

MAY 19, 2008

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. **08-21433-CIV-JORDAN/MCALILEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ALTERNATEL, INC.; G.F.G. ENTERPRISES LLC,  
also d/b/a MYSTIC PREPAID; VOICE PREPAID,  
INC.; VOICE DISTRIBUTORS, INC.; TELECOM  
EXPRESS, INC.; LUCAS FRIEDLANDER; MOSES  
GREENFIELD; NICKOLAS GULAKOS; and  
FRANK WENDORFF,

Defendants.

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**PLAINTIFF FEDERAL TRADE COMMISSION'S MEMORANDUM OF LAW  
IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION WITH OTHER EQUITABLE RELIEF**

JANIS CLAIRE KESTENBAUM  
(Special Bar No. A5501213)  
ROBERTO ANGUIZOLA  
(Special Bar No. 0616761)  
FEDERAL TRADE COMMISSION  
600 Pennsylvania Avenue, NW, H-286  
Washington, DC 20580  
Telephone: (202) 326-2798 (Kestenbaum)  
(202) 326-3284 (Anguizola)  
E-mail: jkestenbaum@ftc.gov  
ranguizola@ftc.gov  
Facsimile: (202) 326-3395

*Attorneys for Plaintiff Federal Trade Commission*

## INTRODUCTION<sup>1</sup>

Plaintiff Federal Trade Commission (“FTC”) moves this Court for a temporary restraining order (“TRO”) and preliminary injunction with other equitable relief to put an immediate end to deceptive business practices that have defrauded consumers of millions of dollars. Individual Defendants Nickolas Gulakos, Moses Greenfield, Lucas Friedlander, and Frank Wendorff together operate a common enterprise that distributes prepaid calling cards through corporate defendants Alternatel, Inc., G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, Inc., Voice Distributors, Inc., and Telecom Express, Inc. Defendants market their cards to recent immigrants in Florida, New Jersey, Pennsylvania, Massachusetts, New Hampshire, and Rhode Island, who rely on such cards to call friends and family outside the United States. In marketing their cards, Defendants represent that consumers will receive a specific number of calling minutes to particular international destinations. These representations are false: consumers who purchase Defendants’ cards typically receive far fewer minutes than Defendants advertise. In addition, Defendants fail to disclose, or to disclose adequately, the fees associated with their cards. Defendants’ conduct violates Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

Defendants have continued their deceptive conduct despite an investigation into the marketing practices of one of the defendants — Alternatel — initiated by the Florida Attorney General in July 2007;<sup>2</sup> a private lawsuit alleging deceptive marketing practices by three of the

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<sup>1</sup>The FTC submits three volumes of exhibits in support of this motion, which include declarations and attachments thereto. Exhibits are cited with the abbreviation “FTC Ex.” followed by the exhibit number. Declarations are then cited by paragraph number, while attachments to declarations are cited by letter and page number.

<sup>2</sup>FTC Ex. 1, ¶ 44, Att. KK, p. 638; *see also* Press Release, “McCollum Issues Subpoenas to Prepaid Calling Card Industry,” dated July 27, 2007, *available at*

(continued...)

defendants — Voice Prepaid, Voice Distributors, and Nickolas Gulakos — filed in June 2007;<sup>3</sup> and a private lawsuit alleging fraudulent marketing practices by a telecommunications service provider owned by another defendant — Moses Greenfield — filed in March 2007.<sup>4</sup>

Notwithstanding this scrutiny of their marketing practices, Defendants have continued their deceptive conduct.

Accordingly, entry of the requested TRO and preliminary injunction is necessary to prevent Defendants from continuing to defraud consumers during the pendency of this case. Presented with nearly identical evidence of violations of the FTC Act by a different prepaid calling card distributor, a federal district court in New Jersey recently entered a TRO comparable to the order the FTC seeks here. *See FTC v. Clifton Telecard Alliance*, No. 2:08-cv-01480-PGS-ES (D.N.J. TRO entered Apr. 1, 2008).<sup>5</sup> As in *Clifton*, immediate entry of a TRO is necessary here to prevent further harm to consumers.

## STATEMENT OF FACTS

### **I. THE DEFENDANTS**

Defendants are a common enterprise of five companies that distribute prepaid calling cards and four individual defendants who own and/or manage the corporate defendants.

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<sup>2</sup>(...continued)

<http://myfloridalegal.com/newsrel.nsf/newsreleases/79D5F12C92A5BE4585257321006423E6>.

<sup>3</sup>*IDT Telecom, Inc. v. Voice Distributors, Inc.*, Civil No. 07-2465 (Mass. Super. Ct. filed June 28, 2007) (“Voice Prepaid Litigation”); FTC Ex. 1, ¶ 43, Att. HH, pp. 530-59.

<sup>4</sup>*IDT Telecom, Inc. v. CVT Prepaid Solutions, Inc.*, No. 2:07-CV-01076-SDW-MCA (D.N.J. filed Mar. 8, 2007) (“Dollar Phone Litigation”); FTC Ex. 1, ¶¶ 10, 41, Att. G, AA, pp. 62, 343, 345, 355.

<sup>5</sup>FTC Ex. 1, ¶ 102, Att. JJ, pp. 574-85.

Defendant **Alternatel, Inc. (“Alternatel”)**, is a Florida corporation with its principal place of business in Pembroke Pines, Florida.<sup>6</sup> Defendant **G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid (“Mystic Prepaid”)**, is a New Jersey limited liability company with its principal place of business in Hoboken, New Jersey.<sup>7</sup> Defendants **Voice Prepaid, Inc., Voice Distributors, Inc., and Telecom Express, Inc.** (collectively “**Voice Prepaid**”) are Massachusetts corporations with their principal place of business in Medford, Massachusetts.<sup>8</sup>

Defendant **Nickolas Gulakos** is an officer, director, and 50% owner of Alternatel;<sup>9</sup> he is also the founder, sole owner, and President of Voice Prepaid,<sup>10</sup> and an owner and Member/Manager of Mystic Prepaid.<sup>11</sup> Defendant **Moses Greenfield** is an officer, director, and 50% owner of Alternatel,<sup>12</sup> as well as an owner and Member/Manager of Mystic Prepaid.<sup>13</sup> Additionally, Greenfield is the founder and CEO of non-party Dollar Phone Corporation (“Dollar Phone”), the telecommunications service provider for the majority of Alternatel, Mystic Prepaid,

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<sup>6</sup>FTC Ex. 1, ¶ 4, Att. A, p. 28.

<sup>7</sup>FTC Ex. 1, ¶¶ 6, 23, Att. C, N, pp. 48-50, 194.

