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I. INTRODUCTION

Defendants are operating an international scam that deceives small businesses and other organizations into paying for worthless directory listings that they did not intend to order and do not want. Based on the Spanish island of Mallorca, Defendants operate through several interrelated front companies, concealing their true location from U.S. victims by using a New York mailing address. Defendants have been unable to avoid law enforcement detection, however. The Australian Competition and Consumer Commission (the “ACCC”) brought suit in 2010, halting the same operation in that country.¹ Since that time, Defendants have continued to target consumers in the U.S. and in Canada. The Federal Trade Commission (“FTC” or “Commission”) now seeks to stop Defendants’ operation here.

Defendants send unsolicited fax messages to churches and other non-profit organizations, government entities, and small businesses, which make the recipients believe that they are simply updating their listing in a local yellow pages directory. The one-page form lists a website such as *YellowPage-Illinois.com* prominently at the top (with the “walking fingers” logo), along with certain information about the consumer already completed. The form directs consumers to “correct and add any additional information to [their] record,” and then fax it back to Defendants. Fine print buried at the bottom of the form relates, in confusing language, that the consumer will be immediately charged for a one-year listing in Defendants’ online business directory. But given the form’s design, many consumers do not read or understand this language. Instead, consumers believe that the fax is from the regular yellow pages that they

¹ See Plaintiff’s Exhibit (“PX”) 1, McKenney ¶ 41 & Att. S (judgment against Yellow Page Marketing B.V. and Yellow Publishing Ltd. imposing a \$2.7 million penalty and declaring all of Defendants’ directory “contracts” with Australian consumers void).

traditionally deal with, and simply correct information and return the form as directed.

Once a consumer returns the initial form, Defendants send an invoice for twelve \$89 monthly fees, totaling \$1068. Consumers who initially do not pay then receive a series of letters from Defendants, purporting to assess late fees and threatening referral to debt collectors and lawsuits. Eventually, many consumers pay some or all of the demanded amount, whether under the mistaken belief that they owe the money or in accession to Defendants' repeated threats. Either way, consumers do not receive anything of value as a result of their payment—Defendants are in no way affiliated with consumers' local yellow pages, and their online directory is essentially useless. In addition to being nearly impossible to locate online, Defendants' directories are hardly comprehensive even when searched directly.

The FTC is quite familiar with this type of business directory scheme. Indeed, in the last few years, Chief Judge Holderman and Judges Gettleman, Darrah, Bucklo, and Kennelly have enjoined directory schemes operating in a similar manner to Defendants in this case. *See FTC v. 6555381 Canada Inc.*, No. 09 C 3158 (N.D. Ill. June 1, 2009) (Gettleman, J.); *FTC v. Integration Media Inc.*, No. 09 C 3160 (N.D. Ill. May 28, 2009) (Bucklo, J.); *FTC v. 6654916 Canada Inc.*, No. 09 C 3159 (N.D. Ill. May 27, 2009) (Darrah, J.); *FTC v. Datacom Mktg, Inc.*, No. 06 C 2574, 2006 WL 1472644 (N.D. Ill. May 24, 2006) (Holderman, C.J.); *FTC v. 4049705 Canada, Inc.*, No. 04 C 4694 (N.D. Ill. Sept. 9, 2004) (Kennelly, J.) (transcript filed as PX 1, Att. V).²

The Commission's evidence of Defendants' fraud is overwhelming. This scam has triggered more than 600 complaints in the United States alone, a sampling of which we have

² See also *FTC v. Enterprise Who's Who*, No. 08 C 2131 (D.P.R. filed Oct. 9, 2008); *FTC v. 9125-8954 Quebec Inc.*, No. 05 C 0265 (W.D. Wash. filed Feb. 15, 2005); *FTC v. Ambus Registry, Inc.*, No. CV 03-1294 (W.D. Wash. filed June 16, 2003); *FTC v. Hanson Publ'ns, Inc.*, No. 1:02 CV 2205 (N.D. Ohio filed Nov. 8, 2002).

provided along with this Memorandum. In addition to the ACCC and Canadian actions, the Iowa Attorney General's office recently reached an Assurance of Voluntary Compliance ("AVC") with some of the Defendants barring them from advertising in Iowa and requiring refunds to Iowa victims who complain.³ We are submitting declarations from Steve St. Clair (PX 2), an assistant attorney general in Iowa who investigated Defendants, as well as from James Slaughter (PX 4), an attorney who has logged hundreds of comments on his website devoted to stopping Defendants' scam. In addition, we are submitting declarations from eighteen small businesses and other organizations that Defendants targeted, including St. Nicholas Catholic Church in Evanston, Illinois (PX 5), and two other churches (PXs 15 & 21). Taken together, this evidence reveals that Defendants' operation is both widespread and entirely fraudulent, leaving no doubt that the Commission is likely to succeed on the merits of its claims. As a result, we ask the Court to enter an *ex parte* temporary restraining order enjoining Defendants' deceptive practices and freezing their assets to preserve the Court's ability to provide effective final relief.

II. DEFENDANTS

Defendants are three foreign corporations and an individual who directs them. Two of the corporations were formed in the U.K.⁴ and appear to be nothing more than shell companies. Their names—**Yellow Data Services Ltd.** and **Yellow Publishing Ltd.**—are used in the initial faxes sent to consumers.⁵ For several years, Yellow Publishing listed a Palma de Mallorca,

³ PX 2, St. Clair ¶ 10 & Att. E.

⁴ PX 1, McKenney ¶¶ 8-9 & Atts. B-C.

