

## RECEIVED

THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

**Defendants.**

**Mag. Judge Valdez**

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

## TABLE OF CONTENTS

I.	Introduction.....	1
II.	Defendants' Deceptive Business Practices .....	3
	A. Defendants' Telemarketing Calls .....	3
	B. Defendants' Recorded "Verifications" .....	6
	C. Defendants' Demand Drafts .....	7
	D. Defendants' Medical Discount Plan Package.....	8
	E. Consumers' Refund Requests .....	9
III.	Defendants .....	10
	A. The "U.S. Defendants" .....	11
	B. The "Canadian Defendants" .....	14
IV.	Argument .....	15
	A. This Court Has the Authority to Grant the Requested Relief.....	16
	B. A Temporary Restraining Order is Appropriate and Necessary .....	16
	C. The Evidence Demonstrates an Overwhelming Likelihood that the FTC Will Prevail on the Merits.....	17
	1. Defendants are Violating the FTC Act .....	17
	2. Defendants are Violating the Telemarketing Sales Rule .....	19
	3. The Individual Defendants are Personally Liable.....	19
	D. The Equities Tip Decidedly in the Commission's Favor.....	20
	E. An Asset Freeze is Necessary and Appropriate .....	21
	F. The Temporary Restraining Order Should Be Issued <i>Ex Parte</i> .....	21
V.	Conclusion .....	22

## **TABLE OF AUTHORITIES**

### **Cases**

<i>CFTC v. Hunt</i> , 591 F.2d 1211 (7th Cir. 1979).....	16
<i>FTC v. Amy Travel Serv., Inc.</i> , 875 F.2d 564 (7th Cir. 1989).....	16, 20
<i>FTC v. Bay Area Bus. Council</i> , 423 F.3d 627 (7th Cir. 2005).....	17, 20
<i>FTC v. Direct Mktg. Concepts, Inc.</i> , 648 F. Supp. 2d 202 (D. Mass. 2009).....	16
<i>FTC v. Febre</i> , 128 F.3d 530 (7th Cir. 1997).....	16
<i>FTC v. Five-Star Auto Club, Inc.</i> , 97 F. Supp. 2d 502 (S.D.N.Y. 2000).....	16
<i>FTC v. QT, Inc.</i> , 448 F. Supp. 2d 908 (N.D. Ill. 2006).....	17
<i>FTC v. Sabal</i> , 32 F. Supp. 2d 1004 (N.D. Ill. 1998).....	20
<i>FTC v. Think Achievement Corp.</i> , 144 F. Supp. 2d 1013 (N.D. Ind. 2000) .....	16
<i>FTC v. World Media Brokers</i> , 415 F.3d 758 (7th Cir. 2005) .....	17, 20
<i>FTC v. World Travel Vacation Brokers, Inc.</i> , 861 F.2d 1020 (7th Cir. 1988).....	16, 17, 20, 21
<i>FTC v. World Wide Factors, Ltd.</i> , 882 F.2d 344 (9th Cir. 1989) .....	20
<i>Kraft, Inc. v. FTC</i> , 970 F.2d 311 (7th Cir. 1992), <i>cert. denied</i> , 507 U.S. 909 (1993).....	17
<i>United States v. First Nat'l City Bank</i> , 379 U.S. 378 (1965).....	21
<i>United States v. W.T. Grant Co.</i> , 345 U.S. 629 (1953).....	16

### **Statutes**

15 U.S.C. § 45(a) .....	1, 15, 17
15 U.S.C. § 53(b) .....	16

### **Rules and Regulations**

16 C.F.R. Part 310.....	1, 15
16 C.F.R. § 310.3(a)(2)(iii).....	19

16 C.F.R. § 310.3(a)(2)(vii).....	19
16 C.F.R. § 310.4(b)(1)(iii)(B) .....	19
16 C.F.R. § 310.4(d) .....	19
Fed. R. Civ. P. 65(b) .....	22

## **I. INTRODUCTION**

We ask that the Court bring an immediate halt to a telemarketing scam that is bilking thousands of elderly and infirm consumers out of hundreds of dollars each. Defendants cold-call senior citizens and pretend to be calling from Medicare, Social Security, or the consumer's medical insurance provider. Creating the illusion that Defendants have dealt with consumers in the past, Defendants want to "update" consumers' information so that those consumers can get a medical discount plan. This plan, Defendants claim, will provide substantial savings on prescription drug costs. Many consumers agree, often mistakenly believing that they must purchase the plan to continue receiving their government or insurance benefits. The plan costs \$299 or more. Defendants then take the money directly from consumers' checking accounts.

This entire operation is a fraud. All consumers get for their money is a prescription drug discount card that is available to anyone for free. It is of no value to consumers already covered by Medicare or private medical insurance. The deceptive claims made here violate Section 5(a) of Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), and provisions of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

What makes this scheme worse, if possible, is that Defendants clearly are targeting elderly consumers, many of whom have Alzheimer's disease or dementia. Some live in assisted living facilities. Most live on fixed incomes and can ill-afford losing \$300 to Defendants' scheme.<sup>1</sup> In less than a year, Defendants have victimized over 6500 consumers with gross sales exceeding \$1.9 million.<sup>2</sup>

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<sup>1</sup> REDACTED

This enterprise includes Defendants in both the Canada and the U.S. A boiler room in Montreal makes the initial calls to consumers, but it is the U.S. Defendants that collect victims' money, open U.S. mail drops, and make refunds when they must. Whenever law enforcement has begun looking into this operation, Defendants have simply changed names, locations, and bank accounts to avoid detection.

In the last few weeks, the Royal Canadian Mounted Police ("RCMP") located the boiler room in Montreal and executed a search warrant where they found Defendants' telemarketing scripts and other key information.<sup>3</sup> Of course, a search warrant in Canada by itself does not mean that a business must close, and it has no effect on operations in the U.S.

The evidence of Defendants' fraud is overwhelming. Along with this memorandum, the FTC is submitting the sworn declarations of seventeen consumers, two law enforcement investigators, and an official with the Better Business Bureau of Wisconsin.

The FTC asks that the Court issue a temporary restraining order ("TRO") to stop false claims and to freeze Defendants' assets to preserve them so that they can later be refunded to victims. Defendants' pattern of fraud—and their attempts to conceal their activities from law enforcement—suggest that they would hide or dissipate assets if they received notice of this

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<sup>2</sup> The entirety of Defendants' operation likely is much larger. The FTC's estimate of consumer victims and sales is based on information obtained from known bank accounts through April 2013. Defendants appear to change banks frequently, and they likely have used accounts at banks unknown to the FTC. *See* PX 1 Menjivar Dec. ¶¶ 34-42, 47-55, 60-78, 80-89.

<sup>3</sup> *See id.* at ¶¶ 117-18.

action. The requested relief is therefore needed to preserve the Court's ability to provide effective final relief.

