

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

STUFFINGFORCASH.COM CORP., a Florida
corporation, AMERICAN PUBLISHING, INC.,
a Florida corporation, SOUND PUBLICATIONS,
INC., a Florida corporation, NELSON BARRERO,
individually, and as an officer of one or more of
the above companies, EDUARDO GONZALEZ,
individually, and as an officer of one or more
of the above companies, and ILEANA M.
MORALES, individually, and as an officer of
one or more of the above companies,

Defendants.

Case No.

02C 5022

JUDGE NORGLÉ

RECEIVED

JUL 16 2002

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

**MEMORANDUM SUPPORTING PLAINTIFF'S *EX PARTE* MOTION FOR
TEMPORARY RESTRAINING ORDER, OTHER EQUITABLE RELIEF, AND ORDER
TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

I. INTRODUCTION

This matter involves an "envelope stuffing" work-at-home scam that has used spam e-mail and Web sites to deceive tens of thousands of consumers out of millions of dollars. In furtherance of their scam, Defendants send e-mails that promise consumers that Defendants will pay them "\$2.00 for each envelope stuffed" and that consumers can "EARN \$720 Weekly! Stuffing Envelopes FROM HOME." Defendants' e-mails contain a link to one of Defendants' Web sites. These Web sites state: "Just when you thought it couldn't get any easier, it does! Not only do we provide you with the envelopes and circulars, we also Pre-Address and Pre-Stamp the envelopes. LETS RECAP... All you have to do to earn big money at home is put circulars in envelopes THAT'S

IT!” (Emphasis in original). Consumers pay \$41-45 to participate in Defendants’ envelope stuffing work-at-home opportunity.

Contrary to Defendants’ representations, they do not provide consumers with pre-stamped, pre-addressed envelopes to stuff. Nor do Defendants pay consumers \$2 for each envelope stuffed. Instead, consumers receive materials that urge them to post flyers in public locations and solicit pre-addressed, pre-stamped envelopes from third parties. The consumer is then supposed to collect these envelopes and send them to Defendants, in exchange for the \$2 per envelope payment promised by Defendants. Once consumers discover that they were deceived into sending Defendants their money, consumers have refused to post Defendants’ flyers and thereby recruit others into Defendants’ work-at-home scams.

Having cheated consumers out of their money, Defendants then take steps to avoid paying refunds. Defendants hide their true location in Florida by disclosing only mail box addresses in Chicago and New York and providing a phone number that is connected to an answering machine. Left with no recourse, at least 400 consumers have complained about Defendants’ business practices to government agencies and consumer groups, including over 200 consumers who have complained to the Chicago BBB. The evidence indicates that Defendants have likely cheated tens of thousands of consumers out of more than \$2 million in the last year.

Plaintiff Federal Trade Commission (“FTC”) brings this action pursuant to the FTC Act, 15 U.S.C. §§ 45(a), 53(b), seeking to immediately enjoin Defendants’ deceptive practices. Plaintiff seeks an *ex parte* asset freeze and immediate access to Defendants’ business premises to preserve the possibility of redress for victimized consumers. Plaintiff also seeks an order that temporarily disables the Web sites used by Defendants to promote their scheme.

II. DEFENDANTS

Defendants are three Florida corporations and the three individuals who collectively control these corporations.

A. The Corporate Defendants

The three corporations – Stuffingforcash.com Corp. (“SFC”), American Publishing, Inc. and Sound Publications, Inc. – are inextricably entwined companies that sell work-at-home envelope stuffing opportunities to consumers. Operating together under names such as “Cash for Stuffing,” “Stuffing for Cash,” “Stuffing for Dollars” and “American Publishing,” Defendants have sold their work-at-home opportunities over the Internet and through direct mail since at least mid-2001. (PX 1-11; PX 14 ¶¶ 2-3, 14-15, 18; PX 15 ¶¶ 3-8, 14, Atts. A-E.)

