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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Clifton Telecard Alliance One LLC,
d/b/a Clifton Telecard Alliance and CTA,
Inc., and

Mustafa Qattous, individually and as an
officer of Clifton Telecard Alliance One
LLC, d/b/a Clifton Telecard Alliance and
CTA, Inc.,

Defendants.

CIVIL ACTION NO.

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

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I. SUMMARY

Plaintiff Federal Trade Commission (“FTC” or “Commission”) moves this Court to enjoin defendants’ deceptive business practices that have defrauded thousands of consumers across the country of tens of millions of dollars. CTA,¹ a large national distributor of prepaid calling cards (“cards”), is a key player in an industry that annually sells approximately \$4 billion worth of cards primarily to recent immigrants looking for a cheap and easy way to call friends and family in other countries. Since at least 2002, CTA has deceptively marketed cards to consumers by falsely representing that CTA cards will deliver a certain number of calling minutes and by failing to disclose or disclose adequately to consumers the restrictions on the use of their cards. In the last quarter of 2007 alone, CTA’s revenue from the sale of cards exceeded \$28 million.

CTA markets its own cards under various brand names through a vast network of downstream distributors and small retail outlets. Through its distribution network, CTA provides retail stores with cards, usually in \$2.00, \$5.00, and \$10.00 denominations. To market the cards, CTA provides retail outlets with posters that misrepresent the number of minutes CTA calling cards

¹CTA consists of one corporate defendant, Clifton Telecard Alliance One LLC, d/b/a Clifton Telecard Alliance and CTA, Inc. (“CTA”), and its principal, Defendant Mustafa Qattous.

provide to specific destinations and fail to disclose or disclose adequately fees and charges associated with the card.

Defendants' ongoing operation of this deceptive marketing scheme for six years underscores the need for immediate injunctive relief. In fact, since at least 2002, consumers have filed complaints about CTA's deceptive practices with the FTC, state Attorneys General offices, and the Better Business Bureau, and CTA has responded to the Better Business Bureau's inquiries regarding its deceptive practices.² Moreover, last year, CTA was sued by private plaintiffs in federal District Court in New Jersey for the type of deceptive conduct at issue here,³ and two of the telecommunications providers CTA uses have been sued by IDT Telecom, Inc. ("IDT")⁴ for the types of practices at issue. Yet, despite mounting consumer complaints and private litigation, CTA has continued to deceptively advertise its cards to consumers.

²See *infra* notes 61-65 and accompanying text.

³See *Adighibe v. Clifton Telecard Alliance One, LLC*, No. 07 Civ 1250 (D.N.J. March 15, 2007).

⁴IDT, a telecommunications provider, is the largest provider of prepaid calling cards in the United States. See *IDT Telecom, Inc. v. CVT Prepaid Solutions, Inc.*, No.07 Civ. 1076 (D.N.J. March 8, 2007); *IDT Telecom, Inc. v. Voice Distributors, Inc.*, No. 07 Civ. 2465 (Mass. Super. Ct., June 28, 2007).

The Commission has filed a three-count complaint charging defendants with engaging in deceptive practices in violation of Section 5 of the Federal Trade Commission Act (the “FTC Act”), 15 U.S.C. § 45(a). (*See* “Complaint for Injunctive and Other Equitable Relief,” filed concurrently with this motion). In order to prevent defendants from continuing to engage in these unlawful practices and in order to preserve the possibility of effective final relief in the form of disgorgement of defendants’ ill-gotten gains and consumer redress, the Commission seeks preliminary and permanent injunctive relief, as well as other equitable remedies, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Accordingly, in its proposed temporary restraining order (“TRO”), the Commission asks this Court to, *inter alia*, order defendants to stop engaging in their unlawful practices, appoint a temporary monitor, and require defendants to preserve their business records.⁵ (*See* “[Proposed] Temporary Restraining Order and Order to Show Cause,” filed concurrently with this motion).

⁵The FTC has filed a Complaint for Injunctive and Other Equitable Relief, and an Emergency Motion for a TRO, and supporting papers and exhibits. The FTC submits two volumes of exhibits in support of this Motion, including sworn declarations with relevant attachments. Exhibits submitted in support of the FTC’s application for a TRO are designated with the abbreviation “FTC Ex.” followed by the exhibit number. The page number of the referenced exhibit or its attachment is indicated by “p.” followed by the number. Declarations are cited by paragraph number.

II. JURISDICTION AND VENUE

This Court has subject matter jurisdiction over the FTC's claims pursuant to 15 U.S.C. §§ 45(a) and 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345. Venue in this district is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)-(c).

III. STATEMENT OF FACTS

A. THE DEFENDANTS

Defendant **Clifton Telecard Alliance One LLC, d/b/a Clifton Telecard Alliance, and CTA, Inc.** ("CTA"), is a limited liability company formed in New Jersey in 2002.⁶ CTA has its principal place of business at 8901 Kennedy Blvd. in North Bergen, New Jersey 07047.⁷ CTA promotes and sells prepaid phone cards to consumers through its web sites: www.ctacard.com and www.clifontelecard.com, a distributor network, and retail outlets.⁸

⁶FTC Ex. 1, p. 2.

⁷FTC Ex. 1, p. 2. According to Bank records, there are several other companies listed at the Kennedy Blvd. address including: International Telecommunications Group ("ITG"), a service provider for CTA cards; CTA Inc. d/b/a Phone Card Zoo; and Crest Point Telecom Group ("Crest Point"). *See* FTC Ex. 4, pp. 210, 224, 226, Att. V. Mustafa Qattous is the signatory on all of these companies' bank accounts. FTC Ex. 4, ¶ 96, pp. 210, 224, 226, Att. V.

⁸FTC Ex. 4, ¶ 7, pp. 2, 29, 45, 47, 61, Atts. A, B, C, D.

Defendant **Mustafa Qattous**, a New Jersey resident, is a director of CTA,⁹ President of CTA, Inc.,¹⁰ and a manager and Vice President of Clifton Telecard Alliance One LLC.¹¹ He is a signatory on all active CTA bank accounts.¹² He markets CTA to telecommunications providers,¹³ and writes, reviews, and approves disclosures for the cards, posters, and other advertising material.¹⁴ He also reviews consumer complaints¹⁵ and is the administrative contact for CTA's web sites.¹⁶

B. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES

Defendants have engaged in deceptive practices in the promotion, distribution, and sale of prepaid calling cards to consumers. When marketed honestly, prepaid calling cards can provide consumers a convenient and inexpensive way to call international destinations without the often costly

⁹FTC Ex. 1, p. 4.

¹⁰FTC Ex. 4, ¶ 97, p. 218, Att. V.

¹¹FTC Ex. 4, ¶ 97, pp. 206, 209, Att. V.

¹²FTC Ex. 4, ¶ 96, pp. 206, 210, 212, 214, 216, 218, 220, 222, 224, 226, 229, Att. V.

¹³*See infra* note 121.

¹⁴*See infra* notes 122-23.

¹⁵*See infra* notes 124-25.

¹⁶FTC Ex. 4, ¶ 11, p. 85, Att. E.

obligation of signing up for international service. Since at least 2002, CTA has marketed, promoted, and distributed its own brand of cards directly to consumers through its web sites, and nationally to downstream distributors and small retail outlets, such as gas stations, grocery stores, and newsstands.¹⁷ To market its cards, CTA deceptively advertises its cards through posters located in retail stores that often state CTA offers rates with “no connection fees,” and claim to provide a specific number of calling minutes to specific destinations.¹⁸ However, CTA cards do not deliver the advertised number of minutes, and defendants fail to disclose or disclose adequately fees and restrictions on the use of their cards, and fail to disclose that calls that are attempted, but not connected, will reduce the value of CTA cards.¹⁹

¹⁷CTA has registered several of its own card names with the U.S. Patent and Trademark Office including: “African Dream;” “Bachata;” “Original Gold” “African Night;” and “Hello Africa.” *See* FTC Ex. 4, ¶¶ 13, 14, pp. 99-110, 139-144, 157-169, Atts. F, G.

