

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05 C 5389
)	
OLEG OKS, et al.,)	Judge Ronald Guzman
)	
Defendants.)	Magistrate Judge Ashman

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION
FOR *EX PARTE* TEMPORARY RESTRAINING ORDER,
PRELIMINARY INJUNCTION, AND OTHER EQUITABLE RELIEF**

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I. INTRODUCTION

We ask that the Court take action to end a Canadian telemarketing operation that has defrauded U.S. consumers out of millions of dollars. In one scheme, Defendants call consumers and falsely promise to provide major unsecured credit cards to consumers; typically those with poor credit histories. In the second, Defendants falsely promise to provide computers to U.S. consumers. In both schemes, Defendants immediately debit a fee that ranges in excess of three hundred dollars from their victims' bank accounts. During these calls Defendants also promise to include free cell phones, vacation packages, digital satellite systems, and even home security systems. Instead of delivering the promised credit card, computer, or free products, Defendants mail consumers a package that can charitably be described as junk mail. It includes credit card applications, documents to return that will supposedly enable Defendants to apply for credit cards for the consumers, booklets on credit and identity theft, and certificates supposedly redeemable for the computers and other products described in the sales calls. Defendants never deliver the credit cards, the computers, or the promised gifts.

The large number of complaints from consumers who did not receive the expected credit cards demonstrates that Defendants' operation is sizable and successful. Defendants have generated over two hundred forty complaints with the Delaware Better Business Bureau.¹ All two hundred consumers who responded to a U.S. Postal Inspection Service survey reported that Defendants debited fees ranging from \$229 to \$319 and not one consumer received a credit card.² Indeed, the FTC has identified advance fee loan schemes, like that of Defendants, as the most common type of consumer fraud in the U.S., affecting some 4.5 million consumers or 2.1 percent of U.S. adults.³

Defendants' practices in connection with both the credit card and computer schemes violate the Federal Trade Commission Act's ("FTC Act") prohibition of unfair or deceptive acts

¹ Plaintiff's Exhibit ("PX") 33 Sauers ¶ 3.

² PX 9 Danz ¶ 13.

³ See Anderson, K., *Consumer Fraud in the United States: An FTC Survey*, at ES-2 (Aug. 2004) (available at: <http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf>).

or practices, 15 U.S.C. § 45(a), the Telemarketing and Consumer Fraud and Abuse Protection Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, and several distinct provisions of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310. Even if Defendants could supply a credit card their claims would still violate the TSR. Defendants’ debiting of bank accounts prior to providing the promised credit cards violates the TSR’s express prohibition against taking a fee in advance of actually obtaining a promised extension of credit. 16 C.F.R. § 310.4(a)(4). Defendants’ credit card scheme is nearly identical to one that the Court found violated the FTC Act and TSR in *FTC v. Bay Area Business Council, Inc.*, No. 04-2173, 2005 U.S. App. LEXIS 18295, at *19 (7th Cir. Aug. 25, 2005) (“*BABC*”) (defendants’ “failure to provide a ‘credit card’ lies at the heart of this case”) (*aff’g* \$12.5 million summary judgment).

We ask that the Court enter a temporary restraining order (“TRO”) that will put an immediate end to Defendants’ practices and preserve funds for eventual return to victims. The requested relief is similar to TROs obtained by the FTC against other Canadian defendants engaged in similar conduct.⁴

II. PARTIES

A. Federal Trade Commission

The FTC is an independent agency created by the FTC Act, 15 U.S.C. §§ 41-58. The FTC is charged with, *inter alia*, enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and its implementing regulations, the TSR, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. The FTC is authorized to bring suit in U.S. District Court to enjoin violations of the FTC Act and the TSR to secure such equitable relief as may be appropriate in each case, including consumer redress and disgorgement of ill-gotten gains. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

⁴ See *FTC v. 120194 Canada, Ltd., et al.*, 04C 7204 (N.D. Ill. 2004) (Gottschall, J); *FTC v. 9094-5114 Quebec Inc.*, 03 C 7486 (N.D. Ill. 2003) (Leinenweber, J.); *FTC v. Pacific First Benefit LLC*, 02 C 8678 (N.D. Ill. 2002) (Norgle, J.); *FTC v. 1492828 Ontario Inc. d/b/a First Capital Consumers Group, et al.*, 02 C 7456 (N.D. Ill. 2002) (Guzman, J.); *BABC*, 02 C 5762 (N.D. Ill. 2002) (Darrah, J.) (TRO appointing receiver); *Cf. FTC v. Xtel Marketing, et al.*, 04 C 07238 (N.D. Ill. 2004) (Zagel, J.) (defendants claimed to be with Social Security Administration and debited bank accounts for drug discount cards).

B. Defendants

The four individual defendants who operate this telemarketing fraud are residents of Ontario, Canada. Oleg Oks is a principal, director, and/or officer of five of the corporate defendants.⁵ Oks's father, Aleksandr, is a principal, director, and/or officer of three of the corporate defendants.⁶ Philip Nemirovsky is the sole director of OCN 1585392.⁷ Boris Pekar was the sole director of OCN 1629930 until he was replaced by Oleg Oks in January 2005.⁸ The eight corporate defendants are seven Ontario corporations and a dissolved Ontario corporation.⁹

III. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES

Defendants have operated two distinct deceptive telemarketing schemes for four years. Since 2001, Defendants have run an advance fee credit card scam in which they falsely offer major unsecured credit cards and promotional gifts to U.S. consumers who pay an advance fee by bank account debit. Since at least 2004, Defendants have also falsely offered to provide personal computers to U.S. consumers who similarly pay an immediate fee by bank account debit.

In an apparent effort to evade authorities or create an aura of legitimacy, Defendants have created new corporations and accompanying business names much like the defendants in *BABC*. See 2005 U.S. App. LEXIS 18295 at *25 (discussing defendant's email "revealing his plan to keep forming new corporate entities to staunch the flow of consumer complaints: ' . . . we keep the complaints down and set up a successor even quicker in another state, so that the temperature

⁵ An Ontario corporation is assigned a number when incorporated and, by default, is typically referred to by that number followed by "Ontario Inc." (e.g., 1485635 Ontario Inc.). A corporation may also designate a name to which it is referred. For simplicity, this memorandum refers to numbered Ontario corporations with the designation "OCN" ("Ontario Corporation Number") followed by the assigned number. (e.g., 1530605 Ontario Inc. is referred to as OCN 1530605). Oleg Oks is a director of OCN 1530605 (PX1), OCN 1559927 (PX2), OCN 1565205 (PX3), and OCN 1629930 (PX7) (replacing Boris Pekar in January 2005). He also was a director, along with his father, Aleksandr Oks, of OCN 1485635, until it was dissolved in March 2005. PX8.

⁶ Aleksandr Oks is a director of OCN 1620142 (PX5) and OCN 1619264 (PX6). He also was a director, along with his son, Oleg Oks, of OCN 1485635 (PX8) until it was dissolved in March 2005.

⁷ PX4.

⁸ PX7.

⁹ OCN 1485635 was dissolved in March 2005. PX8.

never gets high”). Along the way, Defendants have made minor changes in their false telemarketing claims and in the packages that they send in fulfillment of those false claims. The central feature of Defendants’ practices, however, remains constant. Defendants debit fees from consumer bank accounts for products that they promise but never deliver.

A. Advance Fee Credit Card Scheme

Since at least 2001, Defendants, operating under names such as Nationwide Credit Services, Pacific Liberty, Liberty Wide, Atlantic One, and assorted variations of these names, have telephoned U.S. consumers and falsely promised to provide credit cards in exchange for fees of up to \$319 that Defendants immediately debit from the consumers’ bank accounts.¹⁰ Defendants never deliver the promised credit cards, and, in fact, are not authorized even to offer the cards that they typically promise.¹¹

During these calls Defendants make detailed claims about the credit cards they will supposedly provide. They tell consumers that they will provide unsecured major credit cards, such as Visa or MasterCard credit cards,¹² with low interest rates, no annual fees,¹³ and credit limits

¹⁰ Advance fee ranges from \$219 to \$319. \$219 (PX 15 Denka ¶ 3, PX 30 Smith ¶ 3); \$249 (PX 25 Perea ¶ 3, PX 26 Pigman ¶ 3, PX 28 Ryan ¶ 3, PX 29 Sisto ¶ 3); \$269 (PX 31 Vickers ¶ 3); \$279 (PX 12 Black ¶ 3, PX 20 Jackson ¶ 3, PX 24 Passmore ¶ 4, PX 32 Vidal ¶ 4); \$299 (PX 16 Dixon ¶ 4); \$319 (PX 13 Cole ¶ 4, PX 14 Commissiong ¶ 3, PX 17 Eldredge ¶ 4).