<sup>8</sup>FTC Ex. 1, ¶¶ 7-9, 21, Att. D, E, F, L, pp. 52, 56, 58, 60, 188.

<sup>9</sup>FTC Ex. 1, ¶¶ 4, 41, Att. A, Z, BB, pp. 32, 34, 285, 419.

<sup>10</sup>FTC Ex. 1, ¶¶ 7-9, 41, Att. D, E, F, Z, BB, pp. 52, 56, 58-61, 286, 419.

<sup>11</sup>FTC Ex. 1, ¶¶ 6, 41, Att. C, BB, pp. 48, 419. Mystic Prepaid is a limited liability company rather than a corporation. Accordingly, its principals are identified as “Members” and its directors as “Managers.”

<sup>12</sup>FTC Ex. 1, ¶¶ 4, 41, Att. A, BB, pp. 31, 419.

<sup>13</sup>FTC Ex. 1, ¶¶ 6, 41, Att. C, BB pp. 48, 419.

and Voice Prepaid calling cards.<sup>14</sup> Defendant **Lucas Friedlander** is an owner, a Member/Manager, and the Chief Operating Officer of Mystic Prepaid as well as Controller of Voice Prepaid.<sup>15</sup> Defendant **Frank Wendorff** is President and Chief Operating Officer of Alternatel,<sup>16</sup> and has been a signatory on a bank account of Telecom Express, Inc., one of the Voice Prepaid companies.<sup>17</sup>

## II. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES

Defendants develop, design, create, market, and distribute their own prepaid calling cards.<sup>18</sup> Defendants sell their cards on a wholesale basis to a network of sub-distributors and to small retail outlets, such as grocery and convenience stores, gas stations, and newsstands.<sup>19</sup> Consumers then purchase Defendants' cards from such retailers.<sup>20</sup> Defendants' cards generally

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<sup>14</sup>FTC Ex. 1, ¶¶ 10, 13, 41, 46-66, 78, 80, 82-85, Att. G, J, Z, BB, LL-TTT, pp. 62, 149-84, 285-86, 418, 639-75; FTC Ex. 2, ¶¶ 6, 15-16, Att. A-C, pp. 5-8; FTC Ex. 3, ¶¶ 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36.

<sup>15</sup>FTC Ex. 1, ¶¶ 6, 23, 24, Att. C, N, O, Z, pp. 48, 50, 194, 211, 304.

<sup>16</sup>FTC Ex. 1, ¶¶ 4, 25, Att. A, P, pp. 28, 30, 31, 212.

<sup>17</sup>FTC Ex. 1, ¶ 33, Att. W, p. 271.

<sup>18</sup>FTC Ex. 1, ¶¶ 41, 43, Att. Z, FF, pp. 293, 501.

<sup>19</sup>FTC Ex. 1, ¶¶ 41, 43, 45, Att. Z, FF, pp. 285, 501; FTC Ex. 4, ¶ 4; FTC Ex. 5, ¶¶ 4-6; FTC Ex. 6, ¶ 3; FTC Ex. 7, ¶ 3.

<sup>20</sup>FTC Ex. 1, ¶ 45; FTC Ex. 4, ¶ 4; FTC Ex. 6, ¶ 3; FTC Ex. 7, ¶ 3.

retail for between \$2 and \$10.<sup>21</sup> In 2006 and 2007, Defendants took in over \$72 million from the sale of prepaid calling cards just through their Voice Prepaid bank accounts.<sup>22</sup>

Although Defendants do not provide the underlying telecommunications service for their calling cards — which they pay third parties to provide — it is Defendants that design, print, and market their cards.<sup>23</sup> As Voice Prepaid has admitted in court filings:

Voice Prepaid is engaged in the business of developing, creating, **marketing** and distributing prepaid telephone calling cards . . . . Voice Prepaid purchases long-distance telephone minutes from a connection service provider and then distinguishes this relatively fungible service by developing original designs, names and marks that it incorporates into its prepaid calling cards. Voice Prepaid incurs the costs of designing, printing, shipping, and **marketing** these original works and then sells the prepaid telephone cards through a network of local sub-distributors \* \* \* **Based upon Voice Prepaid's industry knowledge and skill, it [has] targeted certain key demographics, identified popular international calling destinations, negotiated rates for minutes with Dollar Phone for these destinations, and developed original designs, names and marks for its prepaid telephone cards.**<sup>24</sup>

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<sup>21</sup>FTC Ex. 1, ¶¶ 45-66, Att. LL-TTT, pp. 639-75; FTC Ex. 4, ¶¶ 4, 6-7; FTC Ex. 5, ¶¶ 4-6, Att. C, p. 6; FTC Ex. 6, ¶ 3; FTC Ex. 7, ¶ 3.

<sup>22</sup>FTC Ex. 1, ¶ 40.

<sup>23</sup>FTC Ex. 1, ¶ 43, Att. FF, p. 501. The corporate defendants are not telecommunications carriers. FTC Ex. 1, ¶ 43, Att. FF, II, pp. 501, 563. Dollar Phone, which is owned by Defendant Moses Greenfield, is the telecommunications provider for the majority of Defendants' calling cards. FTC Ex. 1, ¶¶ 10, 13, 41, 46-66, 78, 80, 82-85, Att. G, J, Z, BB, LL-TTT, pp. 62, 149-84, 285-86, 418, 639-75; FTC Ex. 2, ¶¶ 6, 15-16, Att. A-C, pp. 5-8; FTC Ex. 3, ¶¶ 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36.

<sup>24</sup>FTC Ex. 1, ¶ 43, Att. FF, p. 501 (emphasis added). Voice Prepaid made this representation in a brief filed in the Voice Prepaid Litigation, *see supra* note 3. In that lawsuit, IDT, a prepaid calling card company, alleges that Voice Prepaid has engaged in deceptive marketing practices in violation of the Massachusetts state consumer protection statute.

Defendants' cards typically display the name or logo of Alternatel, Mystic Prepaid, or Voice Prepaid along with one of a wide variety of Defendants' "brand" names, including: "Aló Mamá," "Tree Monkey," "Rey de Florida," "Taco Libre," "Oi Brasil," "Coffee Time Call Me Time," "Dangerous Minutes!," "Mama Africa," "Martini," "Voz Do Brasil," and "Nigeria Connect."<sup>25</sup> Although Alternatel, Mystic Prepaid, and Voice Prepaid operate in different geographic regions,<sup>26</sup> they often sell the same brands of cards, to which Voice Prepaid owns the trademark.<sup>27</sup> For example, Alternatel, Mystic Prepaid, and Voice Prepaid each distribute "Aló Mamá," "Tree Monkey," and "Coffee Time Call Me Time" cards in their respective geographic regions. Whether distributed by Alternatel, Mystic Prepaid, or Voice Prepaid, Defendants' cards, and the marketing materials for the cards, are nearly indistinguishable in appearance.<sup>28</sup>

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<sup>25</sup>FTC Ex. 1, ¶¶ 47, 49, 51, 52, 53, 56, 63, 65, Att. MM, PP, UU, WW, XX, EEE, NNN, RRR, pp. 640, 643, 644, 648, 650, 651, 658, 668, 673.