The corporate Defendants operate as a common enterprise. For example, consumers who purchase envelope stuffing materials from “Cash for Stuffing” or “Stuffing for Cash” are billed by Sound Publications. (PX 4 ¶ 3, Att. B; PX 6 ¶ 3, Att. B; PX 8 ¶ 3, Att. A.) Mail sent from American Publishing and Sound Publications is stamped with the same postal mail meter number. (PX 14 ¶ 12, Atts. E, F.) Additionally, the corporate Defendants all utilize postal mail boxes at the same facilities in Chicago and Florida. (*Id.* ¶¶ 3-13.) Moreover, as described below, the directors and officers of each company undertake responsibilities associated with the day to day operation of Defendants’ combined business activities.

B. The Individual Defendants

Corporate filings show that the Defendant companies are owned and run by three individuals: Nelson Barrero, Eduardo Gonzalez and Ileana Morales. These individuals each undertake responsibilities associated with the daily operation of Defendants’ business activities.

Defendant Nelson Barrero is a director and the president and treasurer of SFC. (PX 15 ¶ 15, Att. H p. 2.) Barrero applied for the Chicago postal address for SFC which is used on some of Defendants’ Web sites. (PX 14 ¶ 6, Att. A; PX 15 ¶ 3, Att. A p. 9.) Barrero also opened a merchant account which allowed Defendants’ Web sites to accept online checks. (PX 16 ¶ 3, Att. A.)

Defendant Eduardo Gonzalez is also a director of SFC, as well as an officer. (PX 15 ¶ 15, Att. H p. 2.) Additionally, Gonzalez is an officer and director of American Publishing. (*Id.*, PX 15

¶ 15 p. 8.) Gonzalez applied for the New York postal address for SFC which is used on some of Defendants' Web sites (PX 14 ¶ 15, Att. H; PX 15 ¶ 4, Att. B p. 8), applied for a Hollywood, Florida postal address for American Publishing (PX 14 ¶ 9, Att. C), and has received mail forwarded from SFC's Chicago postal address (*id.* ¶ 6, Att. A). Additionally, one of the Internet domain names used by Defendants – dollarsforstuffing.com – is registered to Gonzalez. (PX 15 ¶ 9, Att. F p. 7.)

Defendant Ileana M. Morales is the sole director and president of Sound Publications. (PX 15 ¶ 15, Att. H p.14.) At least one of the Internet domain names used by Defendants – Stuffingforcash.com – is registered to Morales. (*Id.* ¶ 9, Att. F p.1.) Morales has also paid for check guarantee services on behalf of Defendants. (PX 16 ¶ 4, Att. B.)

III. JURISDICTION AND VENUE

This matter is properly before the Court. The Court has subject matter jurisdiction over the FTC Act claims pursuant to 28 U.S.C. §§ 1331, 1337(a) & 1345. This Court also has personal jurisdiction over Defendants. The FTC Act provides for nationwide service of process. *See* 15 U.S.C. § 53(b). “Where a federal statute provides for nationwide service of process, personal jurisdiction may be obtained over any defendant having minimum contacts with the United States as a whole.” *Morris v. Martino*, No. 95 C 772, 1995 WL 347947, at *2 n. 4 (N.D. Ill. June 8, 1995); *see also United Rope Distributors, Inc. v. Seatriumph Marine Corp.*, 930 F.2d 532, 534 (7th Cir. 1991). Defendants here clearly have established the minimum contacts with the United States necessary to give rise to personal jurisdiction.

Venue is also proper in the Northern District of Illinois. Pursuant to the FTC Act, an action may be brought where a corporation or person “resides or transacts business.” *See* 15 U.S.C. § 53(b). Here, Defendants have transacted considerable business in this district. Defendants have operated postal mailing addresses in Chicago since at least 1998 (PX 14 ¶¶ 3-8, 11, Atts. A, B), and have held themselves out to consumers as being located in Chicago (PX 14 ¶¶ 3, 8, 11, 12, Att. E; PX 15 ¶ 3, Att. A p. 9.) Defendants have also advertised and sold their products to consumers in this

district. (PX 1 ¶ 1 (Skokie consumer); PX 5 ¶ 1 (Chicago consumer); PX 8 ¶ 1 (Schaumburg consumer).) Accordingly, this case is properly filed in this district.