¹¹ PX 36 Majtka ¶¶ 3, 4 (Defendants not licensed by Visa USA to issue Visa cards in U.S., offer Visa products to consumers, or allowed to use Visa trademarks and word marks); PX 20 Jamieson ¶¶ 4, 5 (same, not authorized by Visa Canada Association); PX 37 MacDonald ¶¶ 5, 6 (not authorized by MasterCard International to use MasterCard trademarks or to issue MasterCard branded cards).

¹² Consumers variously report being promised Visa, MasterCard, or generic ‘major’ credit cards. Visa (PX 24 Passmore ¶ 4, PX 30 Smith ¶ 3); MasterCard (PX 13 Cole ¶ 3, PX 14 Commissiong ¶ 3, PX 17 Eldredge ¶ 3); Visa or MasterCard (PX 12 Black ¶ 3, PX 20 Jackson ¶ 3, PX 31 Vickers ¶ 3, PX 32 Vidal ¶ 4); ‘Major’ credit card (PX 15 Denka ¶ 3, PX 16 Dixon ¶ 4, PX 25 Perea ¶ 3, PX 26 Pigman ¶ 3, PX 28 Ryan ¶ 3, PX 29 Sisto ¶ 3). Some consumers were expressly told that the credit card was unsecured (PX 14 Commissiong ¶ 3, PX 16 Dixon ¶ 4, PX 17 Eldredge ¶ 3, PX 24 Passmore ¶ 4, PX 25 Perea ¶ 3).

¹³ Low interest rates: PX 17 Eldredge ¶ 3, PX 28 Ryan ¶ 3. No annual fees: PX 13 Cole ¶ 3, PX 17 Eldredge ¶ 3, PX 20 Jackson ¶ 3, PX 24 Passmore ¶ 4, PX 32 Vidal ¶ 4.

ranging between \$200 and \$10,000.¹⁴ Defendants also assure consumers that they will receive credit cards by claiming that the consumers are pre-approved, approved, or guaranteed to receive the promised credit cards¹⁵ and often lead consumers to believe that the credit cards will be delivered shortly after the fee is debited from the consumer's bank account.¹⁶ To make the sales pitch even more appealing, Defendants typically make explicit claims that consumers will also get one or more free products. Consumers have been told that they would receive Dish Network satellite television systems, cell phones, vacation packages, and even home security systems.¹⁷

Defendants never deliver the promised credit cards or gifts. In fact, the only thing consumers ever receive from the Defendants is a packet of printed materials sent by mail. These include either a contract ("Authorization Contract") that is supposedly intended to authorize Defendants to apply for credit for the consumer or a form ("Information Form") that is purportedly intended to authorize Defendants to obtain consumers' credit reports for use in obtaining credit.¹⁸ The packet often also includes credit card applications that should be available

¹⁴ Credit limits: \$200-\$400 (PX 15 Denka ¶ 3); \$500 (PX 20 Jackson ¶ 3); \$1,500 (PX 13 Cole ¶ 3, PX 26 Pigman ¶ 3, PX 29 Sisto ¶ 3, PX 32 Vidal ¶ 4); \$2,500 (PX 31 Vickers ¶ 3); \$5,000 (PX 12 Black ¶ 3, PX 17 Eldredge ¶ 3, PX 30 Smith ¶ 3); \$10,000 (PX 28 Ryan ¶ 3); \$1,000-\$10,000 (PX 24 Passmore ¶ 4); \$1,500-\$5,000 (PX 14 Commissiong ¶ 3); \$5,000-\$10,000 (PX 16 Dixon ¶ 4).

¹⁵ Pre-approved (PX 20 Jackson ¶ 3, PX 28 Ryan ¶ 3, PX 29 Sisto ¶ 3, PX 30 Smith ¶ 3, PX 31 Vickers ¶ 3); Approved (PX 12 Black ¶ 3, PX 13 Cole ¶ 3, PX 14 Commissiong ¶ 3, PX 15 Denka ¶ 3, PX 17 Eldredge ¶ 3, PX 26 Pigman ¶ 3, PX 32 Vidal ¶ 4); Guaranteed (PX 16 Dixon ¶ 4, PX 24 Passmore ¶ 4, PX 25 Perea ¶ 3).

¹⁶ PX 15 Denka ¶ 3, PX 17 Eldredge ¶ 4, PX 28 Ryan ¶ 3, PX 30 Smith ¶ 3, PX 31 Vickers ¶ 3, PX 32 Vidal ¶ 4.

¹⁷ Dish Network satellite television system: PX 15 Denka ¶ 3; Cell phone: PX 12 Black ¶ 3, PX 13 Cole ¶ 3, PX 17 Eldredge ¶ 3, PX 29 Sisto ¶ 3, PX 31 Vickers ¶ 3, PX 32 Vidal ¶ 4; Vacation package: PX 17 Eldredge ¶ 3; Home security system: PX 13 Cole ¶ 3, PX 26 Pigman ¶ 3.

¹⁸ The term "Authorization Contract" is used for identification and does not appear in the documents. The "Information Form" is so entitled. Examples of the documents can be found as follows: Authorization Contract (Nationwide): PX 15 Denka ¶ 10 Att. E; Authorization Contract (Pacific Liberty/LibertyWide): PX 12 Black ¶ 8, Att. D Pg 1; PX 20 Jackson ¶ 5 Att. D Pg. 1; PX 25 Perea ¶ 11, Att. D Pg. 1; PX 31 Vickers ¶ 7, Att. B Pg. 1 (contract states, in part: "1530605 Ontario Inc/1585392

(continued...)

for free elsewhere, a financial advice booklet,¹⁹ a self-help book on managing credit,²⁰ an identity theft prevention course,²¹ and a “Membership Benefit Package,” containing brochures and pamphlets that do little more than advertise the complimentary goods that Defendants promise during their sales pitches.²² The only actual card is a catalog card apparently at most usable for purchases from the “Vista” catalog, an obscure publication prominently featuring the Mandrell sisters,²³ that consumers neither expect nor want.²⁴

Moreover, instead of the actual satellite systems, cell phones, and other complimentary merchandise promised during the sales calls, Defendants include certificates supposedly

¹⁸ (...continued)

Ontario Inc., hereinafter referred to as Pacific Liberty/Liberty Wide.”); Information Form (Atlantic One): PX 13 Cole ¶ 8, Att. C.

¹⁹ PX 30 Smith ¶ 5 (Nationwide “package contained about four or five credit card applications and a booklet on financial advice. The credit card applications were generic applications that I could have gotten anywhere for free. The package did not contain a Visa credit card with a credit limit of \$5,000.”)

²⁰ “Liberty Wide Credit Solution’s Improving Your Financial Life.” PX 12 Black ¶ 7, Att. C; PX 20 Jackson ¶ 5, Att. C; PX 24 Passmore ¶ 6, Att. B; PX 25 Perea ¶ 11; PX 29 Sisto ¶ 6; PX 31 Vickers ¶ 7, Att. C; PX 32 Vidal ¶ 9, Att. B.

²¹ PX 28 Ryan ¶ 6, Att. C.

²² For a sample of Defendants’ apparent complete “Membership Benefit Package,” from which credit cards are conspicuously absent, *see, e.g.*, PX 16 Dixon, an Atlantic One declarant, ¶¶ 6, 7, Att. C (Merchant Card); Att. D (“Vista” catalog); Att. E (merchandise vouchers from “Your Benefits Provider”); Att. F (“Global Media” catalog order form); Att. G (application for “National Money Services” “Fast Cash” “Cash Line of Credit Account”); Att. H (“Global Cash Card” stored value card application); Att. I (“5000 Minute Phone Card Just For You!” and “\$500 Shopping Spree Just For You!”); Att. J (savedirectusa.com “Get Today’s Hottest Wireless Phones for Free” cell phone brochure); Att. K (“Free Satellite TV System” brochure); Att. L (free “\$799.00 retail value!” home/business security system brochure); Att. M (“Vacation Dreams Come True” vacation brochure); Att. N (“Identity Theft Prevention Guide”).

²³ PX 16 Dixon ¶ 6, Att. C (Merchant Card), Att. D (Vista catalog); PX 28 Ryan ¶ 6, Att. B. (Pacific Liberty) (“The merchant card was not a credit card, instead it was a card that could only be used with the catalog that was also contained in the package.”)