⁵ Prior to the lawsuit brought by the Australian authorities, Defendants used the name, "Yellow Publishing Ltd.," on their initial faxes to consumers. *See, e.g.*, PX 6, Bond Att. A; PX 16, Rennie Att. A; PX 17, Rosene Att. E at 3. After the December 2010 judgment in Australia, Defendants began faxing consumers using the name "Yellow Data Services Ltd." *See, e.g.*, PX 5, Arden Att. J at 5; PX 7, Conaway Att. H at 2; PX 9, Ellison Att. A.; PX 2, St. Clair Att. B at 4.

Spain address on its corporate papers.⁶ Recently the company changed its registered address to one in Manchester, England, although no business appears to be conducted from that address.⁷

Yellow Data Services, formed in October 2010, also has an official English address.⁸

The principal company behind the scam, however, is a Netherlands-based company, **Yellow Page Marketing B.V.** – the sole director of which is **Jan Marks**, a German citizen living in Palma de Mallorca.⁹ Consumers pay Yellow Page Marketing by mailing checks to a New York address that mainly functions as a mail drop.¹⁰ Under Marks’s direction, consumers’ checks are then forwarded to Palma de Mallorca.¹¹ Yellow Page Marketing also maintains the finances for the entire operation,¹² and has registered the websites for every state and Washington D.C. that comprise Defendants’ “directories.”¹³ Further, Yellow Page Marketing

⁶ PX 1, McKenney ¶ 8(c) & Att. B at 5-8 & 12.

⁷ *Id.* ¶ 8(h) & Att. B at 13-18.

⁸ *Id.* ¶ 9(b) & Att. C at 2-7.

⁹ *Id.* ¶ 7 & Att. A; *see also id.* ¶ 55 & Att. Y at 4 (a tax form for Yellow Page B.V. signed by Marks as “Director”).

¹⁰ Yellow Page Marketing’s New York address is a Regus plc location. Regus provides virtual office services to businesses. In addition to forwarding mail to a Palma de Mallorca, Spain address, Regus also has forwarded Yellow Page Marketing’s incoming telephone calls to a Spanish telephone number. *Id.* ¶ 15(d) & Att. E at 77-78. Defendant Marks signed the contract with Regus for its services, PX 1, McKenney ¶ 15(a)-(b) & Att. E at 6-7, 63, and managed Yellow Page Marketing’s dealings with Regus, *id.* ¶ 15(c), (f), (g), & (h) & Att. E at 2-4, 13-20, 35-36, 39-41, 47-62, 68-70, 71-76.

¹¹ *Id.* ¶ 15(h) & Att. E at 39-40.

¹² Yellow Page (Netherlands) B.V. made a series of wire transfers into the United States over a three-month period beginning in April 2009. All but one of these transfers were to Profax, Inc., a mass fax transmittal company. The remaining transfer was to Regus, presumably to pay for its services. *Id.* ¶ 11 & Att. D; *see also id.* ¶ 15(f) & Att. E at 71-76 (transfer from Yellow Page Marketing’s La Caixa bank account to Regus).

¹³ *Id.* ¶¶ 38-39 & Att. R.

corresponds directly with consumers to collect payments, with the Better Business Bureau in addressing complaints, and with law enforcement.¹⁴ Marks interacts directly with law enforcement, having recently signed the AVC with the Iowa Attorney General.¹⁵

Defendants operate this scheme as a common enterprise. The corporate Defendants appear to operate from the same location and generally participate in a common scheme. As participants in a common enterprise, Defendants are all jointly and severally liable.¹⁶

III. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES

Defendants have been targeting U.S. consumers with their scam since at least 2009. Following a pattern of deception and relentless intimidation, Defendants have bilked consumers out of millions¹⁷ for a worthless directory listing that they never intended to order.

A. Defendants' Deceptive Initial Facsimile

Defendants' scheme typically begins with an unsolicited facsimile to an unsuspecting business or organization.¹⁸ This fax is addressed neither to a specific person nor to a department

¹⁴ PX 1, McKenney ¶ 22 & Att. H.

¹⁵ PX 2, St. Clair ¶ 10 & Att. E.

¹⁶ See *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993, 1011 (N.D. Ind. 2000) (citing *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973)), *aff'd*, 312 F.3d 259 (7th Cir. 2002); *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746-47 (2nd Cir. 1964); see also *CFTC v. Wall Street Underground, Inc.*, 281 F. Supp. 2d 1260, 1271 (D. Kan. 2003). All Defendants are collectively referred to as "Defendants" or "Yellow Page Marketing."

¹⁷ While the exact amount of money taken in by Defendants is not yet known, based upon the checks seized in the Australian action and PayPal records obtained for a three-month period, Defendants' operation is quite lucrative. PX 1, McKenney ¶ 45 & Att. S at 61-62 (noting that Australian authorities intercepted \$178,704.12 (AUD) in checks over a six-week period) & *id.* ¶ 19 (\$47,440 (USD) paid through PayPal).

¹⁸ The transmittal of Defendants' faxes is illegal. The Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 *et seq.*, enforced by the Federal Communications Commission, prohibits the sending of unsolicited faxes without a preexisting business relationship. See 47 U.S.C. § 227(b)(1)(C)(i).

within the recipient organization, nor is it preceded by a cover letter or other communication explaining the purpose of the form. The fax's heading prominently features a "YellowPage" website from the consumer's state, such as YellowPage-Illinois.com, the familiar walking fingers logo, and the bold-print promise of "free submission to www.google.com." A "basic data" section about the consumer follows the heading, with some of the consumer's information already filled in.¹⁹ The consumer is instructed to "correct and add any additional information to your record" by a certain deadline, often within a week.²⁰

Defendants' fax is designed to make consumers believe that by completing the form they are simply updating information for an existing yellow pages directory listing in their home state. The use of the walking fingers logo—a symbol frequently associated with the local yellow pages directory²¹—and the website name reflecting the consumer's state, suggests that Defendants are, or are affiliated with, the consumer's local yellow pages directory. The partially pre-completed form and the deadline for adding "information to your record" suggests that the directory already has an existing "record" and relationship with the consumer, and that the consumer must act quickly to update this record. The emphasis on "now with free submission to www.google.com," further suggests a new feature in a preexisting relationship.²²

¹⁹ One of the fields in this section is an "ID" number, which typically begins with "ID-YP," followed by a series of numbers. *See, e.g.*, PX 17, Rosene Att. C at 2; PX 21, Veeseer Att. A.