IV. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES

Since at least mid-2001, Defendants have used deceptive spam e-mails and deceptive Web sites to sell their work-at-home envelope stuffing scheme to consumers. (PX 1-13 (consumer declarations); PX 14 (postal inspector declaration).) Many consumers with disabilities, small children, or those who are otherwise unemployed are interested in working out of their homes to earn an income. Defendants target these consumers by promising them significant income for the simple task of putting circulars into envelopes. Enticed by Defendants' promises of extra income, consumers send Defendants their money – money which some consumers can doubtlessly ill afford to lose. It is only after sending Defendants their money that consumers discover the falsity of Defendants' promises. Despite explicit claims that Defendants will provide consumers with envelopes to be stuffed, the reality is that consumers themselves have to do separate advertising and recruit other potential consumers to obtain the necessary envelopes. This is a completely different proposition than that advertised by Defendants on their Web sites and in their e-mails.

A. Defendants Deceptively Promote and Sell Envelope Stuffing Opportunities.

Defendants typically send spam e-mails to consumers advertising their envelope stuffing scheme. The body of these e-mails commonly state:

Right now our mail order company is hiring homeworker [sic] like yourself, to help us stuff our sales circulars into envelopes, helping us get ready for upcoming [sic] busy season.

We are paying our home workers \$2.00 for each envelope stuffed[.]

(PX 2 ¶ 2, Att. A; PX 4 ¶ 2, Att. A; PX 6 ¶ 2, Att. A.) Defendants' e-mails also contain a hyperlink to one of several Web sites Defendants operate, including www.stuffingforcash.com. (PX 1 ¶ 2; PX 2 ¶ 2; PX 4 ¶ 2; PX 6 ¶ 2; PX 7 ¶ 2; PX 8 ¶ 2.)

When consumers click through to Defendants' Web sites,¹ they are provided with the same offer contained in the e-mails. Specifically, the Web sites typically state:

Receive **two dollars for every envelope** you secure even if the potential client never purchases anything! That's right... **we provide the circulars and envelopes**. . . just put them together and you're making that extra money that you deserve.

* * *

Just when you thought it couldn't get any easier, it does! Not only do we provide you with the envelopes and circulars, we also Pre-Address and Pre-Stamp the envelopes.

LET'S RECAP...

All you have to do to earn big money at home is put circulars in envelopes... **THAT'S IT!**

* * *

Right now, as you are reading this letter, we have thousands of sales letters stacked in our warehouse waiting to be mailed out to our customers. But first, every one of these letters has to be stuffed into envelopes before they can be mailed. . . . **Your job will be to stuff our sales letters into envelopes and return the stuffed envelopes to us for payment[.]**

(PX 15 ¶ 3, Att. A pp. 1-2; *see also id.* ¶ 4, Att. B pp. 1-2.)

After reading Defendants' e-mails and visiting Defendants' Web sites, consumers believe that Defendants will send them circulars and envelopes to stuff and will pay them \$2 for each envelope stuffed. (PX 1 ¶ 7; PX 2 ¶ 2; PX 3 ¶ 3; PX 4 ¶ 6, Att. C; PX 6 ¶ 2; PX 7 ¶ 3; PX 9 ¶ 2; PX 10 ¶ 3.) Defendants' Web sites invite consumers to send Defendants a \$41 or \$45 "refundable deposit" by credit or debit card, "online check" or by sending a personal check. (PX 15 ¶¶ 3, 4, 7, Att. A pp. 4, 9, Att. B pp. 3, 8-10, Att. D pp. 6, 12.) Many consumers have paid Defendants based on the representations made in Defendants' e-mail and on the Web sites. (PX 1 ¶¶ 2-3; PX 2 ¶¶ 2-3;

¹ Defendants' Web sites have included www.cashforstuffing.com, www.stuffingforcash.com, www.moneyforstuffing.com, www.dollarsforstuffing.com, www.stuffingfordollars.net and www.stuffingfordollars.com. Print-outs of these Web sites are Attachments A-E to PX 15.