## **II. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES**

### **A. Defendants' Telemarketing Calls**

Defendants call consumers pretending that they have dealt with them in the past and often claiming to be from Medicare, Social Security, or the consumer's medical insurance provider.<sup>4</sup>

In one script used by Defendants, the caller claims to be from the intentionally vague "National Health Board" and the "Medical Department with Clinacall."<sup>5</sup> The script begins with Defendants' telemarketers asking consumers:

I'm calling because we sent you some information in the mail a couple of weeks ago about your new discount medical card. Did you receive them?

Of course, consumers have not received anything from Defendants at this time.<sup>6</sup> When consumers no doubt respond in the negative, Defendants' telemarketers add a sense of urgency by stating:

Well we have to have that information filled out for you because right now you are not registered to receive your new health card.

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<sup>4</sup> See, e.g., PX 1 Menjivar Dec. ¶¶ 121-22; PX 3 Ehnert Dec. ¶¶ 6, 11 & Attachment ("Att.") B (nationwide alert); PX 4 Brown Dec. ¶ 6; PX 6 Graham Dec. ¶¶ 7-8; PX 9 McEvers Dec. ¶ 6; PX 12 L. Primeau Dec. ¶¶ 3-5; PX 14 Stanley Dec. ¶ 4; PX 15 Thompson Dec. ¶ 5; PX 16 Ward Dec. ¶¶ 3-4; PX 18 Wentworth Dec. ¶ 2.

<sup>5</sup> A copy of Defendants' telemarketing script was provided to FTC personnel from an official with the Canadian Anti-Fraud Centre, Canada's central agency that collects information and intelligence on mass marketing and other types of fraud. See PX 1 Menjivar Dec. ¶¶ 112-16 & Att. AA (telemarketing script). RCMP officials confirmed that virtually identical scripts were found on-site at Defendants' Montreal boiler room location during execution of the RCMP's search warrant. See *id.* at ¶¶ 117-18.

<sup>6</sup> See, e.g., PX 12 L. Primeau Dec. ¶ 3 (at the time of Defendants' call, consumer had not received any package, and she "became worried that the package contained important information about [her] Medicare or Social Security benefits").

The telemarketers then mention a prescription drug discount card that supposedly will provide consumers with substantial savings on their prescription drug costs.<sup>7</sup> Defendants often claim that consumers can save up to 75 percent off prescription drug costs or even get their prescription drugs for free.<sup>8</sup> Many consumers think that they need this prescription drug discount card to continue receiving their Medicare or Social Security benefits, and that if they do not go forward, their benefits can be cut off.<sup>9</sup> Defendants' script demonstrates one way that Defendants do this:

Now, in receiving your medical card your benefits will now consist on you getting up to 75 % off your prescription Drugs [sic]. There is a fee of \$387.00 which is a discounted price from what you were paying before.<sup>10</sup>

Of course, consumers were paying nothing before because they have never had any prior dealings with Defendants.

Consumers often do not understand, and often are not told directly, that they will have to pay several hundred dollars for this "medical card."<sup>11</sup> Once Defendants have coerced or

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<sup>7</sup> See, e.g., PX 2 Wolfe Dec. ¶¶ 17-21 & Att. G (undercover call); PX 3 Ehnert Dec. ¶ 6; PX 4 Brown Dec. ¶ 6; PX 9 McEvers Dec. ¶ 6; PX 11 D. Primeau Dec. ¶¶ 3, 7; PX 12 L. Primeau Dec. ¶ 4; PX 13 Sandberg Dec. ¶¶ 6-7 & Atts. C, D; PX 15 Thompson Dec. ¶¶ 4-5; PX 18 Wentworth Dec. ¶ 2.

<sup>8</sup> See, e.g., PX 2 Wolfe Dec. ¶¶ 17-21 & Att. G (undercover call); PX 3 Ehnert Dec. ¶¶ 6, 11 & Att. B (nationwide alert); PX 15 Thompson Dec. ¶ 5; PX 20 Willis Dec. ¶ 5.

<sup>9</sup> See, e.g., PX 9 McEvers Dec. ¶ 6 (consumer had to "pay now in order to enroll in the program"); PX 12 L. Primeau Dec. ¶¶ 3-5; PX 14 Stanley Dec. ¶ 4; PX 16 Ward Dec. ¶¶ 4, 13; PX 18 Wentworth Dec. ¶ 2.

<sup>10</sup> Although Defendants' script states a fee of \$387, Defendants appear to charge a discounted rate of \$299. See, e.g., PX 2 Wolfe Dec. ¶¶ 17-21 & Att. G (undercover call during which investigator was told Defendants' "supplement card" retails for \$349, but was being offered for \$299 as a "limited time special"). Operating as "AMG Associates," Defendants charged its victims \$306.99. See, e.g., PX 13 Sandberg Dec. ¶ 5 & Att. B (check). See also PX 1 Menjivar Dec. ¶¶ 70-73.

<sup>11</sup> See, e.g., PX 3 Ehnert Dec. ¶ 6; PX 9 McEvers Dec. ¶¶ 6-7; PX 12 L. Primeau Dec. ¶¶ 4-5; PX 14 Stanley Dec. ¶ 4; PX 15 Thompson Dec. ¶ 5; PX 16 Ward Dec. ¶¶ 3-4 (although Defendants stated a fee, consumer did not remember being told money would be withdrawn from her checking account); PX 17 Waters Dec. ¶¶ 3, 6 (consumer did not want program if she had to pay); PX 18



confused consumers into acceding to their plan, they then ask for consumers' checking account information.<sup>12</sup> Defendants frequently do not disclose that this information will be used to take money from those consumers' checking accounts. In some instances, for example, Defendants request this information simply to "verify" a consumer's identity, or to "enroll" the consumer in Defendants' medical discount plan.<sup>13</sup> Defendants sometimes claim to already have consumers' banking information and simply need to verify it.<sup>14</sup> For example, Defendants' script goes on to state:

Now for security purposes we do need to confirm we are speaking to the correct individual of the account on file because we need to confirm you have been fully covered. Please state the name of your bank that you are making your payments through?

We also need to verify that we have the correct account information on file to make sure you are still eligible to receive your new health card, also from the bottom left hand side of your check book please read me the number from the left to the right. Thank you.

Nowhere in Defendants' script do they disclose that consumers will be charged.<sup>15</sup>

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Wentworth Dec. ¶¶ 3-4, 7 (Defendants attempted to debit consumer's account even though she hung up after verifying information caller claimed to already have); PX 20 Willis Dec. ¶¶ 3-4 (consumer was assured she did not have to purchase any product or service).

<sup>12</sup> See, e.g., PX 4 Brown Dec. ¶¶ 6-7; PX 8 Lee Dec. ¶ 3; PX 9 McEvers Dec. ¶ 7; PX 11 D. Primeau Dec. ¶ 3; PX 12 L. Primeau Dec. ¶ 5; PX 13 Sandberg Dec. ¶ 3; PX 14 Stanley Dec. ¶ 4; PX 15 Thompson Dec. ¶ 5; PX 16 Ward Dec. ¶ 4; PX 18 Wentworth Dec. ¶¶ 3-4; PX 19 West Dec. ¶ 3.