²⁴ PX 28 Ryan ¶ 8 (would not have permitted debit if “I had known the only thing I would get in return was a merchant card that could only be used to order products out of a catalog they provide.”); PX 16 Dixon ¶ 12.

redeemable for various goods and services such as a “Vacation Dreams Come True” brochure and a “\$500 Shopping Spree Just for You!” certificate.²⁵ Ironically, some of these certificates require consumers to demonstrate that they have a major credit card account²⁶ even though many of Defendants’ victims cannot obtain credit cards because of their poor credit histories.²⁷

Defendants’ failure to deliver the credit cards that they promise is highlighted by something that is not a card at all: an application for the stored value “Global Cash MasterCard,”²⁸ which is strikingly similar to *BABC*’s ChexCard, “a useless card with a MasterCard logo.” 2005 U.S. App. LEXIS 18295 at *19 (“We think that it is safe to say that no reasonable consumer would pay close to \$200 for the opportunity to order this ‘ChexCard’”).

Defendants have consistently employed their central tactics of falsely promising to deliver credit cards and immediately collecting payment by bank account debit despite changing their business names and the materials that they send to consumers. Willard Joe Black is a typical recipient of those tactics. Someone who identified himself as a consultant with Liberty Wide Group telephoned Mr. Black and told him that he “had already been approved for two credit cards,” a Visa and a MasterCard, each with a \$5000 credit limit, and a free cell phone for a “one time processing fee of \$279, which would be electronically debited from [his] bank account.”²⁹ Although the consultant told Mr. Black that Liberty Wide would accommodate his financial situation by debiting the payment in two installments,³⁰ Defendants nevertheless immediately

²⁵ PX 16 Dixon Att. I (“5000 Minute Phone Card Just For You!” and “\$500 Shopping Spree Just For You!”); Att. M (“Vacation Dreams Come True” brochure).

²⁶ PX 16 Dixon ¶ 7 Att. J (major credit card required for “free” cell phone), Att. L (“Satisfactory credit history” required for “free” home/business security system).

²⁷ *E.g.*, PX 15 Denka ¶ 3; PX 20 Jackson ¶ 3; PX 28 Ryan ¶ 3; PX 32 Vidal ¶¶ 3, 4.

²⁸ The order form requires a \$39.95 payment consisting of a \$27.95 initial processing and set up fee and a \$12.00 initial load that the consumer must pay to activate the card and expressly states: “This is not a credit card. It is a “stored value” cash card that must be loaded by you.” (*emphasis in original*). PX 16 Dixon ¶ 6, Att. H Pg. 2.

²⁹ PX 12 Black ¶ 3.

³⁰ PX 12 Black ¶ 3.

debited \$279 from Mr. Black's account.³¹ Instead of credit cards, Mr. Black eventually received a package containing an Authorization Contract and a booklet describing how he could establish and maintain credit.³² When he informed Defendants that he still had not received a credit card two months after returning the completed contract, Defendants claimed that they "were still processing [his] application."³³ Mr. Black never received the promised credit card or cell phone.³⁴

Consumers like Mr. Black would not have permitted their bank accounts to be debited if they had known that at most they would receive applications, booklets, and certificates rather than the credit cards promised by Defendants:

The only reason I agreed to let Liberty Wide Group debit \$279 out of my bank account in the first place was because they had guaranteed me that in return I would receive two major credit cards regardless of my credit history and a cell phone . . . I definitely would never have let them take any money out of my savings account if I had known the only thing I would get in return was some information on financial advice.³⁵

Similarly, Frank Dixon states:

The only reason I agreed to let Atlantic One take \$299 out of my bank account in the first place was because they had guaranteed me that in return I would receive an unsecured major credit card and a free cell phone . . . I definitely would never have let them take any money out of my checking account if I had known the only thing I would get in return was an identity theft booklet, a product catalog, a merchant card that could only be used to purchase items out of the catalog, some brochures, and a couple of stored value cash card applications.³⁶

³¹ PX 12 Black ¶ 5.

³² PX 12 Black ¶ 7.

³³ PX 12 Black ¶ 9.

³⁴ PX 12 Black ¶ 13.

³⁵ PX 12 Black ¶ 12.

³⁶ PX 16 Dixon ¶ 12.

Consumers only agree to the debit because they expect to receive the actual credit cards promised by Defendants during the sales pitch.³⁷

Likewise, consumers would not have permitted hundreds of dollars to be debited from their accounts if they knew that all they would receive was the Authorization Contract or Information Form, because, in the words of one consumer, “I could fill out credit card applications on my own for free.”³⁸ Defendants tell consumers who question the Authorization Contract that they must sign and return it to receive a credit card.³⁹ Defendants have even told consumers that they must return a completed contract to obtain a refund.⁴⁰ Indeed, most consumers, such as Betty Kay Perea, do not sign the contract because they do not understand it, find its provisions objectionable, or realize that they have been scammed:

Included in the materials I received from Liberty Wide Group was a financial advice booklet titled “Liberty Wide Credit Solution’s Improving Your Financial Life.” They also sent me a contract to fill out to allow “Pacific Liberty/Liberty Wide” to apply for credit cards on my behalf. However, I had been promised that I would receive an actual unsecured major credit card in the mail, not a booklet or a contract. I did not fill out and return the contract, since by this point I believed that this was a scam and did not wish to provide “Pacific Liberty/Liberty Wide” with any more information.⁴¹

³⁷ *E.g.*, PX 13 Cole ¶ 15 (Atlantic One); PX 14 Commissiong ¶ 16 (Atlantic One); PX 17 Eldredge ¶ 8 (Atlantic One); PX 20 Jackson ¶ 9 (Liberty Wide); PX 24 Passmore ¶ 15 (Liberty Wide); PX 25 Perea ¶ 15 (Pacific Liberty); PX 28 Ryan ¶ 8 (Pacific Liberty); PX 29 Sisto ¶ 9 (Liberty Wide); PX 31 Vickers ¶ 10 (Liberty Wide Group); PX 32 Vidal ¶ 13 (Liberty Wide Group).

³⁸ PX 25 Perea ¶ 15 (“I definitely would never have let them take any money out of my checking account if I had known the only thing I would get in return was some information on financial advice and a contract to let ‘Pacific Liberty/Liberty Wide’ apply for credit cards on my behalf.”); *See also* PX 30 Smith ¶ 5 (describing Nationwide package: “The credit card applications were generic applications that I could have gotten anywhere for free.”)

³⁹ PX 13 Cole (Atlantic One) ¶¶ 6, 11; PX 14 Commissiong ¶ 8 (Atlantic One); PX 16 Dixon ¶¶ 9, 10 (Atlantic One). PX 17 Eldredge ¶¶ 8, 10 (Atlantic One); PX 24 Passmore ¶¶ 6, 16 (Liberty Wide); PX 26 Pigman ¶ 6 (Pacific Liberty)

⁴⁰ PX 26 Pigman ¶ 7.

⁴¹ PX 25 Perea ¶ 11; *See also* PX 15 Denka ¶ 7 (“I thought that the contract was strange because I had been told earlier by [Nationwide representative] that I had already been approved for a credit card
(continued...)”)

Other consumers, including some who suspect that they have been scammed, nevertheless return a completed authorization contract, but still do not receive the promised credit cards.⁴²

Defendants give various excuses to consumers who question why they have not received their supposedly pre-approved or guaranteed credit cards, such as the credit card is in the mail, the application is still being processed, or Defendants are still waiting to hear from a credit card provider with the most favorable rates.⁴³ When excuses fail to placate complaining consumers, Defendants bluntly refuse to provide refunds.⁴⁴

⁴¹ (...continued)

and now the contract said that they were going to apply for credit cards on my behalf.”) PX 16 Dixon ¶ 11 (consumer refused to provide personal information to Atlantic One representative because “I thought that this was a scam and I did not want Atlantic One’s representatives to call my friends and relatives offering them this same credit card offer.”) PX 25 Perea ¶ 14 (consumer told representative that “I thought that this was as a scam and that I had reported Pacific Liberty to the BBB and the Texas Office of the Attorney General.”); PX 31 Vickers ¶ 7 (“The package only contained a contract and a booklet. I filled out the contract, but upon further review of the contract, I realized that this was a scam and therefore I never sent the completed contract to Liberty Wide Group.”)