²⁰ *See, e.g., id.*; PX 7, Conaway Att. C at 2.

²¹ Though the "walking fingers" logo and the term "Yellow Pages" are not protected by federal trademark registration or copyright, courts have found that solicitations using the logo and the term, along with other elements, "must not give [consumers] the impression that the product is something other than what it is." *Directory Publ'g Servs., Inc. v. Runyon*, 851 F. Supp. 484, 489 (D.D.C. 1994); *see also U.S. Postal Serv. v. Yellow Page Directory Publs., Inc.*, 420 F. Supp. 2d 1363, 1370 (N.D. Ga. 2006).

²² *See* PX 5, Arden ¶ 4 ("Based upon on the pre-printed information and the name 'YellowPage,' I thought that this was a yellow pages directory with which the church had a preexisting relationship.");

Believing that they are simply updating information for an existing listing in their local yellow pages directory, many consumers complete and sign the form as directed and fax it back to Defendants. Jim Slaughter, an attorney and creator of a website blog dedicated solely to stopping Defendants' scam, has spoken with at least 100 of Defendants' victims.²³ According to Slaughter, consumers who return Defendants' form think that they are getting a free

PX 6, Bond ¶ 4 (“The fax showed the same type of logo and a name similar to the local yellow pages directory. . . . The fax included the phrase ‘now with free submission to www.google.com’ in large, bold letters. I believed this fax was notifying me of a free, additional service offered by my local yellow page company.”); PX 8, Dickinsen ¶ 5 (“Based on the logo, the name of the company, and the type of information it was requesting, I assumed that the fax was from our local Yellow Pages.”); PX 9, Ellison ¶ 10 (form makes it appear as if submitting an update for an existing listing with local yellow pages directory); PX 11, Humble-Endreson ¶ 5 (“Because of the Yellow Page name, the familiar logo, the same errors in the listing [as our existing local yellow pages listing], and the reference to our ‘record,’ I believed this fax was sent to me by our local yellow pages.”) & Att. E; PX 12, Inmon ¶ 5 (“Based on the appearance of the form, I believed that I was simply updating Reading Coffee Roasters’ contact information with a yellow pages directory which we had an ongoing relationship.”); PX 13, Kriener ¶ 5 (“I assumed from the timing of the fax, the name ‘YellowPage-Wisconsin.com’ and the walking fingers logo that the fax from Yellow Page was one of the yellow pages directories with which Mangold had an ongoing relationship.”); PX 14, Morrone ¶ 9 (“[T]he yellow pages logo that our local carrier uses, the preprinted form with Dr. Liu’s information, and the promise of ‘free submission’ to Google all led me to believe that I was simply updating, without charge, Dr. Liu’s listing in the local yellow pages.”); PX 15, Mullin ¶ 4 (“The form gave me the impression that it was from our local yellow pages company, with which at the time we had an existing business relationship. . . . There was no clear indication that I would be beginning a new contract with a company with which we did not have an established relationship and from which we had not solicited business.”); PX 16, Rennie ¶ 7 (thought the fax was in connection to an existing yellow pages advertisement); PX 17, Rosene ¶ 8 (“‘free submission to www.google.com’ gave the impression” that there was no charge); PX 18, Schumacher ¶ 5 (“Based on the contents of the form, including the ‘walking fingers’ logo, we thought the form had been sent to us by the Yellow Pages directory distributed in our local area.”); PX 19, Sirota ¶ 6 (thought the fax was from his local yellow pages because of website name and logo and business contact information listed); PX 21, Veaser ¶ 7 (“Based on the logo, the letterhead, and the telephone call with the supposed yellow pages representative, I believed that the form was from the local Yellow Pages.”); PX 22, Wright ¶ 5 (thought the fax was from her local yellow pages, in part because all of the consumer’s information was already listed).

²³ Slaughter’s blog, titled “Fight the Yellow Page B.V./Yellow Data Services LTD Scam: Information Clearing House for Victims of Yellow Page B.V./Yellow Data Services LTD. Scam,” has logged over 24,000 views and posted hundreds of comments from victimized consumers. PX 4, Slaughter ¶ 8. It is likely more people have seen the website devoted to Defendants’ scam than have seen Defendants’ Internet directory. See discussion *infra* nn.48-49.

advertisement or are updating an existing listing with their local yellow pages directory,²⁴ further confirming the numerous consumer declarations obtained by the Commission.²⁵

The success of Defendants' scam relies on consumers signing the form without reading (or understanding the import of) carefully buried fine print. This fine print, often difficult to read in the fax version the consumer receives,²⁶ indicates that by returning the form, the consumer is "order[ing] registration" for a "term of two years at a cost of \$89 per month payable one year in advance with 14 day payment terms."²⁷ If consumers do not cancel within three months of the end of the agreement, it "automatically renews for one year."²⁸ The fine print is the only indication that the fax from Defendants is a solicitation at all.

