

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

_____)
FEDERAL TRADE COMMISSION,)
) Case No.
Plaintiff,)
)
v.)
)
MAIL TREE INC., a Florida corporation, <i>et al.</i> ,)
)
Defendants.)
_____)

**PLAINTIFF FEDERAL TRADE COMMISSION'S
MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF ITS *EX PARTE* MOTION FOR A TEMPORARY
RESTRAINING ORDER WITH ASSET FREEZE, APPOINTMENT
OF A RECEIVER, OTHER EQUITABLE RELIEF, AND ORDER TO
SHOW CAUSE WHY A PRELIMINAY INJUNCTION SHOULD NOT ISSUE**

I. Introduction

We ask this Court to put an immediate end to a massive sweepstakes scam operating from Fort Lauderdale that has bilked hundreds of thousands of consumers throughout the United States and other countries, including Australia, Canada, France, Germany, Japan, and the United Kingdom, out of over \$28 million. Defendants bombard millions of consumers with deceptive sweepstakes promotion letters informing them that they have won a huge cash prize, typically over \$2 million. The letters are unmistakably designed to (and do) create the impression that the consumer has already won and is guaranteed the cash prize as long as the consumer sends Defendants a small processing fee of around \$20-\$30. When consumers pay, Defendants pocket the money but never deliver the prizes – the epitome of fraud.

Defendants' letters include confusing fine print, buried at the bottom or on the back of the letters, stating that Defendants in fact do not sponsor sweepstakes or award prizes and instead are in the business of compiling a report of available sweepstakes. This language is not calculated to alert consumers of the truth – that they have won nothing and will get nothing of value for their money. Instead, Defendants' fine print is nothing more than an attempt to concoct a potential defense to law enforcement challenges. It is well-settled under FTC law, however, that this sort of fine print is no defense to a charge of deception.

What is worse, Defendants target elderly consumers who often fail to see or understand the nearly indecipherable legalese in the “disclaimer,” and are deceived by Defendants' letters into paying the requested fees (in some cases multiple times) to claim their sweepstakes winnings. Based on consumers who have complained about Defendants to the FTC and other law enforcement agencies, the vast majority of Defendants' victims are over the age of 65.

None of the consumers who pay Defendants receive the promised prize money. In fact, most consumers seem to receive nothing at all from Defendants, not even the worthless sweepstakes compilation report Defendants claim to create for consumers.

Defendants have continued their scam for years, undeterred by seizures of their mail, the arrest and conviction of one of their mailbox “runners,” and a police raid that shut down their payment processor in Canada. Defendants have responded to these setbacks by redoubling their efforts to hide from law enforcement. They operate through a web of ever changing d/b/a names, mail drops, and bank accounts, hoping to evade detection while continuing to bilk consumers worldwide. They have used payment processors and mail drops in Canada, the Netherlands, and

Hong Kong, and have transferred funds to overseas accounts in Colombia, Panama, and the Seychelles (an island nation in the Indian Ocean off the coast of Madagascar).

The FTC brings this motion *ex parte* to seek an immediate halt to this operation, to freeze its assets, and to have a temporary receiver appointed over the business. Defendants' widespread pattern of fraud, combined with their practice of transferring their ill-gotten gains overseas, and their elaborate efforts to conceal their scam from law enforcement, all strongly suggest that they would hide or dissipate assets if they received notice of this action. The requested relief is necessary to preserve the Court's ability to provide effective final relief, including providing refunds to victims.

II. Defendants' Deceptive Business Practices

Defendants have been engaged in sweepstakes fraud since at least 2010. Their far-reaching scam has targeted consumers worldwide and taken in over \$28 million.¹

A. Defendants' Deceptive Letters Promise Multi-Million Dollar Cash Prizes.

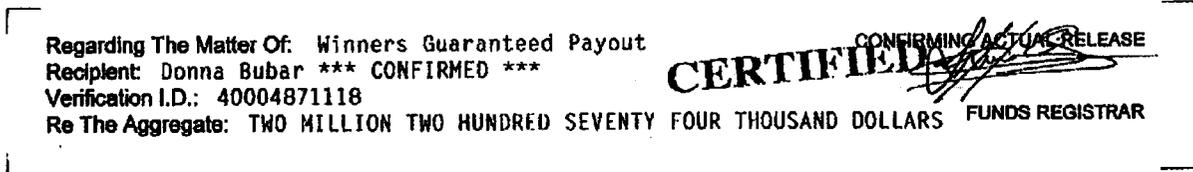
Defendants' scam begins with an artfully constructed, personalized letter to consumers informing them that they are the winners of a very substantial cash prize, typically a multi-million dollar figure featured prominently on the letter.² Consumers are told that to collect their winnings, they only need to pay a small fee, typically \$20-\$30 in U.S. dollars, or a similar amount in the local currency where the consumer resides. For making these payments, the letters include a form and an unstamped return envelope addressed to one of Defendants' mail drops.³

¹ Plaintiff's Exhibit ("PX") 16, McKenney ¶¶ 4, 29-30, 42.e, 43-44, 52.c, 136 & Att. V at 24-33.

² See, e.g., PX 2, Bubar Atts. A-B (\$2,274,000); PX 7, Duranty Att. A at 1 (same); PX 10, Sommers Atts. A-B (same); PX 4, Collins Att. A at 2-3, 6 (\$2,342,643), at 10 (\$3,168,000), at 14-15 (\$2,549,423), at 18-19 (\$3,179,843), at 21 (\$3,680,525), at 25 (\$2,786,529), at 29-30 (\$3,428,263); PX 6, Dorman Supp. Att. A at 2 (\$2,342,643); PX 9, Poynter Att. A (\$4,585,000); PX 11, Staton Att. A at 2 (\$4,625,086), at 6-7 (\$3,585,000), at 10 (\$4,585,000), at 14 (\$3,217,000), at 19 (\$3,287,000); PX 12, Tatem Att. A (\$3,287,000); PX 13, Thomas Att. B at 2 (\$3,179,843).

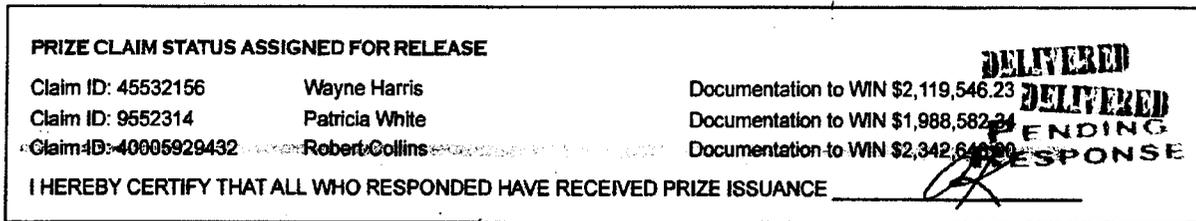
³ See, e.g., PX 1, Bartley ¶¶ 2-3; PX 2, Bubar ¶¶ 2-3 & Atts. A-B; PX 3, Campanale ¶¶ 2-4; PX 4, Collins ¶¶ 2-4 & Att. A; PX 5, Dorman ¶¶ 2-5; PX 6, Dorman Supp. ¶¶ 2-7 & Att. A; PX 7, Duranty ¶¶ 3-6 & Att. A; PX 8, Larson ¶¶ 2-4; PX 9, Poynter ¶¶ 2-5 & Att. A; PX 10, Sommers ¶¶ 2-9 & Atts. A-C; PX 11, Staton ¶¶ 2-3 & Att. A; PX 12, Tatem ¶¶ 3-6 & Att. A; PX 13, Thomas ¶¶ 3-8 & Att. B; PX 14, Grange ¶¶ 2, 5, 13.h-i, 15.g-l, 16.g-h & Atts. A, D at 8-11, F at 7-18, G at 17-20; PX 15, Kilduff ¶¶ 3-7, 15-18 & Atts. A, D-F.