<sup>26</sup>Alternatel distributes prepaid calling cards in Florida, Mystic Prepaid distributes prepaid calling cards in New Jersey and Philadelphia, Pennsylvania, and Voice Prepaid distributes prepaid calling cards in Massachusetts, New Hampshire, and Rhode Island. FTC Ex. 1, ¶¶ 41, 43, 45, Att. Z, BB, FF, pp. 285, 417, 419, 501-02; FTC Ex. 4, ¶ 4; FTC Ex. 5, ¶¶ 4-6; FTC Ex. 6, ¶ 3; FTC Ex. 7, ¶ 3.

<sup>27</sup>In addition to owning the trademarks for a number of the brand names of the calling cards sold by Alternatel, Mystic Prepaid, and Voice Prepaid, Voice Prepaid also owns the copyrights to the artwork used in marketing a number of these cards. FTC Ex. 1, ¶¶ 11-12, 14-20, Att. H, I, K, pp. 63-149, 185-86.

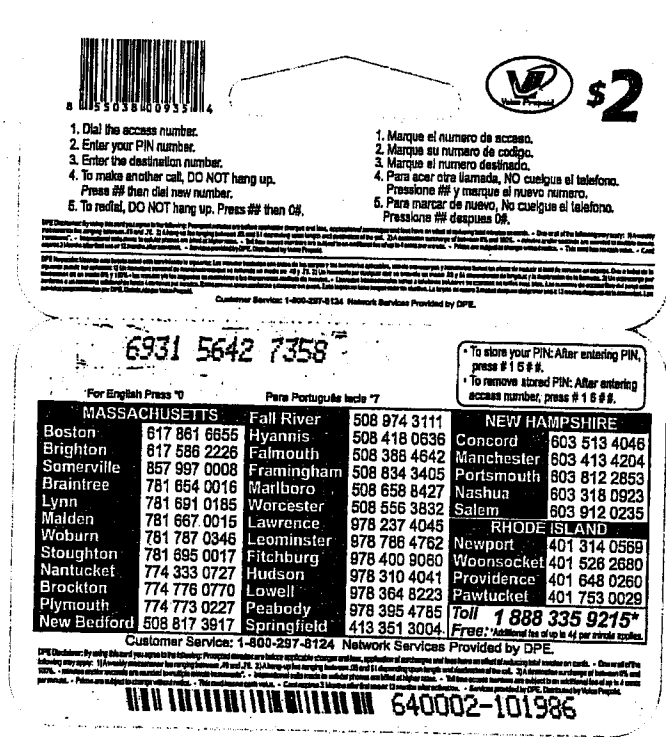
<sup>28</sup>The cards differ in appearance only in that they display the corporate logo of the particular company distributing the card (e.g., the Voice Prepaid "Tree Monkey" card displays a "VP" logo, the Mystic Prepaid "Tree Monkey" card displays an "MP" logo, and the Alternatel version of the card has an "Alternatel" logo). FTC Ex. 1, ¶ 51, Att. UU, pp. 648 (Voice Prepaid Tree Monkey card); FTC Ex. 1, ¶ 58, Att. GGG, p. 660 (Alternatel Tree Monkey card); FTC Ex. 1, ¶ 62, Att. LLL, p. 666 (Mystic Prepaid Tree Monkey card).

**A. Defendants' Cards**

Below is a photocopy of one of Defendants' calling cards<sup>29</sup>:



Front of Card (actual size)



Back of Card (actual size)

The card is printed on laminated paper and, as shown here, contains two detachable portions: a top portion, or “hang tag,” and a bottom portion, which is the calling card itself. The front of the card displays the relevant corporate logo (here, the “VP Voice Prepaid” logo) and the brand name of the card (here, “Tree Monkey”). As with most of Defendants’ cards, as shown above, the back of the hang tag includes directions for how to use the card in both English and Spanish and the relevant corporate logo. The back of the hang tag and/or the back of the card itself also includes disclosures in small print regarding fees and charges. Although the

<sup>29</sup>FTC Ex. 1, ¶ 51, Att. UU, p. 648.



instructions are usually provided in both English and Spanish, these disclosures are in many cases provided in English only.<sup>30</sup> The disclosures typically state:

By using this card you agree to the following: Prompted minutes are before applicable charges and fees, application of surcharges and fees have an effect of reducing total minutes on cards. One or all of the following may apply: 1) A weekly maintenance fee ranging between .49 and .79. 2) A hang-up fee between .05 and \$1 depending upon length and destination of the call. 3) A destination surcharge of between 0% and 100% –minutes and/or seconds are rounded to multiple minutes increments. –International calls made to cellular phones are billed at higher rates. –Toll free access numbers are subject to an additional fee of up to 4 cents per minute. –Prices are subject to change without notice. –This card has no cash value. –Card expires 3 months after first use or 12 months after activation.<sup>31</sup>

#### **B. Using Defendants' Cards**

Defendants' calling cards work as follows: A consumer dials an "access number" printed on the back of the card.<sup>32</sup> A recorded message then prompts the consumer to enter the card's Personal Identification Number ("PIN"), which is printed on the card.<sup>33</sup> Next, the consumer typically hears a voice response-generated statement of the monetary value of the card.<sup>34</sup> The consumer then enters the phone number he or she is trying to reach and hears an automated

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<sup>30</sup>FTC Ex. 1, ¶¶ 47-48, 50, 52-55, 59, 61-64, Att. MM, OO, SS, WW, YY, AAA, CCC, III, JJJ, LLL, NNN, PPP, pp. 640, 642, 646, 650, 652, 654, 656, 662, 663, 666, 668 (examples of cards with instructions in English and Spanish and English-only disclosures); FTC Ex. 1, ¶¶ 51, 58, Att. UU, GGG, pp. 648, 660 (cards with disclosures in English and Spanish).

<sup>31</sup>FTC Ex. 1, ¶¶ 47, 52-54, Att. MM, WW, YY, AAA, pp. 640, 650, 652, 654.