Unfortunately, already having been deceived into believing that the fax came from their local yellow pages directory with which they have an existing relationship, many consumers do not notice the fine print until they later receive an invoice.²⁹ The experience of a church office

²⁴ PX 4, Slaughter ¶ 9; *see also* PX 2, St. Clair ¶ 5 (of the nineteen Iowa consumers who complained to the Iowa Attorney General, "many consumers completed and returned the fax to Yellow Page, believing that they were updating their existing listing with their local yellow pages, or that they were signing up for a free service"); PX 1, McKenney ¶¶ 23 & 25 (summarizing hundreds of consumer complaints).

²⁵ *See supra*, nn.22 & 24.

²⁶ *See* PX 22, Wright ¶ 7 ("My eyesight is not great, so that fine print was *really* fine print. Later, when Yellow Page asked me if I saw the fine print on the fax, I could remember only that it was all blurry.") & Att. A (fine print is illegible); *see also* PX 8, Dickinsen Att. A (poor fax quality); PX 1, McKenney ¶ 25 & Att. I at 7 (church complains that "the fine print was so small and blurry that we could not read the policy and the[] charges").

²⁷ *See, e.g.*, PX 17, Rosene Att. C at 2; PX 21, Veesser Att. A.

²⁸ *See, e.g.*, PX 17, Rosene Att. C at 2; PX 21, Veesser Att. A.

²⁹ Defendants' strategy seems to be to fax as many consumers as possible. Thus the scheme can still be profitable even if some consumers read and understand the fine print, and therefore do not return it. *See, e.g.*, PX 4, Slaughter ¶ 5 ("As an attorney, I know how important reading the fine print can be, so I examined the November 9, 2009 fax carefully. . . . Without reading this fine print, it was impossible to

manager, Sally Arden, is illustrative. She received the fax and, based on the pre-printed “record” and the yellow pages logo, thought it was from the local yellow pages with which the church had a preexisting relationship.³⁰ Arden completed and returned the form, never noticing the fine print. When Defendants then sent the church an invoice demanding \$1068, Arden was surprised that there was any cost associated with returning the initial fax. At that point, she noticed the fine print.³¹ In complaining to the BBB, Arden summarized her experience with Defendants:

The form we received is a very deceptive form of contract that contains small print regarding charges that will occur. This was a blind solicitation, without a person-to-person contact. This form of business is unconscionable and preys on small businesses with intent to deceive.³²

Arden, and the hundreds of other consumers who have had similar experiences, are not alone in finding Defendants’ fax deceptive. The Australian Federal Court reached the same conclusion about identical unsolicited faxes sent to Australian businesses, in particular noting

tell that Yellow Publishing was selling any service, let alone one that would cost \$89 per month for two years.”). Many other consumers do not read, or even notice, the fine print before signing and returning the form. Defendants’ faxes often reach members of the consumer’s support staff who, unlike Slaughter, are unaccustomed to reading fine print. *See, e.g.*, PX 11, Humble-Endreson ¶ 3; PX 14, Morrone ¶ 3.

³⁰ PX 5, Arden ¶ 4.

³¹ *Id.* ¶ 10 (“At this point, though, I saw that there were minuscule terms and conditions at the bottom of the original form, stating that the church was agreeing to ‘registration’ in Yellow Page’s directory for two years. I had not noticed this when I completed the form because I thought I was dealing with our local yellow page directory.”); *see also* PX 6, Bond ¶ 4 (“I did not read the fine print on the bottom of the fax because I thought the offer within this fax would be covered by the existing contract between Bond Chiropractic and the local yellow page directory.”); PX 7, Conaway ¶ 8 (“The only place on the form where there is any indication that Yellow Page Marketing is soliciting business is on the bottom in confusing fine print.”); PX 11, Humble-Endreson ¶ 6 (did not review the fine print because thought she was dealing with an existing contract); PX 13, Kriener ¶ 5 (“Because I thought this fax came from a business with which Mangold already had a contract, I did not see the fine print under the ‘order’ heading at the bottom.”); PX 12, Inmon ¶ 11; PX 14, Morrone ¶ 9 (only noticed “confusing terms” in “very small print” after receiving the invoice for \$1068); PX 15, Mullin ¶ 7 (“small-lettered language” deceptive); PX 16, Rennie ¶ 9 (same); PX 17, Rosene Att. A at 2 (receptionist did not notice the fine print because she thought the form related to the office’s free yellow pages listing); PX 19, Sirota ¶ 10.

³² PX 5, Arden Att. H at 1.

that the buried language was “in fine print, placed in a large body of fine text which was difficult to understand,” and “stood in stark contrast to the banner in the heading which read ‘free submission to www.google.com.au.’”³³

B. Defendants’ Intimidating Collection Tactics

After tricking consumers into signing and returning their form, Defendants then bombard those consumers with invoices demanding payment of \$1068 or more.³⁴ The invoices, like the preceding faxes, bear the walking fingers logo and the name of the “YellowPage” location-specific website.³⁵ Often, receipt of this invoice is consumers’ first indication that the initial fax was not merely to update an existing yellow pages listing.³⁶

Some consumers likely pay Defendants under the mistaken impression that they are paying their local yellow pages directory. Many consumers, however, recognize upon receiving the invoice that Defendants are not their usual yellow pages provider and attempt to cancel the

³³ PX 1, McKenney ¶ 44 & Att. S at 39. Defendants’ prominent promise of “free submission” to Google is of little value, even assuming they provide it. Submitting a website to Google simply gives Google information that its web crawler likely gathers anyway; based on the information gathered, Google “updates its index on a regular basis” *Id.* ¶ 50 & Att. W.