¹⁸CTA reaches a broad audience by distributing both national and regional cards, including but not limited to cards labeled: “CTA Africa;” “Original Gold;” “CTA World;” “African Dream;” “African Night;” “Africa Sky;” “African Beauty;” “Hello Africa;” “First Choice;” “CTA Mexico;” “Miami Gold;” “NJ Gold;” “NJ Bachata;” “TX Gold;” and “Philadelphia Gold.” *See* FTC Ex. 4, ¶¶ 6, 9, 10, pp. 35, 44, 47, 49, 50, 52, 66, 67, Atts. A, C, D.

¹⁹Although CTA contracts with telecommunications providers to provide the underlying telecommunications service, CTA is responsible for the advertising, marketing, and promotion of CTA cards, as discussed more fully in Section III.B.1. *See infra* notes 20-36 and accompanying text.

1. CTA's Deceptive Marketing Materials and Disclosures

CTA deceptively promotes and markets its own brand of cards in order to sell as many cards as possible to consumers nationwide.²⁰ CTA provides its cards and corresponding posters to its distributors and retailers to be posted at the point of sale.²¹ The posters are intended to be placed on the walls or in the windows of retail establishments so that consumers who want to purchase a CTA card will see the advertised number of minutes posted for the particular country they wish to call.²²

CTA contracts with Allstate Printing and Graphics to print its cards and posters.²³ A typical CTA poster includes the name of the card (e.g., "Original

²⁰The cards that CTA promotes are sold in small denominations. To protect its market share, CTA aggressively markets its cards. In one company email communication from defendant Qattous to a telecommunications provider, Qattous writes: "I am making a very big push here and by me flooding the market the distributors will have to carry the product." See FTC Ex. 4, ¶ 110, p. 240, Att. AA.

²¹See FTC Ex. 3, ¶ 7, p. 2.

²²See FTC Ex. 3, ¶ 7, p. 2. It is not clear how frequently CTA changes its posters, but the available evidence suggests that CTA updates them infrequently. In one company email defendant Qattous sent to a telecommunications provider, he stated, "for the past 4 years we did not do anything for this card. We don't even have a new poster for it" FTC Ex. 4, ¶ 110, p. 240, Att. AA. This practice of failing to update posters is particularly troublesome because the posters are the only way for consumers to learn prior to purchasing the card how many minutes they will receive when purchasing a CTA card.

²³FTC Ex. 4, ¶¶ 110-11, p. 242, Att. AA.

Gold”), the name “CTA,” the URL of CTA’s web site, the phrase “No Connection Fee,” and the number of minutes consumers will receive based on the denomination of the card and the country and/or city the consumer chooses to call.²⁴ The posters also prominently advertise the number of minutes available to certain countries with text captions that appear to be 30 point font.²⁵ In a table below the text captions, the names of all advertised countries and the number of minutes allegedly available to each country are listed in approximately 9.6 point font on the poster.²⁶ A customer who sees the poster will learn that he or she can purchase a \$2.00 CTA “Original Gold” card and receive 28 minutes to call Gambia, for example.²⁷

The bottom of the poster contains approximately ten lines of vague disclosures of fees and charges in approximately 5.25 point font stating in relevant part:²⁸

Call time is deducted in three minute increments to certain destinations. Service fees may apply. Calls placed to mobile telephones may be billed at a higher rate. When using a toll free

²⁴FTC Ex. 3, ¶ 7, p. 2.

²⁵FTC Ex. 4, ¶ 107.

²⁶FTC Ex. 4, ¶ 108, pp. 236-37, Att. Y.

²⁷FTC Ex. 4, ¶ 106, p. 232, Att. X.

²⁸FTC Ex. 4, ¶ 108, pp. 238-39, Att. Z.

number from a pay phone a \$0.65 per call surcharge will apply. Application of surcharges and fees may have an effect of reducing total minutes on card. Maintenance fees may apply. This card has no cash value and is non-refundable. Prices and fees are subject to change without notice.²⁹

Company emails authored by and sent to defendant Qattous indicate that the disclosures on the posters and the cards (as described below) are written by and agreed upon by both CTA and its telecommunications provider.³⁰

CTA cards are no better than its posters in informing consumers about fees and charges. CTA's cards typically come in two parts. The top portion is a piece of paper, often the size of a credit card, that says on the front, "CTA," the name of the particular card, (e.g., "African Dream"), the value of the card, the phrase, "No Connection Fee," and the phrase, "Buy online www.CTACard.com."³¹ The back of the top portion repeats this same information and contains at least 10 lines of

²⁹FTC Ex. 4, ¶ 106, p. 233, Att. X.

³⁰For example, in one email authored by defendant Qattous to a telecommunications provider which includes disclosure language for a CTA card, Qattous writes: "I made this ingredient for the cards[.] I think this will protect us more and since there is not even 1% of the customers [who] look at it [,] its [sic] good to have more, give me your feed back." *See* FTC Ex. 4, ¶ 110, p. 243, Att. AA; *see also infra* note 123.

³¹FTC Ex. 3, p. 37, Att. F.

disclosures regarding fees and charges, and in font sizes that range from two to four points,³² that state in relevant part:

By using this card, you agree to the following: All rates and fees vary and are subject to change without notice. Rates are higher for international cellular Calls are billed in three to six minute increments. A post call fee **between one cent and two dollars and an additional surcharge of twenty percent may apply** after each call depending upon length and duration of a call. All calls made from a payphone are subject to 99¢ charge. A 49¢ weekly fee charge applies within 24 hours of first use. Service fees may apply. Application of surcharges and fees will have the effect of reducing total minutes actually received on the card from the minutes announced. Advertised and announced minutes are based on per-minute rates before fees and surcharges are applied. (emphasis added).³³

According to this disclosure, a consumer who purchases a \$2.00 card could be charged a \$2.00 fee after the first call, thereby diminishing the card's value to zero. Moreover, many of the so-called fees that "may apply" are not fixed for a certain amount and are "subject to change without notice." Thus, there is no way for a consumer to determine which fees apply, when they apply, or by how much the value of the card will be reduced.

³²The font sizes for the disclosures on the cards vary depending on the card, but none that we have seen is larger than four point font and some are as minuscule as two point font. See FTC Ex. 4, ¶ 29, pp. 7, 172-73, Atts. J, K; FTC Ex. 4, ¶ 45, pp. 11, 175-76, Atts. M, N.

³³FTC Ex. 3, pp. 39, 40, Atts. H, I.

The bottom portion of the card is frequently the size of a credit card and it separates from the top portion by a perforation. This is the actual “calling card.” The front of the card says “CTA,” the name of the particular card (e.g., “African Night”), the value of the card, and the phrase, “No Connection Fee.” The back of the card includes a scratch off area which hides the Personal Identification Number (“PIN”), toll-free access numbers, a customer service number, the telecommunications provider’s name,³⁴ and approximately four lines containing disclosures of fees and charges in font sizes that range from two to four points, and state in relevant part:³⁵

When using a toll free number from a payphone, a 99¢ call surcharge will apply. A 49¢ weekly fee charge will be assessed within 24 hours of the first call. Calls placed to a mobile telephone may be billed at a higher rate. Service fees may apply . . . Prices and fees are subject to change without notice. Card expires 3 months after first use. Minute information is based on entire card being used in ONE single call. For more details, refer to full disclaimer printed on top of the card.³⁶

The disclosures on the bottom of the card are just as inadequate as those provided on the top of the card. Consumers are still left not knowing which fees apply and how the fees will affect the value of their card. In sum, the disclosures that CTA

³⁴See Section II.B.3.

³⁵As noted above, the font sizes of the disclosures vary depending on the CTA card at issue. *See supra* note 32.

³⁶FTC Ex. 3, pp. 39, 40, Atts. H, I.

provides on its cards about fees are confusing, vague, and nearly impossible to read, which essentially renders them meaningless.

