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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ORIGINAL

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NEOVI, INC., d/b/a NEOVI DATA
CORPORATION and QCHEX.COM, et al.,

Defendants.

CIVIL NO. ~~06CV 1952~~ R JMA

MEMORANDUM OF
POINTS AND
AUTHORITIES IN
SUPPORT OF PLAINTIFF'S
MOTION FOR
TEMPORARY
RESTRAINING ORDER
WITH OTHER EQUITABLE
RELIEF AND ORDER TO
SHOW CAUSE

RM

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14 1997-1 Trade Cas. (CCH) ¶ 71,713 (S.D. Fla. 1996) 32

15 *FTC v. Pantron I Corp.*, 33 F.3d 1088 (9th Cir. 1994) 25, 28, 33

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 8 *FTC v. Maxtheater, Inc.*, 05-CV-0069-LRS (E.D. Was. 2005) 26
 9 *FTC v. Membership Servs., Inc.*, 01-CV-1868 JM(POR) (S.D. Cal. 2001) 26
 10 *FTC v. Optin Global, Inc.*, CV-05-1502 CS (N.D. Cal. 2005) 26
 11 *FTC v. 9125-8954 Quebec Inc.*; C05-0265 TSZ (W.D. Wash. 2005) 26
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13 **STATUTES**

14 Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*
 15 15 U.S.C. § 45(a) 1, 3-4, 27, 35
 16 15 U.S.C. § 45(n) 1, 27
 17 15 U.S.C. § 53(b) 3-4, 6, 26
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 19 28 U.S.C. § 1331 4
 20 28 U.S.C. § 1337(a) 4
 21 28 U.S.C. § 1345 4
 22 28 U.S.C. § 1391 4
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1 **I. INTRODUCTION**

2 Defendants offer online check printing services to the public via their website
3 www.qchex.com. Defendants did not and still do not require a customer requesting those
4 services to demonstrate that he or she has authority to write checks on an identified bank account.
5 As a result of Defendants' failure to verify their customers' authority to write checks drawn on
6 identified accounts, Defendants have created and delivered numerous bogus checks for fraud
7 operators. As described in greater detail below, this pattern of conduct harms both the persons
8 whose bank accounts have been used without their authorization, and those persons who have
9 received the fraudulent checks as payment.

10 Prior to September 2005, Qchex offered their services without even the pretense of
11 verifying their customers' authority to write checks on identified bank accounts before
12 Defendants created and delivered checks for them. Anyone could open a Qchex account with
13 any bank account number and Qchex would create and deliver checks for them. Indeed, the
14 name and address the Qchex customer entered did not need to match the name and address on the
15 bank account. Since approximately September 5, 2005, Defendants have implemented and
16 subsequently abandoned a series of purported verification procedures, presumably to rectify the
17 inadequacies in their business model. However, as discussed below, their efforts have been
18 ineffective and poorly implemented, and individuals and businesses continue to be harmed by
19 Defendants' business practices.

20 By creating and delivering checks without taking steps to verify that the customers have
21 authority to write checks on the bank accounts provided to Qchex, Defendants have engaged and
22 continue to engage in "unfair" acts or practices that violate Section 5 of the Federal Trade
23 Commission Act ("FTC Act"), 15 U.S.C. § 45(a) and (n). As discussed below, these unfair
24 practices cause or are likely to cause substantial consumer injury, that injury is not outweighed by
25 countervailing benefits, and it is not reasonably avoidable by consumers. In order to halt
26

1 immediately these unfair practices and to remedy effectively the substantial harm these unfair
2 practices cause, the Federal Trade Commission (“Commission” or “FTC”) seeks temporary,
3 preliminary, and permanent injunctive relief, as well as other equitable remedies, including
4 restitution and disgorgement, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). In its
5 proposed Temporary Restraining Order (“TRO”) filed herewith, the Commission asks this Court
6 to order Defendants, among other things, to stop engaging in their unfair practices.

7 Defendants have received notice of the harm caused by the Qchex website from banks,
8 individuals, businesses, the Federal Deposit Insurance Corporation (“FDIC”), and the FTC.
9 Nevertheless, Defendants have persisted in their course of conduct, even after being notified
10 repeatedly and from numerous quarters of the substantial injury it causes. Because Defendants
11 have demonstrated that they are unwilling to modify their business practices to incorporate
12 safeguards to stop the harm, Plaintiff respectfully requests that the Court issue a TRO that,
13 among other things, would immediately halt Defendants’ unfair practices. In support of this
14 motion, Plaintiff has filed nineteen exhibits demonstrating Defendants’ law violations and their
15 failure to remedy them despite repeated notice.¹

16 **II. PARTIES, JURISDICTION, AND VENUE**

17 **A. Parties**

18 **1. Plaintiff**

19 Plaintiff, the Federal Trade Commission, is an independent agency of the United States
20 Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission is charged, *inter alia*,

21
22 ¹ The evidence cited in this memorandum references the nineteen exhibits filed herewith
23 titled *Exhibits in Support of Plaintiff’s Motion for Temporary Restraining Order and Other*
24 *Equitable Relief* (PX1-PX19). Cites to the information in these exhibits include, in the following
25 order: (a) exhibit number; (b) paragraph number within the exhibit; (c) letter of relevant
26 attachment, if any; and (d) page number. (For example: PX1 ¶5, Att. A, pp. 3-4). For privacy
reasons, sensitive personal and financial information or other confidential information contained
in the declarations (or attachments thereto) has been redacted. Some additional sensitive
information was redacted after the declarants signed their declarations.

1 with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
2 deceptive acts or practices in or affecting commerce. The Commission is authorized to initiate
3 federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to
4 secure such other equitable relief as may be appropriate. 15 U.S.C. § 53(b); *FTC v. H.N. Singer,*
5 *Inc.*, 668 F.2d 1107, 1111-13 (9th Cir. 1982).

6 2. Defendants

7 Defendants Neovi, Inc., d/b/a Neovi Data Corporation and Qchex.com, G7 Productivity
8 Systems, Inc. d/b/a Qchex.com, James M. Danforth, and Thomas Villwock (also referred to
9 collectively as “Qchex” or “Defendants”) operate their business through two corporate entities,
10 Neovi, Inc. and G7 Productivity Systems. As discussed below, G7 and Neovi are very closely
11 related and operate as a common enterprise.

12 Defendant **Neovi, Inc.** (“Neovi”) is a California corporation with its current principal
13 place of business located at 10946 Willow Court, #100, San Diego, California 92127.² It has
14 used and continues to use the address 10710 Thornmint Road, San Diego, California 92127.³
15 Neovi does business under the name Neovi Data Corp. and Qchex.com.⁴ Since 2000, Neovi has
16 offered check writing services to the public on Qchex.com.⁵

21 ² PX15 ¶39, Att. R, pp.1995-96, 2003-04, Att. S, pp. 2008-11 (corp. filings); PX14 ¶23,
Att. C, p. 863 (address on Qchex.com).

22 ³ PX15 ¶39, Att. R, pp. 2000, 2002, 2006 (corp. filings), ¶42 (domain name
23 registrations); PX9 ¶9, Att. D, p. 331 (company business cards).

24 ⁴ PX15 ¶39, Att. S, pp. 2006-11 (fictitious business name filings).

25 ⁵ PX15 ¶39, Att. R pp. 1996 (art. of incorp.); PX9 ¶10, Att. E, pp. 336, 341 (FDIC
26 presentation).

1 Defendant **G7 Productivity Systems** (“G7”), is a California corporation with its principal
2 place of business located at 10946 Willow Court, #100, San Diego, California 92127.⁶ It also
3 uses and has used the address 10710 Thornmint Road, San Diego, California 92127.⁷ Since
4 2000, G7 has offered, in concert with Neovi, check writing services to the public on Qchex.com.⁸

5 Defendant **James M. Danforth** is an officer of Neovi and an officer and agent of G7.⁹
6 Defendant **Thomas Villwock** is the Chief Executive Officer and a director of Neovi.¹⁰

7 **B. Jurisdiction and Venue**

8 The Court has subject matter jurisdiction over the allegations pursuant to 15 U.S.C.
9 §§ 45(a), 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345. Venue in the United States District
10 Court for the Southern District of California is proper under 15 U.S.C. §§ 53(b), and 28 U.S.C.
11 § 1391(b) and (c). Neovi and G7’s principal place of business is located in this district at 10946
12 Willow Court, #100, San Diego, CA 92127.¹¹ They have used the address at 10710 Thornmint
13 Road, San Diego, CA 92127,¹² but as of June of 2006 that property appears to be vacant.¹³

14
15
16 ⁶ PX15 ¶39, Att. R, pp. 1993-94 (corp. filings); PX10 ¶5, Att. B, p. 344 (G7 products at Willow Street address).

17
18 ⁷ PX15 ¶39, Att. R, pp. 1998, 2001, 2004 (corp. filings), ¶42 (domain name registrations).

19
20 ⁸ PX15 ¶60, Att. KK, p. 2169 (Qchex advertised on G7ps.com as an “online service” of G7); ¶63, Att. MM, p. 2188 (same); ¶65, Att. OO, pp. 2199-2200; ¶66, Att. PP, pp. 2201-09; ¶67, Att. QQ, pp. 2210-12.

21
22 ⁹ PX15 ¶39, Att. R, pp. 1998, 2001, 2004 (corp. filings).

23
24 ¹⁰ PX15 ¶39, Att. R, pp. 2003, 2005 (corp. filings).

25
26 ¹¹ *See supra* notes 2 & 6.

¹² *See supra* notes 3 & 7.

¹³ PX10 ¶4, Att. A, pp. 359-60.