<sup>13</sup> See, e.g., PX 4 Brown Dec. ¶ 7 (bank information needed to "enroll" consumer in program); PX 12 L. Primeau Dec. ¶ 5 (bank information needed "in order to qualify and to enroll in the medical program"); PX 14 Stanley Dec. ¶ (bank information needed "in order to see that [consumer] was reimbursed by Medicare"); PX 16 Ward Dec. ¶ 4 (bank information needed "in order to participate in the medical program").

<sup>14</sup> See, e.g., PX 18 Wentworth Dec. ¶¶ 3-4; PX 20 Willis Dec. ¶ 3.

<sup>15</sup> See, e.g., PX 16 Ward Dec. ¶ 4 ("I do not remember [caller] telling me that the company was going to withdraw \$299 from my checking account"); PX 18 Wentworth Dec. ¶ 4 (consumer "was never informed of any charge that [she] would incur as a result of verifying any personal information"); PX 20 Willis Dec. ¶ 4 (Defendants' telemarketer assured consumer that she "would not need to purchase any product or services"). See also PX 1 Menjivar Dec. ¶¶ 112-16 & Att. AA (telemarketing script).

## B. Defendants' Recorded "Verifications"

Because Defendants are taking money from consumers' bank accounts through remotely-created checks, the banking system requires that they have verification of those consumers' consent to the charges. Thus, Defendants try to obtain a recording of consumers purportedly authorizing payment of Defendants' fee.<sup>16</sup> For example, Defendants' script goes on to state:

Okay, we will be going over sixty second verification for your protection, so u [sic] can receive your patient identification number. Please keep your answers to a clear YES or NO to all questions. If you have any questions please hold them till after the verification. I will come back on the line to answer any of your questions.

During the subsequent recorded sections of these calls, Defendants make several rapid-fire disclosures that entirely contradict what consumers were told before.<sup>17</sup> For example, consumers are quickly told that Defendants are not affiliated with the consumer's bank, any "government institutions," or pharmaceutical companies, and they claim to offer no guarantees that the consumer will qualify for prescription drug discounts.<sup>18</sup> During these recordings, Defendants also ask for the consumer's checking account information—now for the second time—and for the consumer to agree to Defendants' fee.<sup>19</sup>

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<sup>16</sup> See, e.g., PX 6 Graham Dec. ¶ 4; PX 8 Lee Dec. ¶ 7; PX 11 D. Primeau Dec. ¶ 7; PX 12 L. Primeau Dec. ¶ 7; PX 13 Sandberg Dec. ¶¶ 7-8 & Att. D (transcript); PX 16 Ward Dec. ¶ 5; PX 17 Waters Dec. ¶ 4.

<sup>17</sup> See e.g., PX 13 Sandberg Dec. ¶ 9 ("based on the pace and the content of the call, I do not believe that my mother had the ability to accurately process the information to which she was agreeing").

<sup>18</sup> For a transcript of one of Defendants' verification recordings, see PX 13 Sandberg Dec. ¶ 7 & Att. D at pp. 6-9.

<sup>19</sup> See, e.g., PX 8 Lee Dec. ¶ 7; PX 11 D. Primeau Dec. ¶ 7; PX 12 L. Primeau Dec. ¶ 7. See also PX 13 Sandberg Dec. ¶¶ 7-9 & Att. D. at p. 7 (when Defendants' telemarketer asks for consumer's routing number, consumer asks, "You want that again?").

Before the recordings begin, consumers are coached how to respond. Consistent with Defendants' script, consumers are instructed not to ask any questions.<sup>20</sup> If a consumer asks a question or does not respond as Defendants want, the recording is stopped, the consumer is instructed again, and a new recording is started. This process may be repeated until Defendants have a "clean" recording that purports to demonstrate authorization of the fee.<sup>21</sup> The FTC regularly sees these types of recordings. They are not intended to make sure consumers make informed decisions—and they do not. Instead, these recordings are later used against Defendants' victims when those victims or their caregivers discover Defendants' debits and dispute them.

### C. Defendants' Demand Drafts

Because consumers have not signed a check, they may not realize that they still can have money taken directly from their checking accounts. Defendants manage this by using remotely-created checks, also known as "demand drafts." These demand drafts contain the same information as a consumer's conventional check, but they are not signed by the consumer. Instead, the demand drafts contain the statement: "This draft authorized by your depositor **No Signature Required.**"<sup>22</sup>

Defendants' demand drafts are made payable to one of the three business names then being used by Defendants, either AFD Medical Advisors, AMG Associates, or Clinacall.<sup>23</sup> The

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<sup>20</sup> See, e.g., PX 12 L. Primeau Dec. ¶ 7; PX 16 Ward Dec. ¶ 5; PX 17 Waters Dec. ¶ 4; PX 20 Willis Dec. ¶ 7.

<sup>21</sup> See, e.g., PX 16 Ward Dec. ¶ 5 (verification re-recorded about three times); PX 17 Waters Dec. ¶ 4 (Defendants' telemarketer "stopped recording our conversation and told me that I was only supposed to answer the questions that she asked").

<sup>22</sup> For an example of Defendants' demand drafts, see, e.g., PX 2 Wolfe Dec. ¶¶ 30, 32 & Atts. K, O.

<sup>23</sup> See, e.g., PX 5 Dobishinsky Dec. ¶ 5 & Att. B (AFD Medical Advisors); PX 6 Graham Dec. ¶ 3 & Att. A (AFD Medical Advisors); PX 7 Jaeger Dec. ¶ 2 & Att. A (AFD Medical Advisors); PX 8 Lee Dec. ¶ 5 & Att. A (AFD Medical Advisors); PX 10 Newson Dec. ¶ 2 & Att. A (AFD Medical

demand drafts are processed through normal banking channels just like any other check, but their unconventional appearance often catches the eye of Defendants' victims or their caregivers. For example, the demand drafts appear to be computer generated, and the check numbers often are far out of sequence from consumers' regular checks.<sup>24</sup> Because many consumers are not expecting these debits, they sometimes result in an overdrawn account.<sup>25</sup>

#### **D. Defendants' Medical Discount Plan Package**

Consumers get absolutely nothing of value for their money—certainly not anything worth hundreds of dollars. After consumers' money has already been taken, some consumers, but not all, receive a package that includes a welcome letter and a prescription drug discount card.<sup>26</sup> The package is from whatever company name Defendants were using at the time, and it has a U.S. return address.<sup>27</sup>

The wallet-sized prescription drug discount cards Defendants send are of no use to people already covered by Medicare or private medical insurance, and they are entirely worthless to

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Advisors); PX 13 Sandberg Dec. ¶ 5 & Att. B (AMG Associates); PX 15 Thompson Dec. ¶ 10 & Att. B (AFD Medical Advisors); PX 16 Ward Dec. ¶ 9 & Att. B (AFD Medical Advisors); PX 17 Waters Dec. ¶ 5 & Att. A (AFD Medical Advisors); PX 19 West Dec. ¶ 5 & Att. A (AFD Medical Advisors); PX 20 Willis Dec. ¶ 10 & Att. B (Clinacall).