<sup>32</sup>FTC Ex. 1, ¶ 73.

<sup>33</sup>FTC Ex. 1, ¶ 73.

<sup>34</sup>FTC Ex. 1, ¶ 73.

“voice prompt” announcing the number of minutes of time ostensibly available on the card.<sup>35</sup>

After the call is connected and before the card’s value is exhausted, the caller typically receives a warning telling him or her that there is one minute of calling time remaining.<sup>36</sup> The call is cut off once the card has no remaining value.<sup>37</sup>

### C. Defendants’ Advertising

To advertise their cards, Defendants use posters displayed at the point of sale and mass media advertising, such as television and radio ads.<sup>38</sup> Whatever the medium, Defendants’ advertising targets recent immigrants and emphasizes the number of calling minutes purportedly provided by Defendants’ cards.<sup>39</sup>

For example, Defendants urged Latinos to buy the Voice Prepaid “Dangerous Minutes!” card in a radio advertisement highlighting the number of calling minutes consumers would purportedly obtain. During the ad, music plays in the background while a male voice says in Spanish:

Latinos of the world! Latinos of the world! New England! Want to live dangerously! Voice Prepaid, the company that brings you the best cards like: Mass Connection, Bean Town, Coffee Time and Voz du Brazil. Now brings you the Dangerous Minutes! calling card! With a dangerous number of minutes. Dangerous Minutes! Dangerous Minutes! The card with the motorcycle. **With Dangerous Minutes you will receive: 270 minutes to the**

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<sup>35</sup>FTC Ex. 1, ¶ 73.

<sup>36</sup>FTC Ex. 1, ¶ 74.

<sup>37</sup>FTC Ex. 1, ¶ 74.

<sup>38</sup>*See, e.g.*, FTC Ex. 1, ¶¶ 29-30, 41, 45, Att. S-U, Z, pp. 238-52, 293; FTC Ex. 4, ¶ 4; FTC Ex. 6, ¶ 4; FTC Ex. 7, ¶ 4.

<sup>39</sup>FTC Ex. 1, ¶ 41, Att. CC, p. 445.

**Dominican Republic, 405 Medellin, 650 for Bogota, Colombia, 120 for El Salvador and 100 for Guatemala.** Run! Don't walk to your local store and tell them that you need your Dangerous Minutes! From the Dangerous Minutes card! The calling card with the motorcycle and no connection fees! **With Dangerous Minutes you will receive: 270 minutes to the Dominican Republic, 405 Medellin, 650 for Bogota, Colombia, 120 for El Salvador and 100 for Guatemala.** From Voice Prepaid! The company that always has the best cards!<sup>40</sup>

In marketing their cards, Defendants also rely heavily on colorful posters displayed on the windows and walls of the stores where Defendants' cards are sold.<sup>41</sup> The posters range in size from 8.5 x 11 inches to 11 x 17 inches and many proclaim in large type "No Connection Fee!" or "The Most Minutes!!!"<sup>42</sup> In addition, Defendants' posters ordinarily contain large and colorful text "bubbles" containing the name of calling destinations and representations as to the number of calling minutes a consumer will purportedly receive in calling a destination using the advertised calling card of a specified dollar value (*e.g.*, "per \$5"). The representations in the text bubbles are in large font (approximately 32-point font) and are emphasized through the use of color and placement. In addition to the text bubbles, Defendants' posters contain a table listing numerous additional calling destinations and representations as to the number of calling minutes consumers will purportedly receive in calling them using the advertised calling card.<sup>43</sup>

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<sup>40</sup>FTC Ex. 1, ¶¶ 30-31, Att. T, U, pp. 249-52 (translated from Spanish) (emphasis added).

<sup>41</sup>*See, e.g.*, FTC Ex. 1, ¶ 45; FTC Ex. 4, ¶ 4; FTC Ex. 6, ¶ 4; FTC Ex. 7, ¶ 4.

<sup>42</sup>*See, e.g.*, FTC Ex. 1, ¶¶ 46, 59, 61, Att. ZZ, DDD, HHH, KKK, pp. 653, 657, 661, 664.

<sup>43</sup>FTC Ex. 1, ¶¶ 46, 52, 58-59, 61, Att. PP, VV, FFF, HHH, KKK, p. 643, 649, 659, 661, 665.

In contrast to the large and conspicuous claims about the number of calling minutes that dominate Defendants' posters, the bottom of the posters contain fee disclosures in much smaller print. Such disclosures are often provided in English only and state:

By using this card you agree to the following: Prompted minutes are before applicable charges and fees, application of surcharges and fees have an effect of reducing total minutes on cards. One or all of the following may apply: 1) A weekly maintenance fee ranging between .49 and .79. 2) A hang-up fee between .05 and \$1 depending upon length and destination of the call. 3) A destination surcharge of between 0% and 100%. – minutes and/or seconds are rounded to multiple minutes increments. – International calls made to cellular phones are billed at higher rates. – Toll free access numbers are subject to an additional fee of up to 4 cents per minute. – Prices are subject to change without notice. – This card has no cash value. – Card expires 3 months after first use or 12 months after activation.<sup>44</sup>

#### **D. Defendants' Misrepresentations About the Number of Calling Minutes**

Extensive testing of Defendants' cards conducted by FTC investigators and an outside firm retained by the FTC demonstrate that Defendants routinely misrepresent the number of calling minutes their cards provide. *In 87 tests conducted between December 13, 2007 and April 17, 2008, Defendants' cards on average delivered only 50.4% of the advertised minutes.*<sup>45</sup>

The FTC used "multiple-call" and "single-call" testing methods: in multiple-call testing, the tester depleted a prepaid calling card by making a series of calls,<sup>46</sup> whereas in single-call testing, the tester attempted to exhaust the value of the card in a single call. Single-call testing is

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<sup>44</sup>FTC Ex. 1, ¶¶ 61-61, Att. KKK, MMM, pp. 664-65, 667. In some cases, this disclaimer is preceded by the language "DPE Disclaimer." FTC Ex. 1, ¶ 63, Att. OOO, p. 669.

<sup>45</sup>FTC Ex. 1, ¶ 101.