³⁴ *See, e.g.*, PX 6, Bond Att. B (charging \$1068, the total of “12 monthly fees of \$ 89”). Yellow Page Marketing sometimes bills “late payment” fees of \$20 to \$60, in addition to the \$1068 charge. *See, e.g., id.* at Att. G; *see also* PX 15, Mullin Att. H at 1 (assessing \$60 in “late” fees).

³⁵ *See, e.g.*, PX 11, Humble-Endreson Att. B. Oddly, Defendants seem to consistently refer to “YellowPage-Wisconsin.com” as “The Washington business directory” in their correspondence. *See*, PX 16, Rennie Att. B; PX 18, Schumacher Att. B; PX 21, Veaser Att. C.

³⁶ *See, e.g.*, PX 6, Bond ¶ 7; PX 7, Conaway ¶ 6 (“I was surprised to receive this invoice”); PX 12, Inmon ¶ 7 (“The invoice was surprising because I thought I signed up for a free service offered by a yellow pages directory in conjunction with Reading Coffee Roasters’ existing listing.”); PX 11, Humble-Endreson ¶ 7 (alarmed when received invoice because had not entered into any new contracts with advertisers); PX 22, Wright ¶ 6 (consumer “shocked” by the “steep charge”).

unwanted listing.³⁷ Consumers sometimes have difficulty reaching Defendants,³⁸ and when they do, their frustrations only grow after they are told that the cancellation period has expired.³⁹ Despite this, many consumers resist paying the invoice—often arguing that the person who signed the form was not authorized to purchase new advertising for the organization⁴⁰ or that they thought the form was from their existing yellow pages provider.⁴¹ Defendants threaten consumers who do not pay with additional fees, damaged credit, and lawsuits.⁴² These threats, though empty,⁴³ are all too effective.⁴⁴

³⁷ See, e.g., PX 5, Arden ¶ 8 & Att. D; PX 11, Humble-Endreson ¶ 10 & Att. E; PX 15, Mullin ¶ 9; PX 16, Rennie ¶ 10; PX 18, Schumacher ¶ 10.

³⁸ PX 6, Bond ¶ 7 (no response to voicemail messages); PX 14, Morrone ¶ 10 (email to Yellow Page Marketing bounced back).

³⁹ Defendants' standard line is that the cancellation period "is the period between the date of signing the order form and the date of billing the invoice." See, e.g., PX 6, Bond Att. F. Since many consumers did not know there was any fee associated with the return of Defendants' form until they received an invoice, this cancellation period offers no relief. See, e.g., PX 7, Conaway ¶ 11 ("In essence, Yellow Page Marketing was not allowing any chance for cancellation, since I did not become aware that APS had signed up for any service until I received the first invoice."); PX 9, Ellison ¶ 11 (same).

⁴⁰ See PX 11, Humble-Endreson ¶ 15 & Att. K ("The person who signed the form does not have authority to make advertising decisions for this firm."); PX 15, Mullin Att. E ("The employee who signed the order form is not authorized to open or place any new orders. We have no interest in advertising with you and the signed contract is null and void due to a lack of authorization."); PX 16, Rennie ¶ 10 & Att. C ("I did sign but I am not an authorized person who can sign for Dr. Rennie's practice."); PX 21, Veaser ¶ 16.

⁴¹ See, e.g., PX 19, Sirota ¶ 15. Defendants must field such complaints frequently. In a search warrant conducted by the Canadian authorities, form response letters to these and other like-complaints were found. PX 1, McKenney ¶ 55 & Att. Y at 1-3.

⁴² See, e.g., PX 19, Sirota Att. B ("Last Reminder - Debt Collection Pending"); *id.* Att. D (letter from Yellow Page Marketing threatening collection and "legal action"); PX 9, Ellison Att. C at 5 ("Please be advised that you have left us no alternative but to file suit.").

⁴³ Defendants do not appear to take steps to either affect consumers' credit ratings or to file lawsuits against them. See, e.g., PX 9, Ellison ¶ 12; PX 12, Inmon ¶ 19; PX 4, Slaughter ¶ 10; PX 20, Souza ¶ 15 ("To my knowledge, Central Texas Speech Pathology Services has not experienced any negative credit effects as a result of not paying Yellow Page Marketing B.V.'s bill."). Unpaid invoices are sometimes referred to collection agencies, however. One such agency was so alarmed by the high rate

Defendants have been undeterred by the throngs of complaints forwarded to them by the BBB and other law enforcement agencies.⁴⁵ In some instances, Defendants offer and agree to a reduced “settlement” rate from consumers.⁴⁶ In general, however, they defend their practices by relying on the fine print at the bottom of the form.⁴⁷

C. Defendants’ Worthless Internet Directory

Defendants’ website listings, if provided at all, are of no practical value to consumers as a form of advertising. Consumers would never agree to pay Yellow Page Marketing \$1068 if they knew how inaccessible the listings are to potential customers. For example, though

at which consumers were disputing the supposed debts, the agency stopped collecting altogether on behalf of Defendants. PX 3, Lonetto (Long) ¶¶ 5-6.

⁴⁴ See PX 5, Bond ¶ 18 (“We believed that we did not owe Yellow Page any money, but we were still deeply concerned over Yellow Page’s threat to damage Bond Chiropractic’s credit rating, and so we decided to accept the settlement offer.”); PX 8, Dickinsen ¶ 23 (frustrated to have paid \$534 “but just wanted to be sure that our credit score would not be damaged”); PX 10, Eppen ¶ 13 (paid \$267 to be “done with this entire episode”); PX 11, Humble-Endreson ¶ 25 (company paid \$534 to “protect [] credit rating” and to “end this ordeal”); PX 13, Kriener ¶ 13 (paid \$356 out of worry that “Yellow Page would sue Mangold” and create “bad publicity”); PX 16, Rennie ¶¶ 14-16 (paid \$534 because fearful of possible court action: “Basically we were tricked into signing up for a useless service we did not want and then bullied into paying for it.”); PX 19, Sirota ¶ 17 (paid \$267 out of fear credit rating would be damaged). One office manager became so distraught over Yellow Page Marketing’s demands that she considered paying the invoice from her personal savings. PX 14, Morrone ¶ 15.