<sup>24</sup> See, e.g., PX 10 Newson Dec. ¶ 2 & Att. A (AFD Medical Advisors); PX 14 Stanley Dec. ¶ 3 & Att. A (AFD Medical Advisors); PX 19 West Dec. ¶ 5 & Att. A (AFD Medical Advisors).

<sup>25</sup> See, e.g., PX 17 Waters Dec. ¶ 6 (consumer had to borrow money to avoid being overdrawn and charged a penalty by her bank); PX 20 Willis Dec. ¶ 9 (consumer received overdraft notice).

<sup>26</sup> For a sample of Defendants' package, see, e.g., PX 5 Dobishinsky Dec. ¶ 2 & Att. A. See also PX 10 Newson Dec. ¶ 3 & Att. B at p. 3 (YourRxCard); PX 16 Ward Dec. ¶ 6 & Att. A at pp. 6-7 (YourRxCard); PX 20 Willis Dec. ¶ 5 & Att. A (RXrelief). Defendants do not always send consumers their package. See, e.g., PX 13 Sandberg Dec. ¶¶ 12-13.

<sup>27</sup> See, e.g., PX 5 Dobishinsky Dec. ¶ 2 & Att. A at p. 1 (envelope bearing return address "AFD Medical Advisors, 5633 Highway 10 East # 384, Stevens Point, WI 54481"); PX 16 Ward Dec. ¶ 6 & Att. A at p. 1 (envelope bearing the return address "AFD Medical Advisors, 5633 Highway 10 East, #384, East Point Center, Stevens Point, WI 54481").

Defendants' victims.<sup>28</sup> These "YourRxCARD" or "RXrelief" cards can easily be obtained for free. Anyone can get one by visiting [www.yourrxcard.com](http://www.yourrxcard.com) or [www.rxreliefcard.com](http://www.rxreliefcard.com), or by calling a toll-free telephone number.<sup>29</sup> These cards appear only to provide nominal discounts on prescription drugs for the uninsured or those without prescription drug coverage.<sup>30</sup>

#### **E. Consumers' Refund Requests**

Needless to say, many consumers demand refunds when they learn they have had their money taken or they receive the worthless cards in the mail. Many times, calls to Defendants go unanswered,<sup>31</sup> or refund requests are simply ignored.<sup>32</sup> When consumers are able to get through and demand a refund, Defendants typically play the verification recordings to fend off refund requests.<sup>33</sup> Consumers are able to get refunds only if they remain persistent, which often

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<sup>28</sup> See, e.g., PX 4 Brown Dec. ¶ 8; PX 5 Dobishinsky Dec. ¶ 4; PX 6 Graham Dec. ¶ 4; PX 8 Lee Dec. ¶ 6; PX 9 McEvers Dec. ¶ 8; PX 10 Newson Dec. ¶ 3; PX 13 Sandberg Dec. ¶ 7; PX 14 Stanley Dec. ¶ 4; PX 15 Thompson Dec. ¶¶ 10, 14; PX 17 Waters Dec. ¶ 8. Consumers who actually try to use Defendants' card learn they provide no benefit. See, e.g., PX 20 Willis Dec. ¶ 5 (consumer tried to use the discount card but found the discount "was less than the discount I regularly receive from the pharmacy").

<sup>29</sup> See PX 1 Menjivar Dec. ¶¶ 110-11 & Atts. Y (YourRxCARD website), Z (RXrelief website). These cards also can be ordered in bulk at no charge. See *id.* at ¶ 110 & Att. Y at p. 6.

<sup>30</sup> Upon information and belief, these cards are produced by a consortium of drug manufacturers and pharmacies to provide some discounts to those consumers without prescription drug coverage. For a discussion of prescription drug discount cards, see, e.g., <http://www.consumerworld.org/pubs/prescriptiondrugcardsprs.pdf>.

<sup>31</sup> See, e.g., PX 8 Lee Dec. ¶ 6; PX 14 Stanley Dec. ¶ 5; PX 15 Thompson Dec. ¶ 7; PX 16 Ward Dec. ¶ 10.

<sup>32</sup> See, e.g., PX 10 Newson Dec. ¶¶ 5, 7.

<sup>33</sup> See, e.g., PX 6 Graham Dec. ¶¶ 4-5; PX 8 Lee Dec. ¶ 7; PX 11 D. Primeau Dec. ¶ 7; PX 13 Sandberg Dec. ¶¶ 7-8 & Att. D; PX 17 Waters Dec. ¶ 7.

requires filing a complaint with law enforcement authorities or the Better Business Bureau.<sup>34</sup>

Even those who are promised a refund often have to wait weeks to receive it.<sup>35</sup>

Some consumers get their money back by disputing Defendants' debits with their bank. In fact, so many people have fought these checks that Defendants have had a difficult time keeping accounts open.<sup>36</sup> Many consumers have had to close their checking accounts out of fear that Defendants will keep taking their money.<sup>37</sup>

### **III. DEFENDANTS**

There are defendants in both the U.S. and Canada all working together on this fraud. Consumers themselves never know that anyone in Canada is involved. Two individual

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<sup>34</sup> See, e.g., PX 4 Brown Dec. ¶¶ 11-17; PX 6 Graham Dec. ¶¶ 9-10, 12-13 ; PX 7 Jaeger Dec. ¶ 4; PX 13 Sandberg Dec. ¶¶ 11-16; PX 15 Thompson Dec. ¶¶ 9-12; PX 17 Waters Dec. ¶¶ 7, 9-11.

<sup>35</sup> See, e.g., PX 4 Brown Dec. ¶¶ 11-12, 16-17 (consumer requested refund in early February; check not received until April); PX 7 Jaeger Dec. ¶ 4; PX 8 Lee Dec. ¶ 7; PX 14 Stanley Dec. ¶ 6.

<sup>36</sup> See, e.g., PX 1 Menjivar Dec. ¶¶ 40-41 (account had 702 checks deposited and 294 items returned), ¶¶ 52-53 (account had 122 checks deposited and 54 items returned), ¶¶ 66-68 (account had 4150 checks deposited totaling \$1,240,850.00, items returned totaling \$553,842.69, and 389 refunds totaling \$116,422.00), ¶¶ 75-76 (account had 1110 checks deposited totaling \$340,758.90 and items returned totaling \$131,377.42), ¶¶ 86-88 (account had 432 checks deposited, 118 items returned, and 20 refunds); PX 2 Wolfe Dec. ¶ 33 & Atts. Q, R (e-mail exchange between Aaron DuPont and River Valley Bank).