<sup>46</sup>FTC Ex. 1, ¶ 68; FTC Ex. 8, ¶ 9. All multi-call tests of a card were made on one day. Thus, unlike the typical caller, the test calls were not affected by the "weekly fee" of 49 to 79 cents.

the most generous way to measure how many minutes of calling time a card provides because it avoids hefty “hang-up” and “maintenance” fees. But single-call testing does not capture the typical consumer experience because most consumers use calling cards to make multiple calls.<sup>47</sup>

The results of both the multiple-call and single-call testing show that Defendants’ cards do not deliver the number of minutes promised in their posters. Seventy-seven of the 87 tested cards, or 88.5% of Defendants’ tested cards, failed to deliver the number of minutes advertised on point-of-sale posters.<sup>48</sup> Notably, *none* of the 42 cards subjected to multiple-call testing delivered the advertised minutes. On average, the cards subjected to multiple-call testing delivered only 35.3% of advertised minutes. Only ten of the 45 cards subjected to single-call testing delivered the advertised minutes. On average, the cards subjected to single-call testing delivered only 64.3% of advertised minutes.<sup>49</sup>

For example, on January 24, 2008, an FTC investigator tested Defendants’ \$2 “Martini” card which, according to Defendants’ poster displayed at the point of sale, provides 360 calling minutes to Panama City, Panama. The investigator received only 23 minutes on a single call to Panama City.<sup>50</sup>

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<sup>47</sup>See FTC Ex. 1, ¶ 41, Att. DD, p. 445 (“approximately 70-80% of consumers who purchase these cards use them for multiple calls”).

<sup>48</sup>FTC Ex. 1, ¶ 101.

<sup>49</sup>A spreadsheet containing the combined results for the tests conducted by FTC investigators and the outside firm can be found at FTC Ex. 1, ¶ 101, Att. WWW, pp. 680-682. The internal testing results can be found at FTC Ex. 1, ¶ 96-97, Table 4, and the external testing results can be found at FTC Ex. 8, Att. C, pp. 20-37.

<sup>50</sup>FTC Ex. 3, ¶¶ 15-16.

In another example, on March 10, 2008, an FTC investigator tested Defendants' \$2 "Coffee Time, Call Me Time" card which, according to Defendants' poster displayed at the point of sale, provides 320 calling minutes to Rio de Janeiro, Brazil. The investigator received only 70 minutes over seven calls to Rio de Janeiro, Brazil.<sup>51</sup>

Similarly, on March 28, 2008, an outside firm retained by the FTC tested Defendants' \$2 "Coffee Time, Call Me Time" which, according to Defendants' poster displayed at the point of sale, would deliver 33 calling minutes to Guatemala City, Guatemala. The tester found that a single call to Guatemala City cut off after 16 minutes.<sup>52</sup>

**E. Misrepresentations Are an Integral Part of Defendants' Business Practices**

Emails between Voice Prepaid and CVT Prepaid Solutions ("CVT"), a telecommunications service provider, demonstrate that providing advertisements that misrepresent the number of minutes provided by their calling cards is an integral part of Defendants' business practices.<sup>53</sup> For example, in an email discussion on September 26, 2006 between CVT and Defendants Gulakos and Friedlander concerning a poster for a Voice Prepaid card, CVT told Friedlander and Gulakos that it would deliver 24 minutes for calls to Cape Verde using a \$5 card.<sup>54</sup> In response, Friedlander sent an email to CVT, copying Gulakos, in which he

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<sup>51</sup>FTC Ex. 3, ¶¶ 27-28.

<sup>52</sup>FTC Ex. 8, ¶ 8, Att. C, p. 32.

<sup>53</sup>These emails were produced by Voice Prepaid in response to a third-party subpoena in the Dollar Phone Litigation, *see supra* note 4. FTC Ex. 1, ¶ 42. In that case, IDT, a prepaid calling card company, sued a handful of its competitors, including Dollar Phone, challenging their marketing practices under the Lanham Act and the New Jersey state consumer protection statute.

<sup>54</sup>FTC Ex. 1, ¶ 42, Att. EE, p. 494.

wrote, “*24" delivered? Or prompted? if it's 24" delivered, let's put 36" on poster. If it's only delivering 18" then 32"*.”<sup>55</sup> Similarly, a January 31, 2007 email from CVT to Gulakos attached new rates for calling destinations and stated “I have no problem increasing the *Poster* minutes for D.R. but I [sic] going to need to keep the *delivered* minutes the same — let me know if you're ok with that.”<sup>56</sup> Gulakos made no objection to this proposal. Instead, he asked whether CVT could provide a certain number of minutes for calls to Ecuador and Haiti in voice prompts, to which CVT responded,<sup>57</sup> “Nick, anything can be done, but like the DR thing the *delivered* minutes will remain the same.”<sup>58</sup>

### ARGUMENT

In light of Defendants’ egregious practices, the FTC seeks a TRO and a preliminary injunction that: (1) enjoins Defendants from misrepresenting the number of calling minutes actually provided by their cards and failing to disclose or disclose adequately the fees associated with use of their cards; and (2) appoints a temporary monitor. As set forth below, and supported by the FTC’s three volumes of evidence, there is ample basis for such an order.

#### **I. IMMEDIATE ENTRY OF A TRO IS NECESSARY TO PROTECT CONSUMERS**

Where, as here, the defendants have engaged in deceptive practices in violation of Section 5 of the FTC Act, Section 13(b) of the FTC Act, 45 U.S.C. § 53(b), authorizes the “FTC to seek, and the district courts to grant, preliminary and permanent injunctions” against such

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<sup>55</sup>FTC Ex. 1, ¶ 42, Att. EE, p. 494 (emphasis added).

<sup>56</sup>FTC Ex. 1, ¶ 42, Att. EE, p. 499 (emphasis added).

<sup>57</sup>FTC Ex. 1, ¶ 42, Att. EE, p. 498.

<sup>58</sup>FTC Ex. 1, ¶ 42, Att. EE, p. 498 (emphasis added).

practices. *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996). In determining whether to grant a TRO or preliminary injunction under Section 13(b), “a district court must (1) determine the likelihood that the FTC will ultimately succeed on the merits and (2) balance the equities.” *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1217 (11th Cir. 1991). Unlike private litigants, “the FTC need not prove irreparable harm.” *Id.* at 1218. Nor must the FTC prove harm to the public interest, which is presumed. *See, e.g., FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346 (9th Cir. 1989).<sup>59</sup> The FTC “meets its burden on the ‘likelihood of success’ issue if it shows preliminarily, by affidavits or other proof, that it has a fair and tenable chance of ultimate success on the merits.” *FTC v. Beatrice Foods Co.*, 587 F.2d 1225, 1229 (D.C. Cir. 1978) (citation omitted). Finally, in balancing the equities, private concerns may be considered, but public equities must receive far greater weight. *See, e.g., FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1030-31 (7th Cir. 1988).