⁴² *E.g.*, PX 29 Sisto ¶ 7 (after receiving financial advice manual instead of promised credit card, consumer hesitated to initial Liberty Wide contract because “by that time, I wished to sue, so I first sent in the form to Liberty Wide without initialing the form . . . They sent it back to me, telling me that I could not receive my credit card unless I initialed the statement that I would not sue them.” Ms. Sisto eventually initialed and returned paperwork, but never received the promised credit card.); PX 12 Black (Liberty Wide) ¶¶ 7-11; PX 13 Cole (Atlantic One) ¶¶ 9-13.

⁴³ PX 9 Danz ¶ 13 (U.S. Postal Service survey respondents stated that “they were given several excuses including that their applications were still being processed or that Pacific Liberty was waiting for one or more banks to respond with the most attractive interest rate.”); PX 13 Cole ¶ 13 (“Each time that I have called, I have heard a different story for why I had not received my credit card, and the stories typically contradicted what I had been told earlier. Here are just a few examples of what I have been told: I have been told repeatedly that Atlantic One has not received my form; I have been told that they probably received my form, but that my form is sitting at either another building or department waiting to be picked up; And I have been told that I would not receive my credit card until Atlantic One was finished conducting its own internal investigation on the security guards that signed for my packages.”); PX 31 Vickers ¶ 8 (consumer called at least ten times over three months and “representative would always reply that they were still waiting for a credit card company to approve me.”).

⁴⁴ *E.g.* PX 30 Smith ¶ 6 (“representative told me that Nationwide Information Services Group does not offer refunds”); PX 11 Bennett ¶ 5 (told representative “that I never authorized Liberty Sun to withdraw \$289 from my bank account. . . She said that Liberty Sun does not have a refund policy and that therefore I could not get a refund.”) PX 15 Denka ¶¶ 7, 9 (“representative said that Nationwide Credit Services does not offer refunds and that I would have to contact Dish Network myself in order to
(continued...)

B. Computer Scheme

Using the name Liberty Sun, Defendants have falsely offered to provide computers to U.S. consumers since at least 2004. Defendants also promise other promotional gifts similar to those that they falsely offer in the advance fee credit scheme in exchange for fees ranging over three hundred dollars.⁴⁵ As with the advance fee credit card scheme, Defendants obtain bank account information and debit the fee from consumers' accounts. Defendants do not deliver the promised computers or gifts.

During these telemarketing calls consumers are expressly assured that if they authorize the fee they will receive a computer. Again, these claims are buttressed by specific details about the offer, such as specifically stating that it will be a name brand computer, such as a Dell or Hewlett-Packard⁴⁶ Defendants sometimes also claim that the computer will include premium components, such as a 17" flat screen monitor.⁴⁷ To sweeten the offer even more, Defendants also promise an assortment of gifts like those associated with the advance fee credit card scheme such as cell

⁴⁴ (...continued)

get the satellite dish. . . I told him that Mario Rego [the original representative] said that Nationwide Credit Services would be shipping me the satellite dish not Dish Network. He said, 'F***k you!' and he hung up the phone. The same day I called Dish Network and spoke to a representative who said that Dish Network had no promotional offerings or affiliation with Nationwide Credit Services."); PX 25 Perea ¶ 14 (representative stated that "Pacific Liberty does not refund money"); PX 26 Pigman ¶ 7 (asked for a refund because she had been "misled into believing that I had already been approved for a credit card;" called at least thirty times until Pacific Liberty representative hung up on her); PX 28 Ryan ¶¶ 6, 7 (representative stated that "Pacific Liberty Group does not offer refunds"); PX 29 Sisto ¶ 5 (Liberty Wide) ("No one ever told me of a no-refund policy, and if they had, I would never have agreed to this policy in the first place."); PX 31 Vickers ¶¶ 6, 8 (called at least ten times asking for refund and representatives "would reply that Liberty Wide Group had a no refund policy"); PX 16 Dixon ¶¶ 8, 11 (second time that he asked Atlantic One for a refund, the representative "said no and hung up the phone.")

⁴⁵ Fees range from \$269 to \$318. \$269 (PX 27 Rook ¶ 3); \$279 (PX 21 Milburn ¶ 3, PX 19 Hannan ¶ 3); \$289 (PX 11 Bennett ¶ 3); \$299: (PX 18 Ferketich ¶ 3, PX 22 Mitchell ¶ 4); \$318 (PX 23 Olvera ¶ 4 (fee of \$279, or \$318 if consumer paid in two payments)).

⁴⁶ Dell computers (PX 21 Milburn ¶ 3, PX 22 Mitchell ¶ 3, PX 23 Olvera ¶ 3, PX 27 Rook ¶ 3); Dell or Hewlett-Packard computers (PX 11 Bennett ¶ 3, PX 19 Hannan ¶ 4).

⁴⁷ PX 19 Hannan ¶ 3; PX 23 Olvera ¶ 3.

phones, Dish Network satellite television systems, vacation packages, and digital cameras.⁴⁸

Defendants have even claimed that consumers have won the computer and gifts and that the one-time fee is for shipping and handling or taxes.⁴⁹

Of course, Defendants do not deliver the promised computers or gifts. Once again, all consumers receive is a packet containing various brochures and certificates.⁵⁰ The package contains certificates ostensibly redeemable for a computer, often an off brand instead of the name brand promised by the telemarketer.⁵¹ These certificates require that the consumer fulfill various previously undisclosed conditions for redemption, such as paying additional fees or agreeing to a long term commitment for Internet service.⁵² Liberty Sun's "Preferred Computer Club Membership Benefits Package" also includes certificates and brochures for purported benefits

⁴⁸ Cell phones (PX 11 Bennett ¶ 3, PX 18 Ferketich ¶ 3, PX 19 Hannan ¶ 4, PX 21 Milburn ¶ 3, PX 23 Olvera ¶ 3); Dish Network satellite television systems (PX 19 Hannan ¶ 4, PX 21 Milburn ¶ 3, PX 27 Rook ¶ 3); Satellite dishes (PX 11 Bennett ¶ 3, PX 18 Ferketich ¶ 3, PX 22 Mitchell ¶ 3, PX 23 Olvera ¶ 3); Vacation packages (PX 11 Bennett ¶ 3, PX 21 Milburn ¶ 3, PX 22 Mitchell ¶ 3, PX 23 Olvera ¶ 3, PX 27 Rook ¶ 3); Digital camera (PX 11 Bennett ¶ 3, PX 19 Hannan ¶ 4, PX 21 Milburn ¶ 3, PX 23 Olvera ¶ 3, PX 27 Rook ¶ 3).

⁴⁹ PX 27 Rook ¶ 3 ("[Liberty Sun] said that I had won a free Dell computer system. . . a free vacation, a free Dish network television system, a free digital camera, and other free prizes. She said that I would have to pay taxes on all of the items, which totaled \$269, and this was the only fee that I would have to pay to receive all of the items."), PX 22 Mitchell ¶¶ 3, 4 (Liberty Sun representative "said that my husband and I had won a free Dell computer, free Internet service for two months, a free satellite dish and a free trip voucher for 4 days and 3 nights for two people" * * * "that we would have to pay a one-time shipping and handling fee of \$299 and that this was the only fee that we had to pay to receive the Dell computer, Internet service, satellite dish and vacation for two.")

⁵⁰ The packages are variously called a "*LIBERTY SUN INFO SERVICES* Package" (PX 11 Bennett ¶ 7, Att. A; PX 19 Hannan ¶ 9, Att. B; PX 21 Milburn ¶ 7, Att. A; PX 23 Olvera ¶ 10, Att. C); a "Preferred Computer Club Membership Benefits Package," (PX 18 Ferketich ¶ 6, Att. A); or a "Computer Gift Certificate package" (PX 21 Milburn ¶ 15, Att. H.)

⁵¹ E.g., PX 11 Bennett ¶ 8, Att. B;

⁵² PX 11 Bennett ¶ 68 Att. B, PX 19 Hannan ¶ 9, Att. C (\$25 application fee; plus \$69 shipping and handling; 36 month commitment to Internet service at \$29.95 per month); PX 18 Ferketich ¶ 6, Att. B, PX 21 Milburn ¶ 16, Att. I (\$359.40 initial fee for first year of Internet service plus commitment to two years of Internet service at \$29.95 per month); PX 21 Milburn ¶ 8, Att. B, PX 23 Olvera ¶ 10, Att. D, PX 27 Rook ¶ 6 (\$65 shipping and handling; 24 months commitment to Internet service at \$29.95 per month).

such as cell phones, insurance, pharmaceutical discounts, travel discounts and even a stored value card.⁵³ Computers are noticeably absent from the packages, just as credit cards are missing from the packages that Defendants send to their credit card victims.