Defendants use numerous different versions of the letters, in various languages depending on the destination, but the essential substance of the letters is the same. The letters appear professional and official, often including suggestive seals, stamps, bar codes, and other features meant to convey that the letters are coming from, or specifically authorized by, a legitimate sweepstakes operator. Examples include:



(PX 2, Bubar Dec. Att. A at 1 (Prize Award Notice)); and

Robert Collins, IS GUARANTEED RECIPIENT RE: \$2,342,643.00!



(PX 4, Collins Dec. Att. A at 2 (Notice of Cash/Prize Payouts)). Defendants use myriad fictitious names on the sweepstakes letterhead such as “Affiliated Opportunities Group,” “Information Reporting Group,” and “Priority Information Exchange,” often repeatedly targeting the same consumers with a series of seemingly independent prize announcements.⁴

Addressing consumers by name, the letters inform consumers that they have been specially selected to receive the letters, using statements such as, “your participation in an international sweepstakes program has paid off, our customer database selection system has chosen you!”⁵ or “YOU HAVE BEEN CONFIRMED AS THE ONLY EXCLUSIVE OWNER OF RECIPIENT ID NUMBER 40005931478 REFERENCING MORE THAN \$3,179,843.00,”⁶ or “your selection to receive this VERIFIED DOCUMENTATION was made official today at 09:34:02 confirming your status as DESIGNATED RECIPIENT of cash directives for Prize

⁴ See, e.g., PX 4, Collins ¶ 4; PX 8, Larson ¶ 6; PX 11, Staton ¶ 3.

⁵ PX 14, Grange Att. G at 19.

⁶ PX 4, Collins Att. A at 18.

Payment Amounts now GUARANTEED to exceed £2.9 Million.”⁷

Using an assortment of creative language, the letters convey to consumers that they have already been approved for, or are otherwise guaranteed to receive, the prize money. For example, Defendants’ letters have included statements such as “you are officially declared GUARANTEED RECEIVER re the £2,987,662.57,”⁸ or “[Jane Doe] is guaranteed to be dispatched the documented total of £2,352,135.73,”⁹ or “Access every last dollar of the money for award grant if Recognition Claim is posted on time.”¹⁰ The letters embellish these claims with celebratory statements such as, “CONGRATULATIONS ON THIS INCREDIBLE GOOD FORTUNE,”¹¹ or “it gives me great pleasure to confirm that this information has been AUDITED, CERTIFIED, and APPROVED.”¹²

The letters and forms often assure recipients that the money is ready for immediate delivery to consumers.¹³ The only thing consumers need to do to collect their prize, according to the letters, is to complete the attached form and send it to Defendants, along with the required fee.¹⁴ The forms frequently have official-sounding names suggesting that consumers are

⁷ PX 15, Kilduff Att. A at 2.

⁸ *Id.* Att. F at 5.

⁹ *Id.* Att. F at 8.

¹⁰ PX 11, Staton Att. A at 19.

¹¹ PX 4, Collins Att. A at 18.

¹² PX 2, Bubar Att. A at 1; PX 7, Duranty Att. A at 1; PX 10, Sommers Att. A.

¹³ *See, e.g.*, PX 3, Campanale ¶ 4 (“According to the letters, the prize money was ready and available for shipment immediately once the fee was paid.”); PX 4, Collins Att. A at 2 (\$2,342,643 “now being held on account”), at 14 (“A minimum of \$2,549,423.00 is currently being held in accounts by sponsors”); PX 5, Dorman ¶ 4; PX 14, Grange Att. A at 1 (\$2,982,000 “now scheduled for payment IN FULL by guarantors”), Att. F at 9 (\$3,254,526.08 “must be immediately released”); PX 15, Kilduff Att. A at 2 (“the full £2.9 Million MUST be paid”), at 4 (“AWARD AMOUNT – AVAILABLE FOR IMMEDIATE RELEASE: *** £3,605,064.00 GUARANTEED”), at 12 (“The account now totals over \$3,596,895.00”), at 15 (“£2,457,668.42 guaranteed for payouts”).

¹⁴ *See, e.g.*, PX 1, Bartley ¶¶ 2-3; PX 2, Bubar ¶¶ 2-3 & Atts. A-B; PX 3, Campanale ¶¶ 2-4; PX 4, Collins ¶¶ 2-4 & Att. A; PX 5, Dorman ¶¶ 2-5; PX 6, Dorman Supp. ¶¶ 2-7 & Att. A;

acknowledging something of great magnitude: “OFFICIAL CLAIM DOCUMENT,” “TRANSFER ORDER CERTIFICATE,” or “CASH/PRIZE DIRECTIVE FORM.”¹⁵

The forms always ask for consumers’ signature, again signifying a heightened level of formality, and frequently reiterate the promise of a substantial cash prize. For example, claim forms have stated, “SIGN HERE . . . Re: GUARANTEED ISSUANCE FOR AGGREGATE TOTAL MONIES \$2,274,000.00,”¹⁶ or “YES – I request and authorize you to send the full £3,605,064.00 payout data to [my] address,”¹⁷ or “I, addressee hereby confirm that I accept these transfer proceedings of over \$2,982,000 in cash and prizes reported and now scheduled for guarantors payment GUARANTEED IN FULL.”¹⁸ Some forms include a “Publicity Release” for consumers to sign authorizing use of their “name or likeness,” and specifying payment of their winnings by “lump sum” or “monthly payments.”¹⁹ Consumers are told to pay the fee by cash, check, or money order made payable to Defendants.²⁰

To further encourage consumers to send in the fee without delay, the letters and forms create an extreme sense of urgency, frequently warning consumers that they have a very limited amount of time to claim their prize money or it will be forfeited.²¹ For example, one letter

PX 7, Duranty ¶¶ 3-6 & Att. A; PX 8, Larson ¶¶ 2-4; PX 9, Poynter ¶¶ 2-5 & Att. A; PX 10, Sommers ¶¶ 2-9 & Atts. A-C; PX 11, Staton ¶¶ 2-3 & Att. A; PX 12, Tatem ¶¶ 3-6 & Att. A; PX 13, Thomas ¶¶ 3-8 & Att. B; PX 14, Grange ¶¶ 2, 5, 13.h-i, 15.g-l, 16.g-h & Atts. A, D at 8-11, F at 7-18, G at 17-20; PX 15, Kilduff ¶¶ 3-7, 15-18 & Atts. A, D-F.