In response to one bank's serious concerns about Defendants' business practices and returned check activity, Defendants produced consumers' verification recordings supposedly as proof that consumers were unjustified in attempting to return the deposited items. See PX 2 Wolfe Dec. ¶ 33 & Att. R at p. 5 (in e-mail to bank, Defendant writes, "If you have the phone number, and the first and last name of the customers that are claiming they never ordered with me, I can send you their calls verifying they truly purchased the orders.").

<sup>37</sup> PX 6 Graham Dec. ¶ 11 (caregiver moved victim's money from one bank to another because she "was very worried that [Defendants] would attempt to withdraw money from her account."); PX 10 Newson Dec. ¶ 7 (caregiver closed victim's account and opened a new one); PX 12 L. Primeau Dec. ¶ 11 (consumer closed her account and opened a new one); PX 16 Ward Dec. ¶ 10 (consumer changed checking accounts and ordered new checks); PX 18 Wentworth Dec. ¶¶ 5-7 (consumer contacted local police department and closed checking account before Defendants could withdraw money from her account); PX 19 West Dec. ¶ 9 (daughter had her father close account and open a new checking account with both names).



Defendants, Aaron Dupont and Charles Lamborn, are in the U.S. They opened and control the bank accounts that get the money from consumers, formed the three U.S. companies under which Defendants operate, and opened the U.S.-based mail drops used to mail packages and correspond with consumers. The Canadian Defendants operate the boiler room in Montreal where the calls are made to consumers.

**A. The “U.S. Defendants”**

The corporate U.S. Defendants are **AFD Advisors, LLC** (“AFD”), a Wisconsin limited liability company that also does business as AFD Medical Advisors; **AMG Associates, LLC** (“AMG”), a Delaware limited liability company that also does business as AMG Medical and AMG Medical Associates; **Park 295 Corp.**, a New York corporation; and **CAL Consulting, LLC** (“CAL”), a Georgia limited liability company that also does business as Clinacall.

Defendant **Aaron F. Dupont** (“Dupont”), a resident of Weston, Wisconsin, organized and solely controls both AFD and AMG.<sup>38</sup> From about September 2012 to February 2013, Defendants used the name AFD Medical Advisors when telemarketing to consumers.<sup>39</sup>

Dupont opened, controls, and is sole signatory to numerous AFD bank accounts.<sup>40</sup> Several of these accounts were used to deposit the demand drafts drawn on consumers’ bank

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<sup>38</sup> See PX 1 Menjivar Dec. ¶ 7 & Att. A (AFD corporate records), ¶ 9 & Att. C (Delaware Certificate of Formation for AMG), ¶ 57 & Att. P at pp. 2-16 (AMG Operating Agreement).

<sup>39</sup> In September 2012, Dupont registered the d/b/a name “AFD Medical Advisors.” See *id.* at ¶ 8 & Att. B (Application for Registration of Marks). See also PX 2 Wolfe Dec. ¶ 8 & Att. A.

<sup>40</sup> See PX 1 Menjivar Dec. ¶¶ 30-31 & Att. M (Associated Bank account documents), ¶ 44 & Att. N (River Valley Bank account documents), ¶ 58 & Att. Q at pp. 1-4 (USBank account documents). See also PX 2 Wolfe Dec. ¶¶ 23-25, 29-33 & Atts. H (USBank account information forms and signature cards), J (Associated Bank signature cards and other documents), L, M, N (River Valley Bank signature cards), P (copies of business documents submitted to River Valley Bank by Dupont), Q, R (e-mail exchange between Dupont and River Valley Bank).

accounts.<sup>41</sup> Dupont printed the demand drafts payable to AFD Medical Advisors, filled out a deposit ticket, and then physically deposited these in the bank.<sup>42</sup> Dupont also dealt directly with the banks when they raised concerns about the high number of deposited items being returned,<sup>43</sup> and he wrote refund checks from AFD's accounts.<sup>44</sup>

Part of the money was then wired into the account of Defendant **Park 295 Corp.**<sup>45</sup> From October 2012 through January 2013, Park 295 Corp.'s bank account received 28 wire transfers from AFD totaling more than \$640,000.<sup>46</sup> From there, money went to the Canadian Defendants and Defendants CAL and Charles Lamborn.<sup>47</sup>

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<sup>41</sup> See PX 1 Menjivar Dec. ¶¶ 34-36 (Associated Bank), ¶¶ 47-49 (River Valley Bank), ¶¶ 60-62 (USBank). See also PX 2 Wolfe Dec. ¶¶ 25, 30, 32 & Atts. K (sample page of check images deposited into AFD account REDACTED at Associated Bank), O (sample page of check images deposited into AFD account REDACTED at River Valley Bank).

<sup>42</sup> See PX 1 Menjivar Dec. ¶ 38 (Associated Bank), ¶ 50 (River Valley Bank), ¶ 63 (USBank). See also PX 2 Wolfe Dec. ¶¶ 25, 30, 32.

<sup>43</sup> See PX 1 Menjivar Dec. ¶ 45 & Att. O (e-mail exchange between Dupont and River Valley Bank and other bank documents). See also PX 2 Wolfe Dec. ¶ 33 & Atts. Q, R. In a terse e-mail exchange between Dupont and an executive at River Valley Bank, the bank's executive wrote, in part, "we have 4 customers with returns which is highly unusual. Thus we need to better understand so we are not at risk." See PX 2 Wolfe Dec. Att. R at p. 12.

<sup>44</sup> See PX 1 Menjivar Dec. ¶¶ 65, 68. Dupont's home address appears on some of AFD's refund checks. See, e.g., PX 6 Graham Dec. ¶ 10 & Att. B; PX 14 Stanley Dec. ¶ 6 & Att. B; PX 19 West Dec. ¶ 8 & Att. C.

<sup>45</sup> Park 295 Corp. appears to serve no business function other than to act as a pass-through company. It was incorporated in New York on July 1, 2010. Its sole officer is Raffy H. Dikijian ("Dikijian"). Dikijian opened, controls, and is sole signatory to Park 295 Corp.'s bank accounts, including the account into which AFD made deposits. See PX 1 Menjivar Dec. ¶¶ 10-11 & Atts. D (Certificate of Incorporation for Park 295 Corp.), E (Certificate of Change for Park 295 Corp.), ¶ 97 & Att. U (JPMorgan Chase Bank account records for Park 295 Corp.), ¶ 99; PX 2 Wolfe Dec. ¶¶ 26-28 & Att. I (JPMorgan Chase Bank Business Signature Card for Park 295 Corp.).

<sup>46</sup> See PX 1 Menjivar Dec. ¶ 99; PX 2 Wolfe Dec. ¶ 28.

<sup>47</sup> See PX 1 Menjivar Dec. ¶¶ 100-102, 106; PX 2 Wolfe Dec. ¶ 28.