**A. The Evidence Shows that the FTC is Likely to Succeed on the Merits**

To establish that a defendant has engaged in a deceptive act or practice under Section 5 of the FTC Act, the FTC must show that: “(1) there was a representation; (2) the representation was likely to mislead consumers acting reasonably under the circumstances; and (3) the representation was material.” *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003). As with material misrepresentations, material *omissions* violate the FTC Act. *See, e.g., Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1154 (9th Cir. 1984); *P. Lorillard Co. v. FTC*, 186 F.2d 52, 58 (4th

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<sup>59</sup>In cases brought by the FTC, numerous judges in this District have issued TROs (often on an *ex parte* basis) that include the appointment of receivers, asset freezes, and other ancillary relief. *See, e.g., FTC v. Fidelity ATM, Inc.*, No. 06-81101-Civ-Hurley/Hopkins (S.D. Fla. TRO issued Nov 29, 2006); *FTC v. Nationwide Connections, Inc.*, No. 06-80180-Civ-Ryskamp (S.D. Fla. TRO issued Feb. 27, 2006); *FTC v. USA Beverages*, No. 05-61682-Civ-Lenard/Klein (S.D. Fla. TRO issued Nov. 4, 2005).



Cir. 1950); *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999)

(“Misrepresentations or omissions of material facts made to induce the purchase of goods or services constitute deceptive acts or practices that violate § 5(a) of the FTC Act.”). Defendants have engaged in deceptive acts or practices in two ways, by: (1) falsely representing the number of minutes consumers will receive when using Defendants’ calling cards, and (2) failing to disclose or to disclose adequately the fees associated with Defendants’ cards.

The FTC need not prove that these misrepresentations and omissions were done with an intent to deceive, or were made in bad faith. *See, e.g., FTC v. Freecom Commc’ns, Inc.*, 401 F.3d 1192, 1202 (10th Cir. 2005); *FTC v. Wolf*, 1996 WL 812940, at \*5 (S.D. Fla. Jan. 31, 1996) (“A company that deceives consumers through reckless, even simply negligent, disregard of the truth may do just as much harm as one that deceives consumers knowingly.”). Nor does the FTC need to show actual reliance by consumers; it is enough that the representations were likely to be relied on by ordinary consumers. *See, e.g., FTC v. Verity Int’l, Ltd.*, 443 F.3d 48, 63 (2d Cir. 2006), *cert. denied*, 127 S. Ct. 1868 (2007); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991) (“the FTC need merely show that the misrepresentations or omissions were of a kind usually relied upon by reasonable and prudent persons, that they were widely disseminated, and that the injured consumers actually purchased the defendants’ product.”) (citation omitted).

### **1. Defendants Falsely Represent the Number of Calling Minutes**

There is overwhelming evidence that Defendants misrepresent the number of minutes consumers will receive when using Defendants’ cards. Defendants design, print, and distribute posters advertising that their cards will provide a specified number of minutes in calls to

particular international destinations.<sup>60</sup> With rare exception, these representations are false. Extensive testing of Defendants' cards between December 13, 2007 and April 17, 2008 demonstrates that Defendants routinely advertise their cards as delivering a number of minutes that their cards fail to provide. ***On average, the 87 tested cards delivered only 50.4% of advertised minutes.***<sup>61</sup> Seventy-seven of the 87 cards failed to provide the number of advertised minutes.<sup>62</sup> Twenty-three of the tested cards delivered less than 25% of the advertised minutes, and some cards delivered as little as 5.4% of the advertised minutes.<sup>63</sup>

In addition, there is powerful evidence that misrepresentations about the number of calling minutes are central to Defendants' business practices. As discussed above, Defendants openly admit in emails with CVT, one of their telecommunications providers, that if a card delivers 24 calling minutes, Defendants will state in the poster that it delivers 36 minutes; and if a card delivers 18 minutes, Defendants will advertise that it delivers 32 minutes.<sup>64</sup>

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<sup>60</sup>FTC Ex. 1, ¶¶ 41, 43 45-46, 52, 58-59, 60, Att. Z, FF, PP, VV, ZZ, DDD, FFF, HHH, KKK, pp. 293, 501, 643, 649, 653, 657, 659, 661, 664; FTC Ex. 4, ¶ 4; FTC Ex. 6, ¶ 4; FTC Ex. 7, ¶ 4.

<sup>61</sup>FTC Ex. 1, ¶ 101, Att. WWW, pp. 680-82.

<sup>62</sup>FTC Ex. 1, ¶ 101, Att. WWW, pp. 680-82.

<sup>63</sup>FTC Ex. 1, ¶ 101, Att. WWW, pp. 680-82. In testing Defendants' cards, the FTC compared the number of delivered minutes to the number of minutes advertised in posters displayed at the point of sale, rather than in mass media advertisements. However, the FTC tested the Voice Prepaid "Dangerous Minutes!" card to the Dominican Republic and Guatemala, two of the locations mentioned in the radio advertisement quoted above. In these tests, the FTC received only approximately **20%** of the minutes promised in the radio advertisement. FTC Ex. 1, ¶ 101, Att. WWW, p. 681.

<sup>64</sup>FTC Ex. 1, ¶ 42, Att. EE, p. 494.

Defendants' claims regarding the number of calling minutes, like all express claims, are presumptively material. *See FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095-96 (9th Cir. 1994) (en banc). Indeed, these representations concern the very essence of the product — the amount of talk time on phone calls — and are undoubtedly likely to affect consumers' decisions to purchase Defendants' cards. What is more, Defendants' misrepresentations mislead the reasonable consumer. "When claims at issue are express, it is appropriate to infer that reasonable consumers interpret them to mean what they say." *FTC v. Atlantex Assoc.*, 1987 WL 20384, at \*11 (S.D. Fla. Nov. 25, 1987), *aff'd*, 872 F.2d 966, 969 (11th Cir. 1989); *see also FTC v. Five Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) ("Consumer reliance on express claims is [] presumptively reasonable.") (citation omitted). Accordingly, Defendants' false claims about the number of calling minutes violate Section 5 of the FTC Act.

## **2. Defendants' Failure to Disclose or Adequately Disclose Fees**

Not only have Defendants misrepresented the number of minutes consumers will receive when using their cards, but they also have failed to disclose or disclose adequately fees and charges that have the effect of reducing the value of the cards, and, thus, the number of calling minutes consumers will actually receive.