1 Defendants Danforth and Villwock are principals of Neovi and G7 and they transact or have
2 transacted business in this District.¹⁴

3 **III. STATEMENT OF FACTS**

4 Defendants offer an online check creation and delivery service to members of the public
5 without verifying that the persons who request the creation and delivery of the checks have
6 authority to draw checks on the specified bank accounts. Such conduct has caused harm and
7 continues to harm individuals and businesses through the United States.¹⁵

8 **A. Defendants' Unfair Business Practices**

9 **1. How the Qchex Website Works**

10 Qchex creates checks for its customers through its website at *www.qchex.com* and sends
11 the checks to third parties.¹⁶ To use the Qchex website, a customer establishes a Qchex account
12 by entering his or her purported name and email address, and creating a password for the Qchex
13 account.¹⁷ Initially, to identify a bank account to Qchex, a Qchex customer must enter: the
14 purported name and address of the purported payer; the purported name, address, and telephone
15 number of the bank purportedly holding the account; the bank routing number and bank account
16 number from which checks will be written; and a starting check number.¹⁸ To then create a
17 check on the Qchex website, the customer provides the name and address of the payee and the
18

19 ¹⁴ See *supra* notes 9-10.

20 ¹⁵ See, e.g., PX1-PX8, PX16 (Declarations of individuals and businesses); PX13 ¶¶5-11
21 (summary of FTC complaints).

22 ¹⁶ PX15 ¶45, Att. U, pp. 2021-22, 2030-31, 2035; PX14 ¶4, Att. A, pp. 499-509, 529.

23 ¹⁷ PX15 ¶¶5-6, Att. A, pp. 1866-68; PX14 ¶¶11-12, Att. B, pp. 730-33, ¶72, Att. P, pp.
24 1264-65.

25 ¹⁸ PX15 ¶7, Att. A, pp. 1868-73; PX14 ¶17, Att. B, pp. 786-805, ¶77, Att. P, pp. 1299-
26 1317.

1 payment amount.¹⁹ Qchex will place either a digital signature²⁰ that the customer provides or the
 2 payer's typed name and the words "Signature Not Required" on the checks.²¹ In the past, Qchex
 3 customers also had the option to send Qchex a bank logo to be printed on the checks.²² At the
 4 customer's request, Qchex either will print and send the check directly to the payee via U.S. mail
 5 or will send a link to an electronic image of the check to the payee via email.²³ Consumers
 6 receiving links to the electronic images of the checks can print out the checks from their
 7 computers.²⁴ Consumers receiving checks from Qchex then take the checks to their banks to
 8 deposit the checks into their bank accounts.²⁵

11 ¹⁹ PX15 ¶15, Att. E, pp. 1909-25; PX14 ¶¶38-41, Att. F, pp. 1042-54, ¶¶60-61, Att. L,
 12 pp. 1199-1203, ¶¶78-79, Att. P, pp. 1321-31.

13 ²⁰ *See, e.g.*, PX14 ¶¶62-63, Att. L, p. 1220; PX2 ¶¶2, 6, Atts. A, B, pp. 67, 69.

14 ²¹ PX15 ¶45, Att. U, pp. 2030-31, 2043, 2061, 2083; PX14 ¶4, Att. A, pp. 508, 539, ¶22,
 15 Att. C, p. 859; *see, e.g.*, PX15 ¶¶16-17, Att. F, p. 1926, ¶¶23-24, Att. K, p. 1971; PX14 ¶48, Att.
 G, p. 1129, ¶84, Att. P, p. 1371; PX1 ¶9, Att. A, pp. 12, 16, 20, 22-25.

16 ²² PX15 ¶15, Att. A, p. 1874 (page stating "please click on logo, or signature to add, edit
 17 or delete); *see, e.g.*, PX1 ¶9, Att. A, p. 16.

18 ²³ PX15 ¶45, Att. U, p. 2032; PX14 ¶126, Att. EE, p. 1750; *see, e.g.*, PX15 ¶¶16-17, Att.
 19 F, pp. 1926-27 (check sent by U.S. Mail); PX14 ¶¶42-48, Att. G, p. 1129 (check printed from
 20 email link). Recently, Qchex has claimed that it will send the check directly to the bank of the
 payee for deposit to the payee's account. PX14 ¶126, Att. EE, p. 1750 ("Qchex can send checks .
 . . directly to your bank account).

21 ²⁴ PX14 ¶¶42-48, Att. G, p. 1129 (check printed from email link), ¶¶62-63, Att. L, p.
 22 1220 (same), ¶¶80-84, Att. P, p. 1371 (same). A FTC investigator printed the checks on plain
 23 paper and the checks were accepted by the depositing banks. *Id.* The Qchex website makes
 inconsistent statements about the ink and paper required to print the checks, suggesting that
 24 recipients must or should purchase special ink and paper produced by G7 Productivity Systems.
See PX15 ¶44, Att. T, p. 2019, ¶52, Att. BB, p. 2121, ¶53, Att. DD, p. 2130.

25 ²⁵ *See, e.g.*, PX6 ¶13; PX7 ¶5; PX8 ¶4; *see also* PX13 ¶¶9-10 (complaints by consumers
 26 receiving and depositing checks).

1 **2. Defendants Create and Deliver Unauthorized Checks**

2 Defendants create and deliver checks for their customers without verifying the customers'
3 authority to write checks drawn on accounts identified by those customers. As described below,
4 Defendants have adopted – and subsequently abandoned – a series of purported verification
5 procedures, but they have failed to implement any procedures that safeguard against the harm
6 they cause.

7 **a. Defendants Initially Created and Delivered Checks Without Any**
8 **Pretense of Verification**

9 Before September 2005, Qchex created checks using the information supplied by its
10 customers without even a pretense of verifying that the customers possessed authority to write
11 checks from the bank accounts on which the checks were to be drawn. Anyone with access to
12 the Internet could request checks from any bank account on qchex.com, and Defendants would
13 create and deliver the checks for them without any apparent oversight.²⁶ The evidence shows that
14 Qchex created checks even when the customer's name and mailing address differed from the
15 name and mailing address on the bank account listed on the check and the name and mailing
16 address on the credit card account used to pay for Qchex's services.²⁷ Indeed, Qchex created and
17 sent out a check for a customer using the sample account information listed on the sample check
18 on the Qchex website "Quick Demo."²⁸

21 ²⁶ See PX5 ¶13 (statement of Qchex employee to a consumer); see, e.g., PX15 ¶¶5-7, 15-
22 17. Att. F, p. 1926.

23 ²⁷ PX15 ¶¶5-7, 13-17, Att. F, p. 1926.

24 ²⁸ See PX15 ¶45, Att. U, pp. 2032-33 and PX1 ¶12, Att. C, p. 42 (consumer who
25 received a check drawn on an account purportedly held by "ABC Company" in Sun City, CA,
26 which is the same name and account number as on the sample check that Qchex uses in its
"Quick Demo" on Qchex.com).

1 FTC Investigator Linda Henry tested the Qchex system in July and August 2005.
2 Investigator Henry created a Qchex account in the name of "Sydney Brazen" by supplying a
3 Yahoo email address and creating a password.²⁹ Investigator Henry then identified an undercover
4 bank account to Qchex by entering its number and a mailing address on Qchex.com.³⁰ The name
5 "Sydney Brazen" was not an authorized signatory on the bank account and was not associated
6 with the bank account in any way.³¹ Investigator Henry pre-paid Qchex \$10 for its services with
7 an undercover FTC credit card account held under yet another name.³² Investigator Henry then
8 requested that Qchex create a check for \$100 and send it to a fictitious undercover identity with
9 the initials "M.S."³³ Qchex accepted Investigator Henry's payment from the credit card and
10 generated and printed the check with "Sydney Brazen" as account holder despite the fact that
11 "Sydney Brazen" was not an authorized signatory on the bank account.³⁴ Qchex sent this check
12

13 ²⁹ PX15 ¶¶4-6, Att. A, pp. 1866-68.

14 ³⁰ PX15 ¶7, Att. A, p. 1872.

15 ³¹ PX15 ¶7. Before September 2005, Qchex had two procedures on their website,
16 apparently believed to be anti-fraud protections. First, a customer who established a Qchex
17 account would receive an email message from Qchex with instructions to click on the link in the
18 email messages to "activate" the Qchex account. *Id.* ¶12, Att. B, pp. 1896-97. Defendant
19 Danforth has represented this verification of a customer's email address is a procedure
20 "specifically designed to ensure authorized transactions are conducted on the Qchex system." *Id.*
21 ¶33, Att. Q, p. 1985. Second, Defendants required their customers to agree to the Qchex Terms
22 of Service, which, according to Danforth, "obligates all customers to act responsibly and legally."
23 *Id.* Investigator Henry's test of the website demonstrates that neither of these requirements is an
24 impediment to stop unauthorized check requests. Investigator Henry was able to set up a Qchex
25 account with a Yahoo email account, and "agreeing to the Terms of Service" consisted of
26 checking a box on the website. *Id.* ¶¶4-5, Att. A, p. 1867, ¶8, Att. A, p. 1875. These provisions
do nothing to actually demonstrate whether the person has authority to request a check.

23 ³² PX15 ¶¶13-14, Att. D, pp. 1905-05.

24 ³³ PX15 ¶¶15-16, Att. E, pp. 1910-24.

25 ³⁴ PX15 ¶¶13-14, Att. D, pp. 1905-06, ¶¶15-17, Att. F, pp. 1926-27.

1 via U.S. mail to an address Investigator Henry provided for M.S.³⁵ Another FTC investigator
2 received the \$100 check from Qchex, deposited it into the undercover bank account for “M.S.,”
3 and the check cleared the bank account on which it was drawn.³⁶ At no time during the
4 transaction did Qchex require Investigator Henry to demonstrate that she was authorized to write
5 checks drawn on the bank account she identified.³⁷ The fact that the name on the check, “Sydney
6 Brazen,” did not match either the name on the bank account or the name of the credit card used
7 to pay for Qchex’s services was no impediment. In fact, the address that Investigator Henry
8 asked to have printed on the check from “Sydney Brazen” differed from the address on the bank
9 account and the credit card account.³⁸

10
11 ***b. Complaints about Qchex’s Unverified Check Creation and
Delivery Service and Defendants’ Response***

12 In 2005, Qchex experienced rapid growth.³⁹ At the same time, both the FTC and the
13 FDIC received increasing complaints from individual and business consumers reporting that
14 Qchex had created and delivered unauthorized checks.⁴⁰ In early July 2005, the FDIC attempted,
15 with no success, to contact Qchex about these problems.⁴¹ On July 12, 2005, the FDIC issued an
16
17

18 ³⁵ PX15 ¶¶15-17, Att. F, pp. 1926-27.