Dupont also opened and controls AFD's mail drops, the first of them in Stevens Point, Wisconsin.<sup>48</sup> In December 2012, AFD's business practices attracted the attention of Wisconsin authorities, and the Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") opened an investigation.<sup>49</sup> When Dupont became aware of this investigation, Defendants abandoned the name AFD Medical Advisors and began operating as "AMG Associates," a d/b/a for AMG, with a new mail drop in Wilmington, Delaware.<sup>50</sup> Like AFD, Dupont organized and solely controls AMG.<sup>51</sup> He opened and is sole signatory on its bank accounts,<sup>52</sup> and he used this Wilmington address to send mail and correspond with consumers.<sup>53</sup> Defendants operated as AMG for only a couple of months, though, before the DATCP and Oregon Department of Justice connected AMG to AFD and Dupont.<sup>54</sup> Defendants then quit

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<sup>48</sup> Defendants have used a Post Office box in Schofield, Wisconsin, on some of its materials, *see, e.g.*, PX 17 Waters Dec. Att. B, and on some official records, *see, e.g.*, PX 1 Menjivar Dec. ¶ 8 & Att. B (Application for Registration of Marks). Most of Defendants' business while operating as AFD Medical Advisors, however, was conducted from a Stevens Point, Wisconsin, mail drop location. *See* PX 1 Menjivar Dec. ¶¶ 17-19 & Atts. I (PS Form 1583 for Box 384), J (mailbox service agreement); PX 2 Wolfe Dec. ¶¶ 9-13 & Att. E (application for Box 384 at The UPS Store, 5633 Highway 10 East, Stevens Point, Wisconsin 54482).

<sup>49</sup> *See generally* PX 2 Wolfe Dec.

<sup>50</sup> *See* PX 1 Menjivar Dec. ¶ 22-24 & Att. K (commercial mail receiving agency records for Box 7297 in Wilmington).

<sup>51</sup> Dupont formed AMG as a Delaware limited liability company on January 29, 2013. He is its sole manager and member. *See id.* at ¶ 9 & Att. C (Delaware Certificate of Formation for AMG), ¶ 57 & Att. P (AMG corporate records and operating agreement).

<sup>52</sup> *See id.* at ¶ 58 & Att. Q at pp. 5-10 (USBank records for AMG accounts).

<sup>53</sup> Although Dupont opened and controlled this mail drop, mail received here initially was forwarded to another mail drop in Montreal, Canada. The forwarding information was later updated and sent in care of Aaron Dupont at yet another mail drop in Champlain, New York. *See id.* at ¶¶ 22-27 & Att. K at p. 11 (current and previous mail forwarding address).

<sup>54</sup> *See, e.g., id.* at ¶¶ 129-131 & Atts. BB (Amended Notice of Unlawful Trade Practices and Proposed Resolution), CC (Assurance of Voluntary Compliance).

using the name AMG Associates and began operating as Clinacall, a d/b/a of Defendant CAL. However, none of the deceptive practices changed during this time.

Defendant **Charles A. Lamborn, III**, lives in Cumming, Georgia. He set up CAL in his own name,<sup>55</sup> and he opened a Post Office box for this enterprise.<sup>56</sup> Lamborn opened bank accounts in the name of “CAL Consulting LLC d/b/a Clinacall.”<sup>57</sup> Like Dupont, Lamborn printed the demand drafts checks, deposited them in his bank, and personally signed refund checks.<sup>58</sup> From January through March 2013, over \$129,000 in consumer demand drafts was deposited into one of CAL’s accounts.<sup>59</sup> Lamborn transferred a portion of the profits into another CAL bank account before transferring part of the proceeds to Canada.<sup>60</sup>

#### **B. The “Canadian Defendants”**

The Canadian Defendants are **9262-2182 Québec Inc.** (“9262-2182”), a Canadian corporation owned and controlled by Defendant **Stephane Scebba** (“Scebba”), and **9210-7838**

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<sup>55</sup> See *id.* at ¶ 12 & Att. F (CAL corporate records), ¶ 91 & Att. S (CAL corporate records produced to JPMorgan Chase Bank).

<sup>56</sup> See *id.* at ¶ 28 & Att. L (Form 1093 for P.O. Box 3025, Alpharetta, Georgia). Both Clinacall and Lamborn’s wife are authorized to receive mail at this box. See *id.* The P.O. Box address also appears on Defendants’ Clinacall website. See *id.* at ¶ 109 & Att. X at p. 15 (Clinacall website printout).

<sup>57</sup> See *id.* at ¶ 79 & Att. R (SunTrust Bank signature card for CAL account), ¶ 92 & Att. T (JPMorgan Chase Bank signature card and other documents for CAL account).

<sup>58</sup> See *id.* at ¶¶ 80-83, 85.

<sup>59</sup> See *id.* at ¶ 86. Of the 432 consumer demand drafts deposited into this account, 118 were returned. Lamborn wrote just 20 refund checks from the account. See *id.* at ¶¶ 87-88.

<sup>60</sup> See *id.* at ¶ 95. Both CAL and Lamborn personally also have received transfers from Park 295 Corp. See *id.* at ¶¶ 94, 100, 106. See also PX 2 Wolfe Dec. ¶ 28 (three wire transfers totaling over \$6,000 were made from Park 295 Corp. to CAL; five wire transfers totaling over \$5,900 also were made to what appears to be a personal account in the name of Charles and Deborah Lamborn).

**Québec Inc.** (“9210-7838”), a Canadian corporation owned and controlled by Defendant **Fawaz Sebai**, also known as Frank Sebag (“Sebai”).<sup>61</sup>

Both 9262-2182’s and 9210-7838’s Canadian corporate bank accounts received numerous and sizeable wire transfers from Park 295 Corp.’s account that are directly traceable to the profits generated by this scheme while Defendants were operating as AFD Medical Advisors.<sup>62</sup> 9262-2182’s Canadian corporate bank accounts also received transfers directly from one of CAL’s accounts that are directly traceable to the profits generated by this scheme while Defendants were operating as Clinacall.<sup>63</sup>

#### IV. ARGUMENT

This deceptive conduct violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and multiple provisions of the TSR, 16 C.F.R. Part 310. To prevent further injury to innocent consumers, the FTC asks that the Court issue *ex parte* its proposed TRO. That order would enjoin Defendants from engaging in illegal conduct, freeze their assets, and prohibit them from dissipating or destroying assets or documents. The Court has full authority to enter the requested relief, which is strongly supported by the evidence. Courts in this district have repeatedly granted similar TROs in FTC actions.<sup>64</sup>

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<sup>61</sup> See PX 1 Menjivar Dec. ¶¶ 13-15 & Atts. G (Canadian corporate record for 9210-7838), H (Canadian corporate record for 9262-2182). Sebai is 9210-7838’s president, secretary, and treasurer. Scebbba is 9262-2182’s president, secretary, and administrator. See *id.*

<sup>62</sup> See *id.* at ¶¶ 99, 101-102; PX 2 Wolfe Dec. ¶ 28 (seven wire transfers totaling \$77,254.92 from Park 295 Corp. account to 9210-7838; thirteen wire transfers totaling \$102,855.74 from Park 295 Corp. account to 9262-2182).