¹⁵ See, e.g., PX 2, Bubar Att. B; PX 4, Collins Att. A at 14, 29; PX 10, Sommers Att. B; PX 14, Grange Att. A at 2, Att. G at 19; PX 15, Kilduff Att. A at 17.

¹⁶ PX 2, Bubar Att. B; PX 10, Sommers Att. B.

¹⁷ PX 15, Kilduff Att. A at 4.

¹⁸ PX 14, Grange Att. G at 19.

¹⁹ See, e.g., PX 4, Collins Att. A at 3 (Registered Cash/Prize Documentation Claim and Winner’s Publicity Release), at 15 (Official \$2,549,423.00 Affidavit Agreement Publicity Release), at 30 (Official \$3,428,263.00 Affidavit Agreement, Publicity Release); PX 6, Dorman Supp. Att. A at 4-5.

²⁰ See, e.g., PX 4, Collins ¶¶ 4-6 & Att. A at 3, 6, 10, 14, 19, 21, 25, 29 (forms), Att. B (checks).

²¹ *Id.* Att. A at 2 (“Now this is your FINAL OPPORTUNITY to respond and claim the

cautions, “internal regulations prohibit us from making ANY delivery to you if you do not respond in time. That would be your terrible loss.”²² Another letter warns, “your PREFERRED status regarding the GUARANTEED £2.9 Million PRIZE AMOUNT requires that you respond within 5 days,” otherwise, “we absolutely will release your Official £2.9 Million CASH DIRECTIVE to someone else. Please do not let that happen.”²³ Envelopes in which the letters arrive sometimes are labeled “TIME-SENSITIVE” or “URGENT FINANCIAL NOTICE,” or include warnings such as, “Immediate response is required to avoid potential loss.”²⁴

B. Defendants’ Disclaimers Are Useless.

Only in fine print, typically on the backs of the letters where consumers are unlikely to look, or buried at the bottom of the letter beneath the prominently touted cash award, do Defendants include their version of a “disclaimer” – although the language is really more of a retraction than a disclaimer. This proviso states that consumers, in fact, have not really won the prize the letter just informed them they won, and that Defendants do not sponsor sweepstakes or make any awards of cash or prizes. Instead, Defendants supposedly compile some type of report about sweepstakes for consumers. Not only is the text of this “disclaimer” written in dense, all capital letters, typically in small font, but the language used is complicated and confusing. It is challenging to read through the text itself and just as hard to comprehend precisely what it means. An example of the way the disclaimer typically appears on the letters is set out below:

\$2,342,643.00 cash/prize documentation reserved exclusively for you as GUARANTEED RECIPIENT.”), at 18 (“WE CANNOT HOLD THIS FOR MORE THAN 10 (TEN) DAYS.”); PX 9, Poynter Att. A (“In order to receive these cash and prizes – over FOUR MILLION FIVE HUNDRED EIGHTY FIVE THOUSAND DOLLARS – you must act promptly or your nomination will become forfeit due to deadlines.”); PX 11, Staton Att. A at 2 (“Failure to respond in a timely manner will result in forfeiture of all claim to said monies.”), at 6 (“We must hear from you virtually immediately to claim your eligibility settlement right to same – otherwise you forfeit this precise value.”); PX 14, Grange Att. A at 2 (“Please remember the 14 DAY DEADLINE, failing to respond in time negates all rights to these funds.”).

²² PX 15, Kilduff Att. A at 4.

²³ *Id.* Att. A at 2.

²⁴ PX 4, Collins Att. A at 9, 17; PX 15, Kilduff Att. F at 7, 10, 15.

INFORMATION REPORTING GROUP IS NOT AFFILIATED WITH ANY GOVERNMENT AGENCY OR CONTEST OPERATOR. WE ARE AN INDEPENDENT PRIVATE RESEARCH AND REPORTING FIRM THAT PUBLISHES INFORMATIONAL REPORTS FOR A FEE ON AVAILABLE SWEEPSTAKES AND CONTESTS THAT ARE OPEN TO THE PUBLIC FOR ENTRY. UNDER US LAW NO PURCHASE IS EVER NECESSARY TO ENTER AND WIN ANY SWEEPSTAKES AND PURCHASING OUR REPORT DOES NOT INCREASE YOUR ODDS OF WINNING A SWEEPSTAKES OR CONTEST. THIS CORRESPONDENCE IS NOT AN AWARD NOTIFICATION AND DOES NOT SUGGEST OR GUARANTEE THAT YOU HAVE WON OR WILL WIN ANY PRIZE, CONTEST, OR SWEEPSTAKES YOU CHOOSE TO ENTER. SUBSCRIBERS ARE SOLELY RESPONSIBLE FOR ENTRY INTO ANY SWEEPSTAKES OR CONTEST CONTAINED IN OUR REPORT AND MUST COMPLY WITH ALL REQUIREMENTS AS DESCRIBED BY THE INDEPENDENT SPONSOR'S OFFICIAL RULES AND REGULATIONS. LIABILITY FOR ANY MISTAKE OR PUBLISHING ERROR CONTAINED IN OUR REPORT IS LIMITED TO A REFUND OF THE PURCHASE PRICE OF THE PUBLICATION IN WHICH THE MISTAKE OR ERROR APPEARS. IF A SUBSCRIBER IS DISSATISFIED WITH OUR REPORT OR SERVICE FOR ANY REASON, WE OFFER A 100% MONEY BACK GUARANTEE UPON WRITTEN REQUEST WITHIN 1 YEAR OF PURCHASE. THIS PROMOTION MAY BE USED UNDER DIFFERENT CREATIVE OR TRADE PRESENTATIONS. VOID WHERE PROHIBITED BY LAW. WHEN YOU PURCHASE BY CHECK, YOU ARE AGREEING TO OUR CHECK ACCEPTANCE POLICY. IN THE UNLIKELY EVENT THAT YOUR CHECK IS RETURNED UNPAID, YOU UNDERSTAND AND AGREE THAT YOUR CHECK MAY BE ELECTRONICALLY REPRESENTED. IF YOUR CHECK IS ELECTRONICALLY REPRESENTED, IT WILL NOT BE PROVIDED TO YOU WITH YOUR BANK STATEMENT, BUT A COPY CAN BE RETRIEVED BY CONTACTING YOUR FINANCIAL INSTITUTION. IF YOU DO NOT WISH TO RECEIVE FURTHER MAIL SOLICITATIONS FROM IRG, PLEASE CONTACT OUR CUSTOMER SERVICE DEPARTMENT IN WRITING AND EXPRESS YOUR WISH TO BE REMOVED FROM OUR MAILING LIST. CUSTOMER SERVICE DEPARTMENT, C/O PO BOX 1500 FT. LANGLEY, LANGLEY BC V1M 0B6, CANADA

