing evidence that a false representation of a material fact was made innocently or negligently, and the injured party was damaged as a result of his reliance upon the misrepresentation.” *Baker v. Elam*, 883 F.Supp.2d 576, 580 (E.D. Va. 2012) (internal citation omitted).
193. Libre’s conduct described above in Paragraph 189, *supra*, to the extent that it is found to be “innocent” or “negligent” rather than intentional nevertheless constitutes constructive fraud.
194. Plaintiffs reasonably relied on Defendants’ misrepresentations and concealments of material fact which caused them to pay Libre thousands of dollars, suffer extreme financial hardship, caused them to forego basic life necessities such as food and rent, suffer bodily injury, restrain their liberty and freedom of movement, and experience extreme fear, anxiety and emotional distress.

**Count IV**  
**Battery**

195. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of this Complaint as though fully set forth herein.
196. In Virginia, “battery is an unwanted touching which is neither consented to, excused, nor justified.” *Koffman v. Garnett*, 265 Va. 12, 16, 574 S.E.2d 258, 261 (2003). While consent is generally a defense to a claim of battery, fraudulently induced consent does not constitute a valid defense. *See Banovitch v. Commonwealth*, 196 Va. 210, 219, 83 S.E.2d, 369, 375 (1954). Virginia courts have long held that a claim of battery can be

proved even absent a showing of physical injury. *See, e.g., S.H. Kress & Co. v. Musgrove*, 153 Va. 348, 356–57, 149 S.E. 453, 455 (1929); *see also Adams v. Commonwealth*, 33 Va. App. 463, 469, 534 S.E.2d 347, 351 (2000) (“In Virginia, it is abundantly clear that a perpetrator need not inflict a physical injury to commit a battery.”).

197. Defendants committed the intentional tort of battery when Defendants intentionally placed the GPS monitoring ankle bracelets on Plaintiffs, causing them pain, discomfort, humiliation, anxiety, and emotional distress;
198. Any consent Plaintiffs gave for the placement of the GPS monitors was fraudulently induced by the misrepresentations described in Paragraph 189, *supra*, and is therefore invalid.
199. As a result of Defendants’ intentional acts, Plaintiffs suffered bodily injury, had their liberty and freedom of movement restrained, and experienced extreme fear, anxiety, and emotional distress.

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs respectfully request that this Court:

200. Enter judgment jointly and severally against all Defendants in favor of Plaintiffs on all claims;
201. Issue a declaratory judgment pursuant to Va. Code § 8.01-184 declaring the contract documents between Plaintiffs and Defendants null and void, unconscionable, contrary to public policy, and unenforceable as a matter of law;


202. Issue a declaratory judgment pursuant to Va. Code § 8.01-184 releasing Plaintiffs from any further performance under any purported contract between each Plaintiff and any of the Defendants, and ordering the removal of all Plaintiffs' GPS monitors;
203. Rescind any purported contract between any Plaintiff and any Defendant;
204. Award Plaintiffs damages pursuant to Va. Code § 59.1-204(A). Section 59.1-204(A) provides for actual damages, which may be trebled because Defendants have committed willful violations, or statutory damages of \$1,000, whichever is greater.
205. Award Plaintiffs damages on their common law fraud claims;
206. Award Plaintiffs damages on their battery claims;
207. Plaintiffs have sustained damages in the amount of:
  - a. Marvin Garcia Salvador: \$6000 paid to Libre plus \$29,000 in emotional distress,
  - b. Marvin Garcia Diaz: \$29,000 in emotional distress,
  - c. Julio Mejia Ayala: \$7,260 paid to Libre plus \$38,000 in emotional distress,
  - d. Edwin Alvarenga: \$7,140 paid to Libre plus \$15,000 in emotional distress,
  - e. Juan Narvaez: \$6,000 paid to Libre plus \$7,000 in emotional distress,
  - f. Carlos Portillo Morales: \$2,965 paid to Libre plus \$23,000 in emotional distress.
208. Award Plaintiffs punitive damages in the amount of \$250,000 each;
209. Award Plaintiffs reasonable attorneys' fees and court costs pursuant to Va. Code § 59.1-204(B); and
210. Award Plaintiffs any other relief the Court deems just and necessary.

### **JURY DEMAND**

Plaintiffs demand trial by jury on all issues as to which a jury trial is available.

Dated: 8/8/2017

Respectfully submitted,



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*Counsel for the Plaintiffs*

# Exhibit 1

# LIBRE

BY NEXUS

## CLIENT COVER SHEET

OFFENDER ID NUMBER: A#: 202076611

Offender Name: MARVIN EUSEBIO GARCIA-DIAZ

Offender Address: 3811 EXECUTIVE AVE APT C12, ALEXANDRIA VA 22305-2388

Offender Phone Number: 216 - 242 - 7095

### Charge(s):

1) IMMIGRATION REMOVAL PROCEEDINGS

ATTORNEY/  
ABOGADO

2) N/A

NEXT COURT  
DATE

3) 04/05/2017

COUNTRY OF ORIGIN: El Salvador

DETENTION  
LOCATION

4) FARMVILLE FIELD OFFICE

AMOUNT OF BOND: \$ 8,000

DATE OF  
BIRTH

5) 10/02/1998

SS/A  
NUMBER

6) 202076611

### Immigration Status:

Citizen Green Card Visa Undocumented

ICE DETAINER: YES NO PENDING

### Co-signer (Sponsor) Information

Co-signer Name: MARVIN BALMORYS GARCIA SALVADOR

Co-signer Address: 3811 EXECUTIVE AVE APT C12, ALEXANDRIA VA 22305-2388

Co-signer Phone Number: 216 - 242 - 7095

# Exhibit 7

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NEXUS SERVICES, INC.

and

LIBRE BY NEXUS, INC.