19 ³⁶ PX15 ¶¶17-18, Atts. G-H, pp. 1927a, 1928.

20 ³⁷ PX15 ¶18.

21 ³⁸ *See supra* notes 30 & 32.

22 ³⁹ *See* PX9 ¶10, Att. E, p. 341.

23 ⁴⁰ *See* PX13 ¶5 (bulk of the complaints came in 2005); PX9 ¶¶3, 5-6, Att. B, pp. 218-
24 329.

25 ⁴¹ PX9 ¶4. Many consumers also had great difficulty contacting Qchex, if they were able
26 to reach Qchex at all. *See infra* note 88.

1 alert to Chief Executive Officers of financial institutions about fraudulent checks from Qchex.⁴²
2 After issuance of the alert, representatives of Qchex, including Defendants Danforth and
3 Villwock, met with FDIC staff to discuss the problems with the Qchex service.⁴³ During the July
4 2005 meeting with the FDIC, Defendant Danforth admitted that fraudulent checks had been
5 issued and that they were trying to implement some procedures to address the problems.⁴⁴
6 Danforth reported that Qchex was processing thousands of transactions per week at the time.⁴⁵

7 On July 20, 2005, in response to an inquiry from the FTC, Qchex stated, through
8 Danforth, that Qchex had received complaints.⁴⁶ Defendant Danforth stated that Qchex could not
9 authenticate the identities of persons who requested checks and that Qchex was not responsible
10 for the authentication of such information.⁴⁷ Danforth sent a follow-up letter to the FTC in which
11 he explained the reason that Qchex had decided not to implement processes to verify the
12 authority of its customers to draw checks on the bank accounts they identified, stating, among
13 other things, that:

14 . . . Qchex has evaluated many possible user authentication
15 methods. Unfortunately, no validation means (short of a DNA
16 finger print in the presence of the subscriber) exist to completely
17 prevent abuse of Qchex . . . without harming [Qchex's] attributes
and conveniences for legitimate users. . . . Extensive validation
attempts through online data collection are self-defeating and
intrusive, as concerned users are (rightfully) fearful of identity theft

18
19 ⁴² PX9 ¶5, Att. A, pp. 216-17.

20 ⁴³ PX9 ¶¶7-24, Att. D, p. 331.

21 ⁴⁴ PX9 ¶¶13, 18-23, Att. E, p. 341.

22 ⁴⁵ PX9 ¶14; *see also* PX15 ¶44, Att. T, p. 2014 (website states “[t]he use of the Qchex
23 system has drastically increased over the past couple of years and we are completing thousands
of transactions every week!”).

24 ⁴⁶ PX15 ¶31.

25 ⁴⁷ PX15 ¶32.

1 and should not supply nor be asked to supply extensive personal or
2 business information to any online service, including Qchex.⁴⁸

3 In fact, a Qchex representative admitted to one consumer that “anyone could open a
4 Qchex account, provided the person has a valid bank account number, bank location, and bank
5 name, without verifying that the person in fact is authorized to use the account.”⁴⁹ The Qchex
6 representative further stated that because Qchex was not a financial institution, Qchex had no
7 way to verify or investigate whether customers opening Qchex accounts were authorized to write
8 checks on the bank accounts that they used to open the Qchex accounts.⁵⁰ As further evidence of
9 Defendants’ acknowledgment of the problem, the Qchex website advised consumers:

10 [T]here are several reasons Qchex users enjoy additional
11 protection against fraud, including:

- 12 ● Registering your bank accounts with Qchex ensures no
13 one else can setup or access your account numbers on the
14 Qchex system, ...⁵¹

15 *c. Qchex’s Purported “Micro-Deposit Validation” Procedure*

16 On or about September 5, 2005, Qchex implemented the “Qchex Validation System”
17 (“QVS”).⁵² Through QVS, Qchex required a customer to demonstrate access to the statements
18 for bank accounts on which a check would be drawn. When a new customer attempted to pay the
19 required fees for Qchex services, Qchex told the customer that he or she first would have to
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21 ⁴⁸ PX14 ¶3, Att. Q, p. 1988.

22 ⁴⁹ PX5 ¶13.

23 ⁵⁰ PX5 ¶13.

24 ⁵¹ PX15 ¶45, Att. U, p. 2051.

25 ⁵² PX15 ¶34 (statements of Lissa Jordan).

1 “validate” the identified bank account with QVS.⁵³ In the first step of QVS, Qchex made a
2 nominal “micro-deposit” (approximately 3-20 cents) into the bank account identified by the
3 customer.⁵⁴ After looking at the bank account statement (or accessing the account online), the
4 customer then reported to Qchex the amount of the micro-deposit.⁵⁵ According to the procedure,
5 only after the customer entered the correct amount of the micro-deposit on Qchex.com would
6 Qchex allow the customer to pay Qchex for its services and subsequently be allowed to request
7 checks.⁵⁶ In September and October 2005, Investigator Henry tested Qchex’s QVS and
8 determined that the process worked as described.⁵⁷ Had Defendants retained this QVS procedure
9 and applied it consistently, much of the potential for harm might have been substantially reduced.
10 However, Defendants left two large holes in this micro-deposit system.

11 First, Qchex represented on its website that it would create and deliver checks by email
12 without requiring QVS at all.⁵⁸ Thus, Qchex apparently continued to create and send unverified
13 checks via email. Second, Qchex did not require QVS for checks requested from any Qchex
14 account setup before September 2005 that had a prepaid balance.⁵⁹ In fact, Qchex created and
15 delivered by U.S. Mail at least one check on a pre-existing account for an FTC investigator after
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18 ⁵³ PX15 ¶20, Att. I, pp. 1942-45, 1952-55.

19 ⁵⁴ PX15 ¶35, *see also* ¶20, Att. I, pp. 1952-54.

20 ⁵⁵ PX15 ¶35, *see e.g.*, ¶20, Att. I, pp. 1952-54, ¶¶26-28, Atts. N-O.

21 ⁵⁶ PX15 ¶35.

22 ⁵⁷ PX15 ¶35, *see e.g.*, ¶20, Att. I, pp. 1952-54, ¶¶26-28, Atts. N-O. In addition, Qchex
23 stopped accepting credit card payments for its services and required pre-payment from the actual
24 bank account that the customer had registered with Qchex. PX15 ¶37.

25 ⁵⁸ PX15 ¶51, Att. AA, p. 2108.

26 ⁵⁹ PX15 ¶37 (statement of Lissa Jordan).

1 September 5, 2005.⁶⁰ Qchex required no verification of the investigator's authority to write
2 checks drawn on the identified bank account.⁶¹

3 *d. Qchex's Purported Voided Check Validation Procedure*

4 In May 2006, Qchex abandoned the limited QVS micro-deposit validation procedures and
5 began implementing other procedures. In May and June 2006, the Qchex website stated that
6 customers would be required to fax, mail, or upload a copy of a voided check from the identified
7 bank account before Qchex would create checks for that customer.⁶² In addition, Qchex stated
8 that it required each of its customers to sign a "terms of use" agreement and to fax, upload, or
9 mail the agreement to Qchex.⁶³ The signature on the agreement would become the digital
10 signature that Qchex would place on checks created for that customer.⁶⁴

11 As in the case with the by-then abandoned micro-deposit validation procedure, Qchex's
12 new procedure did not apply to checks created and delivered by email, a service that Qchex
13 offered for free at that time.⁶⁵ FTC Investigator Roberto Menjivar tested this voided check
14 procedure by setting up two Qchex accounts in similar fashion to Investigator Henry's account.⁶⁶

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16 ⁶⁰ PX15 ¶¶23-24, Att. K, pp. 1971-72.

17 ⁶¹ PX15 ¶23.

18 ⁶² PX14 ¶4, Att. A, pp. 532-33; ¶16, Att. B, pp. 777-79, ¶22, Att. C, pp. 851, 857-70.

19 ⁶³ PX14 ¶22, Att. C, pp. 851, 858-60.

20 ⁶⁴ PX14 ¶22, Att. C, pp. 858-60.

21 ⁶⁵ See PX15 ¶69, Att. SS, p. 2221-22 (Qchex email indicating these new validation
22 procedures would be required for checks delivered via U.S. mail which required a paid Qchex
account, not for those check sent by email, which was a free service).

23 ⁶⁶ Investigator Menjivar created two Qchex accounts using fictitious names by supplying
24 Yahoo email addresses, creating passwords, and providing the numbers for undercover bank
accounts. PX14 ¶¶10-13, 17, Att. B, pp. 730-33, 786-804, ¶¶70-73, 77, Att. P, pp. 1264-65,
25 1299-1317. The fictitious names were not authorized signatories on the bank accounts and were

(continued...)

1 On three different occasions, Investigator Menjivar requested checks be created on the identified
2 bank accounts and sent by email to three undercover identities.⁶⁷ Qchex generated and sent the
3 three checks with the fictitious names as the payors despite the fact that these fictitious names
4 were not authorized signatories on the bank accounts Investigator Menjivar identified.⁶⁸ Posing
5 as the recipients of the three checks, Investigator Menjivar received and printed the checks on
6 plain white paper and had them deposited into undercover bank accounts.⁶⁹ The checks cleared
7 the bank accounts on which they were drawn and funds were made available.⁷⁰ In one of these
8 instances; Investigator Menjivar, without providing any information to demonstrate authority
9 over the identified bank account, was able to create a new Qchex account, and, on the same day,
10 successfully request creation of a check to be sent to another undercover email account.⁷¹ At no
11

12
13 ⁶⁶ (...continued)

14 not associated with the bank accounts. PX14 ¶¶17, 77.