2. Using CTA's Cards

To use a CTA card, a consumer first dials an access number designated on the back of the card.³⁷ A pre-recorded message prompts the consumer to enter the PIN found on the back of the card.³⁸ Next, the consumer typically hears a voice response-generated statement (“voice prompt”) of the monetary value of the card.³⁹ Then, the consumer enters the number to be called and receives a voice prompt of the number of minutes of call time the consumer will have to the specific number dialed.⁴⁰ If the consumer uses all of a card's minutes in a single call, the caller typically receives a warning when there is one minute of call time remaining. The call is cut off once the card has no value left.⁴¹

a. Consumers' Experience Using CTA's Cards

Consumers who use CTA's cards often: (1) do not receive the number of minutes promised in CTA's deceptive advertising; (2) receive only vague and

³⁷FTC Ex. 3, ¶ 13, p. 3.

³⁸FTC Ex. 3, ¶ 13, pp. 3-4.

³⁹FTC Ex. 3, ¶ 13, p. 4.

⁴⁰FTC Ex. 3, ¶ 13, p. 4.

⁴¹FTC Ex. 3, ¶ 14, p. 4.

minuscule disclosures about additional fees and charges; and/or (3) lose money on their cards, without notice, when they attempt to place a call that is not successfully connected.

First, CTA routinely promises minutes on its posters that consumers do not receive. Consumers have consistently complained that they receive fewer minutes than promised.⁴² For instance, declarant Eric Frempong purchased a CTA “African King” card for \$10.00 because, when he was deciding among prepaid cards to purchase, he noticed a CTA poster that advertised 55 minutes to call.⁴³ When Frempong attempted to use the CTA “African King” card, a voice prompt told him that he had 55 minutes for the call, but he did not receive the 55 minutes that were advertised on the poster and the subsequent voice prompt.⁴⁴ Rather, Frempong only received 22 of the promised 55 minutes.⁴⁵

⁴²See FTC Ex. 10 (Frempong), ¶¶ 6-8, p. 2 (stating did not receive 55 minutes advertised in poster and provided in voice prompt); FTC Ex. 14 (Zungu), ¶ 15, p. 5 (stating the CTA card did not provide the number of minutes promised); FTC Ex. 6 (Ayitou), ¶ 14, p. 3 (stating never received the number of minutes mentioned in the voice prompt); FTC Ex. 11 (Nkongolo), ¶ 8, pp. 2-3 (stating only received approximately 5 of the 15 promised minutes for a single call); FTC Ex. 8 (Belete), ¶ 14, p. 3 (stating only received 18 minutes in a single call instead of the 35 minutes advertised on the poster and provided in the voice prompt).

⁴³FTC Ex. 10 (Frempong), ¶¶ 5, 7, 14, pp. 1, 2, 4.

⁴⁴FTC Ex. 10 (Frempong), ¶¶ 6-8, p. 2.

⁴⁵FTC Ex. 10 (Frempong), ¶ 14, p. 2.

Second, as described above, CTA's disclosures about fees that will reduce the value of the card are vague, confusing, and nearly illegible in approximately four point font or less. Moreover, the disclosures are frequently written in English for a predominantly immigrant population. The FTC received many consumer complaints regarding CTA's inadequate and confusing disclosures that are difficult to read,⁴⁶ including one from a consumer who had to photocopy and enlarge the image of the card just to read it.⁴⁷ For example, declarant Nsalambi Nkongolo purchased a CTA card for \$5.00.⁴⁸ Nkongolo photocopied the top portion of the card and enlarged the fine print on the card in order to read it. Nkongolo discovered that not only were the disclosures regarding the fees hard to read, but

⁴⁶See FTC Ex. 11 (Nkongolo), ¶ 4, pp. 1-2 (stating not only were disclosures about fees hard to read, but also were very confusing and did not help to calculate charges); FTC Ex. 5 (Ababovic), ¶ 12, p. 3 (stating disclosures listing fees are confusing, difficult to understand and calculate, and difficult to read because written in small print); FTC Ex. 14 (Zungu), ¶ 14, pp. 4-5 (stating the writing explaining the fees requires a magnifying glass to read because the print is very fine); FTC Ex. 7 (Belamri), ¶ 4, p. 1 (stating fees are in very fine print and difficult to read); FTC Ex. 10 (Frempong), ¶ 17, p. 5 (stating fees are very confusing and written in a very tiny print that is difficult to read); FTC Ex. 13 (Trezevant), ¶ 13, p. 3 (stating fees are in very tiny print, difficult to read, not clearly written, and as written, prevented her from calculating fees) .

⁴⁷See FTC Ex. 11 (Nkongolo), ¶ 4, pp. 1-2.

⁴⁸FTC Ex. 11 (Nkongolo), ¶ 3, p. 1.

that they were also confusing and she did not understand how to calculate the applicable fees.⁴⁹

Finally, although CTA sells its cards for certain denominations and makes representations regarding delivering a certain number of minutes for a specified amount of money, it does not disclose, on either its posters or cards, that consumers will be charged even when the CTA card fails to connect a telephone call. In fact, many consumers have complained that they are frequently unable to connect to their destination when using CTA cards.⁵⁰ Instead of having their calls connected, consumers hear a fast busy signal⁵¹ or complete silence⁵² or the phone simply rings.⁵³ In two instances, consumers were told that the destination number

⁴⁹FTC Ex. 11 (Nkongolo), ¶ 4, pp. 1-2.

⁵⁰FTC Ex. 6 (Aytou), ¶¶ 6, 11, p. 2; FTC Ex. 8 (Belete), ¶¶ 8, 10, p. 2; FTC Ex. 12 (Taylor), ¶¶ 5, 10, pp. 1-2; FTC Ex. 11 (Nkongolo), ¶ 7, p. 2; FTC Ex. 5 (Ababovic), ¶¶ 7, 11, p. 2; FTC Ex. 10 (Frempong), ¶¶ 9, 10, 13, pp. 2-3; FTC Ex. 7 (Belamri), ¶¶ 6, 8, 9, p. 2.

⁵¹FTC Ex. 13 (Trezevant), ¶¶ 7, 8, p. 2.

⁵²FTC Ex. 5 (Ababovic), ¶¶ 7, 11, p. 2; FTC Ex. 10 (Frempong), ¶¶ 9, 10, pp. 2-3; FTC Ex. 8 (Belete), ¶¶ 8, 10, p. 2.

⁵³FTC Ex. 7 (Belamri), ¶¶ 6, 8, p. 2; FTC Ex. 11 (Nkongolo), ¶ 7, p. 2; FTC Ex. 8 (Belete), ¶ 10, p. 2; FTC Ex. 6 (Aytou), ¶¶ 6, 11, p. 2.

had been temporarily disconnected, was unable to receive calls at the time, or was not in service when in fact, the number was still operable.⁵⁴

Consumers who hang up and try to call again hear a voice prompt informing them that they have less money on their card.⁵⁵ Consumers also have complained that while they cannot connect using the CTA cards (and lose money on those cards), they can connect using other means.⁵⁶ Frequently, consumers will deplete the balance of their cards without ever connecting to their destination telephone numbers.⁵⁷

Many consumers have tried to call the customer service telephone number listed on the back of CTA's cards. The telephone number varies from card to card depending on which service provider is used for the particular card. However, the results are typically the same: the customer service representatives place the

⁵⁴FTC Ex. 12 (Taylor), ¶¶ 5, 10, pp. 1-2; FTC Ex. 9 (Burns), ¶¶ 5, 6, 9, pp. 1-3.

⁵⁵FTC Ex. 6 (Aytou), ¶¶ 7, 11, pp. 2-3; FTC Ex. 8 (Belete), ¶ 9, 10, p. 2; FTC Ex. 12 (Taylor), ¶¶ 6, 7, p. 2; FTC Ex. 11 (Nkongolo), ¶ 7, p. 2; FTC Ex. 5 (Ababovic), ¶¶ 6, 8, 11, pp. 2-3; FTC Ex. 10 (Frempong), ¶¶ 10, 12, 13, p. 3; FTC Ex. 7 (Belamri), ¶¶ 7, 9, p. 2; FTC Ex. 13 (Trezevant), ¶ 8, p. 2; FTC Ex. 9 (Burns), ¶¶ 6, 7, 9, pp. 2-3.