Plaintiffs,

v.

CONSUMER FINANCIAL PROTECTION  
BUREAU

and

RICHARD CORDRAY, IN HIS OFFICIAL  
CAPACITY AS DIRECTOR OF THE CONSUMER  
FINANCIAL PROTECTION BUREAU

Defendants.

Case No. 1:17-cv-02215

Case No. 1:17-cv-02238

**DECLARATION OF ERIK SCHNEIDER**  
**IN SUPPORT OF NEXUS' MOTION FOR SUMMARY JUDGMENT AND**  
**RESPONSE IN OPPOSITION TO DEFENDANTS'**  
**PETITION TO ENFORCE CIVIL INVESTIGATIVE DEMAND**

COMES NOW Erik Schneider, Corporate Representative of Plaintiffs and hereby declares under penalty of perjury as follows:

1. As Vice President of Risk Management for Nexus Services, Inc., I provide this Declaration is in support of the Motion for Summary Judgment and Response in Opposition to Defendants' Petition to Enforce Civil Litigation Demand filed by Plaintiffs, Nexus Services, Inc., and Libre by Nexus, Inc., (jointly referred to as Nexus).

2. Nexus Services, Inc. was incorporated in the Commonwealth of Virginia on December 30, 2013. All of its immigration bond services are provided by Libre by Nexus, Inc.

(Libre), which is a wholly-owned subsidiary of Nexus Services, Inc.

3. Nexus is a small for-profit business that provides critical services to immigrants who languish in detention facilities, because they cannot afford to post immigration bonds. Nexus provides guarantees for immigration bonds that are posted by third party licensed bail bondsmen and secured by third party federally-approved insurance companies (sureties). Simply stated, Nexus assumes tens of millions of dollars in risk to facilitate the release of incarcerated immigrants.

4. Nexus' mission is to give hope and help to those without a voice in the immigration system. Nexus' program allows detained immigrants to post their bonds and be reunited with their families without having to pay the full amount of their bonds. The program allows immigrant detainees to secure release without requiring collateral, and indemnifies sureties or bail agents from losses in writing civil immigration bonds.

5. A number of clients (referred to as Program Participants) of Nexus are people who have come to the United States seeking asylum. For example, many of Nexus' Program Participants are escaping death sentence in their own country because they are former law enforcement, are targeted minorities (such as indigenous people or members of the LGBT community), or are fleeing gang violence. Thus, deportation is often the equivalent of a death sentence.

6. Unless immigrant detainees are able to post bonds, they are required to live in detention centers that are increasingly unsafe and overcrowded. In many instances, the detention centers are unlivable for extended periods of time. The US immigration system is overburdened and without necessary resources, which results in radically prolonged incarceration rates for immigrants who cannot post bond.

7. The detainees are languishing in these facilities at the taxpayer's expense because the immigration system is broken. Based on published reports, it costs \$119.00 per day to detain an immigrant. Based on other published reports of the length of time that immigrants spend in detention, and multiplying the savings by the number of days that Nexus' almost 20,000 Program Participants have been freed, the savings to the U.S. Taxpayers exceeds \$600-million.

8. Unlike in criminal proceedings, immigration detainees are generally required to post the full bond that is set before the detainee will be released, making the posting of immigration bonds very difficult in most cases. Bond amounts can often exceed \$25,000.

9. Nexus' monitoring program has proven to be successful, with a failure to appear rate of less than 1.3%. This success rate is unheard of in the immigration or criminal bonding industries. Nexus' success is tied to the services Nexus provides its Program Participants.

10. With respect to immigration bonding, the only entities with whom Nexus conducts business are third party bonding and surety companies. Nexus has no relation with these companies, other than on a contractual basis. Nexus does not control, nor is it controlled, or under common control with, any of these third party bonding companies.

11. Nexus does not offer or sell consumer financial products.

12. Nexus does not act as a bail bondsman, nor does it post bonds, and it is not a surety company.

13. While Nexus periodically waives the monthly payment obligations of some Program Participants, such waivers serve as a permanent statement of program fees and such other financial assistance is provided without any repayment obligation. Nexus does not extend nor offer credit to Program Participants of any kind, nor does it make loans.

14. Nexus merely assists its Program Participants by facilitating the immigration bond

process for bonds issued by third parties.