(PX 7, Duranty Dec. Att. A at 2).²⁵

Defendants' disclaimers do not alert consumers to the truth and are entirely insufficient to cure the impression in the body of the letters that consumers have won a cash prize. Consumers send money because they are convinced that they have won a sweepstakes.²⁶ Even skeptical consumers believe they have a strong chance of receiving the prize money once they pay the fee.²⁷ Consumers typically do not see, let alone read and understand, the disclaimer, and if they did, they certainly would not send money to purchase a sweepstakes compilation report.²⁸ Some consumers are deceived into sending fees multiple times.²⁹

C. Consumers Receive Nothing Of Value for Their Money.

Consumers who send Defendants the requested fees receive absolutely nothing of value in exchange for their money. They do not receive the "guaranteed" multi-million dollar prize.³⁰

²⁵ See also PX 2, Bubar Att. A at 2; PX 4, Collins Att. A at 4, 7, 11, 15, 19, 22, 26, 30; PX 6, Dorman Supp. Att. A at 3; PX 7, Duranty Att. A at 2; PX 11, Staton Att. A at 3, 6, 11, 15, 20; PX 13, Thomas Att. B at 2; PX 14, Grange Att. D at 9, 11, Att. F at 8, 10, 12, 14, 16, 18, Att. G at 18, 20; PX 15, Kilduff Att. A at 3, 5-6, 11, 14, 16, 18, 20, 22, Att. D at 3, Att. F at 3, 6, 9.

²⁶ See, e.g., PX 1, Bartley ¶¶ 4-5 & Att. A; PX 3, Campanale ¶¶ 2-7 & Att. A; PX 4, Collins ¶¶ 2-6 & Atts. A-B; PX 5, Dorman ¶¶ 2-5 & Att. A; PX 8, Larson ¶¶ 2-7 & Att. A; PX 13, Thomas ¶¶ 3-8 & Atts. A-B; PX 16, McKenney ¶¶ 44, 122, 126, 131 & Atts. V at 26-33, MM-OO.

²⁷ See, e.g., PX 7, Duranty ¶¶ 3-10 & Atts. A-C.

²⁸ See, e.g., PX 1, Bartley ¶ 6; PX 3, Campanale ¶ 7; PX 5, Dorman ¶ 5; PX 7, Duranty ¶ 8; PX 8, Larson ¶¶ 7-8; PX 13, Thomas ¶ 4.

²⁹ See, e.g., PX 1, Bartley ¶¶ 2-7 & Att. A (six checks totaling \$120); PX 3, Campanale ¶¶ 2-7 & Att. A (two checks totaling \$40); PX 4, Collins ¶¶ 2-6 & Att. B (14 checks totaling \$290, some unpaid); PX 5, Dorman ¶¶ 2-5 & Att. A (five checks totaling \$100); PX 8, Larson ¶¶ 2-8 & Att. A (25 checks totaling \$510); PX 13, Thomas ¶¶ 3-4 & Att. A (five checks and money orders totaling \$140).

³⁰ See, e.g., PX 1, Bartley ¶ 7; PX 3, Campanale ¶ 5; PX 4, Collins ¶ 3; PX 5, Dorman ¶ 6; PX 7,

We have not identified a single consumer who even received the purported sweepstakes compilation report, and, not surprisingly, consumers say they would never agree to pay \$20-\$30 for such an item.³¹ Typically, the only things consumers who pay Defendants receive are more deceptive letters requesting additional fees to claim another alleged sweepstakes award.³²

Even if some consumers actually read and understand the disclaimer, Defendants send such an enormous volume of letters to consumers that their scam remains exceptionally profitable. From just April 2011 to February 2014, Defendants bombarded consumers with over 12 million pieces of mail.³³ They have defrauded consumers of more than \$28 million since 2010 – an amount (at \$20-\$30 per transaction) that corresponds to roughly one million consumer victims.³⁴ To make matters worse, it appears Defendants intentionally target vulnerable seniors with their deceptive mailings.³⁵

D. Prior Law Enforcement Efforts Have Not Deterred Defendants.

Defendants have continued their scheme despite law enforcement efforts in Canada and the United Kingdom. On June 9, 2011, a “runner” for Defendants, while sweeping their mail drops around Vancouver, was arrested for a traffic violation and caught with stacks of consumer payments from Europe, Canada and Australia. He pled guilty to one count of fraud and served six months in a Canadian jail.³⁶ In July and August 2012, the Vancouver police raided a local “caging company” that was processing consumer payments for Defendants, and seized records

Duranty ¶ 11; PX 8, Larson ¶ 5; PX 13, Thomas ¶ 5.

³¹ See, e.g., PX 1, Bartley ¶ 6; PX 3, Campanale ¶ 7; PX 5, Dorman ¶ 5; PX 7, Duranty ¶ 8; PX 8, Larson ¶¶ 7-8; PX 13, Thomas ¶ 4.

³² See, e.g., PX 1, Bartley ¶ 7; PX 4, Collins ¶ 4; PX 5, Dorman ¶ 6; PX 8, Larson ¶ 5.

³³ PX 16, McKenney ¶ 29.

³⁴ *Id.* ¶¶ 4.d, 136.

³⁵ *Id.* ¶¶ 148, 150 & Att. TT; PX 14, Grange ¶ 2; see, e.g., PX 1-13 (elderly consumers).

³⁶ PX 14, Grange ¶¶ 3-8 & Att. A (sweepstakes letters seized from Juan Hernandez); PX 16, McKenney ¶¶ 148, 153 & Att. TT (court transcripts). Within days of Hernandez’s arrest, defendants were maneuvering to replace a Vancouver mail drop they “lost in the incident.” See PX 14, Grange ¶¶ 21.d, 22 & Att. M at 85 (email dated June 13, 2011 from Victor Ramirez (processor@hush.ai) to Marcus Pradel and Matthew Pisoni).

and the contents of Defendants' nearby mail drops.³⁷ In October and November 2012, and July 2013, police in the U.K. seized over 5 tons of fraudulent sweepstakes mail at Heathrow Airport, including Defendants' letters targeting consumers in Austria, Australia, France, Germany, Japan, New Zealand, and the U.K. Defendants received (and ignored) notice of these mail seizures, and simply continued their lucrative scheme.³⁸

III. Defendants

Defendants are eleven corporations (or LLCs) that operate as a common enterprise, and four individuals who own, direct, and manage the enterprise, and share its profits. Defendants operate primarily from this district, and all the individuals reside here.