Consumers expect to receive a computer – not a package of miscellaneous printed materials. For example, Defendants claimed that Judith Rook had won a Dell computer system, and other products, which she would receive once she paid \$269 in taxes, the only fee associated with the “prize.”⁵⁴ After Ms. Rook’s account was debited, she learned that the package delivered by Defendants “did not contain any of the actual products that I had supposedly won; it only contained advertisements from several companies.”⁵⁵ Moreover, she calculated that, “[a]ccording to the advertisements, I would have to pay over \$900 in additional fees” to claim her prizes.⁵⁶ Consumers, like Ms. Rook, provide bank account information and permit hundreds of dollars to be debited from their bank accounts only because they expect to receive the computers that Defendants claim that they will deliver rather than the coupons and certificates that Defendants actually send.⁵⁷

⁵³ The supposed benefits of the “New Preferred Computer Club Member” are listed in its welcome letter, *e.g.*, PX 18 Ferketich Att. A. For the apparent complete package, *see, e.g.*, PX 18 Ferketich Att. C (“Preferred Communications No Cost Cellular Phone Order Form”); Att. D (“Savings Guarantee” providing \$100 savings bond because “We are so sure that you and your family will save money with this club”); Att. E (“Preferred Benefits Executive Benefit Pack” that supposedly insures against lost pets, cell phones, keys, credit card loss, and check forgeries); Att. F (“Preferred Family/Health Services” supposedly providing pharmacy, dental, and vision discounts); Att. G (“Preferred Benefits Roadside Motor Club”); Att. H (“Free Digital Camera, Camcorder & PC Camera All in One!” for \$29.99); Att. I (“Impulse Travel” hotel and car rental discounts); and Att. J (“Authorized MasterCard Distributor Guaranteed Acceptance Certificate” application for stored value “MasterCard Debit Card” for \$19.90 plus amounts that the consumer must load on to the card).

⁵⁴ PX 27 Rook ¶¶ 3, 4.

⁵⁵ PX 27 Rook ¶¶ 3, 6.

⁵⁶ PX 27 Rook ¶ 7.

⁵⁷ PX 18 Ferketich ¶ 11; PX 19 Hannan ¶ 12 (“I definitely would never have let them take money out of my bank account if I had known that the only thing I would get in return was some brochures that required me to pay even more money for products that were claimed to be free.”); PX 21 Milburn ¶ 18 (“only reason I agreed to let Liberty Sun electronically debit \$279 out of my checking
(continued...)”)

Most consumers realize that they have been victimized and, rather than risk losing still more money, decide against attempting to redeem the various certificates.⁵⁸ Those who attempt to redeem the certificates still do not receive computers.⁵⁹ As with the advance fee credit card scheme, Defendants flatly refuse to provide refunds to consumers who, for example, complain that they were promised computers, not brochures, or that the additional fees described in the certificates were not disclosed in the telephone solicitations.⁶⁰

⁵⁷ (...continued)

account in the first place was because they had guaranteed me that in return, I would receive a free Dell Intel Pentium 3 computer, with a 17" color monitor, keyboard, speakers, free installation, instructions and a free one year warranty on parts and labor" plus assorted other products.); PX 22 Mitchell ¶ 9 (only agreed to \$299 Liberty Sun debit because she was told "that I had won a free Dell computer, free Internet service for two months, free satellite dish and two vouchers for a four day, three night trip."); PX 23 Olvera ¶ 15 (only agreed to \$558 Liberty Sun debit because Liberty Sun "had twice guaranteed me that in return I would receive two black, 2004 Dell computers each with a 17" flat screen monitor" and other products); PX 27 Rook ¶ 9 (only agreed to \$269 debit because "they had told me that I had won a free Dell computer system complete with a monitor, speakers, keyboard and software, a free satellite dish, a free vacation and a free digital camera.")

⁵⁸ PX 21 Milburn ¶ 17 ("I had my doubts that I would even receive the computer and internet service even if I did prepay for the one year. As a result of my doubts and my frustrations, I decided not to send in the form or any more money."); PX 27 Rook ¶ 8 ("After I received the package of advertisements from Liberty Sun, I realized that I had been scammed by Liberty Sun" and decided against paying any additional fees to avoid losing any more money.)

⁵⁹ PX 18 Ferketich ¶¶ 3, 4, 10 (consumer initially paid \$299 by bank account debit and committed to two years of Internet service at \$29.95 per month; in addition, returned certificate committing to \$359.40 for one year of Internet service. Consumer never paid the \$359.40 and never received a computer). PX 22 Mitchell ¶¶ 7, 8, 10 (at ¶ 10, consumer was told that "Liberty Sun was not in charge of delivering the items [Dell computer, Internet service, satellite dish] and that Liberty Sun was only in charge of paperwork.")

⁶⁰ *E.g.*, PX 11 Bennett ¶¶ 5, 6 (consumer with overdrawn account notice requested refund for unauthorized debit and was told that "Liberty Sun does not have a refund policy and that therefore I could not receive a refund;" called two more times and "each time, they told me that I could not receive a refund because Liberty Sun does not offer refunds."); PX 18 Ferketich ¶ 9 (representative stated that "Liberty Sun does not offer refunds."); PX 21 Milburn ¶ 13 (consumer complained that what he received was completely different from what was described in sales pitch and the representative stated that "Liberty Sun does not offer refunds.")

IV. ARGUMENT

The Court has the full authority to issue the requested injunctive relief and ancillary asset freeze to prevent Defendants from violating the law pending final resolution and to preserve the possibility of an effective final remedy. The facts strongly support issuing such relief.

A. This Court Has Jurisdiction and Venue is Proper

This Court has subject matter jurisdiction, 28 U.S.C. §§ 1331, 1337(a), and 1345, and personal jurisdiction over Defendants because the FTC Act provides for nationwide service of process. *See* FTC Act, 15 U.S.C. § 53(b). When a federal statute provides for nationwide service of process, personal jurisdiction may be obtained over any defendant having minimum contacts with the United States as a whole. *United States v. De Ortiz*, 910 F.2d 376, 382 (7th Cir. 1990); *see also United Rope Distributors, Inc. v. Seatrion Marine Corp.*, 930 F.2d 532, 534 (7th Cir. 1991). The Canadian defendants have the necessary minimum contacts because, among other things, they market and sell throughout the United States. Venue is proper because “[a]n alien may be sued in any district.” 28 U.S.C. § 1391(d). *See also* 15 U.S.C. § 53(b) (suit may be brought where person, partnership, or corporation resides or transacts business, or wherever venue is proper under 28 U.S.C. § 1391).

B. This Court Has the Authority to Grant the Requested Relief

A district court may issue injunctions to enjoin violations of the FTC Act. *See* 15 U.S.C. 53(b); *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1028 (7th Cir. 1988). The Court’s authority to grant injunctions includes the power to grant “any ancillary equitable relief necessary to effectuate the exercise of the granted powers.” *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989). Such ancillary relief includes, *inter alia*, rescission of contracts, restitution, disgorgement, and freezing of assets. *See, e.g., Febre*, 128 F.3d at 534 (redress as restitution or rescission); *World Travel*, 861 F.2d at 1026, 1031 (freeze of corporate and individual defendants’ assets); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102-03 (9th Cir. 1994) (restitution and disgorgement). Courts

appropriately invoke Section 13(b) remedies in fraud cases.⁶¹ *World Travel*, 861 F.2d at 1024-28; *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982).

The TSR also authorizes the Court to exercise its full equitable powers because all applicable FTC Act remedies are available to enforce the TSR. 15 U.S.C. § 6105(b). Courts are authorized to grant relief necessary to redress injury to consumers caused by violations of FTC rules prohibiting unfair or deceptive practices, such as the TSR, including “rescission or reformation of contracts, the refund of money or return of property.” 15 U.S.C. §§ 57b(a), (b).