15. Nexus' Program Participants voluntarily enter into contracts, which make clear that Nexus will provide indemnification for the immigration bond (in place of the Program Participants providing collateral to the surety), thereby allowing the bond to be posted and facilitating the Program Participants' release from immigration custody. The contract further indicates that the bond will be posted by a particular bonding company and that Nexus will sign as guarantor of the Program Participants' bond and indemnify the surety and bail agent from loss. Nexus' indemnification is guaranteed by various collateral pledged to the licensed sureties and bail agents that Nexus indemnifies.

16. Rather than paying the full amount of the bond, Nexus' Program Participants pay a bond premium of typically 10-15% of the face value of the bond to the bondsman. Program Participants also pay service fees to Nexus, including Nexus' monthly program fees, which may include fees for Nexus' GPS monitoring program.

17. In exchange for the fees paid by the Program Participants, Nexus provides a wide range of services for its Program Participants, which include the following:

- a. At all hours of the day or night, Nexus picks up the Program Participants from the detention centers, many of which are remote. This is particularly important in cold weather states in which Program Participants are released in the same clothes they were arrested in and are prohibited from reentering the facility – once released. Program Participants are provided mobile phones to contact their families and to facilitate their reentry into society, and are also provided essential toiletries.

Frequently, Nexus provides clothing, food, shelter and ultimately the transport of undocumented people released from ICE custody to their families. This begins to provide some humanity back to the individuals after they have endured a process which utterly strips all humanity and dignity from them.

- b. 24/7 nationwide logistics call and support centers which help Program Participants with various needs, including such basic concepts as paying a water bill. Many Program Participants have never lived somewhere where they have to pay a water bill or other utilities.
- c. Investigative services regarding those individuals who may seek to harm its Program Participants. Many of our Program Participants are abused and are afraid to come forward for fear of involving the police and Nexus helps them interface and report transgressions so their concerns can be heard.
- d. Travel services for Program Participants, sometimes across the country to ensure that they appear at their hearings and provide professional staff to escort them to meetings with deportation officers. These staff escorts often result in the Program Participants being allowed to avoid a deportation.
- e. Computer and English language training assistance.
- f. Help with medical expenses.

- g. Counseling, life coaching and pre-paid telephone services.
- h. Assistance during hurricanes and other natural disasters.
- i. Referral to pro bono legal services offered by, among others, Nexus Caridades Attorneys, Inc., an independent law firm, which is funded by Nexus.

18. There are a limited number of bonding companies that can post immigration bonds. The surety companies must be on the approved Treasury List, (often referred to as the T-List). The agent can post bonds across the country using E-Bonds, a government system that allows authorized sureties to post bonds electronically.

19. There is even a smaller number of surety companies on the T-List that can work with Nexus. Notwithstanding Nexus' agreement to fully indemnify the insurance companies if the Nexus Program Participants fails to voluntarily appear in court, conservative insurance carriers are reluctant to secure civil immigration bonds because of the traditionally high rate of failure to appear by undocumented immigrants. Additional reasons for this reluctance include:

20. Nexus is a relatively small company with an extremely unique business. Conservative insurance companies are hesitant to secure bonds for individuals who typically have no job, no house and no collateral and who are facing legal proceedings to remove them from the United States.

21. In most states, bond premiums are capped, which means the insurance carrier is not going to make more money if its takes on a greater risk. Therefore, from the insurance carrier's perspective, accepting the financial guarantee from a small company in a unique niche business is often not worth the risk.

22. Nexus needs the bonding and surety company to allow Nexus to manage the

Program Participants. Nexus works closely with the Program Participants and needs the bonding companies to step back without the threat of “bounty hunters” pursuing them. Many bonding companies will not allow that type of discretion and, therefore, Nexus’ relationship with their existing vendors is critical.

23. For the few insurance companies that are qualified to serve as federal sureties and which will agree to accept Nexus’ financial guarantees, Nexus must demonstrate that it has developed and deployed appropriate risk mitigation tools and services. To achieve this goal, Nexus combines the Program Participants centric support services (as identified in paragraph 14 above) with state of the art geo-positioning (GPS) technology – similar to that used by law enforcement authorities around the United States for pre-trial programs.

24. Nexus’ Program Participants pay a monthly fee for program participation, which includes costs for services provided and monitoring. In about one third of the cases, that monitoring includes GPS. Nexus attempts to limit the amount of time any Program Participants is monitored via a GPS device. Because immigration cases can stretch over years, Nexus establishes a maximum number of months any Program Participants may be required to make monthly program payments.

25. Nexus’ GPS vendors do not sell the equipment, they lease it to Nexus. Therefore, Nexus is responsible for the GPS unit if it is lost or destroyed and the replacement costs of many of the units is up to \$4,000 depending on which device, to Nexus.

26. Many of Nexus’ Program Participants are employed in manual labor positions which provide a significant amount of wear and tear on the equipment. If the GPS unit is broke or stops working, a Nexus employee is dispatched-sometimes to remote locations, to repair or replace the unit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 29<sup>th</sup> day of January, 2018.



ERIK G. SCHNEIDER

Sworn to and subscribed before me this 29<sup>th</sup> day of January, 2018.

  
Notary Public

My Commission Expires: 7/31/21