The disclosures on Defendants' cards and posters are so minuscule as to be nearly illegible. In addition, to the extent they can be read by consumers, the language is so vague and confusing as to be useless. For example, the disclosure on the hang tag of a "Tree Monkey" card states that one or all of the following "may" apply:

- 1) A weekly maintenance fee ranging between .49 and .79.
- 2) A hang-up fee between .05 and \$1 depending upon length and destination of the call.
- 3) A destination surcharge of between 0% and

100% - minutes and/or seconds are rounded to multiple minutes increments.<sup>65</sup>

According to this disclosure, it is possible for a consumer to purchase a \$2 “Tree Monkey” card, place a call for one minute, and have the remaining value of the card depleted because of fees. Even consumers who see, read, and try to understand Defendants’ disclosures have no way to know which fees actually apply, the amount of the actual fee, or when they apply. The disclosure does not state that the fees “will” apply, but rather that they “*may*” apply. Additionally, it does not identify the circumstances under which such fees are triggered. Nor does the disclosure spell out what those fees will be when they do apply; instead it provides an enormously broad range for the fees. For example, it states that the card may be subject to a “destination surcharge of *between 0% and 100%*” (emphasis added). Likewise, it states that there “may” be weekly “maintenance” fees of 49 to 79 cents and “hang-up” fees of between 5 cents to one dollar. Nor does a consumer have any way to know what it means that “minutes and/or seconds are rounded to multiple minutes increments.”

Fees and charges substantially reduce the available calling time provided by Defendants’ cards. Consequently, whether these fees will apply and, if so, the amount of the fees would be highly significant to consumers. Indeed, on a product often sold for \$2 (and up to \$10), these fees can literally wipe out the value of the card even after one short call. Accordingly, Defendants’ inadequate disclosures are material and violate Section 5 of the FTC Act.

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<sup>65</sup>FTC Ex. 1, ¶ 51, Att. UU, p. 648.

**B. The Balance of Equities Mandates Entry of a TRO and Preliminary Injunction**

The balance of equities mandates entry of a TRO and preliminary injunction. The public interest in preventing consumers from being victimized by Defendants' deceptive marketing far outweighs any possible interest Defendants may have in continuing to operate their business deceptively. When a court balances the hardships of the public interest against the private interest, "the public interest should receive greater weight." *World Wide Factors*, 882 F.2d at 347. This preference for public equity is especially relevant here, where Defendants' business practices have already caused consumers to lose millions of dollars and, if permitted to continue, will cause them to lose millions more. In 2006 and 2007, through their Voice Prepaid bank accounts alone, Defendants took in over \$72 million from their sale of prepaid calling cards.<sup>66</sup> By contrast, compliance with the law is hardly an unreasonable burden. *See id.* Defendants "can have no vested interest in a business activity found to be illegal." *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972) (internal quotations and citations omitted).

Defendants have continued their deceptive practices even in the face of: (1) an ongoing investigation, instituted in July 2007, by the Florida Attorney General into the marketing practices of Defendant Alternatel; (2) pending private litigation challenging the marketing practices of Defendants Voice Prepaid and Gulakos, and (3) pending private litigation challenging the marketing practices of Dollar Phone, which is owned by Defendant Greenfield.<sup>67</sup>

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<sup>66</sup>Although Defendants' cards typically retail for between \$2 and \$10, this translates into tens of millions of dollars of deceptively-marketed cards each year. As noted above, through their Voice Prepaid bank accounts alone, Defendants took in over \$72 million from the sale of prepaid calling cards in 2006 and 2007. FTC Ex. 1, ¶ 40.

<sup>67</sup>*See supra* nn.2-4.

Therefore, it is clear that only the entry of the requested TRO and preliminary injunction will prevent Defendants from continuing to mislead the public during the pendency of this case.<sup>68</sup>

## II. THE INDIVIDUAL DEFENDANTS ARE PERSONALLY LIABLE

The individual defendants, Gulakos, Friedlander, Greenfield, and Wendorff, are responsible for the corporate defendants' unlawful conduct and they should be subject to a TRO and a preliminary injunction. Under the FTC Act, an individual is liable for injunctive relief if he "participated directly" in the unlawful acts or practices *or* had "authority to control" the corporate defendants. *See, e.g., Gem Merch.*, 87 F.3d at 470; *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1996); *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1270 (S.D. Fla. 2007). "Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer." *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989); *see also Publ'g Clearing House*, 104 F.3d at 1170-71.

All of the individual defendants have the ability to control the corporate defendants, because they are officers and principals of one or more of the corporate defendants, which are a common enterprise.<sup>69</sup> "An individual's status as a corporate officer gives rise to a presumption

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<sup>68</sup>Defendants' past misconduct "gives rise to the inference that there is a reasonable likelihood of future violations." *SEC v. R.J. Allen & Assoc., Inc.*, 386 F. Supp. 866, 877 (S.D. Fla. 1974) (citations omitted). That they have continued to engage in deceptive conduct despite their awareness of a law enforcement investigation by the Florida Attorney General, in addition to private litigation, demonstrates a high likelihood of continued violations of the FTC Act absent a TRO and a preliminary injunction. *See FTC v. Nat'l Prize Info. Group Corp.*, 2006 WL 3234360, \*7 (D. Nev. Nov. 2, 2006) (continued violations of FTC Act after learning of government investigation demonstrated need for preliminary injunction).

<sup>69</sup>"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  
(continued...)

of ability to control a small, closely-held corporation.” *Transnet Wireless*, 506 F. Supp. 2d at 1270 (citations omitted); *see also, e.g., Five Star Auto Club*, 97 F. Supp. 2d at 535 (“assuming the duties of a corporate officer establishes authority to control”). Gulakos is the founder and sole owner of Voice Prepaid; he is a 50% owner of Alternatel, and an officer and director of the corporation; likewise, he is a Member and a Manager of Mystic Prepaid.<sup>70</sup> Like Gulakos, Greenfield is a 50% owner, officer, and director of Alternatel, and a Member and a Manager of Mystic Prepaid.<sup>71</sup> Friedlander is a Member and a Manager of Mystic Prepaid and the Controller of Voice Prepaid.<sup>72</sup> Finally, Wendorff is President of Alternatel and has been a signatory on a bank account of Telecom Express, one of the Voice Prepaid companies.<sup>73</sup> This evidence of the

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<sup>69</sup>(...continued)

transacted through ‘a maze of interrelated companies,’ the commingling 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.’” *Wolf*, 1996 WL 812940, at \*7 (citations omitted). Here, bank records and other evidence indicate that Alternatel, Mystic Prepaid, and Voice Prepaid are commonly controlled, share officers and owners, commingle corporate funds, and engage in advertising using shared trademarks and copyrights. FTC Ex. 1, ¶¶ 4-9, 11-12, 14-20, 33, 34, Att. A-F, H-I, K, W, X, pp. 28-61, 63-148, 185-86, 271, 273-77 (check nos. 1089, 2111, 2116, 2265 & 2428). Accordingly, the corporate defendants operate as a common enterprise and are jointly and severally liable along with the individual defendants. *See Wolf*, 1996 WL 812940, at \*8.