⁵⁶FTC Ex. 8 (Belete), ¶ 11, pp. 2-3; FTC Ex. 14 (Zungu), ¶ 13, p. 4.

⁵⁷FTC Ex. 13 (Trezevant), ¶¶ 11, 12, p. 3; FTC Ex. 11 (Nkongolo), ¶ 7, p. 2; FTC Ex. 6 (Aytou), ¶ 11, pp. 2-3; FTC Ex. 7 (Belamri), ¶ 15, p. 3.

consumer on hold for extended periods of time,⁵⁸ hang up on the consumer,⁵⁹ or are generally unhelpful.⁶⁰ Consumers are dissuaded from even calling customer service knowing that they may have to wait for long periods of time to dispute a card that may be valued at \$2.00.

In response to CTA's deceptive marketing of its cards, consumers have filed complaints with the FTC, state Attorneys General offices, and the Better Business Bureau. CTA has responded to the Better Business Bureau's inquiries regarding these practices since at least 2005.⁶¹ CTA has provided wholly inadequate responses to consumer complaints about being charged for unconnected calls or failing to receive the minutes promised and being disconnected during a call. For example, one consumer complained that the balance on her CTA card was reduced when she attempted to place a cell phone call that was never connected. CTA answered her complaint by referencing the disclosures on the back of the card and providing the statement: "We are not responsible for cell phones."⁶² In other

⁵⁸FTC Ex. 10 (Frempong), ¶ 16, pp. 4-5; FTC Ex. 11 (Nkongolo), ¶ 11, p. 3.

⁵⁹FTC Ex. 7 (Belamri), ¶ 15, p. 3; FTC Ex. 12 (Taylor), ¶¶ 13, 19, pp. 3-4; FTC Ex. 9 (Burns), ¶ 10, p. 3.

⁶⁰FTC Ex. 14 (Zungu), ¶ 12, p. 4; FTC Ex. 8 (Belete), ¶ 12, p. 3.

⁶¹See FTC Ex. 2, ¶ 3 pp. 14, 17, 19, 21, 23, 25, 28, 30, 33, 36, 40, 43, 45, 47, 50, 52, 55, 58, 60, 63, 66, 73, 75.

⁶²FTC Ex. 2, p. 30. For similar responses, see FTC Ex. 2, pp. 36, 40, 43.

instances in which consumers have complained about failing to receive the promised minutes, being disconnected during a call, or having the value of their card depleted, CTA has routinely responded with unresponsive statements such as: “We are not responsible when [a consumer] gets disconnected from [the] phone line”⁶³ and “[T]his card is meant to be used for a one time phone call.”⁶⁴ CTA, however, has offered some consumers complimentary CTA cards based on their complaints.⁶⁵ Yet, despite these complaints and being sued in federal district court for the same type of deceptive conduct at issue here, CTA has not fixed its practices and continues to deceptively advertise its cards.

b. The Commission’s Testing of CTA Cards

The FTC’s testing of CTA cards has confirmed that in numerous instances CTA cards do not deliver the advertised or prompted minutes.⁶⁶ We have tested 16

⁶³FTC Ex. 2, pp. 19, 28, 33, 50, 52.

⁶⁴FTC Ex. 2, pp. 17, 19, 30, 33, 40, 50, 52.

⁶⁵FTC Ex. 2, pp. 17, 19, 28, 40, 50, 55.

⁶⁶The FTC’s investigators conducted these tests by completing a single call with a CTA card from a landline located in the United States to a landline located in one of the advertised international destinations. *See* FTC Ex. 3, ¶ 13, pp. 3-4; FTC Ex. 4, ¶¶ 17, 19, p. 5. Depleting a card in a single call from and to a landline is the most conservative way to measure how many minutes of call time a card provides. Additional calls, calling from and to a mobile phone, and the passage of time often results in fees being assessed and a reduction in the value of the card.

CTA cards that were purchased at retail outlets.⁶⁷ Overall, the worst performing card we tested delivered 25.6% of the advertised minutes and the best performing card we tested delivered 67.5% of the advertised minutes.⁶⁸ Notably, the only CTA cards the FTC tested that delivered 100% of the advertised minutes were two that we purchased on CTA's web site.⁶⁹

To offer two specific examples, our investigator tested CTA's \$2.00 "African Night" card which advertised 30 minutes to Egypt on a CTA poster.⁷⁰ After our investigator entered the PIN and the destination telephone number, the voice prompt said: "You have 30 minutes before applicable service fees."⁷¹ Our investigator actually received 10 of the promised 30 minutes or 33.3 % of the

⁶⁷FTC Ex. 4, ¶¶ 15, 57, p. 4, 14.

⁶⁸FTC Ex. 4, ¶ 58, p. 14.

⁶⁹FTC Ex. 4, ¶¶ 73-75, 78-80, pp. 18, 19-20. In addition to being the only cards we tested that we purchased from the Internet, these are the only two cards we tested that use STi Prepaid ("STi") as the telecommunications provider. Leucadia, another telecommunications provider, acquired STi in early 2007. According to email communications between STi and CTA, Leucadia required STi to change its voice prompts to state the cards it services will deliver 100% of the announced minutes, and in fact deliver those minutes. *See* FTC Ex. 4, ¶ 110, pp. 245-48, Att. AA. Moreover, STi is a defendant in the IDT litigation pending in New Jersey. *See supra* note 4.

⁷⁰FTC Ex. 3, ¶ 44, pp. 10, 38, Att. G.

⁷¹FTC Ex. 3, ¶ 47, p. 11.

advertised minutes in a single call from and to a landline.⁷² Another FTC investigator tested CTA's \$2.50 "Africa Sky" card which advertised 75 minutes to Ghana on a CTA poster.⁷³ After our investigator entered the PIN and the destination telephone number, the voice prompt said, "you have 1 hour and 15 minutes [75 minutes] before applicable service fees."⁷⁴ Our investigator actually received 43 of the promised 75 minutes or 57.3 % of the advertised minutes in a single call from and to a landline.⁷⁵ None of the cards our investigators tested provided a voice prompt in which the number of minutes prompted explicitly indicated the applicable fees.⁷⁶

c. Third-Party Testing of CTA's Cards

Third-party testing of CTA's cards corroborates the Commission's test results that CTA cards do not deliver the advertised or prompted minutes. The Commission contracted with a consulting firm to conduct independent testing of CTA cards.⁷⁷ The contractor completed tests of 30 CTA cards valued at \$2.00 and

⁷²FTC Ex. 3, ¶ 49, p. 11.

⁷³FTC Ex. 4, ¶ 26, pp. 7, 171, Att. I.

⁷⁴FTC Ex. 4, ¶ 30, p. 8.

⁷⁵FTC Ex. 4, ¶ 39, p. 10.

⁷⁶FTC Ex. 3, ¶ 22, p. 6; FTC Ex. 4, ¶ 30, p. 8.

⁷⁷FTC Ex. 16, ¶ 3, p. 2.

\$2.50.⁷⁸ Twenty-five of these tests were single call tests⁷⁹ from a landline located in the United States to a landline located in one of the following international destinations: the Dominican Republic, Ghana, Guatemala, Honduras, and Nigeria.⁸⁰

Four of the tests were multiple calls tests⁸¹ from a landline located in the United States to a landline located in one of the following international destinations: the Dominican Republic, Mexico, and Nigeria.⁸² Not a single one of the 30 cards tested by the contractor delivered 100% of the minutes advertised for the tested destinations.⁸³

In regard to single call testing, the worst performing CTA card delivered 15% of the minutes advertised on CTA's poster for the specific country.⁸⁴ For this particular test using CTA's "African Beauty" card, CTA advertised 55 minutes to

⁷⁸FTC Ex. 16, ¶ 8, pp. 3, 18-23.

⁷⁹Single-call tests are tests in which all of the minutes available on a card were used in a single call. *See supra* note 66.

⁸⁰FTC Ex. 16, ¶ 3, p. 2, 18-20, Att. D.