⁴⁵ In addition to the 600 complaints received by the New York BBB, see PX 1, McKenney ¶ 22 & Att. H, the Ontario BBB has received over 300 complaints against the Canadian-based arm of Defendants’ operation, *id.* ¶ 48 & Att. U.

⁴⁶ The typical settlement amount is \$534 (equivalent to a six-month listing). See, e.g., PX 16, Rennie ¶ 14; see also PX 19, Sirota ¶ 16 (\$267 settlement amount).

⁴⁷ Incredibly, Defendants tell complaining consumers that they could have contacted Defendants to clear up any confusion about the fax before returning it. See, e.g., PX 16, Rennie Att. G at 1; PX 11, Humble-Endreson Att. Q; PX 6, Bond Att. J at 2. This argument is disingenuous at best. Not only do Defendants fail to provide a telephone number on their initial fax to consumers, but their entire scam relies upon creating the false impression that the fax is from a legitimate business. Consumers have no reason to contact Defendants until they receive the invoice and realize that they have been tricked. By then, it is too late.

YellowPage-Illinois.com does list Illinois businesses,⁴⁸ Defendants do not advertise this site.⁴⁹

Apart from victimized consumers, there are probably very few people who even know it exists.⁵⁰

In defending its directory to the Iowa Attorney General, Defendants pointed to the various “enhanced” services supposedly available to their paying, “Premium” clients.⁵¹ These Premium clients, however, are often victims themselves. When Iowa’s assistant attorney general contacted several of these Iowa businesses, he discovered that they had not voluntarily signed up for Defendants’ directory and had only paid under the threat of collection.⁵² Absent deception,

⁴⁸ The list of Illinois businesses, however, is far from being complete or even helpful on the off-chance someone did access the site directly. For example, a search for “Physician” on www.YellowPage-Illinois.com yields a total of 15 businesses. PX 1, McKenney ¶ 31. By contrast, the same search on www.yellowpages.com yields 31,585 results. *Id.*; *see also id.* (only one “lawyer” listed on Defendants’ Illinois site, while www.yellowpages.com lists 21,502). Defendants themselves must not have much faith in their own directories – they are not even listed on YellowPage-NewYork.com. *Id.* at ¶ 30 & Att. M.

⁴⁹ Businesses do not benefit from increased exposure as a result of being listed on Defendants’ sites. For instance, even though Pierce & Associates, an accounting firm in Libertyville, Illinois, is listed on www.YellowPage-Illinois.com, that listing does not appear on any of the main Internet search engines when searching directly on the name “Pierce & Associates,” or when searching on “accountant” and “Libertyville.” *Id.* at ¶ 34; *see also* PX 18, Schumacher ¶ 25 (consumer has never seen YellowPage-Wisconsin.com advertised anywhere).

⁵⁰ Some consumers have become so enraged by Defendants’ scam that they have conducted their own surveys of companies listed on Defendants’ directory websites to determine whether any had willingly signed up for a listing. *See* PX 17, Rosene ¶ 16; PX 1, McKenney Att. H at 5-12. Not surprisingly, these informal surveys demonstrate that those listed on Defendants’ sites had not knowingly signed up for the listing, and, indeed, some had paid only because of Defendants’ threats. *See* PX 17, Rosene Att. G; PX 1, McKenney Att. H at 5-12; *see also* PX 16, Rennie ¶ 15 (discovered that neighbor business also was harassed by Yellow Page Marketing); PX 10, Eppen ¶ 6 (Yellow Book representative said she had received complaints about Yellow Page Marketing from all over Rochester, MN).

⁵¹ PX 2, St. Clair Att. C at 3. Tellingly, Defendants never even mention any of these purported services in their initial fax to consumers. Certainly if Defendants were actually interested in selling their directory (as opposed to tricking consumers), they would highlight all that its directory has to offer. *See* Conaway Att. A (an example of a legitimate yellow pages contract from SuperMedia LLC, which clearly lists products offered and prices).

⁵² PX 2, St. Clair ¶ 8 (Premium clients surveyed did not intentionally sign up with Yellow Page Marketing) & Att. D at 1 (“Several businesses that had complained to our office about your client’s deceptive marketing efforts nevertheless appear as Premium clients.”) & *id.* (government offices are supposed “Premium” clients yet they had no knowledge of signing up with Defendants); PX 1,

few, if any, consumers would knowingly agree to pay any money for Defendants' listing.⁵³

IV. ARGUMENT

Defendants have tricked consumers out of millions of dollars with their deceptive business practices, which clearly violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The Commission seeks an *ex parte* temporary restraining order and a preliminary injunction prohibiting Defendants' ongoing deceptive practices. The Commission also asks that the Court freeze assets, both corporate and personal, to preserve them for restitution to victims, and have the mail (containing checks from consumers) addressed to the New York address redirected to the FTC.⁵⁴ The Court has full authority to enter the requested relief, which is strongly supported by the evidence.