C. The FTC Meets the Applicable Standard for Issuance of a Temporary Restraining Order and Preliminary Injunction

Section 13(b) authorizes a temporary restraining order and a preliminary injunction “[u]pon a proper showing that, weighing the equities and considering the Commission’s likelihood of ultimate success, such action would be in the public interest.” 15 U.S.C. § 53(b). Unlike litigation between private parties, the traditional four pronged injunctive relief test is inapplicable to Section 13(b). *See World Travel*, 861 F.2d at 1028-29. Instead, irreparable injury is presumed in a statutory enforcement action, *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 903 (7th Cir. 1989), and the Court need only “1) determine the likelihood that the Commission will ultimately succeed on the merits and 2) balance the equities.” *World Travel*, 861 F.2d at 1029. Under this two pronged test, once the FTC establishes the likelihood of ultimate success, *i.e.*, a “‘better than negligible’ chance of succeeding on the merits,” *see FTC v. Windermere Big Win Int’l*, No. 98 C 8066, 1999 U.S. Dist. LEXIS 12259, at *17 (N.D. Ill. 1999), issuing an injunction is appropriate if the balance of equities favors the requested relief. In balancing public and private interests, the public interest should receive greater weight. *World Travel*, 861 F.2d at 1029.

⁶¹ Courts in this district regularly enter TROs in FTC fraud cases. *See, e.g., FTC v. 120194 Canada, Ltd., et al.*, 04 C 7204 (N.D. Ill. Nov. 8, 2004); *FTC v. 9094-5114 Quebec Inc., et al.*, 03 C 7486 (N.D. Ill. Oct. 23, 2003); *FTC v. QT Inc., et al.*, 03 C 3578 (N.D. Ill. May 29, 2003); *FTC v. STF Group, Inc., et al.*, 03 C 977 (N.D. Ill. Feb. 12, 2003); *FTC v. CSCT, Inc.*, 03 C 880 (N.D. Ill. Feb. 11, 2003); *FTC v. 1492828 Ontario Inc., et al.*, 02 C 7456 (N.D. Ill. Oct. 17, 2002); *FTC v. Bay Area Bus. Council, Inc.*, 02 C 5762 (N.D. Ill. Aug. 15, 2002); *FTC v. Stuffingforcash.com, Inc.*, 02 C 5022 (N.D. Ill. July 16, 2002); *FTC v. TLD Network Ltd.*, No. 02 C 1475 (N.D. Ill. Feb. 28, 2002); *FTC v. 1st Financial Solutions, Inc.*, 01 C 8790 (N.D. Ill. Nov. 19, 2001); *FTC v. Growth Plus Int’l Mktg., Inc.*, 2001 WL 128139 (N.D. Ill. Jan. 9, 2001).

The public interest in protecting consumers from Defendants' deceptive practices outweighs Defendants' interest in continuing to operate a business permeated by fraud. Both the likelihood of success and a balancing of the equities favor granting preliminary injunctive relief.

D. The Evidence Demonstrates an Overwhelming Likelihood that the FTC will Prevail on the Merits

1. Defendants' advance fee credit card and computer scams are deceptive and violate Section 5 of the FTC Act

Section 5 of the FTC Act declares unlawful "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(1). Acts or practices are deceptive if the representations, omissions, or practices are likely to mislead consumers, acting reasonably, to their detriment. *Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992); *World Travel*, 861 F.2d at 1029. "Misrepresentations of material facts made for the purpose of inducing customers to purchase goods or services constitute unfair or deceptive acts or practices forbidden by Section 5(a)." *World Travel*, 861 F.2d at 1029 (citation omitted). A representation, omission, or practice is material if it is likely to affect a consumer's decision to buy a product or service. *FTC v. Sabal*, 32 F. Supp. 2d 1004, (N.D. Ill. 1998). To be actionable, the "misrepresentations or practices need not be made with an intent to deceive." *World Travel*, 861 F.2d at 1029.

The declarations of consumers who were misled by Defendants' false claims and whose bank accounts were debited for hundreds of dollars to pay for nonexistent credit cards, computers, and assorted gifts amply demonstrate that Defendants have violated Section 5.

2. Defendants have violated the Telemarketing Sales Rule in further violation of the FTC Act

Defendants have violated the TSR by telephoning consumers and misrepresenting that they will provide consumers with major credit cards, often with no annual fees, high credit limits, and low interest rates, and by misrepresenting that they will provide well known name brand computers and other products. Defendants' misrepresentations fall squarely within the TSR's prohibition of misrepresentations concerning any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii). Moreover, Defendants' request for and receipt of an advance fee while promising to deliver credit cards violates the TSR's express prohibition of advance fee

credit schemes. 16 C.F.R. § 310.4(a)(4). Finally, Defendants' false promise to provide computers to consumers who pay an immediate fee followed by a later revelation that consumers must pay additional fees violates the TSR's prohibitions against failing to disclose and misrepresenting the total costs to purchase goods or services. 16 C.F.R. §§ 310.3(a)(1)(i) and (a)(2)(i). Defendants' violations of the TSR also constitute violations of the FTC Act, 15 U.S.C. § 45(a), by operation of the Telemarketing Act, 15 U.S.C. § 6102(c), and the FTC Act, 15 U.S.C. § 57a(d)(3).

3. Defendants are Liable as a Common Enterprise

Defendants operate as a common enterprise. "Where one or more corporate entities operate in common enterprise, each may be held liable for the deceptive acts and practices of the others." *FTC v. Think Achievement Corp.*, 144 F. Supp.2d 993, 1011 (N.D. Ind. 2000), *aff'd*, 312 F.3d 259 (7th Cir. 2002) (citing *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973); *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746-7 (2nd Cir. 1964)); *See also CFTC v. Wall Street Underground, Inc.*, No. 03-2193-CM, 2003 U.S. Dist. LEXIS 15865, at *23 (D. Kan. July 18, 2003). "Factors considered in determining common enterprise include: (1) common control, (2) shared office space and offices, (3) transaction of business through a 'maze of interrelated companies,' and (4) commingling of funds." *Think Achievement*, 144 F. Supp.2d at 1011 (citations omitted).

Defendants' scheme has all the factors of a common enterprise. Common control is evident because Oleg Oks or his father, Aleksandr, are principals of seven of the eight corporations.⁶² As for shared office space, three of the corporations share the same registered office,⁶³ three of Defendants' four U.S. mail drops forward mail to that address,⁶⁴ and the same

⁶² See Notes 5 and 6. PX1 - PX3, PX5 - PX8.

⁶³ The registered office of OCN 1619264 (registered name: C & B Communications Group, PX6), OCN 1620142 (registered name: Liberty Sun Info Services, PX5), and OCN 1629930 (registered name: Atlantic One Info Services Grp, PX7) is 3701 Chesswood Drive, Suite 206, Toronto, Ontario.

⁶⁴ The following mail has all been forwarded to 3701 Chesswood Drive, Suite 206, Toronto, Ontario: mail for Pacific Liberty and Liberty Wide received at Box 109 in Newark, Delaware, a box opened by Oleg Oks for OCN 1530605 (PX 9 Danz ¶¶ 6, 8); mail for Liberty Sun received at Box 179 in Wilmington, Delaware, a box opened by Oleg Oks for C & B Communication Group (PX 9 Danz ¶ 11 Att. I); and mail for Atlantic One received at Box 107 in Milford, Delaware, a box opened by Boris

(continued...)

telephone numbers are associated with multiple corporations and their various business names.⁶⁵ Defendants also operate through a “maze of interrelated companies,” among which connections are apparent from corporate records, consumer declarations, postal records, and the use of fictitious names. In particular, OCN 1485635 is directly associated with Defendants’ operations as Nationwide,⁶⁶ a name that Defendants began using at least by 2001.⁶⁷ OCN 1530605, OCN 1559927, and OCN 1585392 are directly tied to Pacific Liberty and Liberty Wide,⁶⁸ names that

⁶⁴ (...continued)
Pekar. PX 9 Danz ¶ 12, Att. K.

⁶⁵ 866-282-5550 has been used by Atlantic One (PX 13 Cole ¶ 6, PX 16 Dixon ¶ 4, PX 17 Eldredge ¶ 6), Liberty Sun (PX 18 Ferketich ¶ 3, PX 19 Hannan ¶ 4, PX 21 Milburn ¶ 5, PX 22 Mitchell ¶ 5, PX 23 Olvera ¶ 3) and Liberty Wide (PX 32 Vidal ¶ 11). 866-815-7131 has been used by Liberty Sun (PX 11 Bennett ¶ 3, PX 27 Rook ¶ 6), Liberty Wide (PX 12 Black ¶ 3, PX 20 Jackson ¶ 3, PX 24 Passmore ¶ 4, PX 29 Sisto ¶ 3, PX 31 Vickers ¶ 5, PX 32 Vidal ¶ 4) and Pacific Liberty (PX 25 Perea ¶ 3, PX 26 Pigman ¶ 3, PX 28 Ryan ¶ 3). 866-682-4654 has been used by Nationwide, PX 15 Denka ¶ 3; PX 30 Smith ¶ 3.