⁸¹Multiple-call tests are tests in which the minutes available on a card are depleted over several calls.

⁸²FTC Ex. 16, ¶ 3, pp. 2, 21-23, Att. D.

⁸³FTC Ex. 16, ¶ 8, pp. 3, 18-23.

⁸⁴FTC Ex. 16, ¶ 8, pp. 3, 18-20.

Ghana on the card's corresponding poster. The card, however, delivered only eight of the promised 55 minutes.⁸⁵ The best performing CTA card delivered 76% of the minutes advertised on CTA's poster for the particular country.⁸⁶ This test was of CTA's "TV" card which advertised 105 minutes to the Dominican Republic on the card's corresponding poster. During the test, the CTA card delivered 80 of the advertised 105 minutes.⁸⁷

When multiple call testing of CTA cards was performed, the percentage of advertised minutes versus delivered minutes decreased substantially. The percentage of delivered minutes compared to advertised minutes for multiple call testing ranged from 8% to 29%.⁸⁸ For example, CTA advertises 500 minutes to Mexico with its \$2.50 "Holiday" card.⁸⁹ On February 15, 2008, the contractor called a landline in Mexico City using the particular card and a voice prompt announced that the contractor had 8 hours and 20 minutes for the call.⁹⁰ The contractor intentionally concluded the call after 20 minutes. When the contractor

⁸⁵FTC Ex. 16, ¶ 8, pp. 3, 20.

⁸⁶FTC Ex. 16, ¶ 8, pp. 3, 18-20.

⁸⁷FTC Ex. 16, ¶ 8, pp. 3, 19.

⁸⁸FTC Ex. 16, ¶ 8, pp. 3, 21-23.

⁸⁹FTC Ex. 16, ¶ 8, pp. 3, 22.

⁹⁰FTC Ex. 16, ¶ 8, pp. 3, 22.

placed another call to Mexico city using the same CTA card, the voice prompt announced that the contractor had 4 hours and 14 minutes for the call.⁹¹ This time, the call was simply disconnected after 19 minutes. When the contractor attempted to place a third call to Mexico City using the same CTA card, a voice prompt announced that the card did not have sufficient funds to make the call.⁹² Overall, the CTA card delivered 39 of the 500 promised minutes or 8% of the minutes advertised.⁹³

In addition, the results show that the caller erroneously received one minute warnings during two of the four tests, and was disconnected from the calls when minutes remained on the CTA cards.⁹⁴ The caller discovered that additional minutes were still available on the two CTA cards once he placed calls to confirm

⁹¹FTC Ex. 16, ¶ 8, pp. 3, 22.

⁹²FTC Ex. 16, ¶ 8, pp. 3, 22.

⁹³FTC Ex. 16, ¶ 8, pp. 3, 22.

⁹⁴FTC Ex. 16, ¶ 8, pp. 3, 21-22. In the multiple call test to Mexico City on February 14, 2008, using a \$2.00 CTA card that advertised 400 minutes to the destination on its corresponding poster, the caller heard one minute warnings on four separate occasions before the value of the card was depleted. This particular CTA card delivered 11% or 42 of the 400 minutes advertised on CTA's poster. In another multiple call test to Santiago, Dominican Republic using a \$2.00 CTA card that advertised 105 minutes to the destination on its corresponding poster, the caller heard one minute warnings on three separate occasions before the value of the card was depleted. The CTA card in question delivered 27% or 28 of the 105 minutes advertised on CTA's poster.

that the cards' value had been depleted. Instead of hearing voice prompts that the cards had insufficient funds to make a call, the caller heard voice prompts announcing the number of minutes available for each call. This practice of announcing a one minute warning and subsequently disconnecting a call when value is still left on a CTA card is particularly misleading because many consumers will likely not attempt to use the card again.

3. CTA's Relationship with the Telecommunications Providers

CTA is not a telecommunications provider.⁹⁵ Instead, CTA contracts with various telecommunications providers, including STi,⁹⁶ ClearTel, International Telecommunications Group ("ITG") and Crest Point Telecom Group ("Crest Point"), to provide telecommunication services for its cards.⁹⁷ The actual calling card discloses which telecommunications provider delivers the underlying telecommunications service for the particular card.⁹⁸ Two of the telecommunications providers that CTA uses, ITG and Crest Point, appear to be

⁹⁵FTC Ex. 4, ¶ 66, p. 16, Att. Q.

⁹⁶FTC Ex. 4, ¶ 83, p. 20.

⁹⁷FTC Ex. 4, ¶¶ 63-65, pp. 15-16, Att. P.

⁹⁸FTC Ex. 4, ¶ 59, p. 15-16.

owned and/or operated by defendant Qattous's relatives, Wael and Moh'd.⁹⁹ Both of these companies are listed on several of CTA's own brand of cards.¹⁰⁰ Although CTA is not the telecommunications provider, CTA is still responsible for its deceptive promotion, distribution, and sale of cards to consumers. As explained above, CTA arranges for its cards and posters to be printed and distributed.¹⁰¹ Moreover, CTA is also involved in the setting of rates and the creation of disclosures.¹⁰²

C. CONSUMER INJURY

As described above, CTA's deceptive business practices have injured thousands of consumers across the country¹⁰³ and caused them to lose tens of millions of dollars. Clifton Telecard Alliance One LLC's gross revenue in 2007

⁹⁹FTC Ex. 4, ¶¶ 64, 97, p. 16, 23, 210-17, Atts. O, P, V. Crest Point, unlike ITG, is registered as a telecommunications provider with the FCC. Wael Qattous is listed as the CEO of Crest Point on the company's FCC registration. Moh'd Qattous is listed as the President of ITG on corporate bank accounts and on the company's Articles of Incorporation. *See* FTC Ex. 1, p. 8.

¹⁰⁰FTC Ex. 4, ¶¶ 63-64, pp. 15-16.

¹⁰¹*See supra* notes 20-23 and accompanying text.

¹⁰²*See infra* notes 122-123.

¹⁰³FedEx shipping records for CTA from November 2006 to November 2007 show that the FedEx processed an average of 51 packages a day on behalf of CTA. A random review of FedEx invoice distribution for 2005 shows that CTA ships to approximately 130 unique recipients located in at least 30 different states. *See* FTC Ex. 4, ¶¶ 91-94, pp. 22-23, Att. U.

ranged from seven to eleven million dollars per month,¹⁰⁴ and CTA deposited over \$28 million into its bank account during the last quarter of 2007 alone.¹⁰⁵

IV. THE LAW SUPPORTS ENTRY OF AN INJUNCTION AND APPOINTMENT OF A MONITOR

Defendants' actions violate Section 5 of the FTC Act, 15 U.S.C. § 45. To prevent further injury to consumers, the Commission seeks entry of an order enjoining defendants from their illegal practices and an order to show cause why a preliminary injunction should not issue. In addition, the FTC seeks additional relief, including the appointment of a temporary monitor to ensure compliance with any order entered by the Court. In its three-count complaint, the Commission has alleged that defendants have engaged and continue to engage in acts or practices that are "deceptive," and therefore violate Section 5 of the FTC Act. (*See* "Complaint for Injunctive and Other Equitable Relief," filed concurrently). As set forth in detail below, and supported by the Commission's two volumes of exhibits, this Court has the authority to grant the requested relief, the evidence demonstrates that the Commission is likely to succeed on the merits, and the equities of protecting the public support entry of a temporary restraining order and a preliminary injunction.

¹⁰⁴FTC Ex. 4, ¶ 101, p. 230, Att. W, Table 1.

¹⁰⁵FTC Ex. 4, ¶¶ 101-03, pp. 230-31, Att. W, Table 1, 2.