A. Corporate Defendants

Defendants **Mail Tree Inc., Michael McKay Co., Spin Mail, Inc., MCP Marketing Activities, LLC d/b/a Magellan Mail and Magellan Marketing, Trans National Concepts, Inc., Romeria Global, LLC, d/b/a Lowenstein Varick and Nagel, Supreme Media, LLC, Vernier Holdings, Inc., Awards Research Consultant, LLC, Mailpro Americas Corp., and Masterpiece Marketing, LLC, d/b/a Affiliated Opportunities Group (AOG), Corporate Accounting Authority (CAA), Dispatch Notification Services (DNS), Information Reporting Group (IRG), National Directory Center (NDC), and Priority Information Exchange (PIE),** have engaged in sweepstakes campaigns targeting consumers in the U.S., Australia, Canada, France, Germany, Japan, the United Kingdom and other countries.³⁹ The corporate defendants are controlled by the same individuals, share addresses, and commingle funds.⁴⁰ Their sweepstakes

³⁷ PX 14, Grange ¶¶ 9-22 & Atts. B-M.

³⁸ PX 15, Kilduff ¶¶ 3-18 & Atts. A-F.

³⁹ See PX 16, McKenney ¶ 4.a (campaigns), ¶ 29 (volume of mail), ¶ 30 (countries targeted), ¶¶ 43, 52.c, 91, 119-31 (consumer payments), & Att. U (sweepstakes letters); PX 14, Grange ¶¶ 11.a-c, 12.a-b, 13.a-d, 14.a-b, 15.a-c, 16.b-c, 17.a-b, 18.a, 19.a-b, 20.b-c (countries) & Atts. A, F at 7-18, G at 17-20 (letters); PX 15, Kilduff Atts. A, D-F (letters); see also *supra* note 2.

⁴⁰ The four individual defendants are the officers of nine of the companies (PX 16, McKenney ¶¶ 5-7, 10-16), and long-term employees of the enterprise Lilia Rodriguez and Myriam Ceballos are the officers of the other two (*Id.* ¶¶ 8, 17, 21, 27.b, 32.c, 89, 144 & Atts. N, R, T at 8-11; PX 14, Grange ¶ 6.d). Defendants use mail drops for most corporate addresses and receiving consumer payments (PX 16, McKenney ¶¶ 9, 13.d, 14.c, 15.c, 21-27; PX 14, Grange Att. L at 5-6; PX 2). Only Mailpro Americas Corp. is known to have a physical address (PX 16, McKenney

campaigns, while designed to appear independent, use the same printers, shippers, and payment processors.⁴¹

B. Individual Defendants

The individual defendants, all residents of the Fort Lauderdale area, are the officers, directors and managers of companies forming the enterprise. All four have controlled and actively participated in the scheme: **Matthew Pisoni**, President and Director of Mail Tree Inc., Michael McKay Co., and Spin Mail, Inc., and Manager of MCP Marketing Activities, LLC d/b/a Magellan Mail and Magellan Marketing;⁴² **Marcus Pradel**, Vice President and Director of Mail Tree Inc., Michael McKay Co., and Spin Mail, Inc., and President and Director of Trans National Concepts, Inc.;⁴³ **John Leon**, President and Director of Vernier Holdings, Inc., and Manager of

¶ 17.c, 18). Proceeds of the scheme routinely are transferred among the companies (*e.g.*, *id.* ¶¶ 50, 60.c, 61.e, 64.a, 65.d, 67.b, 68.a, 70.c, 71.a, 75.c, 76.a, 80.b, 81.a, 83.d, 84.a, 86.d, 94.c).

⁴¹ PX 16, McKenney ¶¶ 28-39, 41-43, 49.a-b, 51-52, 54.a-b, 60.a-b, 64.b, d, 67.d-e, 70.a, 75.a, 80.a, c-d, 83.a, c, 86.b-c; *see also* ¶ 136 (financial summary chart).

⁴² *Id.* ¶¶ 5-7, 11-12 & Atts. A-C, G (corporate records). Pisoni signed the merchant processing agreement between Michael McKay Co. and the Netherlands payment processor Global Collect and directed remittances to a Mail Tree account (*Id.* ¶¶ 41-42 & Att. V at 12, 17-21); registered the domains circlemkt.com and magellanmail.com used for sweepstakes campaigns in the U.S. and overseas (*Id.* ¶¶ 32, 137-40, 145-46; PX 14, Grange ¶¶ 13.e, 18.a & Atts. D at 5, I at 1, L at 3; PX 15, Kilduff ¶¶ 10, 12); and controlled as signatory bank accounts that received over \$11 million in proceeds from the enterprise and paid for mail drops, and translating, printing and mailing sweepstakes letters (PX 16, McKenney ¶¶ 45-50, 55-68, 98.a, 102.a, 106.a, 110.a, 114, 135.a, 146 & Atts. W-X, Z-DD; *see also* ¶ 136 (financial summary chart)). Emails recovered by Canadian authorities show Pisoni's active role in the campaigns (PX 14, Grange ¶ 22 & Att. M at 6-7, 13-19, 23-33, 36, 39, 42-44, 48-50, 52, 66, 69-72, 79, 83-85; *see also* PX 16, McKenney ¶ 4.e (meaning of "OSE" and "CRE"))).

⁴³ PX 16, McKenney ¶¶ 5-7, 10 & Atts. A-C, F (corporate records). Pradel signed the merchant processing agreement with Global Collect (*Id.* ¶ 42 & Att. V at 12); signed a services agreement between Trans National Concepts and the Canadian payment processor International Caging and directed transfers from the proceeds (PX 14, Grange ¶ 13.e, 20, 22 & Atts. D at 5, K at 1-10, M at 8, 38, 40, 44); directed international shipments of millions of sweepstakes letters (PX 16, McKenney ¶¶ 29-30, 42.e); received actual notice of the mail seizures at Heathrow in 2012 and 2013 (*Id.* ¶ 31 & Att. S; PX 15, Kilduff ¶¶ 9, 11, 13 & Att. B); and controlled as signatory bank accounts that received over \$13 million in proceeds from the enterprise and paid for mail drops, and translating, printing and mailing sweepstakes letters (PX 16, McKenney ¶¶ 45-50, 55-65, 68.d, 72-76, 114, 135.b, & Atts. W-X, Z-CC, FF-GG; *see also* ¶ 136 (financial summary chart)). When questioned about the sweepstakes mailings in 2010 by a reporter for the New York Daily

Romeria Global, LLC, and Supreme Media, LLC;⁴⁴ and Victor Ramirez, Manager of Awards Research Consultant, LLC.⁴⁵

IV. Argument

Defendants' business practices violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). To immediately halt these illegal practices and preserve assets necessary for restitution to victims, the FTC requests that the Court issue a TRO enjoining the deceptive and illegal conduct described herein, freezing Defendants' assets, appointing a temporary receiver, granting immediate access to business premises, providing for other ancillary relief, and ordering the Defendants to show cause why a preliminary injunction should not issue.