⁶⁶ Oleg Oks opened a mail drop to receive mail for Nationwide Credit Service Inc. or OCN 1485635, PX 10 Krause ¶ 4. Defendants used the name Nationwide Credit Services (PX 15 Denka ¶ 3, PX 30 Smith ¶ 3) and sent consumers documents that listed OCN 1485635 along with the names “Nationwide Information Services” and “Nation Wide Information Services Group Inc.” PX 15 Denka ¶ 10 Atts. D, E.

⁶⁷ OCN 1485635 was incorporated July 17, 2001. PX8. In August 2001, Oleg Oks opened a mail drop in the name of “Nationwide Credit Service Inc. or 1485635 Ontario Inc.” PX 10 Krause ¶ 4. Defendants used the name Nationwide Credit Services at least as early as 2002 PX 15 Denka ¶ 3 (November 2002); PX 30 Smith ¶ 3 (October 2002)) and sent consumers documents that listed OCN 1485635 along with the names “Nationwide Information Services” and “Nation Wide Information Services Group Inc.” PX 15 Denka ¶ 10 Atts. D, E.

⁶⁸ OCN 1559927 registered the names Pacific Liberty Group and Pacific Liberty Liberty W Group. PX2. OCN 1585392 registered the name Liberty Wide Info Services. (PX4).

Mail for Pacific Liberty and Liberty Wide was received at a mail drop opened for OCN 1530605. PX 9 Danz ¶¶ 6, 7, Danz Att C. That mail drop was used by: Pacific Liberty (PX 25 Perea ¶ 3; PX 26 Pigman ¶ 3), Pacific Liberty Group (PX 28 Ryan ¶ 6, Att. C), and Liberty Wide Group (PX 12 Black ¶ 7, Att. B; PX 20 Jackson ¶ 5, Att. B; PX 25 Perea ¶ 10, Att. C; ¶ 11, Att. E; ¶ 13, Att. G; PX 32 Vidal ¶ 9).

The Authorization Contract states, in part: “1530605 Ontario Inc/1585392 Ontario Inc., hereinafter referred to as Pacific Liberty/Liberty Wide.” PX 12 Black ¶ 8, Att. D Pg 1; PX 20 Jackson ¶ 5 Att. D Pg. 1; PX 25 Perea ¶ 11, Att. D Pg. 1; PX 31 Vickers ¶ 7, Att. B Pg. 1.

Defendants began using by 2003.⁶⁹ OCN 1629930 is linked to Atlantic One,⁷⁰ a name Defendants began using by 2004.⁷¹ OCN 1530605, OCN 1620142, and OCN 1619264 are directly associated with Liberty Sun,⁷² a name that Defendants began using by 2004.⁷³ Finally, Defendants have commingled funds by using a single ACH processor to debit accounts under multiple business names associated with multiple corporate defendants.⁷⁴

4. The Individual Defendants Are Jointly and Severally Liable

The individual defendants are liable for the deceptive practices that they have inflicted upon U.S. consumers. Individuals may be held liable for corporate violations of the FTC Act if the individuals “either participated directly in the deceptive acts or practices or had authority to control them. *Amy Travel*, 875 F.2d at 573; see also [FTC v.] *Freecom Communications*, 401 F.3d

⁶⁹ OCN 1559927, incorporated January on 30, 2003, registered the names Pacific Liberty Group and Pacific Liberty Liberty W Group. PX2. OCN 1565205, incorporated on March 11, 2003, registered the names Pacific Liberty and Pacific Liberty Liberty W. PX3. OCN 1585392, incorporated August 27, 2003, registered the name Liberty Wide Info Services. PX4. A mail drop that received mail for Pacific Liberty and Liberty Wide Group was opened in January 2003. PX 9 Danz ¶ 7.

⁷⁰ OCN 1629930 registered the name Atlantic One Info Services Grp. PX7. Boris Pekar opened a mail drop, Box 107, in Milford, Delaware, for Atlantic One Info Services. PX 9 Danz ¶ 12.

⁷¹ OCN 1629930 was incorporated August 25, 2004, and registered the name Atlantic One Info Services GRP. (PX7). Boris Pekar opened a mail drop for Atlantic One Info Services Group that same day. PX 9 Danz ¶ 12. Consumers were contacted by Atlantic One by October 2004. PX 9 Danz ¶ 14.

⁷² Oleg Oks opened a mail drop, Box 109, in Newark, Delaware, under the name OCN 1530605. PX 9 Danz ¶ 6. Oleg Oks opened a mail drop, Box 179, in Wilmington, Delaware, under the registered name of OCN 1619264, C & B Communications Group Inc. PX6. PX 9 Danz ¶ 11. OCN 1620142 Ontario Inc. registered the name Liberty Sun Info Services. (PX5).

Liberty Sun consumers received mail from the Wilmington (PX 18 Ferketich ¶ 6, Att. A; PX 21 Milburn ¶ 15, Att. H) and Newark mail drops. Bennett ¶ 7 Att. A; PX 19 Hannan ¶ 9, Att. B; PX 21 Milburn ¶ 7 Att. A; PX 23 Olvera ¶ 10 Att. C; PX 27 Rook ¶ 6.

⁷³ Mail for Liberty Sun was scheduled to be received at Box 109 in Newark, Delaware, in June 2004. PX 9 Danz ¶ 8. OCN 1620142, which registered the name Liberty Sun Info Services, was incorporated in on May 26, 2004. PX5. Consumers were contacted by Liberty Sun by as early as June 2004. *E.g.*, PX 19 Hannan ¶ 3.

⁷⁴ Defendants had a contract with Teledraft to debit accounts for OCN 1559927 d/b/a Pacific Liberty. PX 10 Krause ¶ 5. Defendants also used Teledraft to debit accounts for Atlantic One (PX 14 Commissioning ¶ 7, Att. A; PX 17 Eldredge ¶ 7), Liberty Wide (PX 24 Passmore ¶ 5, Att. A, PX 32 Vidal ¶ 8, Att. A), and Liberty Sun (PX 19 Hannan ¶ 5, Att. A).

[1192] at 1204; *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997).” *FTC v. World Media Brokers*, No. 04-2721, 2005 U.S. App. LEXIS 15326, *12 (7th Cir.). The FTC must also prove that the individuals either knew or should have known about the deceptive practices, but it is not required to prove subjective intent to defraud. *World Media*, 2005 U.S. App. LEXIS 15326, at *12, *13. (citing *Amy Travel*, 875 F.2d at 573-74). Instead, the knowledge requirement may be fulfilled by showing that the individuals had ““actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth.”” *Id.* at * 13 (quoting *Amy Travel*, 875 F.2d at 574).

Each individual defendant’s role as a corporate principal and his participation in the affairs of the corporate defendants demonstrates that he has the requisite control and knowledge to be held individually liable. Authority to control “may be demonstrated by the active participation in the corporate affairs, including assuming duties as a corporate officer.” *World Media*, 2005 U.S. App. LEXIS 15326, at *14 (citing *Amy Travel*, 875 F.2d at 573). “The extent of an individual’s involvement in a fraudulent scheme alone is sufficient to establish the requisite knowledge for personal restitutionary liability. See *FTC v. Sharp*, 782 F.Supp. 1445, 1450 (D.Nev. 1991); *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, 574 (7th Cir. 1989) (“Also, the degree of participation in business affairs is probative of knowledge.”)” *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1235 (9th Cir. 1999). See *Amy Travel*, 875 F.2d at 574; *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973) (“A heavy burden of exculpation rests on the chief executive and primary shareholder of a closely held corporation whose stock in trade is overreaching and deception.”)