A. SECTION 13(b) OF THE FTC ACT AUTHORIZES THIS COURT TO GRANT THE REQUESTED RELIEF

“Section 13(b) [of the FTC Act] gives the Commission the authority to seek, and gives the district court the authority to grant, permanent injunctions,” and “[i]t is clear that, because the district court has the power to issue a permanent injunction to enjoin acts or practices that violate the law enforced by the Commission, it also has authority to grant whatever preliminary injunctions are justified by the usual equitable standards.” *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111-13 (9th Cir. 1982). This “unqualified grant of statutory authority . . . carries with it the full range of equitable remedies” *FTC v. Gem Merchandising Group*, 87 F.3d 466, 468 (11th Cir. 1996). *Accord FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431 (11th Cir. 1984) (per curiam); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir. 1989). The power of the Court pursuant to Section 13(b) is not limited to injunctive relief; rather, it includes the authority to grant any ancillary relief necessary to accomplish complete justice and preserve assets for rescission and restitution. *Singer*, 668 F.2d at 1112-14. This ancillary relief can include appointment of a receiver, asset freezes, and expedited discovery. *Id.* The exercise of this broad equitable authority is particularly appropriate where, as here, the public interest is at stake. *See Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347

(9th Cir. 1989). Federal courts in this district have granted motions for temporary restraining orders with similar ancillary relief in FTC cases.¹⁰⁶

B. ENTRY OF A TEMPORARY RESTRAINING ORDER PURSUANT TO THE FTC ACT IS PROPER IN THIS CASE

The standard for determining whether preliminary injunctive relief is appropriate in Section 13(b) cases differs from that typically applied to private litigants. To determine whether to grant a preliminary injunction under Section 13(b) of the FTC Act, “a court must: 1) determine the likelihood that the Commission will ultimately succeed on the merits, and 2) balance the equities” of private and public interest. *FTC v. World Travel Vacation Brokers*, 861 F.2d 1020, 1029 (7th Cir. 1988) (citation omitted); *In re Nat’l Credit Mgmt. Group, LLC*, 21 F. Supp. 2d 424, 438-40 (D.N.J. 1998)

It is not necessary for the Commission to show irreparable injury. Harm to the public is presumed. *World Wide Factors*, 882 F.2d at 346-47. *See FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999) (noting that Section 13(b) “places a lighter burden on the Commission than that imposed on private

¹⁰⁶Cases in which the District of New Jersey has granted the FTC such preliminary injunctive relief include: *FTC v. Sparta Chem, Inc.*, No. 96-3228 (D.N.J. Nov. 14, 2007); *FTC v. Bernard Rann, et al.*, No. 00-2792 (D.N.J. Jun. 9, 2000); *FTC v. Screen Test U.S.A., Inc.*, No. 99-2371 (D.N.J. May 24, 1999); *FTC v. Michael P. McGowan*, No. 96-3227 (D.N.J. July 1, 1996); *FTC v. Car Checkers of America, Inc.*, No. 93-623 (D.N.J. Feb. 8, 1993); *FTC v. Fax Corp. of America, Inc.*, No. 90-983 (D.N.J. March 19, 1990).

litigants by the traditional equity standard; the Commission need not show irreparable harm”) (internal citations omitted); *FTC v. Check Investors, Inc.*, Civ.A. 03-2115, 2003 U.S. Dist. LEXIS 26941, at *13 (D.N.J. July 30, 2003) (where FTC seeks injunctive relief that is authorized by statute, irreparable injury is presumed); *FTC v. Nat’l Invention Servs.*, Civ.A. 97-3459, 1997 U.S. Dist. LEXIS 16777, at *11 (D.N.J. Aug. 11, 1997) (“‘irreparable injury’ . . . [is] presumed from the fact that a federal regulatory statute has apparently been violated”); *see also In re Nat’l Credit Mgmt.*, 21 F. Supp. 2d at 439 (FTC need not show irreparable harm, but rather only must “establish [that] ‘probable cause exists . . . and that there is some reasonable likelihood of future violations,’” a standard akin to the traditional requirement of proving the “likelihood of success on the merits.”) (citations omitted).

The FTC has alleged that defendants have engaged and continue to engage in deceptive acts or practices that violate Section 5 of the FTC Act. As set forth in this memorandum and the accompanying two volumes of exhibits, the Commission has presented substantial evidence that it will ultimately succeed on the merits. Indeed, the facts presented above show that the FTC not only meets but exceeds the standard for likelihood of success on the merits. Moreover, the equities weigh heavily in favor of granting the requested preliminary relief because of the

deceptive conduct repeatedly and knowingly engaged in by defendants over the past six years. Thus, the evidence provided in Section III.B *supra* satisfies the required two-prong test.

1. The Commission Has Demonstrated a Likelihood of Success on the Merits of its Claims that CTA Has Engaged in Deception

The Commission has satisfied the first prong of the Court's analysis and demonstrated a likelihood of success in establishing that defendants have repeatedly violated Section 5(a) of the FTC Act. Section 5(a) prohibits "unfair and deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a). To establish liability for deceptive misrepresentations under Section 5(a) of the FTC Act, the Commission must establish that: (1) there was a representation; (2) the representation was likely to mislead consumers acting reasonably under the circumstances; and (3) the representation was material. *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994) (adopting standard in *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 164-65, *appeal dismissed sub nom, Koven v. FTC*, No. 84-5337 (11th Cir. 1984); *see also World Travel Vacation Brokers*, 861 F.2d at 1029.

A claim is considered material if it "involves information that is important to consumers and, hence, [is] likely to affect their choice of, or conduct regarding a product." *FTC v. Cyberspace.com, LLC*, 453 F. 3d 1196, 1201 (9th Cir. 2006) (quoting *Cliffdale Assoc., Inc.*, 103 F.T.C. at 165). Certain categories of

information are presumptively material. For example, express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service, are presumed to be material. *Thompson Medical Co., Inc.*, 104 F.T.C. 648, 816 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986). *See also FTC v. Wilcox*, 926 F. Supp. 1091, 1098 (S.D. Fla. 1995) (citation omitted); *Figgie*, 994 F.2d at 604.

As with material misrepresentations, material omissions have been long outlawed by the FTC Act. *See Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1154 (9th Cir. 1984); *P. Lorillard Co. v. FTC*, 186 F.2d 52, 58 (4th Cir. 1950) (“To tell less than the whole truth is a well known method of deception; and he who deceives by resorting to such method cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which it has been accomplished.”). In that regard, failing to disclose “the true nature of the services or product offered . . . can be a deceptive practice.” *FTC v. Febre*, 1996 U.S. Dist. LEXIS 9487, at *13 (N.D. Ill. 1996), *aff'd*, 128 F.3d 530 (7th Cir. 1997).

The FTC need not prove that the misrepresentations or omissions were done with an intent to defraud or deceive, or were made in bad faith. *See World Travel Vacation Brokers*, 861 F.2d at 1029; *see also Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976), *cert. denied*, 430 U.S. 983 (1977); *Regina Corp. v. FTC*,

322 F.2d 765, 768 (3d Cir. 1963). Nor does the Commission need to show actual reliance by consumers. *See FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 605-06 (9th Cir. 1993)(citing *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282, 1293 (D. Minn. 1985)(“Requiring proof of subjective reliance by each individual consumer would thwart effective prosecutions of large consumer redress actions and frustrate the statutory goals of [Section 13(b).]”); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991) (“the FTC need merely show that the misrepresentations or omissions were of a kind usually relied upon by reasonable and prudent persons, that they were widely disseminated, and that the injured consumers actually purchased the defendants’ product.”) (citation omitted). Further, whether material promises are expressly misleading or impliedly misleading is of no consequence to the legal analysis. *Figgie*, 994 F.2d at 604 (There is “nothing in statute or case law which protects from liability those who merely imply their deceptive claims; there is no such loophole.”).

a. CTA Fails to Deliver Advertised Minutes

There is ample evidence demonstrating that defendants have violated Section 5(a) of the FTC Act. Here, with regard to the defendants’ conduct, Count One alleges that defendants have engaged in deception by misrepresenting the number of minutes consumers will receive when using defendants’ cards.

Defendants print and distribute posters that advertise a certain number of deliverable minutes to particular countries, and these representations are undeniably false. As described in Section III.B *supra*, the consumer complaints, tests, and other evidence clearly demonstrate that CTA routinely promises a certain number of deliverable minutes on its posters and voice prompts¹⁰⁷ that CTA cards do not deliver.