A. **This Court has the Authority to Grant the Requested Relief.**

The FTC Act provides that "in proper cases the Commission may seek, and after proper

McKenney ¶ 51 ("premium" childcare listing did not knowingly sign up with Defendants but paid \$100 to end collection efforts). To add insult to injury, not all of the consumers who paid Yellow Page Marketing even appear in the listings. *See* PX 16, Rennie ¶ 15 (consumer unable to locate find business listing on www.YellowPage-Wisconsin.com). Indeed, searches of Defendants' directories for common businesses often lead to nonsensical results. *See, e.g.*, PX 1, McKenney ¶ 32 (searching "plastic surgery" on Defendants' directory yields erroneous results such as "Plastic Bottle Corp.").

⁵³ PX 7, Conaway ¶ 14 (would never pay for a listing on such a poor quality website); PX 8, Dickinsen ¶ 9 ("We do very little advertising and mostly get clients through word of mouth. If we had understood Yellow Page B.V. was selling a listing in an Internet directory, we never would have returned the form."); PX 9, Ellison ¶ 15 ("I am embarrassed that my company name appears on the www.YellowPage-SouthCarolina.com site at all and I certainly would never pay for such a service."); PX 15, Mullin ¶ 21 ("Had the original form we received been straightforward and obvious about Yellow Page's intention to enter into a binding business relationship with us, I would have never bothered filling it out or returning it to Yellow Page."); PX 17, Rosene Att. H at 1-2 ("This is a clear and intentional scam as the so called service brings no value to customers beyond an internet listing that is not vetted for accuracy nor likely to be found by any consumer searching for one of the entities listed."); PX 18, Schumacher ¶ 26 ("[I]f Yellow Page B.V. had presented itself and its services to us in an honest manner, we would have declined to have any dealings with it. We would never agree to pay \$1,068.00, or any amount, for a listing on Yellow Page B.V.'s website.")

⁵⁴ The FTC has submitted a Proposed Temporary Restraining Order with its papers.

proof, the court may issue, a permanent injunction.” 15 U.S.C. § 53(b).⁵⁵ Once the Commission invokes the federal court’s equitable powers, the full breadth of the court’s authority is available, including the power to grant such ancillary final relief as rescission of contracts and restitution. *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir. 1989). The court may also enter a temporary restraining order, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief. *World Travel*, 861 F.2d at 1026; *see also Amy Travel*, 875 F.2d at 571. Such ancillary relief may include an asset freeze to preserve assets for eventual restitution to victimized consumers. *World Travel*, 861 F.2d at 1031.

B. The Commission Meets the Applicable Legal Standard for Issuance of a Temporary Restraining Order and Preliminary Injunction.

To grant preliminary injunctive relief in an FTC Act case, the district court must ““(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 (quoting *FTC v. Warner Commc’ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)); *see also Datacom Mktg.*, 2006 WL 1472644, at *3. Under this “public interest” test, “it is not necessary for the FTC to demonstrate irreparable injury.” *World Travel*, 861 F.2d at 1029. Unlike a private litigant, who generally must show a substantial likelihood of success on the merits, the Commission need only make the statutory showing of a likelihood of ultimate success. *Id.* And when the court balances the equities, the public interest “must receive far greater weight” than any private concerns. *Id.* Preliminary injunctive relief is therefore appropriate if the Commission shows a likelihood of success on the

⁵⁵ The practice of defrauding consumers by misrepresenting or omitting material facts in violation of Section 5(a) of the FTC Act presents a “proper case” for injunctive relief under 15 U.S.C. § 53(b). *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1028 (7th Cir. 1988).

merits and that a balancing of the equities, giving greater weight to the public interest, favors such relief.

1. Defendants Have Violated Section 5(a) of the FTC Act.

There is no doubt that Defendants' activities qualify as deceptive acts or practices under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances. *FTC v. Bay Area Bus. Council*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. World Media Brokers*, 415 F.3d 758, 763 (7th Cir. 2005); *World Travel*, 861 F.2d at 1029. A misrepresentation or omission is material if it involves information that is likely to affect a consumer's choice of, or conduct regarding, a product or service. *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992); *Datacom Mktg.*, 2006 WL 1472644, at *4.

Here, Defendants violate the FTC Act by making a series of deceptive claims that are designed to induce consumers to purchase unwanted directory listings. As described above, Defendants falsely represent that they are consumers' local yellow pages and have a preexisting relationship with consumers. The Commission's sworn consumer declarations demonstrate that these misrepresentations often succeed in misleading consumers to purchase or pay for listings that they do not want or need. The misrepresentations are clearly material, in that they are likely to and do affect consumers' conduct. In *Datacom*, under similar circumstances, Chief Judge Holderman found that the defendants violated the FTC Act by misleading consumers into erroneously believing that they had a previous business relationship with defendants, when none existed, and that consumers had agreed to buy defendants' directories, when they had not. *Datacom Mktg.*, 2006 WL 1472644, at *4. As in *Datacom*, the Commission has shown a likelihood of success on its claim that defendants are violating the FTC Act.

2. The Equities Tip Decidedly in the Commission's Favor.

Once the Commission has shown a likelihood of success on the merits, the Court must balance the equities, assigning greater weight to the public interest than to any of defendants' private concerns. *World Travel*, 861 F.2d at 1029. The public equities in this case are compelling, as the public has a strong interest in halting the deceptive scheme, and in preserving the assets necessary to provide effective final relief to victims. *See FTC v. Sabal*, 32 F. Supp. 2d 1004, 1009 (N.D. Ill. 1998); *Datacom Mktg.*, 2006 WL 1472644, at *5. Defendants, by contrast, have no legitimate interest in continuing to deceive consumers and persisting with conduct that violates federal law. *See Sabal*, 32 F. Supp. 2d at 1009; *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (upholding district court finding of “no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment.”). An injunction is required to ensure that Defendants' scheme does not continue while the case is pending.