PX 3 ¶ 3-4; PX 4 ¶¶ 2-3; PX 5 ¶¶ 2-3; PX 6 ¶¶ 2-3; PX 7 ¶¶ 3-4, 6; PX 8 ¶¶ 2-3; PX 9 ¶¶ 2-3; PX 10 ¶¶ 3-4; PX 11 ¶¶ 2-3.)²

Consumers who pay Defendants do not receive the envelope stuffing materials that Defendants promised to provide.³ Instead of receiving circulars and pre-addressed, pre-stamped envelopes to stuff them into, consumers receive a stack of flyers, circulars and an instruction manual. (PX 1 ¶ 6, Att. A; PX 2 ¶ 4; PX 3 ¶ 5; PX 4 ¶ 4; PX 7 ¶ 5; PX 8 ¶ 4; PX 9 ¶ 3; PX 10 ¶ 6, Atts. B, C; PX 12 ¶ 5, Att. B; PX 13 ¶ 12.) The flyers sent to consumers advertise “Free information” about a home Internet business, which is available to individuals if they send a self addressed, stamped envelope to the address on the flyer. (PX 1 ¶ 6, Att. A; PX 10 ¶ 6, Att. C.) The instructions sent to consumers tell consumers to place their address on the flyers and then post the flyers on public bulletin boards in places such as grocery stores. (PX 1 ¶ 6, Att. A; PX 10 ¶ 6, Att. B.) The consumer is then supposed to receive self-addressed, pre-stamped envelopes from interested members of the public that read these flyers. (*Id.*) After receiving envelopes from various interested members of the public, the consumer is then instructed to insert a one page circular into these envelopes and to send the stuffed envelopes back to Defendants. (*Id.*) In return, Defendants are supposed to send \$2 to the consumer for each envelope. (*Id.*)

Consumers are typically surprised and disappointed when they receive Defendants’ materials in the mail, and they do not post Defendants’ flyers to solicit envelopes. (PX 1 ¶ 7; PX 2 ¶ 5; PX 3 ¶ 6, Att. C; PX 4 ¶ 6; PX 7 ¶ 6, Att. B; PX 8 ¶ 6; PX 9 ¶ 5; PX 10 ¶ 8; PX 12 ¶ 6; PX 13 ¶ 13; PX 14 ¶¶ 2, 7, 11.) They attempt to contact Defendants to ask for their “refundable deposit” back; however, it is not easy to contact Defendants. Although Defendants are really located in Florida,

² In addition to advertising over the Internet, as American Publishing and Sound Publications, Defendants have solicited consumers via direct mail and print advertisements. Defendants’ direct mail solicitations have been nearly identical to the solicitations made via the Internet. (PX 12; PX 13.)

³ Some consumers never receive anything at all from Defendants. (PX 5; PX 6; PX 11.)

they only provide Chicago and New York addresses on their Web sites. (PX 15 ¶¶ 3, 4, Att. A p. 9, Att. B p. 8.) These addresses are nothing more than postal mail boxes; Defendants have no physical presence at either of these locations. (PX 14 ¶¶ 2-6, 14, 15, Atts. A, H.) Defendants rarely respond to inquiries by e-mail or letter. (PX 1 ¶ 8; PX 2 ¶¶ 6-7; PX 3 ¶ 8; PX 4 ¶ 7; PX 5 ¶ 4; PX 6 ¶ 4; PX 7 ¶ 7; PX 8 ¶ 7; PX 10 ¶ 8; PX 12 ¶ 7; PX 13 ¶ 6.) Additionally, the only phone number provided to consumers is connected to an answering machine. (*Id.*) As a result, consumers rarely get refunds without complaining to a government or consumer agency or lodging a dispute with their credit card issuer. (PX 2 ¶¶ 6-7; PX 4 ¶ 8; PX 5 ¶¶ 8-9; PX 7 ¶¶ 7-8; PX 8 ¶¶ 8-9; PX 10 ¶ 9; PX 11 ¶¶ 6-8; PX 13 ¶¶ 14-15.)