In particular, Oleg Oks is a director of five of the eight corporate defendants.⁷⁵ He opened three of Defendants’ mail drops and provided forwarding instructions to the proprietor of at least

⁷⁵ Oleg Oks is a director of OCN 1530605, OCN 1559927 (Ontario registered business names “Pacific Liberty Group” and “Pacific Liberty Liberty W Group”), OCN 1565205 (registered business names “Pacific Liberty” and “Pacific Liberty Liberty W”), OCN 1629930 (replacing Boris Pekar in January 2005) (registered name “Atlantic One Info Services Grp.”), and, with his father, Aleksander, of OCN 1485635 (dissolved in March 2005). See Notes 5 and 6; PX1-PX3, PX5-PX8.

one of those drops.⁷⁶ Aleksandr Oks is a director of three of the eight corporate defendants.⁷⁷ His credit card was used to open two of Defendants' mail drops⁷⁸ and mail to Pacific Liberty and Liberty Wide was forwarded to him.⁷⁹ Philip Nemirovsky is the sole director of the corporate defendant that registered to do business as Liberty Wide and that is directly linked to Defendants' advance fee credit card operations using the names Pacific Liberty and Liberty Wide.⁸⁰ Boris Pekar was a director of the corporate defendant that uses the name Atlantic One⁸¹ and opened its mail drop.⁸² The individual defendants should be held jointly and severally liable because they have authority to control the corporations and knowledge of their practices.

E. Balance of the Equities Favors the Requested Relief

In balancing the equities, the Court must assign greater weight to the public interest than to any of Defendants' private concerns. *World Travel*, 861 F.2d at 1029. The public has a strong

⁷⁶ Oleg Oks opened the Newark, Delaware, mail drop for OCN 1530605 that received mail under the names Pacific Liberty, Liberty Wide Group, and Liberty Sun Info Services (PX 9 Danz ¶¶ 5-7); a Wilmington, Delaware, mail drop for C & B Communications Group (OCN 16192624) that also received mail for Liberty Sun (PX 9 Danz ¶ 10); and a Corning, New York, mail drop for Nationwide Credit Service Inc. and OCN 1485635. PX 10 Krause ¶ 4.

⁷⁷ Aleksandr Oks is a director of OCN 1620142 (registered name: Liberty Sun Info Services), OCN 1619264 (registered name: C & B Communications Group), and, along with his son, Oleg, of OCN 1485635. *See* Note 6; PX5, PX6, PX8.

⁷⁸ Oleg Oks used Aleksandr Oks' credit card to open the Wilmington, Delaware, box that received mail for Liberty Sun, a name used for the computer scheme, and Boris Pekar used the same credit card to open the Milford, Delaware, box that received mail for Atlantic One, a name used for advance fee credit card promotions. PX 9 Danz ¶¶ 11, 12.

⁷⁹ Mail delivered to a box that Oleg Oks opened for OCN 1530605 in Newark, Delaware, was forwarded to Aleksandr Oks. PX 9 Danz ¶¶ 6, 7.

⁸⁰ Nemirovsky is the sole director of OCN 1585392, which registered the name Liberty Wide Info Services. PX4, at 5. OCN 1530605 is identified as "Pacific Liberty" and OCN 1585392 as "Liberty Wide" and are collectively referred to as "Pacific Liberty/Liberty Wide" on the Authorization Contract that Defendants send consumers. *See* Note 66.

⁸¹ OCN 1629930 registered the name Atlantic One Info Services Grp. PX7, at 11. Pekar was the sole director until he was replaced by Oleg Oks in January 2005. PX7, at 26.

⁸² PX 9 Danz ¶ 12, Danz Att. L.

interest in preventing further fraudulent sales of phantom credit cards and computers and in preserving assets necessary for effective final relief. In contrast, Defendants have no legitimate interest in unlawfully selling nonexistent credit cards to vulnerable consumers. *See FTC v. Sabal*, 32 F. Supp.2d 1004, at 1009 (N.D. Ill. 1998) (“no legitimate interest in continuing to make false and misleading claims”). The FTC’s strong likelihood of success on the merits tips the balance of equities even more decidedly in favor of the FTC. *See id.* (citing *Elder’s Grain*, 868 F.2d at 903).

F. An Asset Freeze Is Necessary to Preserve Assets for Consumer Redress

The FTC seeks an immediate freeze of Defendants’ assets to preserve them for restitution to Defendants’ victims. This Court has authority to order a party to “freeze” property under its control whether the property is within or outside the United States. *U.S. v. First Nat’l City Bank*, 379 U.S. 378, 384 (1965). Indeed, once the court determines that the FTC is likely to prevail on the merits and that restitution is an appropriate final remedy, the court has “a duty to ensure that the assets of the corporate defendants [are] available to make restitution to injured consumers.” *See World Travel*, 861 F.2d at 1031 & n.9. When the FTC is likely to succeed in showing that a corporate officer is individually liable for restitution, the freeze should extend to individual assets. *Id.* (affirming freeze on individual assets); *see also FTC v. Austin Galleries of Illinois, Inc.*, 1988-2 Trade Cas. (CCH) ¶ 68,341, at 59,923 (N.D. Ill. Oct. 31, 1988) (asset freeze against corporate officer centrally involved in fraudulent business). The asset freeze should include the individual defendants’ assets because the FTC is likely to succeed in showing that they are liable for restitution.

G. The Requested Temporary Restraining Order Should Be Issued Ex Parte

The TRO should be issued *ex parte* to prevent Defendants from dissipating or concealing assets necessary for full and effective final relief.⁸³ Issuing an *ex parte* order is appropriate when the evidence demonstrates a likelihood that providing notice to Defendants would render issuing the order fruitless. *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 323 (7th Cir. 1984). The fraudulent nature of Defendants’ scheme and the likelihood that Defendants would conceal or

⁸³ *See* Declaration in Support of *Ex Parte* Motion for Temporary Restraining Order and Application to File Papers Under Seal (citing cases in which defendants who learned of impending FTC action withdrew bank funds, destroyed vital documents, and fled the jurisdiction).

dissipate assets absent *ex parte* relief justify dispensing with notice. Courts in this district have routinely issued *ex parte* relief under similar circumstances in other FTC cases.⁸⁴

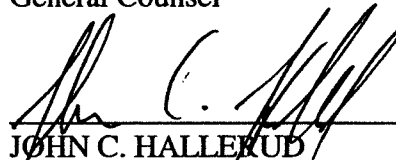
V. CONCLUSION

For the foregoing reasons, Plaintiff Federal Trade Commission requests that this Court enter the proposed Temporary Restraining Order *Ex Parte* and issue an Order to Show Cause Why a Preliminary Injunction Should Not Issue.

Dated: September 19, 2005

Respectfully Submitted,

WILLIAM BLUMENTHAL
General Counsel



JOHN C. HALLERUD
Attorney for Plaintiff
Federal Trade Commission
55 East Monroe Street, Suite 1860
Chicago, Illinois 60603
(312) 960-5634 (telephone)
(312) 960-5600 (facsimile)

⁸⁴ See, e.g., *FTC v. 120194 Canada, Ltd., et al.*, 04 C 7204 (N.D. Ill. Nov. 8, 2004) (Gottschall, J.); *FTC v. AVS Marketing, Inc., et al.*, Case No. 04 C 6915 (N.D. Ill. October 28, 2004) (Moran, J.); *FTC v. 9094-5114 Quebec Inc., et al.*, 03 C 7486 (N.D. Ill. Oct. 23, 2003) (Leinenweber, J.); *FTC v. Datatech Communications, Inc., et al.*, Case No. 03 C 6249 (Lefkow, J.) (*ex parte* TRO entered by St. Eve, J., sitting as emergency judge, on September 8, 2003) (N.D. Ill. 2003); *FTC v. QT Inc., et al.*, 03 C 3578 (N.D. Ill. May 29, 2003) (St. Eve, J.); *FTC v. STF Group, Inc., et al.*, 03 C 977 (N.D. Ill. Feb. 12, 2003) (Zagel, J.); *FTC v. CSCT, Inc.*, 03 C 880 (N.D. Ill. Feb. 11, 2003) (Coar, J.); *FTC v. 1492828 Ontario Inc., et al.*, 02 C 7456 (N.D. Ill. Oct. 17, 2002) (Guzman, J.); *FTC v. Bay Area Bus. Council, Inc.*, 02 C 5762 (N.D. Ill. Aug. 15, 2002) (Darrah, J.); *FTC v. Stuffingforcash.com, Inc.*, 02 C 5022 (N.D. Ill. July 16, 2002) (Norgle, J.); *FTC v. TLD Network Ltd.*, No. 02 C 1475 (N.D. Ill. Feb. 28, 2002) (Holderman, J.); *FTC v. 1st Financial Solutions, Inc.*, No. 01 C 8790 (N.D. Ill. Nov. 19, 2001) (Kocoras, J.); *FTC v. Growth Plus Int'l Marketing, Inc.*, 2001 WL 128139 (N.D. Ill. Jan. 9, 2001) (Aspen, J.).