3. Jan Marks is Individually Liable Under the FTC Act.

Marks is responsible for the deceptive practices of the corporations he controls, and he therefore should be subject to the temporary restraining order and an asset freeze. An individual defendant is subject to injunctive relief and liable for monetary restitution under the FTC Act when he (1) participated directly in, or had some control over, a corporation's deceptive practices, and (2) had actual or constructive knowledge⁵⁶ of the practices. *World Media Brokers*,

⁵⁶ The knowledge requirement is satisfied by a showing that the defendant (1) had actual knowledge of the deceptive acts or practices, (2) was recklessly indifferent to the truth or falsity of the representations, or (3) had an awareness of a high probability of fraud coupled with an intentional avoidance of the truth. *World Media Brokers*, 415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 574.

415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 573-74. The Commission does not need to show intent to defraud. *Amy Travel*, 875 F.2d at 573.

Marks both actively participates in the acts or practices of the corporate Defendants and has the authority to control them. As the sole director of Yellow Page Marketing, the main entity behind the operation, he is able to control its acts and practices. *See, e.g., World Media Brokers*, 415 F.3d at 764-65 (corporate officer “hard-pressed to establish that he lacked authority or control” over corporate entity); *Amy Travel*, 875 F.2d at 574. Further, Marks also has directly participated in the deceptive acts and practices. He opened the virtual office in New York that accepts consumers’ payments, directs the forwarding of consumers’ checks to Spain, and also signs tax documents. Moreover, Marks is certainly aware of his operation’s deception, as hundreds of consumers complaints are forwarded to Yellow Page Marketing, his company has been sued by the Australian authorities, and he recently signed an AVC with the Iowa Attorney General agreeing to cease all marketing activities to Iowa consumers.

C. An Asset Freeze is Necessary and Appropriate.

The relief sought by the Commission includes restitution for the victims of Defendants’ fraud. To preserve the possibility of such relief, the Commission seeks a freeze of Defendants’ assets and an immediate accounting to prevent concealment or dissipation of assets.

An asset freeze is appropriate once the Court determines that the Commission is likely to prevail on the merits and that restitution would be an appropriate final remedy. *See World Travel*, 861 F.2d at 1031 & n.9. In the words of the Seventh Circuit, the district court at that juncture has “a duty to ensure that the assets of the corporate defendants [are] available to make restitution to injured consumers.” *Id.* at 1031. In a case such as this, where the Commission is likely to succeed in showing that a corporate officer is individually liable for the payment of

restitution, the freeze should extend to individual assets as well. *Id.* (affirming freeze on individual assets); *see also Datacom Mktg.*, 2006 WL 1472644, at *5 (freezing assets of individual and corporate defendants).⁵⁷

D. The Temporary Restraining Order Should Be Issued *Ex Parte*.

To prevent Defendants from dissipating or concealing their assets, the requested TRO should be issued *ex parte*.⁵⁸ An *ex parte* TRO is warranted where the facts show that immediate and irreparable injury, loss, or damage will occur before the defendants can be heard in opposition. *See* Fed. R. Civ. P. 65(b). The utterly fraudulent nature of Defendants' scheme, coupled with their efforts to conceal their true location in Spain and their dishonest and abusive collection practices, indicates that Defendants likely would conceal or dissipate assets if notified of the Commission's motion. Moreover, the evidence shows that Defendants currently have assets in the United States at their mail drop that they could quickly transfer out of this country if they were to receive prior notice of this motion. In similar circumstances in past FTC cases, courts in this district have consistently granted restraining orders on an *ex parte* basis.⁵⁹

⁵⁷ This Court's jurisdiction over foreign assets not located within its jurisdiction is well established. Once the Court has jurisdiction over a party, the Court "has the authority to order it to 'freeze' property under its control, whether the property is within or without the United States." *United States v. First Nat'l City Bank*, 379 U.S. 378, 384 (1965).

⁵⁸ *See* Declaration in Support of *Ex Parte* Motion for Temporary Restraining Order and Application to File Papers Under Seal (describing need for *ex parte* relief here and citing cases in which defendants who learned of impending FTC action withdrew funds and destroyed vital documents).

⁵⁹ *See, e.g., FTC v. Nat'l Sales Group*, No. 11 C 1230 (N.D. Ill. Feb. 22, 2011) (Guzman, J.); *FTC v. Am. Tax Relief*, No. 10 C 6123 (N.D. Ill. Sept. 24, 2010); *FTC v. Central Coast Nutraceuticals, Inc.*, 10 C 4931 (N.D. Ill. Aug. 5, 2010) (Norgle, J.); *FTC v. Asia Pacific Telecom Inc.*, No. 10 C 3168 (N.D. Ill. May 25, 2010) (Hart, J.); *FTC v. API Trade, LLC*, No. 10 C 1543 (N.D. Ill. Mar. 10, 2010) (Guzman, J.); *FTC v. 2145183 Ontario Inc.*, No. 09 C 7423 (N.D. Ill. Nov. 30, 2009) (Grady, J.); *FTC v. 6555381 Canada Inc.*, No. 09 C 3158 (N.D. Ill. June 1, 2009) (Gettleman, J.); *FTC v. 6654916 Canada Inc.*, No. 09 C 3159 (N.D. Ill. May 27, 2009) (Darrah, J.); *FTC v. Integration Media Inc.*, No. 09 C 3160 (N.D. Ill. May 27, 2009) (Bucklo, J.).

V. CONCLUSION

Defendants have caused and are likely to continue to cause substantial injury to consumers as a result of their violations of the FTC Act. The Commission therefore asks that the Court issue the requested injunctive relief to prevent ongoing harm and to help ensure the possibility of effective final relief, including monetary restitution.

Respectfully submitted,

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