15 ⁶⁷ PX14 ¶¶40-41, Att. F, pp. 1042-54, ¶48, Att. G, p. 1129, ¶60, Att. L, pp. 1199-1203,
16 ¶63, Att. L 1220, ¶¶78-79, Att. P, 1321-31, ¶84, p. 1371. Initially, Qchex would not allow
17 Investigator Menjivar to request any checks on one of his undercover Qchex accounts, so
18 Investigator Menjivar began the voided check validation process. PX14 ¶18, Att. B, pp. 807-08,
19 ¶¶22, 25-33. Investigator Menjivar uploaded images of a voided check and the Terms of Use
20 Agreement on Qchex.com as instructed, but he did not use an actual check from the checking
21 account that he had identified. PX14 ¶¶28-33, Att. D, pp. 930, 933-37, Att. E, pp. 992-96.
22 Rather, Investigator Menjivar uploaded a sample check from the Qchex website that he had
23 altered slightly. *Id.* After uploading the images, the website stated that Investigator Menjivar's
24 account was "waiting for approval" and "validation pending," but still allowed him to request two
25 checks on this account. PX14 ¶36, Att. E, p. 996, ¶39, Att. F, p. 1042.

22 ⁶⁸ PX14 ¶¶17, 77.

23 ⁶⁹ PX14 ¶48, Att. G, p. 1129, ¶52, Att. I, p. 1168, ¶63, Att. L, p. 1220, ¶¶67-68, Att. N,
24 pp. 1246-47, ¶84, Att. P, p. 1371, ¶87, Att. Q, p. 1400.

25 ⁷⁰ PX14 ¶54, Att. K, p. 1172, ¶101, Att. W, p. 1577, ¶103, Att. Y, p. 1582.

26 ⁷¹ PX14 ¶¶72-73, 77-79, Att. P, pp. 1329-31.

1 time during these transactions did Qchex require Investigator Menjivar to demonstrate that he
2 was authorized to write checks drawn on the bank accounts he identified.⁷²

3 *e. Qchex's Most Recent Purported Validation Procedures*

4 Since the first week of July 2006, Qchex has announced yet another round of purported
5 validation procedures on its website that it does not actually implement.⁷³ Recently, Qchex.com
6 has stated that, before creating and delivering a check for a customer, Qchex will: (a) mail an
7 authorization code to the (physical) mailing address provided by the customer and require the
8 customer to enter this authorization code on the Qchex website, and (b) create and deposit a
9 check drawn on the identified bank account to pay the fees for Qchex's services and wait for that
10 check to clear before allowing a customer to create a check.⁷⁴ Defendants represent that as soon
11 as the check clears, the Qchex account would be activated.⁷⁵

12 The FTC has tested the recent procedures by establishing a new test account. On
13 September 18, 2006, Qchex created and sent two checks on Investigator Menjivar's request – the
14 first by email and the second by U.S. Mail.⁷⁶ Investigator Menjivar did not enter any kind of
15 authorization code on Qchex.com, nor did he submit any payment, before Qchex created and sent
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19 ⁷² See PX14 ¶¶10-41, 57-61, 70-79 (describing process of setting up two undercover
20 accounts and asking Qchex to send three checks).

21 ⁷³ PX14 ¶92, Att. T, pp. 1496-97 (email notification); PX15 ¶69, Att. SS, pp. 2223-24
(same); see also PX13 ¶17, Att. J, p. 448 (new procedures on website).

22 ⁷⁴ PX14 ¶126, Att. EE, p. 1766. At one point, a telephone call was listed as a third
23 validation step, but apparently was not implemented. PX 14 ¶118, Att. BB, p. 1680; PX14
24 ¶¶119-20, Att. BB, p. 1703; PX14 ¶122, Att. CC, p. 1719.

25 ⁷⁵ PX14 ¶126, Att. EE, p. 1766.

26 ⁷⁶ PX19 ¶¶7-8, 10.

1 the checks.⁷⁷ Qchex created these checks without Mr. Menjivar making any demonstration that
2 he was authorized to write checks drawn on the identified bank account.⁷⁸

3 The Qchex website has appeared to be undergoing nearly constant change for several
4 months, making it difficult to determine what procedures Defendants actually follow on any
5 given day. FTC investigators have found numerous flaws when navigating the website. For
6 example, the home page, billing page, and the navigational tabs in many cases have produced
7 error messages.⁷⁹ In another example, Investigators Menjivar and Nicholas Mastrocinque
8 attempted on numerous occasions to provide profile address and telephone information in the
9 undercover Qchex accounts as requested by Qchex during their sessions, but were caught in
10 endless loops of error messages claiming that they had not entered the information, although in
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16 ⁷⁷ PX19 ¶¶5, 18. Investigator Menjivar requested these checks from a Qchex account
17 that identified a bank account belonging to a person who is not associated with the fictitious
18 name on the Qchex account. The Qchex website still stated that it was “validating your mailing
19 address,” despite the fact that Investigator Menjivar successfully requested these checks. PX19
20 ¶9, Att. D, p. 2337. *See also* PX17 (checks created by Qchex on consumer’s account in August
21 2006); PX18 (checks created by Qchex on FCC account in August 2006).

22 ⁷⁸ Qchex sent an email to the recipient of the first check with a link to access the check
23 on Qchex.com. PX19 ¶11, Att. F, p. 2358-60. Investigator Menjivar signed in to Qchex as the
24 recipient of the first check and printed the check. PX19 ¶13. Qchex.com states that the second
25 check requested has been “sent” by U.S. Mail. PX19 ¶17. Qchex sent the recipient of the second
26 check an email that stated that the check would arrive in 2-3 business days. PX19 ¶¶14-15, Att.
I, p. 2424-25.

⁷⁹ PX14 ¶126, Att. EE., p. 1748 (home page error), ¶96, Att. U, pp. 1535-36; ¶100, Att.
V, pp. 1559-60 (billing page); ¶93, Att. T, pp. 1504-05, 1509-10, 1519; ¶117, Att. BB, p. 1672
(navigational tabs); *see also* PX15 ¶55, Att. FF, p. 2139; ¶57 Att. HH, p. 2144 (contact us page
errors).

1 fact, they had.⁸⁰ On three occasions, the very checks Qchex creates failed to print properly.⁸¹
 2 FTC Investigators also found numerous typographical errors, misspellings, and what appeared to
 3 be internal messages from one Qchex employee to another on the live website.⁸²

4 **B. Defendants' Unfair Practices Cause Consumer Harm**

5 Defendants' unverified check writing services have caused substantial harm to individual
 6 and business consumers. The FTC has received over 600 complaints about Qchex into its
 7 complaint system.⁸³ The aggregate reported loss listed in these complaints amounts to over
 8 \$900,000.⁸⁴ The complaints essentially fall into two categories: 1) consumers and businesses
 9 whose bank accounts were debited by way of an unauthorized Qchex; and 2) individuals and
 10 businesses who received bogus checks created by Qchex in connection with a transaction.

11 **1. Individuals and Businesses on Whose Bank Accounts Qchex Created**
 12 **and Delivered Unauthorized Checks**

13 Over 100 FTC complainants reported that a Qchex check had been drawn on their bank
 14 accounts without their permission.⁸⁵ In numerous instances, the complainants have discovered

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 16 ⁸⁰ PX13 ¶¶13-16, Atts. F-I, pp. 415-438; PX14 ¶¶112-114, Att. AA, pp. 1638-40, 1645-
 17 52. In yet another example, the message Investigator Henry received when seeking to "validate"
 18 her account using the micro-deposit QVS produced three lines of what appeared to be error
 19 codes. PX15 ¶22, Att. I, pp. 1950, 1955; ¶23, Att. J. p. 1957.

20 ⁸¹ PX14 ¶56.

21 ⁸² *E.g.*, PX14 ¶23, Att. C, p. 859 ("freecheq.com" website referenced in End-User
 22 License Agreement and Terms of Service instead of "qchex.com"); ¶126, Att. EE, p. 1760
 23 (apparent note to a Qchex employee to "(link to g7ps)"); *see infra* note 108 (misspellings).

24 ⁸³ PX13 ¶¶4-5.

25 ⁸⁴ PX13 ¶6.

26 ⁸⁵ PX13 ¶¶7-8; *see, e.g., id.* ¶8, Att. B, pp. 397-400; PX1-PX5, PX16-17 (individuals and
 businesses who had unauthorized checks created on their bank accounts). As discussed in
 Section III.B.2., the FTC received the bulk of the complaints from consumers who had received
 (continued...)

1 the unauthorized checks and their banks have reimbursed them for the fraudulently withdrawn
 2 funds and attempted to stop further transactions.⁸⁶ Nevertheless, these complainants are not
 3 compensated for the money, time, trouble and aggravation expended on investigating and
 4 reporting the bad checks, closing their bank accounts, opening new bank accounts, purchasing
 5 new checks, changing any automated transactions associated with the bank account, and
 6 monitoring their bank accounts for future unauthorized use.⁸⁷

7 Individuals and businesses whose accounts were debited fraudulently by means of a
 8 Qchex check have complained that Qchex was unreachable or was reachable only through
 9 herculean persistence.⁸⁸ Some reported that they were unable to prevent Qchex from continuing
 10 to create checks for Qchex customers on their bank accounts.⁸⁹ In one case, a small business in
 11 Utah discovered that Qchex created at least 20 checks on the business' bank accounts. The
 12 business notified Qchex dozens of times by phone, email, and letter, but Qchex continued to
 13 create unauthorized checks on those accounts for months.⁹⁰ Individuals and businesses on whose
 14 accounts Qchex created checks consistently have stated that they had no knowledge of Qchex

15
 16 ⁸⁵ (...continued)

17 unauthorized Qchex checks. It is likely that most if not all of these complaints involved
 18 unauthorized Qchex checks drawn on another individual's or business' bank account. Moreover,
 these numbers do not include the potentially large numbers of consumers who did not complain
 to the FTC.

19 ⁸⁶ See, e.g., PX1; PX3-PX5; PX17.

20 ⁸⁷ See, e.g., PX1 ¶26; PX 2 ¶4; PX3 ¶13; PX4 ¶¶17-20; PX5 ¶20; PX 17 ¶16. Consumer
 21 Abell lost his business because Qchex created and delivered checks drawn on the bank account
 22 into which his client received funds. The client thereafter refused to do business with Abell,
 Abell lost his account on eBay because he failed to complete auction listings he had made for his
 client, Abell could not pay his mortgage, and Abell was forced to leave his property. PX16 ¶19.