The defendants' express claims regarding the number of deliverable minutes are material. "Express product claims are presumed to be material." *Pantron I Corp.*, 33 F.3d at 1095-96. Even without the presumption, these representations are clearly material, as they concern the very essence of the product – the number of minutes available – and are likely to affect consumers' decisions to purchase CTA cards. Consumers reasonably relied on these representations when deciding whether to purchase CTA's cards.¹⁰⁸ Accordingly, these misrepresentations were deceptive and violate Section 5(a) of the FTC Act.

¹⁰⁷Although CTA does not create the voice prompts, CTA is aware of them and has failed to ensure that they are accurate. *See infra* note 125 and accompanying text.

¹⁰⁸*See supra* notes 42-45.

b. CTA Fails to Disclose Adequately Fees and Charges

Not only have defendants misrepresented the number of minutes consumers will receive when using CTA cards, but they also have failed to disclose or disclose adequately fees and charges that effectively reduce the value of CTA cards, and thus, the number of minutes consumers will actually receive, as alleged in Count Two. The deceptive disclosures that CTA provides to consumers are minuscule, vague, and confusing.¹⁰⁹ Consumers who complain state that they found the disclosures difficult to understand and useless in determining applicable fees.¹¹⁰

As noted above, the font sizes of the disclosures on CTA cards range from two to four points and are nearly illegible.¹¹¹ In addition, the actual language of the disclosures does very little to inform consumers of how fees or charges affect the value of their card and the number of minutes available to call a desired destination. For example, the disclosure on the top portion of an “African Night” card states that “[a] post fee between one cent and two dollars and an additional surcharge of twenty percent may apply.” As such, it is possible for a consumer to

¹⁰⁹*See supra* note 28-29, 32-33.

¹¹⁰*See supra* notes 46-49.

¹¹¹*See supra* notes 32, 35.

purchase a \$2.00 “African Night” card, place a call for one minute, and have the remaining value of the card depleted because of fees. Moreover, even consumers who see, read, and try to understand defendants’ fees have no way to know which fees actually apply or when they apply, and it is impossible to determine the amount of the actual fee. For example, the language of the disclosure includes the words “may” and “fee between one cent and two dollars.”¹¹² Essentially, the vague and confusing nature of the disclosures render them meaningless, useless, and deceptive.

Defendants’ inadequate disclosures regarding fees and charges are material. Fees and charges affect the number of minutes consumers will actually receive to call a particular country. This information would likely affect a consumer’s choice to purchase CTA cards, and the evidence shows that consumers would not have purchased CTA cards had they known that fees would reduce the number of specified minutes advertised for a particular country.¹¹³ Accordingly, CTA’s

¹¹²*See supra* note 33 and accompanying text. Furthermore, it also does not help that the top portion of the card that contains most of the disclosures separates from the bottom portion which is the actual calling card. Consequently, a consumer who only keeps the actual calling card will not even have the disclosures.

¹¹³*See infra* note 115.

failure to disclose or disclose adequately fees and charges to consumers is deceptive and violates Section 5(a) of the FTC Act.

c. CTA Fails to Disclose that the Value of CTA Cards is Reduced For Unconnected Calls.

As alleged in Count Three, CTA has engaged in deception by failing to disclose to consumers that the value of CTA cards is reduced when a consumer attempts to place a call that is not connected. CTA represents that CTA cards are valued at a specific denomination and that the value of the card is reduced once a consumer's call is connected. Nowhere on either CTA's posters or cards does CTA disclose to consumers that CTA cards will be charged even when a CTA card fails to connect a telephone call. This deceptive practice often results in the depletion of the value of consumers' CTA cards without ever connecting consumers to their destination telephone number. In fact, consumers have complained that the value of their CTA cards has been reduced consistently with each successive call that is attempted, but not connected.¹¹⁴ Accordingly, CTA's failure to disclose to consumers that the value of their CTA cards will be reduced for unconnected calls is misleading.

The defendants' failure to disclose that minutes are deducted from a CTA card for attempted but not completed calls is material. Consumers would clearly

¹¹⁴*See supra* notes 55, 57 and accompanying text.

find this omitted information, charges that reduce the value of the card for simply attempting to make a call, material to their decision to purchase and use CTA's cards. Indeed, numerous consumers have all stated that knowledge of fees for attempting a call that is not connected would have adversely affected their decision to purchase a CTA card.¹¹⁵ Given the evidence, it is clear that consumers would not have purchased CTA cards had they known that they would lose value on the card for dialing their destination telephone number without being connected.

2. The Balance of Equities Tips Decidedly In the Commission's Favor and Supports Awarding the Requested Relief

The balance of equities tips decidedly in the Commission's favor, therefore, the second prong of the Court's analysis also supports awarding the requested relief. The public's interest in preventing consumers from being victimized by defendants' deceptive marketing far outweighs any possible interest defendants

¹¹⁵See FTC Ex. 7 (Belamri), ¶ 17 p. 4 (stating would not have purchased CTA card if knew card would be decreased in value even when a call did not go through); FTC Ex. 1 (Ababovic), ¶ 13 p. 3 (stating would not have used CTA card if knew that money would be deducted from card even when call is not connected); FTC Ex. 11 (Nkongolo), ¶ 10 p. 3 (stating would not have bought a CTA card if knew would be charged a fee when call not connected); FTC Ex. 10 (Frempong), ¶ 13, p. 4 (stating would not have bought CTA cards if knew would lose money on the cards even when calls are not connected); FTC Ex. 13 (Trezevant), ¶ 14, pp. 3-4 (stating would not have bought a CTA card if knew would be charged for trying to make a call without being connected); FTC Ex. 9 (Burns), ¶ 14, p. 4 (stating would not have purchased CTA cards if knew would be charged money even when call never reached a person).

may have in continuing to operate their business deceptively. When a court balances the hardships of the public interest against the private interest, “the public interest should receive greater weight.” *World Wide Factors*, 882 F.2d at 347 (affirming district court’s finding that “there is no oppressive hardship to defendants in requiring them to comply with the FTC Act.”). Defendants “can have no vested interest in a business activity found to be illegal.” *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972) (internal quotations and citations omitted). This preference for public equity is especially relevant in this case, where defendants’ business practices are deceptive and consumers have already lost tens of millions of dollars.

As noted above, defendants have operated this deceptive scheme since at least 2002. They have continued to deceptively market CTA cards even in the face of numerous consumer complaints, a pending civil class-action lawsuit in which CTA is the defendant, and other industry litigation regarding deceptive marketing practices.¹¹⁶ Only the entry of the requested temporary and preliminary injunctive relief will prevent defendants from continuing to deceive and harm the public during the pendency of this litigation.¹¹⁷

¹¹⁶*See supra* notes 3-4.

¹¹⁷Defendants’ past misconduct “gives rise to the inference that there is a reasonable likelihood of future violations.” *SEC v. R.J. Allen & Assoc., Inc.*, 386

C. THE INDIVIDUAL DEFENDANT IS PERSONALLY LIABLE FOR VIOLATING SECTION 5 OF THE FTC ACT AND SUBJECT TO MONETARY AND INJUNCTIVE RELIEF

The individual defendant, Mustafa Qattous, operates this scheme aimed at defrauding consumers. As such, he is personally liable and subject to injunctive and monetary relief under the FTC Act. The standard for determining whether an individual is subject to injunctive relief for the acts of the corporation is whether the individual participated directly in the acts or practices or had authority to control the company involved in the unlawful practices. *See Cyberspace*, 453 F.3d at 1202; *FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997); *Amy Travel Service*, 875 F.2d at 573; *Gem Merchandising Corp.*, 87 F.3d at 470 (citation omitted), *In re Nat'l Credit Mgmt*, 21 F.Supp.2d at 461; *Nat'l Invention Services*, 1997 U.S. Dist. LEXIS 16777, at *12-13. "Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer." *Amy Travel*, 875 F.2d at 573; *Publishing Clearing House*, 104 F.3d at 1170-71.