A. The Court Has The Authority To Grant The Relief Sought.

Section 13(b) of the FTC Act authorizes the FTC to seek, and the Court to issue, temporary, preliminary, and permanent injunctions. The second proviso of Section 13(b), under which this action is brought, states that "the Commission may seek, and after proper proof, the court may issue, a permanent injunction" against violations of "any provision of law enforced by the Federal Trade Commission." 15 U.S.C. § 53(b). Section 13(b) empowers the courts to exercise the full breadth of their equitable powers, including ordering rescission of contracts, restitution, and disgorgement of ill-gotten gains. *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468-

News, Pradel said, "Those letter mailings . . . those are newsletter offerings, not postal scams." (*Id.* ¶ 151 & Att. UU at 2).

⁴⁴ PX 16, McKenney ¶¶ 13-15 & Atts. H-J (corporate records). Leon opened/managed mail drops where consumers sent payments (*Id.* ¶¶ 24-25 & Atts. P-Q; PX 14, Grange ¶¶ 6, 22 & Att. M at 47); and controlled as signatory bank accounts that received over \$4 million in proceeds from the enterprise and paid for mail drops and printing and mailing sweepstakes letters (PX 16, McKenney ¶¶ 61.d, 65.e, 69-71, 76.b, 77-84, 87.b, 94.b, 114.d, 135.c & Atts. EE, HH-JJ; *see also* ¶ 136 (financial summary chart); PX 14, Grange ¶ 19 & Att. J).

⁴⁵ PX 16, McKenney ¶ 16 & Att. K (corporate records). Ramirez opened/managed mail drops where consumers sent payments, oversaw processing of that mail, and registered new d/b/as (*Id.* ¶¶ 21, 26-27 & Att. N; PX 14, Grange ¶¶ 21.c, 22 & Atts. L at 5-6, M at 9, 13, 25, 35-36, 47-48, 52, 57, 65-67, 69-72, 85). He also directed transfers of funds from payment processors International Caging and PacNet Services (PX 14, Grange ¶¶ 11.d-e, 12.c, 14.c-f, 15.d-f, 16.d-f, 17.c, 18.a.i, 18.b-e, 19.c-d, 20.d, 22 & Atts. B at 4-5, C at 3, E at 3-6, F at 4-6, G at 14-16, H at 3, I at 2-5, J at 3-4, K at 13, M at 41, 45-46, 55-56); and controlled as signatory bank accounts that received over \$2 million in proceeds from the enterprise and paid for printing and mailing sweepstakes letters (PX 16, McKenney ¶¶ 50.b, 85-87 & Att. KK; *see also* ¶ 136 (chart)).

70 (11th Cir. 1996); *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984). By enabling the courts to use their full range of equitable powers, Congress gave them authority to grant preliminary relief, including a temporary restraining order, preliminary injunction, and asset freeze. *U.S. Oil & Gas*, 748 F.2d at 1434.

B. The FTC Meets The Standard For Issuance Of A Temporary Restraining Order And Preliminary Injunction.

In this Circuit, “[f]or the FTC to obtain injunctive relief, it must show that (1) it is likely to succeed on the merits, and (2) injunctive relief is in the public interest.” *FTC v. IAB Mktg. Assocs.*, 746 F.3d 1228, 1232 (11th Cir. 2014) (citing *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1217-18 (11th Cir. 1991)). Unlike a private litigant, the FTC need not show irreparable injury. *Id.* As set forth below, both factors weigh in favor of the requested relief.

1. The FTC Is Likely To Succeed On The Merits.

The FTC is likely to succeed on the merits in this action. The FTC’s evidence shows (a) that Defendants’ sweepstakes scheme violates the FTC Act, (b) that the corporate defendants act as a common enterprise, and (c) that the individual defendants control and directly participate in the enterprise. Defendants therefore should be held jointly and severally liable for injunctive and equitable monetary relief.

a. Defendants Violate Section 5 Of The FTC Act.

An act or practice is deceptive under the FTC Act if it is likely to mislead consumers, acting reasonably under the circumstances, in a material respect. *See FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003). In considering whether a claim is deceptive, the Court must consider the “net impression” created by the representation. *FTC v. Peoples Credit First, LLC*, 2005 WL 3468588, *6 (M.D. Fla. Dec. 18, 2005) (quoting *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993, 1010 (N.D. Ind. 2000)), *aff’d*, 244 Fed. Appx. 942 (11th Cir. 2007); *see also FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006) (solicitation can be deceptive by virtue of its net impression even if it contains truthful disclosures); *FTC v. Five-Star Auto Club*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) (“the Court must consider the misrepresentations at issue, by viewing [them] as a whole without emphasizing isolated words or phrases apart from their context”) (internal quotation marks omitted). Regardless of whether “the words in the mail piece are technically or literally true,” the FTC Act is violated if “[t]he material implication in the entirety of the mail piece” is deceptive. *Peoples Credit First*, 244 Fed. Appx. at 944.

Representations made to induce consumers to send money are presumed to be material. *FTC v. Wilcox*, 926 F. Supp. at 1091, 1098, 1100 (S.D. Fla. 1995).

Defendants' letters, with their official-looking designs, prominently featured multi-million dollar figures, and carefully crafted language, create the overwhelming impression that consumers have won a substantial cash prize and need only send in a small fee to claim their winnings. Tellingly, the sweepstakes compilation reports that defendants claim to be selling are not described anywhere in the body of the letter.

The fine print Defendants bury at the bottom or on the backs of their letters, in dense text and confusing language, in no way corrects this overall impression. It is well established that fine print disclaimers do not cure deceptive solicitations. In *Cyberspace.com*, for example, the Ninth Circuit held that a fine print disclosure on the back of a check sent to consumers did not cure the overall deceptive impression that the check "was simply a refund or rebate rather than an offer for services." 453 F.3d at 1200-01; *see also FTC v. Wash. Data Res.*, 856 F. Supp. 2d 1247, 1275 (M.D. Fla. 2012) (disclaimer buried in agreement did not cure deceptive net impression), *aff'd*, 704 F.3d 1323 (11th Cir. 2013).⁴⁶

Indeed, in *FTC v. National Prize Information Group*, the court held that the fine print disclosure used by a scheme nearly identical to Defendants' scheme did not insulate the defendants from liability under the FTC Act. 2006 WL 3234360, *3 (D. Nev. Nov. 2, 2006). In *National Prize*, as in the instant case, the letters sent to consumers created the impression that consumers had won millions of dollars, and included a dense, fine print disclosure at the bottom of the letters which disclosed that the defendants actually only sent a newsletter about available sweepstakes to consumers. *Id.* at *2-3. The district court concluded that the consumers' net impression from the letters was that they had won a cash prize which could be obtained by sending a \$20 fee, and held that the "small-print disclosure, containing legalistic and ambiguous language, [did] not dispel that net impression." *Id.* at *3.

⁴⁶ *See also FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 12 (1st Cir. 2010) ("[d]isclaimers or qualifications in any particular ad are not adequate to avoid liability unless they are sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression.") (citation omitted); *Porter & Dietsch v. FTC*, 605 F.2d 294, 301 (7th Cir. 1979) (upholding FTC finding that disclosures "buried in small print" were inadequate to change net impression of weight loss claims in advertising).