<sup>63</sup> See PX 1 Menjivar Dec. ¶ 95 (transfers from CAL account to 9262-2182 totaling \$43,588.57). In April 2013, the CAL account also received a transfer from 9262-2182 for \$1,840.00. See *id.* at ¶ 96.

<sup>64</sup> See, e.g., *FTC v. Freedom Cos. Mktg., Inc.*, No. 12 C 05743 (N.D. Ill. July 23, 2012) (Shadur, J.) (*ex parte* TRO with asset freeze); *FTC v. Apogee One Enters. LLC*, No. 12 C 588 (N.D. Ill. Jan. 30, 2012) (Kennelly, J.) (same); *FTC v. Am. Credit Crunchers, Inc.*, No. 12 C 1028 (N.D. Ill. Feb. 14,

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

The FTC Act provides that “in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction.” 15 U.S.C. § 53(b). Once the FTC invokes the federal court’s equitable powers, the full breadth of the court’s authority is available, including the power to grant such ancillary final relief as rescission of contracts and restitution. *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir. 1989). The court may also enter a temporary restraining order, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief. *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1026 (7th Cir. 1988); *see also Amy Travel*, 875 F.2d at 571. Such ancillary relief may include an asset freeze to preserve assets for eventual restitution to victimized consumers. *World Travel*, 861 F.2d at 1031. Injunctive relief is appropriate even if a defendant has ceased its illegal activities if there is “cognizable danger of recurrent violation,” *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), and the commission of past illegal conduct is “highly suggestive of the likelihood of future violations.” *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979). *See also FTC v. Direct Mktg. Concepts, Inc.*, 648 F. Supp. 2d 202, 212 (D. Mass. 2009); *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1017 (N.D. Ind. 2000); *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 536 (S.D.N.Y. 2000).

**B. A Temporary Restraining Order is Appropriate and Necessary**

To grant preliminary injunctive relief in an FTC Act case, the district court must: (1)

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2012) (Guzman, J.) (same); *FTC v. Yellow Page Mktg., B.V., et al.*, No. 11 C 05035 (N.D. Ill. July 26, 2011) (Leinenweber, J.) (same); *FTC v. Am. Tax Relief LLC, et al.*, No. 10 C 6123 (N.D. Ill. Sept. 24, 2010) (Kocoras, J.) (*ex parte* TRO with asset freeze and appointment of a receiver); *FTC v. Asia Pacific Telecom, Inc., et al.*, No. 10 C 3168 (N.D. Ill. May 25, 2010) (Hart, J.) (same); *FTC v. API Trade, LLC, et al.*, No. 10 C 1543 (N.D. Ill. March 10, 2010) (Guzman, J.) (*ex parte* TRO with asset freeze); *FTC v. 2145183 Ontario Inc., et al.*, No. 09 C 7423 (N.D. Ill. Nov. 30, 2009) (Grady, J.) (same).

determine the likelihood that the Commission will ultimately succeed on the merits, and (2) balance the equities. *World Travel*, 861 F.2d at 1029. Under this “public interest” test, “it is not necessary for the FTC to demonstrate irreparable injury.” *Id.* When the court balances the equities, the public interest “must receive far greater weight” than any private concerns. *Id.*

**C. The Evidence Demonstrates an Overwhelming Likelihood that the FTC Will Prevail on the Merits**

**1. Defendants are Violating the FTC Act**

There is no question that Defendants’ activities qualify as deceptive acts or practices under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances. *See FTC v. Bay Area Bus. Council*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. World Media Brokers*, 415 F.3d 758, 763 (7th Cir. 2005); *FTC v. QT, Inc.*, 448 F. Supp. 2d 908, 957 (N.D. Ill. 2006). The materiality requirement is satisfied if the misrepresentation or omission involves information that is likely to affect a consumer’s choice of, or conduct regarding, a product or service. *See Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992), *cert. denied*, 507 U.S. 909 (1993). In deciding whether particular statements are deceptive, courts must look to the “overall net impression” of consumers. *See id.*

Defendants have violated the FTC Act by claiming that they are calling from, calling on behalf of, or are otherwise affiliated with, a government program, such as Medicare or Social Security, or the consumer’s medical insurance provider when, in fact, they are not. As demonstrated by the numerous consumer declarations submitted by the FTC, this misrepresentation is a central aspect of Defendants’ fraudulent sales pitch. Consumers solicited by Defendants reasonably relied on the misrepresentation when deciding whether to pay

Defendants' fee.<sup>65</sup> Few statements would be more central to a consumer's decision to pay a fee than being told that the caller is calling from or on behalf of a government program about the consumer's medical benefits. Consumers would not have agreed to pay had they known that Defendants, and their medical discount plan, had no affiliation with a government program or their medical insurance provider.<sup>66</sup>

Defendants also violated the FTC Act by falsely claiming that their medical discount plan would provide consumers with substantial discounts on prescription drugs. The prescription drug discount cards Defendants send to consumers do not provide the promised savings, or any savings for that matter, particularly when consumers' prescription drug costs already are covered by Medicare or private insurance.<sup>67</sup> In fact, consumers who used Defendants' prescription drug discount card found that it provided little to no benefit whatsoever.<sup>68</sup>

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<sup>65</sup>

REDACTED

<sup>66</sup> See, e.g., PX 12 L. Primeau Dec. ¶ 9 (after consumer learned Defendants' program was not affiliated with Medicare, she did not want it); PX 15 Thompson Dec. ¶ 14; PX 16 Ward Dec. ¶ 4 (consumer gave Defendants her checking account information only because she thought their program was related to Medicare).

<sup>67</sup> See, e.g., PX 4 Brown Dec. ¶ 8; PX 5 Dobishinsky Dec. ¶ 4; PX 6 Graham Dec. ¶ 4; PX 8 Lee Dec. ¶ 6; PX 9 McEvers Dec. ¶ 8; PX 10 Newson Dec. ¶ 3; PX 13 Sandberg Dec. ¶ 7; PX 14 Stanley Dec. ¶ 4; PX 15 Thompson Dec. ¶¶ 10, 14; PX 17 Waters Dec. ¶ 8.

<sup>68</sup> See, e.g., PX 20 Willis Dec. ¶ 5. Some consumers realize Defendants' prescription drug discount card is worthless to them without even trying to use it and simply throw it away. See, e.g., PX 17 Waters Dec. ¶ 8.