<sup>70</sup>*See supra* nn.9-11.

<sup>71</sup>*See supra* nn.12-13.

<sup>72</sup>*See supra* n.15.

<sup>73</sup>*See supra* nn.16-17 & accompanying text. In addition, the incriminating emails discussed above, *see supra* pages 13-14, evidence Gulakos and Friedlander’s direct involvement in the scheme to deceive consumers.

individual defendants' status as officers and principals of one or more of the corporate defendants is, by itself, ample basis to subject them to an injunction under the FTC Act.<sup>74</sup>

### III. A MONITOR IS NECESSARY TO PREVENT ONGOING DECEPTION AND PRESERVE EFFECTIVE FINAL RELIEF

In addition to conduct prohibitions, the TRO and preliminary injunction should provide for the appointment of a Monitor to ensure Defendants' compliance with the Court's order and to preserve the possibility of full and effective final relief. In an accompanying filing, the FTC has submitted two candidates, Jane W. Moskowitz and Mark A. Raymond, for the Court's consideration for the temporary Monitor position. *See* Federal Trade Commission Recommendation for Temporary Monitor.

In cases like this one, in which the complaint seeks restitution to consumers, courts frequently impose an asset freeze to prevent dissipation of assets. *See, e.g., FSLIC v. Sahni*, 868 F.2d 1096, 1097 (9th Cir. 1989); *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431 (11th Cir. 1984). Likewise, courts routinely transfer of control of fraudulent businesses to a receiver. *See, e.g., U.S. Oil & Gas Corp.*, 748 F.2d at 1432; *FTC v. Ameridebt, Inc.*, 373 F. Supp. 2d 258, 564 (D.

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<sup>74</sup>The final relief sought by the FTC (though not the TRO and preliminary injunction) includes restitution and/or disgorgement of ill-gotten gains. *See* Compl., Prayer for Relief. Although there is no requirement to show actual or constructive knowledge to obtain an injunction against the individual defendants, to obtain monetary relief from the individual defendants, the FTC will be required to show that the individual defendants knew or **should have known** that the corporate defendants engaged in the wrongful conduct. *See, e.g., Publ'g Clearing House*, 104 F.3d at 1171. This requirement can be satisfied through evidence that the individual defendants were recklessly indifferent to whether the corporate acts or practices were deceptive or that they had an awareness of a high probability that the corporation was engaged in deceptive practices along with an intentional avoidance of the truth. *See id.* Although such evidence is unnecessary to obtain the requested TRO and preliminary injunction, the FTC has nonetheless presented powerful evidence that the individual defendants had actual knowledge of the falsity of their representations or that, at minimum, they recklessly or deliberately avoided such knowledge.



Md. 2005). In this case, the FTC does not seek an asset freeze or appointment of a receiver, because there is no reason that a company cannot market prepaid calling cards in a lawful manner, despite Defendants' refusal to do so. Instead, the FTC urges the far more modest remedy of appointing a temporary Monitor.<sup>75</sup> The appointment of a Monitor is appropriate because Defendants' repeated and ongoing deceptive practices demonstrate that they will not comply with the law absent a court order and judicial oversight. Defendants persistently have flouted the law notwithstanding a nearly year-old investigation by the Florida Attorney General into Alternatel's marketing practices in addition to private litigation.<sup>76</sup> Under these circumstances, the appointment of a Monitor is warranted to preclude additional consumer injury. Indeed, based on similar evidence of deceptive marketing practices by another prepaid calling card distributor, the district court in the *Clifton* case concluded that appointment of a temporary Monitor was appropriate.<sup>77</sup>

In addition, a temporary Monitor is warranted to identify, preserve, and analyze Defendants' corporate assets to preserve the possibility of the restitution and/or disgorgement sought as final relief. Where, as in this case, the defendants run a cash business that is built on deception, there is a strong likelihood that assets will be dissipated or concealed during legal

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<sup>75</sup>In cases like this one where the public interest is at stake, district courts have broad authority to appoint a Monitor to ensure compliance with its orders and the availability of full and effective relief. *See U.S. Oil & Gas Corp.*, 748 F.2d at 1434.

<sup>76</sup>*See supra* nn.2-4.

<sup>77</sup>FTC Ex., 1, ¶ 102, Att. JJ, pp. 579-83. In addition to *Clifton*, examples of FTC cases in which temporary monitors have been appointed include: *FTC v. Magazine Solutions, LLC*, No. 2:07-CV-00692-DWA (W.D. Pa. Feb. 4, 2008); *FTC v. Cleverlink Trading Ltd.*, No. 05C 2889 (N.D. Ill. June 29, 2005); *FTC v. Capital Choice Consumer Credit, Inc.*, No. 02-21050-CIV Ungaro-Benages (S.D. Fla. Apr. 25, 2002); *FTC v. Connelly*, No. SACV06-701 DOC (C.D. Cal. Aug. 9, 1996).

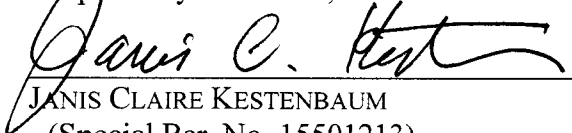
proceedings, causing irreparable injury to the FTC's ability to obtain consumer redress and/or disgorgement. See *World Wide Factors*, 882 F.2d at 347; *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972). Once appointed, a Monitor will be in a position to alert the Court and the FTC if concealment or dissipation of assets has occurred and whether further steps are necessary to preserve them for consumers. The FTC has demonstrated a likelihood that Defendants will be ultimately held liable; accordingly, it is necessary to preserve the possibility of full and effective monetary equitable relief.

**CONCLUSION**

For the foregoing reasons, the Court should grant the FTC's motion for a TRO and preliminary injunction with other equitable relief.

Dated: May 19, 2008

Respectfully submitted,

  
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JANIS CLAIRE KESTENBAUM

(Special Bar. No. 15501213)

ROBERTO ANGUIZOLA

(Special Bar No. 0616761)

FEDERAL TRADE COMMISSION

600 Pennsylvania Avenue, NW, H-286

Washington, DC 20580

Telephone: (202) 326-2798 (Kestenbaum)

(202) 326-3284 (Anguizola)

E-mail: jkestenbaum@ftc.gov

ranguizola@ftc.gov

Facsimile: (202) 326-3395

*Attorneys For Plaintiff Federal Trade Commission*