B. Defendants Are Causing Enormous Consumer Injury.

Consumers have filed at least 400 complaints about Defendants' deceptive practices with government and consumer agencies, including 226 complaints filed with the Chicago Better Business Bureau alone. (PX 14 ¶¶ 2, 3, 7, 11; PX 15 ¶¶ 12-14, Att. G.)⁴ As a result of these complaints, Defendants have an "unsatisfactory record" with the BBB. (PX 15 ¶ 14, Att. G p. 8.) Consumers have repeatedly stated that they were misled by Defendants' advertisements. (PX 1 ¶ 7; PX 2 ¶ 5; PX 3 ¶¶ 6-7, Att. C; PX 4 ¶ 6; PX 7 ¶ 6, Att. B; PX 8 ¶ 6; PX 9 ¶ 5; PX 10 ¶ 8; PX 12 ¶ 6; PX 13 ¶ 13; PX 14 ¶¶ 2, 7, 11.)

Tens of thousands of consumers have paid Defendants what likely amounts to over \$2 million in the last year. Defendants processed almost 16,000 Visa transactions alone, totaling almost \$700,000, in the eight month period of September 2001 through April 2002. (PX 15 ¶ 16, Att. I.) Since Visa accounts for only about half of the credit card market, credit cards sales alone have likely exceeded \$2 million for the year. Moreover, Defendants also accept mailed personal checks and

⁴ The FTC has submitted 13 consumer declarations as exhibits in support of its motion for a TRO. (PX 1-13.) These consumer declarations are merely a sample of the hundreds of complaints received by government agencies and consumer groups.

“online checks.” Defendants processed over 6700 online check transactions, with total gross check sales of over \$285,000 from September 2001 through May 2002. (PX 16 ¶ 8.) Defendants’ postal mailboxes also receive hundreds of letters weekly, many of which presumably consists of paper checks. (PX 14 ¶¶ 5, 9.) In addition to the millions of dollars of consumer injury which have already been incurred, Defendants are undoubtedly deceiving new consumers every day.

V. ARGUMENT

Defendants are engaged in a fraudulent scheme which has successfully bilked consumers out of what likely amounts to millions of dollars. We ask that the Court bring this scam to an immediate end. To this end, the FTC seeks an order that enjoins further deceptive claims and that temporarily disables Defendants’ Web sites. The FTC also request that the Court freeze Defendants’ assets and allow immediate access to Defendants’ business premises to preserve the assets and records that will be needed if the Court determines that restitution should be made to the consumer victims. As discussed in more detail below, this Court has full authority to enter the relief sought by Plaintiff, and the facts strongly support such relief.

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

The FTC Act provides that “in proper cases the [FTC] may seek, and after proper proof, the court may issue, a permanent injunction.” 15 U.S.C. 53(b). Matters involving false and deceptive advertising are “proper cases” for injunctive relief under the FTC Act. *See FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1028 (7th Cir. 1988). Moreover, “[t]he district court’s authority [under the FTC Act] to grant a permanent injunction also includes the power to grant other ancillary relief sought by the Commission” and “order any ancillary equitable relief necessary to effectuate the exercise of the granted powers.” *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997).

B. This Court Should Immediately Issue a Temporary Restraining Order and Other Appropriate Equitable Relief.

The injunctive relief requested by the FTC is warranted in this case. The FTC Act authorizes injunctive relief “[u]pon a proper showing that, weighing the equities and considering the FTC’s likelihood of ultimate success, such action would be in the public interest.” 15 U.S.C. § 53(b). Unlike litigation between private parties, “it is not necessary for the FTC to demonstrate irreparable injury” under the FTC Act. *World Travel*, 861 F.2d at 1029. Instead, to obtain equitable relief under the FTC Act, the FTC must merely demonstrate: (1) a likelihood of success on the merits, and (2) that the balance of the equities tips in its favor. *Id.* As demonstrated below, the FTC has more than satisfied this standard here.