## **2. Defendants are Violating the Telemarketing Sales Rule**

Defendants also are violating the TSR in several ways. Calling consumers and falsely claiming to be calling from, calling on behalf of, or that they are otherwise affiliated with, a government program or the consumer's medical insurance provider violates the TSR's prohibition against misrepresenting an affiliation with, or endorsement or sponsorship by, any person or government entity. 16 C.F.R. § 310.3(a)(2)(vii). Defendants' falsehood that their medical discount plan will provide consumers with substantial discounts on prescription drugs falls squarely within the TSR's prohibition of misrepresentations concerning any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii). Defendants also have repeatedly called consumers whose telephone numbers appear on National Do Not Call Registry.<sup>69</sup> This abusive telemarketing practice is expressly prohibited by the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B). Finally, in their calls to consumers, Defendants fail to disclose truthfully, promptly, and in a clear and conspicuous manner, their identity, that the purpose of the call is to sell goods or services, and the nature of those goods and services. This abusive telemarketing practice also is expressly prohibited by the TSR. 16 C.F.R. § 310.4(d).

## **3. The Individual Defendants are Personally Liable**

An individual defendant is liable under the FTC Act when he (1) participated directly in, or had some control over, a corporation's deceptive practices, and (2) had actual or constructive

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<sup>69</sup> See, e.g., PX 1 Menjivar Dec. ¶¶ 124-128 (search of the National Do Not Call Registry of a random sample of 45 consumer telephone numbers appearing on Defendants' demand drafts returned 31 telephone numbers on the registry); PX 4 Brown Dec. ¶ 3; PX 5 Dobishinsky Dec. ¶ 4; PX 9 McEvers Dec. ¶ 3; PX 10 Newson Dec. ¶ 4; PX 14 Stanley Dec. ¶ 8; PX 19 West Dec. ¶ 9. See also PX 11 D. Primeau Dec. ¶ 2 (Missouri No Call List); PX 12 L. Primeau Dec. ¶ 2 (same); PX 16 Ward Dec. ¶ 2 (same).

knowledge<sup>70</sup> of the practices. *World Media Brokers*, 415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636. The FTC does not need to show intent to defraud. *Amy Travel*, 875 F.2d at 573-74.

The FTC is likely to succeed in showing that all four Individual Defendants are liable under this standard. The role of each Individual Defendant in this fraud is detailed in Section III above. Each Individual Defendant is an owner, officer, director, member, manager, or managing member of at least one of the Corporate Defendants. These authority positions alone establish their ability to control corporate acts and practices. *See, e.g., World Media Brokers*, 415 F.3d at 764 (corporate officer “hard-pressed to establish that he lacked authority or control over” corporate entities); *Amy Travel*, 875 F.2d at 574. The evidence also demonstrates the central roles each Individual Defendant played in this scam.

#### **D. The Equities Tip Decidedly in the Commission’s Favor**

Once the FTC has shown a likelihood of success on the merits, the Court must balance the equities, giving greater weight to the public interest than to any of Defendants’ private concerns. *World Travel*, 861 F.2d at 1029. The public equities here are compelling, as the public has a strong interest in halting the deceptive scheme, and in preserving the assets necessary to provide effective final relief to victims. *See FTC v. Sabal*, 32 F. Supp. 2d 1004, 1009 (N.D. Ill. 1998). Defendants, by contrast, have no legitimate interest in continuing to deceive consumers and persisting with conduct that violates federal law. *See id.*; *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (upholding district court finding of “no

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<sup>70</sup> The knowledge requirement is satisfied by a showing that the defendant (1) had actual knowledge of the deceptive acts or practices, (2) was recklessly indifferent to the truth or falsity of the representations, or (3) had an awareness of a high probability of fraud coupled with an intentional avoidance of the truth. *World Media Brokers*, 415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 574.



oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment.”). An injunction is required to ensure that Defendants’ scheme does not continue while the case is pending.

**E. An Asset Freeze is Necessary and Appropriate**

The relief sought by the FTC includes restitution for the victims of Defendants’ fraud. To preserve the possibility of such relief, the FTC seeks a freeze of Defendants’ assets and an immediate accounting to prevent concealment or dissipation of assets. There are U.S. bank accounts, and the freeze also would extend to the ill-gotten gains of the Individual Defendants. An asset freeze also is needed to prevent Defendants from moving their cash and other assets outside the U.S.

An asset freeze is appropriate once the Court determines that the FTC is likely to prevail on the merits and that restitution would be an appropriate final remedy. *See World Travel*, 861 F.2d at 1031 & n.9. In the words of the Seventh Circuit, the district court at that juncture has “a duty to ensure that the assets of the corporate defendants [are] available to make restitution to the injured consumers.” *Id.* at 1031. In a case such as this, where the FTC is likely to succeed in showing that corporate officers are individually liable for the payment of restitution, the freeze should extend to individual assets as well. *Id.* (affirming freeze on individual assets).<sup>71</sup>

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

To prevent Defendants from dissipating or concealing their assets, the requested TRO should be issued *ex parte*. An *ex parte* TRO is warranted where the facts show that immediate

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<sup>71</sup> This Court’s jurisdiction over foreign assets not located within its jurisdiction is well established. *United States v. First Nat’l City Bank*, 379 U.S. 378, 384 (1965) (once court has jurisdiction over party, it has authority to freeze property “whether the property be within or without the United States”).

and irreparable injury, loss, or damage will occur before the defendants can be heard in opposition. *See* Fed. R. Civ. P. 65(b). Here, as in similar FTC actions in this district where courts have granted an *ex parte* TRO (*see supra* n.64), there is a serious risk that assets and evidence stemming from the illegal activity will disappear if Defendants receive prior notice.<sup>72</sup> In this case, the blatantly deceptive nature of Defendants' scheme, the fact that they target a particularly vulnerable demographic, and the steps they take to conceal their identity and move scheme proceeds outside the U.S., all indicate there is a serious risk that Defendants will destroy documents and dissipate assets if given advance notice of the FTC's motion.

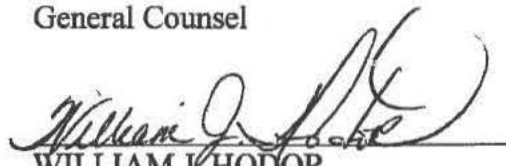
V. **CONCLUSION**

The FTC respectfully requests that the Court issue the proposed *Ex Parte* Temporary Restraining Order With Asset Freeze and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue to protect the public from further harm and to help ensure the possibility of effective final relief for defrauded consumers.

Respectfully submitted,

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<sup>72</sup> *See* Declaration and Certification of Plaintiff Federal Trade Commission's Counsel Pursuant to Fed. R. Civ. P. 65(b) and Local Rule 5.5(d) in Support of Plaintiff's *Ex Parte* Motion for Temporary Restraining Order and Motion to Seal File Temporarily (describing need for *ex parte* relief and citing cases in which defendants who learned of impending FTC action withdrew funds, destroyed vital documents, and fled the jurisdiction).

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