As in *National Prize*, the disclaimers in Defendants' letters are not conspicuous and, as the evidence demonstrates, certainly do not draw consumers' attention. We have not heard from a single consumer who believed they had sent in \$20 or \$30 to purchase a list of sweepstakes contests. Similarly, not a single consumer reported receiving, let alone benefitting from, the report they supposedly agreed to purchase.

Defendants have conned thousands of consumers, often elderly, into thinking they won the sweepstakes. Consumers send money to Defendants thinking they are claiming their winnings, and, in return, receive absolutely nothing of value. Although it is not necessary to prove actual deception to establish a violation of the FTC Act, "such proof is highly probative to show that a practice is likely to mislead consumers acting reasonably under the circumstances." *Cyberspace.com*, 453 F.3d at 1201 (citation omitted).

b. The Corporate Defendants Operate As A Common Enterprise.

The corporate defendants are jointly and severally liable because they have operated as a common enterprise while engaging in the deceptive acts and practices described above. "When determining whether a common enterprise exists, courts look to a variety of factors, including: common control, the sharing of office space and officers, whether business is transacted through a 'maze of interrelated companies,' the comingling of corporate funds and failure to maintain separation of companies, unified advertising, and evidence which 'reveals that no real distinction existed between the Corporate Defendants.'" *FTC v. Wolf*, 1996 WL 812940, *7 (S.D. Fla. Jan. 31, 1996) (internal citations omitted); *see also Wash. Data Res.*, 856 F. Supp. 2d at 1271 ("If the structure, organization, and pattern of a business venture reveal a 'common enterprise' or a 'maze' of integrated business entities, the FTC Act disregards corporateness."); *FTC v. U.S. Oil & Gas Corp.*, 1987 U.S. Dist. Lexis 16137, *58-63 (S.D. Fla. July 10, 1987) (finding common enterprise where corporate defendants were under common control, shared office space and employees, and used similar sales techniques).

The corporate defendants are controlled by the four individual defendants. The companies do not function as independent legal entities, but as interchangeable corporate shells that exist solely as conduits for the scam. They commingle assets and share addresses, including at least one business location in Fort Lauderdale, as well as mail drops spread around the

world.⁴⁷ Accordingly, the corporate defendants operate as a common enterprise and are all jointly and severally liable for Defendants' violations of the FTC Act.

c. Individual Defendants Matthew Pisoni, Marcus Pradel, John Leon And Victor Ramirez Are Liable For The Practices Of The Corporate Defendants.

The individual defendants are responsible for the illegal activity of the corporations they control. An individual may be held liable for injunctive and monetary relief under the FTC Act if: (1) the individual participated directly in or had authority to control the practices; and (2) had some knowledge of the practices. *See Gem Merch. Corp.*, 87 F.3d at 470; *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, 573 (7th Cir. 1989).⁴⁸ Authority to control may be evidenced by "active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer." *Wilcox*, 926 F. Supp. at 1104 (quoting *Amy Travel*, 875 F.2d at 573); *see also Transnet Wireless*, 506 F. Supp. 2d at 1270 ("An individual's status as a corporate officer gives rise to a presumption of ability to control a small, closely-held corporation.") (citations omitted). Having signing authority on corporate accounts or acquiring services on behalf of the corporation also evidences authority to control. *FTC v. USA Fin., LLC*, 415 Fed. Appx. 970, 974-75 (11th Cir. 2011); *Transnet Wireless*, 506 F. Supp. 2d at 1271. Even where an individual is not officially designated as a corporate officer, courts consider "the control that a person actually exercises over given activities." *FTC v. Windward Mktg., Ltd.*, 1997 WL 33642380, *5 (N.D. Ga. Sept. 30, 1997) (holding that defendant did not have to be an officer or even an employee to control corporate activities). Participation in corporate affairs is probative of knowledge. *Transnet Wireless*, 506 F. Supp. 2d at 1270; *Wilcox*, 926 F. Supp. at 1104. The FTC need not show intent to defraud. *Transnet Wireless*, 506 F. Supp. 2d at 1270.

⁴⁷ *See supra* notes 40-41.

⁴⁸ 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. *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1270 (S.D. Fla. 2007); *Amy Travel Service*, 875 F.2d at 574.

Here, each individual defendant is an officer or manager of one or more of the corporate defendants, all of which are small, closely held companies, giving rise to a presumption of control. Bank records, emails and other documents show the individual defendants' direct involvement with arranging and paying for the printing and mailing of sweepstakes letters, setting up mail drops, and engaging runners. They are each signatories on bank accounts into which millions of dollars in scam proceeds have been transferred.⁴⁹ Their efforts to evade detection by using a multitude of different names and bank accounts is probative of their knowledge. *See FTC v. J.K. Publ'n, Inc.*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000) (repeated changes of business names signals fraudulent activities). Given their control over and active participation in this scheme, the individual defendants are undoubtedly aware of the deceptive practices, and should therefore be held individually liable.

2. Injunctive Relief Is In The Public Interest.

The public equities in this case warrant preliminary and ancillary injunctive relief. In balancing the equities, the public interest should receive greater weight than any private interest. *University Health*, 938 F.2d at 1225; *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988). The public equities in this case are compelling, as the public has a strong interest in halting Defendants' law violations and preserving assets for restitution to victims. Defendants, by contrast, have no legitimate interest in continuing to mislead consumers, and compliance with the law is hardly an unreasonable burden. *See World Wide Factors*, 882 F.2d at 347 (affirming 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.").

C. The Scope Of The Proposed TRO Is Necessary And Appropriate.

An *ex parte* TRO is necessary and legally appropriate to prevent Defendants from dissipating assets and destroying evidence. The FTC respectfully requests a TRO to: (a) freeze Defendants' assets; (b) appoint a temporary receiver over the corporate defendants; and (c) grant the FTC immediate access to Defendants' records and information. Defendants are likely to immediately dissipate assets or destroy evidence if given advance notice of the FTC's action. Courts in this district have frozen defendants assets, appointed receivers, and granted the FTC

⁴⁹ *See supra* notes 42-45.

immediate access to defendants' business premises in numerous FTC enforcement actions. See, e.g., *FTC v. IAB Mktg. Assocs.*, 972 F. Supp. 2d 1307, 1309-10 (S.D. Fla. 2013); *FTC v. Prime Legal Plans LLC*, 2012 WL 4854762, *1 (S.D. Fla. Oct. 12, 2012); *FTC v. USA Beverages, Inc.*, 2005 WL 5654219, *8-9 (S.D. Fla. Dec. 6, 2005), *rep. & recom. adopted*, 2005 WL 5643834 (S.D. Fla. Dec. 9, 2005).⁵⁰

1. Asset Freeze

The Eleventh Circuit has repeatedly upheld the authority of district courts to order an asset freeze to preserve the possibility of consumer redress. See, e.g., *Gem Merch. Corp.*, 87 F.3d at 469 (“district court may order preliminary relief, including an asset freeze, that may be needed to make permanent relief possible”); *U.S. Oil & Gas*, 748 F.2d at 1433-34; see *IAB Mktg. Assocs.*, 746 F.3d at 1234-35. Here, an asset freeze is appropriate given the magnitude of financial injury. Defendants’ deceptive conduct is especially egregious because it targets elderly consumers. To help ensure the availability of assets, preserve the status quo, and guard against the dissipation and diversion of assets, the Court should impose an asset freeze. In light of evidence showing the individual defendants’ control of the corporate defendants’ bank accounts and the likelihood that the Commission will succeed in establishing their liability for restitution, the freeze should unquestionably extend to individual assets as well. *Gem Merch. Corp.*, 87 F.3d at 470 (upholding use of individual defendants’ assets for restitution); see *IAB Mktg. Assocs.*, 746 F.3d at 1234-35.