23 ⁸⁸ See, e.g., PX1 ¶13-24; PX2 ¶17; PX3 ¶¶8-10; PX4 ¶¶6, 9-10, 18, 21-22; PX5 ¶¶11-13.

24 ⁸⁹ PX1 ¶25; PX4 ¶6; PX16 ¶18.

25 ⁹⁰ PX1 ¶25.

1 before they discovered that Qchex had created checks drawn on their bank accounts and that they
 2 never authorized Qchex to create checks on their accounts.⁹¹ They have no relationship to Qchex
 3 and have no reason to know or even suspect that Qchex would create checks on their bank
 4 accounts.⁹²

5 At least two federal agencies also have had unauthorized Qchex checks created on their
 6 bank accounts. Qchex created at least four unauthorized checks drawn on one of the Federal
 7 Trade Commission's own bank accounts.⁹³ Recipients of the unauthorized checks forwarded the
 8 checks to the FTC. Fortunately, no money was withdrawn from the FTC's account as a result of
 9 the issuance of these four checks.⁹⁴ As recently as a few weeks ago, Qchex has created checks
 10 drawn on the Federal Communications Commission's ("FCC") bank accounts.⁹⁵ Qchex has
 11 created at least sixteen unauthorized checks on the FCC's account, totaling over \$100,000.⁹⁶

12 **2. Individuals and Businesses Who Received Bogus Checks Created by** 13 **Qchex**

14 The FTC received over 550 complaints from individual and business consumers who
 15 received checks created on the Qchex system.⁹⁷ Some of these complainants sent goods as a
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19 ⁹¹ PX1 ¶¶4-5, 8-10; PX2 ¶¶3-4, 11, 13; PX3 ¶¶4-5, 7; PX4 ¶¶5, 14-15; PX5 ¶¶6, 8-9; 15.

20 ⁹² PX ¶8; PX2 ¶4; PX3 ¶7; PX4 ¶5.

21 ⁹³ PX12 ¶¶4-8, Att. A, pp. 377-88.

22 ⁹⁴ PX12 ¶¶6, 9.

23 ⁹⁵ PX18 ¶5, Att. B, pp. 2282-93.

24 ⁹⁶ PX18 ¶¶4-5.

25 ⁹⁷ PX13 ¶¶7, 9-11; *see, e.g.*, PX6-PX8.

1 result of relying on the check or checks sent by Qchex.⁹⁸ A large portion of these complainants
2 received a Qchex check or checks in excess of money owed to them or as a gift and wired the
3 overpayment amount to someone in reliance on the check.⁹⁹ These consumers did not know that
4 the checks Qchex sent them were unauthorized: the checks look real,¹⁰⁰ the banks allowed the
5 checks to be deposited,¹⁰¹ and the checks initially clear the accounts on which they were drawn.¹⁰²
6 Many consumers who wired funds or sent goods suffered thousands of dollars of losses – their
7 banks reversed the checks they had deposited and the funds were withdrawn from their
8 accounts.¹⁰³

9 When a consumer receives a check from Qchex, there is usually additional information
10 about Qchex printed on the stub attached to the check.¹⁰⁴ This information has varied, but
11 sometimes contains ambiguous warnings about the possibility of fraud. These warnings often
12 direct recipients of these checks to visit Qchex.com and read the security and fraud prevention
13
14

15 ⁹⁸ PX13 ¶9, Att. C, pp. 403-04; PX1 ¶11.

16 ⁹⁹ PX13 ¶11, Att. E, pp. 409-10; PX6-PX8. Another group of complainants are
17 consumers who received a Qchex check or checks as part of an employment scheme whereby the
18 consumer believes his job requirements are to receive the checks, deposit them into his bank
19 account, and forward the funds at the direction of his employer. PX13 ¶10, Att. D, pp. 405-08.

20 ¹⁰⁰ *See, e.g.*, PX6 ¶10, Att. D, p. 171; PX7 ¶10, Att. D, p. 193 (check with bank logo).

21 ¹⁰¹ *See* PX6 ¶13, PX7 ¶5, PX8 ¶4.

22 ¹⁰² *See, e.g.*, PX7 ¶5; PX8 ¶¶4-6.

23 ¹⁰³ PX6 ¶¶18-19, 23-24; PX7 ¶¶6, 9-10 (consumer took out a loan to pay back funds);
24 PX8 ¶8. These consumers sometimes contacted Qchex to complain about the unauthorized
25 Qchex checks they had received, but Qchex either never responded to them or refused to help
26 them. PX6 ¶¶21-22; PX7 ¶8, PX13 ¶10, Att. D, pp. 407-08.

¹⁰⁴ PX15 ¶17, Att. F, p. 1926; ¶24, Att. K, p. 1971; *see also, e.g.*, PX6 ¶10, Att. D, p.
171; PX7 ¶6, Att. D, p. 193.

1 tips on the website.¹⁰⁵ However, Qchex.com provides confusing information about the risk of
 2 fraud to a recipient of a Qchex check, and this information is overshadowed by promotional
 3 messages and puffery.¹⁰⁶ The website touts Qchex as a “secure, online check service,” and
 4 assures visitors that “qchex uses state-of-the-art encryption and secure site technology to ensure
 5 protection of your privacy.”¹⁰⁷

6 Sometimes the information attached with the Qchex check directs recipients of the checks
 7 to validate the check by entering a tracking code from the check on the Qchex website.¹⁰⁸ Using
 8 the tracking code, a recipient of a check can verify that the check was actually created by Qchex.
 9 Unfortunately, due to the confusing nature of what such verification actually means, recipients of
 10

11
 12 ¹⁰⁵ See, e.g., PX7 ¶6, Att. D, p. 193.

13 ¹⁰⁶ PX15 ¶45, Att. U, p. 2023 (home page), pp. 2051-60 (security, privacy policy and
 14 terms of use pages); PX14 ¶126, Att. EE, p. 1813 (“Recently Qchex has introduced QVS, the
 15 Qchex Validation System, as an effective solution to enhance security and better prevent abuse of
 16 its service. Now Qchex users are required to validate payment information before Qchex grants
 full check sending privileges. . . Other users and recipients of checks processed by Qchex can
 now have a great level of confidence when accepting checks.”)

17 ¹⁰⁷ PX15 ¶45, Att. U, p. 2023.

18 ¹⁰⁸ PX15 ¶17, Att. F, p. 1926; ¶24, Att. K, p. 1971 (“VALIDATION NOTE: You may
 19 validate that this check was created on the Qchex.com system. Please sign in at
 20 <http://www.qchex.com>, click on the ‘Receive’ tab, and then on the “Verify Qchex Tracking
 21 Code” submenu item.”); see also, e.g., PX6 ¶10, Att. D, p. 171; PX2 ¶2, Att. A, pp. 67, 69. On
 Qchex.com, the help section states: “Verify Qchex-Tracking Code allows verification for any
 individual check you have received.” PX15 ¶47, Att. W, p. 2080. Qchex describes this
 verification in the FAQ section (PX15 ¶45, Att. U, p. 2043):

22 **How does Qchex help prevent check fraud?**

23 Using the Qchex system adds an additional layer of track ability [sic] to your check
 24 activity. Whenever you send or receive a Qchex, a unique transaction number (Qchex-
 25 Tracking Code) is assigned to each check and printed on the check face. This
 26 information, which is in addition to all the other traditinal [sic] check information, can be
 used by authorized users to track the trail of each authentical [sic] Qchex. This allows
 for real time verification of Qchex at point-of-sale or at point-of-deposit.

1 Qchex checks have relied on this tracking verification to determine that an unauthorized Qchex
2 check is an authorized check.¹⁰⁹

3 **C. The Corporate Defendants Are Engaged In Common Enterprise**

4 G7 and Neovi are very closely related entities – in fact the domain name “neovi.com”
5 used to automatically direct an Internet user to the G7ps.com website.¹¹⁰ Both companies have
6 used the same addresses and currently both appear to operate out of the address at 10946 Willow
7 Court, #100, San Diego, California 92127.¹¹¹ Defendant Danforth is an officer of both
8 companies.¹¹² Lissa Jordan, who has represented herself as an employee of Neovi, is also a G7
9 employee.¹¹³

10 Neovi and G7’s operations are intertwined around the Qchex service and its related
11 products. Neovi registered the fictitious business name Qchex.com, and Neovi maintains the
12 website registrations for Neovi.com, G7ps.com (the website with G7’s logo), Qchex.com,
13 Versacheck.com, Versaink.com, and sunchash.com, among other websites operated by Neovi and
14 G7.¹¹⁴ However, Qchex.com and related products and services are marketed by both companies:
15 Qchex services are advertised on the G7 website.¹¹⁵ Neovi and G7 market and own other

16
17 ¹⁰⁹ *See, e.g.*, PX6 ¶12.

18 ¹¹⁰ PX15 ¶¶61-62.

19 ¹¹¹ *See supra* notes 2-3, 6-7; *see also* PX10 ¶¶3-5, Att. A, B, pp. 359-364.

20 ¹¹² *See infra* notes 119-20.

21 ¹¹³ PX9 ¶¶9-10, Att. D, p. 331 (represented Neovi at meeting with FDIC); PX15 ¶¶34-38
22 (conversation with FTC); ¶60, Att. KK, p. 2177 (G7 press release).

23 ¹¹⁴ PX15 ¶39, Att. S, ¶42.

24 ¹¹⁵ *See supra* note 8. Qchex.com and g7ps.com are also linked dozens of times. For
25 example, the “supplies” page and home page banners at qchex.com has graphics links to
26 g7ps.com. PX14 ¶¶127-28, Att. FF, pp. 1817-29; PX15 ¶54, Att. EE, pp. 2132-35. When a user
(continued...)