The standard for determining whether an individual is subject to monetary relief for the acts of the corporation is whether the individual had actual or constructive knowledge of the deception. *Publishing Clearing House*, 104 F.3d at

F. Supp. 866, 877 (S.D. Fla. 1974) (citations omitted).

1171; *Amy Travel*, 875 F.2d at 573. Constructive knowledge can be shown by demonstrating that the individual was recklessly indifferent to the truth, or had an awareness of a high probability of fraud coupled with an intentional avoidance of the truth. *Id. See also Check Investors*, 2003 U.S. Dist. LEXIS 26941, at *44-45. The Commission need not show that the individual intended to defraud consumers to establish individual liability. *Publishing Clearing House*, 104 F.3d at 1171.

Defendant Qattous's participation in the unlawful activities of the corporation exceeds the standard for individual liability because he: (1) participated directly in the unlawful acts or had the authority to control them, and (2) he knew or should have known of the unlawful conduct.

First, Qattous has the authority to control the unlawful acts and participated directly in those acts. Corporate filings identify defendant Qattous as a director of CTA, Inc.¹¹⁸ and bank records indicate that Qattous is the President of CTA, Inc., and the manager and Vice President of Clifton Telecard Alliance One LLC.¹¹⁹ He also is a signatory on all the CTA's bank accounts.¹²⁰ Therefore, defendant Qattous possesses the requisite authority to control the corporate entity.

¹¹⁸*See supra* note 9..

¹¹⁹*See supra* notes 10-11.

¹²⁰*See supra* note 12.

Moreover, defendant Qattous is an integral part of CTA's operation. He markets CTA to the telecommunications providers and has control over the advertising of CTA's cards.¹²¹ He has direct contact with those telecommunications providers and other distributors and frequently discusses the rates and/or minutes to offer consumers.¹²² In addition, he writes and/or reads and

¹²¹FTC Ex. 4, ¶ 110, p. 249, Att. AA (email from Qattous to telecommunications provider stating that he is investing around \$200,000 in advertising for radio and TV); FTC Ex. 4, ¶ 110, p. 250, Att. AA (email from Qattous to telecommunications provider requesting extension of Chulita promotion to reach goal of 3 million sales) *See also* FTC Ex. 4, ¶ 110, p. 251-52, Att. A.

¹²²FTC Ex. 4, ¶ 110, p. 253, Att. AA (email to Qattous re Original Gold rates: "Take a look at your 800 rates, very aggressive Pakistan Morocco and others..please re-push"); FTC Ex. 4, ¶ 110, p. 254, Att. A (email to Qattous stating "[y]our rates beat the crazy crazy nj, knockout nj, and some of the dollar phonecard cards"); FTC Ex. 4, ¶ 110, p. 255, Att. A (email from Qattous that attaches new rates for CTA Africa card); FTC Ex. 4, ¶ 110, p. 256, Att. A (email from Qattous regarding CTA Africa card stating that he has "attached some of the aggressive rates that are targeting African market."); FTC Ex. 4, ¶ 110, p. 257, Att. A (email to Qattous, "Look at the mexico (sic) rates. . this is our tequeiro"); FTC Ex. 4, ¶ 110, p. 258, Att A (email from telecommunications provider which states "Mostafa (sic) [Qattous] said these rates are not competitive. . he wants crazy minutes for the launch"); FTC Ex. 4, ¶ 110, p. 259, Att. A (email from Qattous to telecommunications provider discussing rates for Mundo card to "open up the market").

approves the disclosure language on the cards and posters.¹²³ Therefore, defendant Qattous' participation in the unlawful conduct is irrefutable.

Similarly, defendant Qattous' knowledge of the deceptive representations and omissions at issue is irrefutable. Indeed, the evidence includes email communications in which defendant Qattous discusses consumer complaints with the telecommunications providers,¹²⁴ and is copied on others which discuss

¹²³FTC Ex. 4, ¶ 110, p. 260, Att. A (email from telecommunications provider to defendant Qattous attaching disclosures for Original Gold and Genesis cards); FTC Ex. 4, ¶ 110, p. 261, Att. A (email to Qattous attaching CTA Africa disclosure); FTC Ex. 4, ¶ 110, p. 262, Att. A (email from Qattous stating "Please forward me the exact discloser (sic) that I need to print on the back of the CTA Africa cards."); FTC Ex. 4, ¶ 110, p. 263, Att. AA (email to Qattous regarding disclosures for CTA Africa, Original Gold, and Genesis cards and posters). In addition, defendant Qattous is involved in the review and approval of posters for CTA cards. *See* FTC Ex. 4, ¶ 110, p. 264, Att. AA (email to Qattous requesting that he "check disclosures, [and] remove no connection fee from poster"); FTC Ex. 4, ¶ 110, p. 265, Att. A (email to defendant Qattous requesting approval of Chulita poster); FTC Ex. 4, ¶ 110, p. 266, Att. A (email communication between Qattous and printing company regarding disclosures for Genesis poster); FTC Ex. 4, ¶ 110, p. 267, Att. A (email from Qattous attaching CTA Africa poster); FTC Ex. 4, ¶ 110, p. 268, Att. A (email from Qattous regarding approval of Original Gold poster).

¹²⁴In an email authored by defendant Qattous to a telecommunications provider regarding a consumer complaint, Qattous writes: "Boss We (sic) still receive some complains (sic) on the mundo card . . . whats (sic) going on we need to sell cards here not hearing (sic) to customer complains (sic). FTC Ex. 4, ¶ 110, p. 269, Att. AA.

CTA and the ongoing litigation in which CTA is a party, Qattous knew or recklessly disregarded knowledge of CTA's deceptive business practices. Qattous knew that the conduct of CTA was the type of action that a reasonably prudent person would rely, and that consumer injury resulted. Therefore, Qattous is personally liable for the deceptive acts alleged in the Complaint and subject to injunctive and monetary relief.

D. A COURT-APPOINTED MONITOR IS NECESSARY TO PREVENT ONGOING FRAUD AND PRESERVE EFFECTIVE FINAL RELIEF

As part of the permanent relief in this case, the Commission seeks restitution for consumers who have been defrauded by defendants' deceptive practices and/or disgorgement of the profits defendants received from their fraudulent scheme. To preserve the possibility of such relief, it is necessary to ensure that defendants halt their fraudulent practices and present reliable information to the Court pending final disposition of this litigation. Consistent with the Court's authority under the FTC Act and orders in similar cases, the Commission seeks an order appointing a temporary monitor for the corporate defendant.

Courts have routinely recognized that the appointment of a receiver or monitor is an appropriate equitable remedy in civil enforcement proceedings to assist in ensuring defendants' compliance with the Court's Order. *See, e.g., FTC v.*

American Nat'l Cellular, 810 F.2d 1511, 1512-14 (9th Cir. 1987); *SEC v. First Financial Group of Texas*, 645 F.2d 429, 438 (5th Cir. 1981); *In re Nat'l Credit Management Group*, 21 F.Supp. 2d at 463. The appointment of a temporary monitor is appropriate here because of defendants' repeated and ongoing misrepresentations associated with the marketing of defendants' cards for the last six years. Defendants have blatantly demonstrated that they will not change their deceptive practices even in light of mounting consumer complaints and litigation. Given the above evidence, the appointment of a temporary monitor is clearly appropriate.

A temporary monitor will help to preclude additional consumer injury by monitoring defendants' compliance with the proposed TRO and ensuring that adequate notice of this proceeding is given to employees, agents, and others who promote or participate in defendants' scheme. In addition, the temporary monitor will identify, preserve, and analyze defendants' records to identify corporate assets and determine the size and extent of the fraud.

V. CONCLUSION

Despite a civil class-action lawsuit and numerous consumer complaints, defendants have continued to deceptively advertise their cards to consumers by advertising minutes that their cards do not deliver, and by failing to disclose or disclose adequately their fees, and that consumers will be charged when calls are not connected. In order to put an immediate end to this egregious conduct, this Court should grant the FTC's Application for a TRO and other equitable relief.

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