⁵⁰ See also *FTC v. Regency Fin. Serv.*, No. 15-cv-20270-DPG (S.D. Fla. Jan. 28, 2015) (*ex parte* TRO with asset freeze); *FTC v. Boost Software, Inc.*, No. 14-cv-81397-KAM (S.D. Fla. Nov. 12, 2014) (*ex parte* TRO with asset freeze, temporary receiver, and access to business premises); *FTC v. Inbound Call Experts, LLC*, No. 14-cv-81395-KAM (S.D. Fla. Nov. 12, 2014) (same); *FTC v. Centro Natural Corp.*, No. 14-cv-23879-CMA (S.D. Fla. Oct. 20, 2014) (same); *FTC v. Diversified Educ. Resources*, No. 14-cv-62116-JIC (S.D. Fla. Sept. 16, 2014) (*ex parte* TRO with asset freeze and access to business premises); *FTC v. Partners in Health Care Ass’n*, No. 14-cv-23109-RNS (S.D. Fla. Aug. 25, 2014) (*ex parte* TRO with asset freeze, temporary receiver, and access to business premises); *FTC v. FMC Counseling Services, Inc.*, No. 14-cv-61545-WJZ (S.D. Fla. July 7, 2014) (same); *FTC v. Hispanic Global Way, Corp.*, No. 14-cv-22018-CMA (S.D. Fla. June 2, 2014) (same); *FTC v. Southeast Trust, LLC*, No. 12-cv-62441-WJZ (S.D. Fla. Dec. 11, 2012) (*ex parte* TRO with asset freeze and access to business premises); *FTC v. A+ Financial Center, LLC*, No. 12-cv-14373-DLG (S.D. Fla. Oct. 24, 2012) (*ex parte* TRO with asset freeze, temporary receiver, and access to business premises); *FTC v. Premier Precious Metals, Inc.*, No. 12-cv-60504-RNS (S.D. Fla. Mar. 20, 2012) (same).

2. Temporary Receiver

The FTC seeks the appointment of a temporary receiver pursuant to the Court's equitable powers under Section 13(b) of the FTC Act. *See U.S. Oil & Gas*, 748 F.2d at 1432. Such an appointment is particularly appropriate where Defendants' pervasive fraud presents a strong likelihood of continued misconduct. *USA Beverages*, 2005 WL 5654219 at *8. A temporary receiver would prevent the destruction of evidence and dissipation of assets while the case is pending. The receiver also would be helpful in assessing the extent of Defendants' widespread fraud, tracing the proceeds of that fraud, and making an independent report of Defendants' activities to the Court.

3. Immediate Access And Limited Expedited Discovery

The proposed TRO grants the temporary receiver and the FTC immediate access to the corporate defendants' physical business premises to locate and secure Defendants' assets as well as documents pertaining to their business practices. For the same purposes, the FTC seeks limited expedited discovery into the nature, location, and extent of these assets and documents, including permission to conduct depositions with 48 hours' notice and to issue requests for production of documents on five days' notice.

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

The requested TRO should be issued *ex parte* to prevent Defendants from dissipating or concealing their assets or destroying evidence. 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. Fed. R. Civ. P. 65(b)(1); *see, e.g., FTC v. U.S. Mortg. Funding*, 2011 WL 810790, *1 (S.D. Fla. Mar. 1, 2011). The FTC's experience shows that similarly situated defendants have acted to dissipate assets and destroy evidence upon notice of an FTC enforcement action.⁵¹

Here, as in similar FTC actions in this district where courts have granted an *ex parte* TRO (*see supra* n. 50) there is a serious risk that assets and evidence stemming from the illegal

⁵¹ *See* Declaration and Certification of Plaintiff's Counsel Pursuant to Fed. R. Civ. P. 65(b) in Support of Plaintiff Federal Trade Commission's *Ex Parte* Motion for Temporary Restraining Order and Motion to Temporarily Seal File (describing need for *ex parte* relief and citing cases in which defendants who learned of impending FTC action withdrew funds, destroyed vital documents, and fled the jurisdiction).

activity will disappear if Defendants receive prior notice. Defendants are seasoned sweepstakes scam artists with a long history of disregarding and evading law enforcement. They have taken steps to hide their identities by using numerous shell companies, d/b/as and mail drops. They also have transferred funds to overseas accounts in Colombia, Panama and the Seychelles.⁵² They have used payment processors and mail drops in Canada, the Netherlands, and Hong Kong.⁵³ They have continued their scheme even after Canadian authorities arrested and jailed one of their runners, seized their incoming mail and consumer payments, and raided their Vancouver payment processor, and after U.K. authorities twice seized bulk shipments of their sweepstakes letters at Heathrow Airport.⁵⁴ There is a significant risk Defendants will continue their pattern of evasion if given advance notice of the Commission's motion.

V. Conclusion

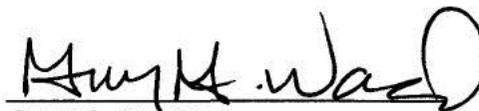
For the above reasons, the FTC respectfully requests that this Court issue the proposed TRO with asset freeze, appointment of a receiver, immediate access, and other equitable relief, and require Defendants to show cause why a preliminary injunction should not issue.

Respectfully submitted,

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⁵² PX 16, McKenney ¶¶ 50.c, 84.c, 94.b; PX 14, Grange ¶¶ 21.d, 22 & Atts. L at 7-8, M at 34, 45-46, 55-56.

⁵³ PX 16, McKenney ¶¶ 41-43, 49.a-b, 51-52, 54.a-b, 60.a-b, 64.b, d, 67.d-e, 70.a, 75.a, 80.a, c-d, 83.a, c, 86.b-c, 136; PX 14, Grange ¶¶ 6, 21.c & Att. L at 5-6; PX 2, Bubar Att. A at 1.

⁵⁴ PX 14, Grange ¶¶ 3-22 & Atts. A-M; PX 15, Kilduff ¶¶ 3-18 & Atts. A-F; PX 16, McKenney ¶¶ 148, 153 & Att. TT.