1 products related to Qchex, including VersaCheck blank security check paper; VersaInk magnetic
 2 ink; VersaJette printers; Suncash, an electronic payment system; and "Recycle4Dollars," an ink
 3 cartridge recycling program.¹¹⁶ These products variously are advertised on Qchex.com,
 4 G7ps.com, Neovi.com, and on other internet and retail locations.¹¹⁷ The Qchex website directs
 5 recipients of electronic Qchex checks to purchase G7 ink, paper, and printers to print the
 6 checks.¹¹⁸

7 **D. The Individual Defendants are Personally Involved**

8 **1. Danforth is Personally Involved**

9 Defendant **James M. Danforth** is an officer and principal of Neovi and G7. Danforth is
 10 the Secretary, Chief Financial Officer, Chief Operating Officer, and agent for service of process
 11 for Neovi.¹¹⁹ He has signed corporate documents as the "EVP/CFO" of G7 and is an agent for
 12

13 ¹¹⁵ (...continued)

14 logs out of their account at Qchex.com, they are directed to a page advertising G7's products or
 15 programs. *E.g.*, PX15 ¶11, Att. A, pp. 1893-95.

16 ¹¹⁶ Comparing the following sets of documents show the commonality of products and
 17 between the two companies. *Compare* PX14 ¶128, Att. FF, p. 1819 (Qchex supplies page) *and*
 18 PX15 ¶63, Att. MM, pp. 2188-90 (VersaCheck and VersaInk products on G7ps.com; *compare*
 19 PX15 ¶10, Att. A, pp. 1889-90 (Suncash and Qchex links on G7ps.com homepage under "online
 20 services") *and* PX15 ¶56, Att. GG, pp. 2140-41 (suncash.com resolves to Qchex.com); *compare*
 21 PX15 ¶60, Att. KK, pp. 2179-80 (G7 announcing on April 6, 2006, new Versaink nano-
 22 technology ink cartridges) *and* PX15 ¶62, Att. LL, p. 2184 (Neovi.com advertising Versaink
 cartridges on Aug. 22, 2006) *and* PX15 ¶64, Att. NN, pp. 2193-94; 2197-98 (G7 advertising
 Versacheck for Qchex on OfficeDepot.com); *compare* PX15 ¶45, Att. U, p. 2047 (Neovi
 developed Recycle4Dollars); *and* PX15 ¶42 (Recycle4Dollars.com registered by Neovi.com) *and*
 PX14 ¶119, Att. BB, p. 1711 (Recycle for Dollars bears G7 logo) *and* PX14 ¶125, Att. DD, p.
 1747.

23 ¹¹⁷ *See supra* note 116.

24 ¹¹⁸ *See* PX15 ¶44, Att. T, p. 2019, ¶52, Att. BB, p. 2121, ¶53, Att. DD, p. 2130.

25 ¹¹⁹ PX15 ¶39, Att. R, pp. 2000, 2002-03, 2005 (corp. filings), ¶33, Att. Q, p. 1984 (letter
 26 from Danforth to FTC), PX9 ¶9, Att. D, p. 331 (business card); PX11 ¶13, Att. A, pp. 367-69.

1 service of process for G7.¹²⁰ He has represented Qchex in discussions with the FTC, FDIC and
2 United States Postal Inspection Service¹²¹ and he has responded to consumers complaining about
3 the Qchex system.¹²² He also has spoken about Qchex in the press and on Internet chat rooms.¹²³

4 2. Villwock is Personally Involved

5 Defendant **Thomas Villwock** is the Chief Executive Officer of Neovi and a director. He
6 is listed in these capacities on the corporate papers filed for Neovi with the California Secretary
7 of State in August 2005.¹²⁴ Villwock made a presentation to the FDIC concerning Qchex
8 services and the VersaInk product line, providing a business card stating he was the Neovi
9 CEO.¹²⁵

10 IV. LEGAL ARGUMENT

11 Defendants' unverified check creation and delivery service violates Section 5(a) of the
12 Federal Trade Commission Act. Defendants' practices have harmed and will continue to harm
13 individuals and businesses unless enjoined by this Court. Defendants have attempted to
14 implement some procedures to require verification, but each time they have demonstrated their
15 unwillingness to follow through and create a system that protects individuals and businesses from
16 harm. In order to protect the public from Defendants' illegal activities and to prevent Defendants
17 from continuing to make unlawful profits, Plaintiff requests that the Court enter a TRO with
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19
20 ¹²⁰ PX15 ¶39, Att. R, pp. 1998, 2001; *see also id.* ¶65, Att. OO, pp. 2199-2200.

21 ¹²¹ PX15 ¶¶30-33, Att. Q, p. 1984 (FTC); PX9 ¶¶7-11, 13- 23, 26, Atts. C-F, pp. 330-33,
22 354-56 (FDIC); PX11 ¶13, Att. A, pp. 367-73 (USPIS).

23 ¹²² PX1 ¶21 (letter from Danforth); PX3 ¶11, Att. C, p. 82 (same).

24 ¹²³ PX15 ¶65, Att. OO, pp. 2199-2200, ¶68, Att. RR, pp. 2213-20.

25 ¹²⁴ PX15 ¶39, Att. R, pp. 2003, 2005 (corporate filings).

26 ¹²⁵ PX9 ¶¶9, 12, Att. D, p. 331.

1 ancillary equitable relief to stop the illegal conduct immediately and to ensure that the Court can
2 grant effective final relief to Plaintiff at the conclusion of this case.

3 **A. The Court is Authorized to Grant the Requested Relief**

4 Section 13(b) of the FTC Act (second proviso) provides that “in proper cases the
5 Commission may seek, and after proper proof, the court may issue, a permanent injunction.” 15
6 U.S.C. § 53(b). The FTC may seek a permanent injunction against violations of “any provisions
7 of law enforced by the Commission.” *FTC v. H.N. Singer*, 668 F.2d 1107, 1113 (9th Cir. 1982);
8 *FTC v. Evans Prods. Co.*, 775 F.2d 1084, 1086 (9th Cir. 1985).

9 The authority under Section 13(b) of the FTC Act gives the federal courts “broad
10 authority to fashion appropriate remedies for violations of the Act.” *FTC v. Pantron I Corp.*, 33
11 F.3d 1088, 1102 (9th Cir. 1994). It is well established that because Section 13(b) gives a court
12 authority to grant a permanent injunction, the statute also gives authority “to grant any ancillary
13 relief necessary to accomplish complete justice because [Congress] did not limit that traditional
14 equitable power explicitly or by necessary and inescapable inference.” *H.N. Singer*, 668 F.2d at
15 1113; *see also Pantron I*, 33 F.3d at 1102. Therefore, once the FTC invokes the equitable power
16 of a federal court, the Court can grant such preliminary and ancillary relief as is necessary,
17 including rescission of contracts, restitution, and disgorgement of profits. *See H.N. Singer*, 668
18 F.2d at 1113; *Pantron I*, 33 F.3d at 1102-03; *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 469 (11th
19 Cir. 1996); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1315-1316 (8th Cir.
20 1991); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir. 1989). The exercise of this
21 broad equitable authority is particularly appropriate where, as here, the public interest is at stake.
22 *See Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *FTC v. World Wide Factors, Ltd.*,
23 882 F.2d 344, 347 (9th Cir. 1989).¹²⁶

24
25 ¹²⁶ Other courts in this District and in other districts in the Ninth Circuit have granted
26 (continued...)

1 **B. The Court Should Issue The Requested TRO**

2 **1. Plaintiff Must Demonstrate Some Chance of Success on the Merits**
 3 **and that the Balance of Equities Tips in Its Favor**

4 When ruling on a motion for a TRO in a case brought pursuant to Section 13(b) of the
 5 FTC Act, the court “is required (i) to weigh equities; and (ii) to consider the FTC’s likelihood of
 6 ultimate success before entering a preliminary injunction. Harm to the public interest is
 7 presumed.” *World Wide Factors*, 882 F.2d at 346 (citing *U.S. v. Odessa Union Warehouse Co-*
 8 *op*, 833 F.2d 172, 174-176 (9th Cir. 1987)). Because irreparable injury is presumed in a statutory
 9 enforcement action, the court need only find “some chance of probable success on the merits.”
 10 *World Wide Factors*, 882 F.2d at 347 (quoting *Odessa Union*, 833 F.2d at 176). Thus, Section
 11 13(b) “places a lighter burden on the Commission than that imposed on private litigants by the
 12 traditional equity standard.” *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir.
 13 1999) (quoting *FTC v. Warner Commc’ns, Inc.*, 742 F.2d 1156, 1159 (9th Cir. 1984)).
 14 Furthermore, in weighing the equities between the public interest in preventing further violations
 15 of law and Defendants’ interest in continuing to operate their business in violation of the FTC
 16 Act, the public equities are accorded much greater weight. *See World Wide Factors*, 882 F.2d at
 17 347; *see also FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1030-31 (7th Cir.
 18 1988). “Public equities include, but are not limited to, economic effects and pro-competitive
 19 advantages for consumers and effective final relief for the [C]ommission. *World Wide Factors*,
 20 882 F.2d at 347 (citing *Warner Commc’ns*, 742 F.2d at 1165). In this case, Plaintiff FTC can

21 _____
 22 ¹²⁶ (...continued)

23 such preliminary injunctive relief. *See, e.g., FTC v. Membership Servs., Inc.*, 01-CV-1868
 24 JM(POR) (S.D. Cal. 2001) (Ex parte TRO); *FTC v. Optin Global, Inc.*, CV-05-1502 CS (N.D.
 25 Cal. 2005) (TRO); *FTC v. Enternet Media, Inc.*, CV-05-7777 CAS (AJWx) (C.D. Cal. 2005) (Ex
 26 parte TRO); *FTC v. J.K. Publ’ns, Inc.*, 99-004 ABC(AJWx) (C.D. Cal. 1999) (Ex parte TRO);
FTC v. Maxtheater, Inc., 05-CV-0069-LRS (E.D. Was. 2005) (Ex parte TRO); *FTC v. 9125-*
8954 Quebec Inc.; C05-0265 TSZ (W.D. Wash. 2005) (Ex parte TRO).

1 show an overwhelming likelihood of success on the merits and the balance of equities tips
2 decidedly in Plaintiff's favor.

3 **2. Plaintiff Has Demonstrated A Likelihood of Success on the Merits**

4 The Commission has demonstrated a likelihood of success in establishing that Defendants
5 have repeatedly violated Section 5(a) of the FTC Act. Section 5(a) prohibits "unfair and
6 deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a). An act or practice is
7 "unfair" under Section 5(a) if it "causes or is likely to cause substantial injury to consumers,
8 which is not reasonably avoidable by consumers themselves and not outweighed by
9 countervailing benefits to consumers or to competition." 15 U.S.C. § 45(n). The FTC has
10 submitted voluminous evidence that establishes a likelihood of success in proving that (1)
11 Defendants' business practices cause substantial injury to consumers, (2) the harm is not
12 reasonably avoidable by consumers; and (3) the harm caused is not outweighed by any
13 countervailing benefits.

14 There is more than sufficient evidence in the record to establish substantial consumer
15 injury. The declarations of the individuals and businesses harmed by Defendants' practices tell a
16 consistent story of substantial injury from Defendants' business practices. As discussed in
17 Section III.B.1., numerous consumers report learning of checks created by Qchex on their bank
18 accounts without their authorization.¹²⁷ Although many of the banks stopped the bogus checks
19 before any funds were withdrawn or ultimately refunded any money lost by the account holders
20 when an unauthorized draft was withdrawn, these consumers have suffered substantial harm.
21 These consumers have expended significant time and resources monitoring their bank accounts,
22 changing their bank account numbers, and purchasing new checks for the new bank accounts.¹²⁸

23
24 ¹²⁷ See *supra* notes 85-87.

25 ¹²⁸ See *supra* note 87; see, e.g., PX1 ¶26 (stating that he and the small business for which
26 (continued...))

1 It is well-settled that “[i]njury may be sufficiently substantial if it causes a small harm to a large
 2 class of people.” *FTC v. J.K. Publ’ns Inc.*, 99 F. Supp. 2d 1176, 1201 (C.D. Cal. 2000) (citing
 3 *FTC v. Windward Mktg., Ltd.*, 1997 U.S. Dist. LEXIS 17114, *31-32 (N.D. Ga. Sept. 30, 1997));
 4 *see also Pantron I*, 33 F.3d at 1102 (“consumer injury is substantial when it is the aggregate of
 5 many small individual injuries”); *FTC v. The Crescent Publ’g Group, Inc.*, 129 F. Supp. 2d 311,
 6 322 (S.D.N.Y. 2001) (finding that “injury to consumers was substantial in the aggregate”).

7 As described in Section III.B.2., other consumers report receiving checks created and sent
 8 by Qchex as payment for items they were selling or in transactions whereby the consumers were
 9 to deposit the checks and wire money to third parties.¹²⁹ These consumers later learned that the
 10 persons with whom they were dealing were conducting unlawful activities and were trying to
 11 steal money or goods from them.¹³⁰ Defendants took on these thieves as customers of Qchex and
 12 created and delivered checks upon their requests without verifying that the individuals had
 13 authority to write checks drawn on identified bank accounts. The consumers who received the
 14 unauthorized Qchex checks suffered significant losses when the funds were debited from the
 15 bank accounts in which they had deposited the bogus checks created by Qchex.¹³¹ Some of these
 16 consumers report not only losing the funds they wired to third parties, but also being charged
 17
 18
 19
 20

21 ¹²⁸ (...continued)

22 he works expended over 100 hours of time resolving the problems caused by Qchex); PX4 ¶17,
 23 20 (employee of entity stating he spent a third of his time for a period “trying to handle and
 24 resolve this situation with Qchex.”)

25 ¹²⁹ *See supra* notes 97-103.

26 ¹³⁰ *See, e.g.*, PX6 ¶¶15-19, PX7 ¶¶ 5-9, PX8 ¶¶ 5-6.

¹³¹ PX13, ¶7; *see, e.g.*, PX8, ¶¶6, 8; PX7 ¶¶6-9; PX6 ¶23.

1 overdraft fees and other bank fees as a result of depositing the bogus checks.¹³² One consumer
2 even had to take out a personal loan from her bank to pay back the funds.¹³³

3 The next prong of the unfairness test focuses on “whether consumers had a free and
4 informed choice that would have enabled them to avoid the unfair practice.” *J.K. Publ’ns*, 99 F.
5 Supp. 2d at 1201 (*quoting FTC v. Windward Mktg., Ltd.*, 1997 U.S. Dist. LEXIS 17114, *32
6 (N.D. Ga. Sept. 30, 1997) and citing *Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354, 1365
7 (11th Cir. 1988)). Consumers harmed by Defendants’ practices could not reasonably have
8 avoided this injury.

9 The individuals and businesses who have suffered loss because Qchex has created and
10 delivered unauthorized checks written on their bank accounts have no relationship to Qchex and
11 have no reason to know or even suspect that Qchex would create and deliver checks on their
12 bank accounts.¹³⁴ Such consumers could not avoid this injury.

13 The second group of consumers, those who have received the Qchex checks as payment,
14 also could not reasonably have avoided the injury caused when they relied on the bogus
15 checks.¹³⁵ The checks created by Qchex appear real with the proper bank account and routing
16 codes and are, in fact, accepted by banks.¹³⁶ These consumers do not have prior relationships
17 with Qchex and could not know that Qchex created and delivered these checks for Qchex
18 customers without verifying the authority of the customer to write checks drawn on these
19
20

21 ¹³² See, e.g., PX8, ¶¶6, 8.

22 ¹³³ PX7 ¶¶9-10.

23 ¹³⁴ See *supra* note 92.

24 ¹³⁵ See *supra* notes 100-102, 104-109.

25 ¹³⁶ See *supra* notes 100-101.

1 accounts.¹³⁷ Further, these checks initially clear the consumers' bank accounts and funds are
2 made available.¹³⁸

3 At various times, Defendants have posted vague warnings on the Qchex.com website and
4 on the material attached to the check sent by Qchex.¹³⁹ Nevertheless, even if a consumer reads
5 and understands these vague statements, such warnings are not sufficient to help consumers
6 avoid the harm. In fact, the Qchex website actually assures consumers to trust its systems by
7 touting its security features and including a mechanism whereby a recipient of a Qchex check can
8 confirm the validity of a Qchex check.¹⁴⁰ Moreover, as mentioned, any lingering concerns about
9 the validity of a Qchex check are dissolved when the bank accepts the check and the funds clear
10 the consumers' accounts.¹⁴¹ These consumers could not reasonably avoid the injury caused by
11 Defendants' practices.

12 The substantial injury to individuals and businesses by Defendants' acts or practices is
13 not "outweighed by countervailing benefits" to consumers or competition. This prong of the
14 unfairness test is satisfied "when a practice produces clear adverse consequences for consumers
15 that are not accompanied by an increase in services or benefits to consumers or by benefits to
16

17 ¹³⁷ See PX 7 ¶8, PX8 ¶3.

18 ¹³⁸ See, e.g., PX8 ¶¶4-6.

19 ¹³⁹ See *supra* notes 104-105.

20
21 ¹⁴⁰ See *supra* notes 106-109. Although the language of the Qchex website is unclear, the
22 Qchex-Tracking Code validation only tells a user whether Qchex in fact created and delivered the
23 check. See *supra* note 108. That is, it prevents against "counterfeit" Qchex checks. It does not
24 in fact validate the underlying authenticity of the checks. It would be unreasonable to expect a
25 consumer who receives a check (and who has not requested Qchex to write a check drawn on his
26 or her own account) to realize this fine distinction. This is especially true now because
27 Defendants represent on their website that they verify the authority of their customers to write
28 checks on the accounts listed on the checks Qchex creates. See *supra* note 106.

29 ¹⁴¹ See *supra* notes 101-102.

1 competition.” *J.K. Publ’ns*, 99 F. Supp. 2d at 1201 (quoting *Windward Mktg.*, 1997 U.S. Dist.
 2 LEXIS 17114, *32 and citing *Orkin Exterminating*, 849 F.2d at 1365).¹⁴² The services Qchex
 3 provides are not without some potential benefits. Qchex’s online check writing services could be
 4 valuable to consumers and businesses wishing to have immediate distribution of checks via email
 5 or to those consumers and businesses who only occasionally need paper checks. Nevertheless, as
 6 discussed, providing the online check writing services without verifying that the customers are
 7 authorized to debit the identified bank accounts causes or is likely to cause substantial injuries
 8 that are not outweighed by the possible benefits. There is no benefit to consumers or competition
 9 to having an unverified check writing service. In fact, such a service only injures consumers and
 10 the economy as a whole.¹⁴³ Indeed, some of the individuals and small businesses affected by
 11 Qchex’s practices spent numerous hours challenging the unauthorized checks and continue
 12 having to spend considerable resources going forward working with their banks to verify each
 13 check issued.¹⁴⁴

14 3. **The Corporate Defendants are Liable for Violating Section 5 as a** 15 **Common Enterprise**

16 The corporate Defendants should be held jointly liable for the violations of the enterprise
 17 as they operate as a common enterprise. Courts have found common enterprises in a variety of
 18 FTC actions under Section 13(b) where there has been common corporate control, shared office
 19 space, shared employees and officers, interrelated funds, and other factors. *See, e.g., J.K.*
 20

21 ¹⁴² Several courts have held that the unauthorized billing of credit cards or debit cards
 22 and the unauthorized debiting of bank accounts satisfy the three-part unfairness test, making
 23 them unfair practices. *See, e.g., FTC v. The Crescent Publishing Group, Inc.*, 129 F.Supp.2d
 24 311, 322 (S.D.N.Y. 2001); *J.K. Publications*, 99 F. Supp.2d at 1201; *Windward Mktg.*, 1997 U.S.
 25 Dist LEXIS 17114, *37-38.

26 ¹⁴³ PX 9 ¶6, Att. B, pp. 218, 239-41 (banks reporting harm caused by Qchex checks).

¹⁴⁴ *See supra* note 128.

1 *Publ'ns*, 99 F. Supp. at 1202; *FTC v. Marvin Wolf*, 1996 U.S. Dist. LEXIS 1760, 1997-1 Trade
2 Cas. (CCH) ¶171,713 (S.D. Fla. 1996). Indeed, where “the same individuals were transacting an
3 integrated business through a maze of interrelated companies[,] . . . ‘the pattern and frame-work
4 of the whole enterprise must be taken into consideration’” and the companies may be held jointly
5 liable as a common enterprise. *J.K. Publ'ns*, 99 F. Supp. at 1202 (quoting *Delaware Watch Co.*
6 *v. FTC*, 332 F.2d 745, 746 (2nd Cir. 1964)).

7 As discussed in Section III.C., Neovi and G7 operate the Qchex website as a common
8 enterprise. The companies share office space, officers, and employees.¹⁴⁵ Their operations are
9 interrelated and intertwined as to Qchex and about a dozen other related products and services.¹⁴⁶
10 G7 products are sold on the Qchex website and the website recommends their use as part of the
11 Qchex system.

12 4. The Individual Defendants are Liable for Violating Section 5

13 The complaint seeks not only to hold the corporate Defendants Neovi and G7 liable, but
14 also to hold Defendants Danforth and Villwock individually liable for consumer redress,
15 disgorgement, and other equitable relief. Under the FTC Act, an individual is liable and subject
16 to injunctive relief for the acts of a corporate defendant if the individual participated directly in
17 the wrongful activities or had the authority to control such activities. *J.K. Publ'ns*, 99 F. Supp. at
18 1203 (citing *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997)).
19 “Authority to control the company can be evidenced by active involvement in business affairs
20 and the making of corporate policy, including assuming the duties of a corporate officer.” *Amy*
21 *Travel*, 875 F.2d at 573; see also *Publ'g Clearing House*, 104 F.3d at 1170; *J.K. Publ'ns*, 99 F.
22 Supp. 2d at 1203-4.

23
24
25 ¹⁴⁵ See *supra* note 111-113.

26 ¹⁴⁶ See *supra* notes 110 & 114-118.

1 As discussed in Section III.D., here, each of the individual Defendants possesses or has
2 possessed the authority to control the corporate Defendants and participated in the conduct at
3 issue. Danforth is an officer and principal of Neovi and G7.¹⁴⁷ He has spoken on behalf of
4 Qchex with FTC staff and the FDIC about the unauthorized checks being created and sent by
5 Qchex and about the measures Defendants took and planned to take to try to prevent fraud on the
6 Qchex website.¹⁴⁸ He has responded to entities complaining about the Qchex system on behalf of
7 the operation.¹⁴⁹ Villwock likewise is an officer of Neovi.¹⁵⁰ Villwock made a presentation to
8 the FDIC concerning problems with Qchex services.¹⁵¹ Therefore, the individual Defendants
9 should be subject to injunctive relief.¹⁵²

10 **5. The Balance of Equities Warrants Entry of the Proposed Order**

11 The public equities in this case warrant preliminary and ancillary injunctive relief. The
12 proposed TRO and preliminary injunction would require Defendants to take reasonable steps to
13 verify that their customers have authority to write checks drawn on identified bank accounts.

14 ¹⁴⁷ See *supra* notes 119-120.

15 ¹⁴⁸ See *supra* note 121.

16 ¹⁴⁹ See *supra* note 122.

17 ¹⁵⁰ See *supra* note 124.

18 ¹⁵¹ See *supra* note 125.

19
20 ¹⁵² Although not relevant for purposes of this motion for a temporary restraining order,
21 which seeks only injunctive relief as to Defendants' conduct, an individual may be held
22 personally liable for injunctive monetary relief under the FTC Act if, in addition to direct
23 participation or control over the wrongful acts or practices, the individual (1) had actual
24 knowledge of the wrongful acts; (2) was recklessly indifferent as to whether or not the corporate
25 acts were fraudulent; or (3) had an awareness of a high probability that the corporation was
26 engaged in fraudulent practices coupled with an intentional avoidance of the truth. *J.K. Publ'ns*,
99 F. Supp. 2d at 1204; *Publishing Clearing House*, 104 F.3d at 1171; *Pantron I*, 33 F.3d at
1103. The FTC need not establish that the individuals possessed the intent to defraud. *Amy
Travel*, 875 F.2d at 573-74. As described above, Defendants Danforth and Villwock clearly had
"actual knowledge of the wrongful acts." See, e.g., *supra* notes 121 & 125.

1 Without such conduct prohibitions, Defendants would be free to continue their illegal practices
2 and possibly revert to even less effective verification procedures during the pendency of this
3 case. The conduct prohibitions contained in the proposed TRO would work no hardship on
4 Defendants, as they have no right to engage in practices that violate the law. *See World Wide*
5 *Factors*, 882 F.2d at 347; *U.S. v. Diapulse Corp. of America*, 457 F.2d 25, 29 (2d Cir. 1972). A
6 “court of equity is under no duty ‘to protect illegitimate profits or advance business which is
7 conducted [illegally].’” *CFTC v. British American Commodity Options Corp.*, 560 F.2d 135, 143
8 (2d Cir. 1977) (quoting *FTC v. Thomsen-King & Co.*, 109 F.2d 516, 519 (7th Cir. 1940)). The
9 Defendants’ past misconduct “gives rise to the inference that there is a reasonable likelihood of
10 future violations.” *SEC v. R.J. Allen & Assoc., Inc.*, 386 F. Supp. 866, 877 (S.D. Fla. 1974)
11 (citations omitted). In weighing the public and private equities, the public interest should receive
12 greater weight. *World Wide Factors*, 882 F.2d at 347. Thus, in this matter the public equities
13 weigh in favor of protecting individuals and businesses throughout the United States and against
14 Defendants’ rights to operate outside the law.

15 Without entry of the requested preliminary injunctive relief set forth in the FTC’s
16 proposed TRO filed concurrently, Defendants will continue to engage in unfair business practices
17 and injure the public during the pendency of this litigation. Despite repeated notice from
18 consumers and government agencies of the fact that the Qchex website creates and delivers
19 fraudulent checks, Defendants have failed to address the problem. In fact, the evidence shows
20 that as recently as September 18, 2006, Qchex created checks without taking any steps to verify
21 the authority of a customer to draw checks on an identified bank account.¹⁵³ Evidence also shows
22 that Qchex created unauthorized checks on a consumer’s bank account about a month ago¹⁵⁴ and
23

24 ¹⁵³ See *supra* notes 76-78.

25 ¹⁵⁴ PX17.

1 the FCC's bank account as recently as a few weeks ago.¹⁵⁵ As described above, each attempt
2 Defendants implemented to safeguard against fraudulent use of their system has failed to close,
3 and in some cases, has opened, new avenues for their fraud operators to request – and for Qchex
4 to create and deliver – unauthorized checks. Defendants simply are unwilling to implement a
5 verification system that reduces the likelihood of causing harm to consumers.¹⁵⁶

6 In summary, Defendants' continued creation and delivery of unverified checks, their
7 ineffective implementation of purported corrective action, and their lax quality assurance on their
8 website operations demonstrates that Defendants will continue to engage in such wrongful
9 activity unless a TRO is issued against them. Defendants' unfair business practices should be
10 halted immediately to prevent further substantial injury to the public.

11 **V. CONCLUSION**

12 The Commission has provided ample evidence that Defendants have engaged and are
13 engaging in unfair acts or practices in violation of Section 5 of the Federal Trade Commission
14 Act ("FTC Act"), 15 U.S.C. § 45(a). Consumer injury is significant and continues to grow.
15 Given the continued creation and delivery of unverified checks despite the substantial injury
16 caused to individuals and businesses throughout the U.S., the Commission urges the Court to

17
18 ¹⁵⁵ PX18.

19 ¹⁵⁶ Even if Defendants' current purported "validation" procedures were actually required,
20 they would not verify each customer's authority to create checks drawn on an identified bank
21 account. These procedures include nothing that would actually require a Qchex customer to
22 demonstrate his authority over the bank account. If Qchex's were to follow its own stated
23 procedures, it would begin creating and sending checks for a customer as soon as the check to
24 pay for Qchex's services cleared. PX14 ¶126, Att. EE, p. 1766. Several days, if not weeks,
25 could pass before an account holder receives her bank statement and notices an unauthorized
26 check to Qchex, and even then the account holder may not notice the relatively small
unauthorized draft on her bank statement. If the account holder noticed an unauthorized draft
and reported it to her bank, only then would Qchex learn of fraudulent misuse of its services,
because the check written to Qchex for its services would be returned. In the meanwhile, Qchex
would continue to create and deliver checks on the account despite these purported validation
procedures.

1 grant the requested TRO and order to show cause why a preliminary injunction should not issue
2 in order to halt this ongoing abuse.

3
4 Dated: Sept. 18, 2006

5
6 Respectfully submitted:

7 

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CERTIFICATE OF SERVICE

I, Deborah Matties, hereby certify that I am over 18 years of age, and my business address is Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, and state that I am causing true and correct copies of the Civil Cover Sheet; Complaint for Injunctive and Other Equitable Relief; Summons; Plaintiff's Motion for Temporary Restraining Order with Other Equitable Relief and Order to Show Cause, and Request for Emergency Hearing Withing 24 Hours; Proposed Order Granting Plaintiff's Motion for an Emergency Hearing on Motion for Temporary Restraining Order with Other Equitable Relief and Order to Show Cause; Exhibits in Support of Motion for Temporary Restraining Order, with Other Equitable Relief, and Order to Show Cause (PX1-19); Declaration of Plaintiff's Counsel Deborah Matties; Memorandum of Points and Authorities in Support of the Motion for Temporary Restraining Order with Other Equitable Relief and Order to Show Cause; Proposed Temporary Restraining Order with Other Equitable Relief and Order to Show Cause; Plaintiff's Motion for Leave to File Memorandum in Excess of Twenty-Five Pages; Proposed Order Granting Plaintiff's Motion for Leave to File Memorandum in Excess of Twenty-Five Pages; Pro Hac Vice Applications for Deborah Matties and Patricia Poss; to be served by express mail service on September 18, 2006, for delivery on September 19, 2006, on:

**Attorney for Defendants Neovi, Inc., G7 Productivity Systems, Inc.,
James M. Danforth, and Thomas Villwock**
James C. Stevens, Esq.
402 West Broadway, Suite 400
San Diego, California 92101

Date: Sept. 18, 2006


Deborah Matties