1. There Is A Substantial Likelihood That the FTC Will Prevail on the Merits.

As a result of the false claims made in their advertisements, Defendants are engaging in “deceptive acts or practices” prohibited by the FTC Act. 15 U.S.C. § 45(a). “[M]isrepresentations of material facts made for the purpose of inducing consumers to purchase services [or products] constitute . . . deceptive acts or practices forbidden by [the FTC Act].” *World Travel*, 861 F.2d at 1029. The “misrepresentation or practice need not be made with an intent to deceive;” instead, the FTC need merely establish that “the representations, omissions, or practices likely would mislead consumers, acting reasonably, to their detriment.” *Id.*

Here, as described in Section IV of this brief, Defendants have consistently made material misrepresentations about the nature and earnings potential of their alleged work-at-home envelope stuffing opportunity. The Complaint challenges two false claims made by Defendants. First, Defendants claim that they will provide consumers with sales letters and pre-stamped, pre-addressed envelopes. Defendants own instruction manual – sent to consumers only *after* they have purchased Defendants’ work-at-home package – makes it plain that Defendants do not provide consumers with the envelopes to be stuffed. Rather, consumers must solicit the envelopes themselves. Second,

Defendants claim that they will pay consumers \$2 for stuffing each individual envelope provided by Defendants. Again, Defendants do not provide consumers with envelopes to stuff and thus do not pay consumers for stuffing envelopes provided by Defendants.

Defendants' deception is not only "likely" to mislead consumers, it already *has* misled consumers and caused substantial consumer harm, including losses likely totaling more than \$2 million dollars. Defendants' misrepresentations are "material" because they are likely to affect, and indeed have affected, consumers decisions to purchase Defendants' work-at-home opportunity materials. Consumers simply would not purchase Defendants' materials if Defendants had not misrepresented what they were selling.

2. Provisional Relief is in the Public Interest.

In deciding whether to grant injunctive relief, the Court must balance the equities, assigning greater weight to the public interest advanced by the FTC than to any of Defendants' private concerns. *World Travel*, 861 F.2d at 1029. The balance of equities tips strongly in the FTC's favor here. In this case, immediate injunctive relief is necessary to protect the public from the future financial harm that will inevitably result from Defendants' deceptive practices. In contrast, Defendants have no legitimate interest to balance against the need for an injunction. The FTC's proposed temporary restraining order only restrains Defendants from engaging in illegal conduct and preserves assets. Such a restriction does not work an undue hardship on Defendants, for they have no legitimate interest in persisting with conduct that violates federal law. *See, e.g., FTC v. World Wide Factors*, 882 F.2d 344, 347 (7th Cir. 1989) (upholding district court finding of "no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment"); *FTC v. Sabal*, 32 F. Supp. 2d 1004, 1009 (N.D. Ill. 1998) (same).

3. Nelson Barrero, Eduardo Gonzalez and Ileana M. Morales Are Individually Liable for Injunctive and Monetary Relief.

Nelson Barrero, Eduardo Gonzalez and Ileana M. Morales are the perpetrators of this illicit scheme and are individually liable for the violations of the FTC Act described above. An individual may be held liable for violations of the FTC Act if the court finds that the individual: (1) actively participated in or had authority to control the deceptive practices, and (2) had or should have had knowledge or awareness of the practices. *See Amy Travel*, 875 F.2d at 573-74; *FTC v. Febre*, No. 94 C 3625, 1996 WL 396117, *8 (N.D. Ill. July 3, 1996). Authority to control 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. In addition, the defendants “degree of participation in business affairs is probative of [their] knowledge.” *Id.* at 574.

The individual Defendants have authority to control the acts and practices of the companies and are clearly aware of the deceptive practices at issue here. As described in Section II.B, the individual Defendants have each undertaken responsibilities associated with the daily operations of the corporate Defendants’ business activities. Barrero is a director of SFC, Gonzalez is a director of SFC and American Publishing, and Morales is the sole director of Sound Publications. (PX 15 ¶ 15, Att. H.) Both Gonzalez and Morales are registered owners of Internet domain names used by Defendants to advertise the envelope stuffing scam. (PX 15 ¶ 9, Att. F pp. 1-7.) Both Barrero and Gonzalez have opened postal addresses used to facilitate this scam. (PX 14 ¶¶ 6, 15, Atts. A, H.) And both Barrero and Morales have contacted a third party check guarantee company to allow Defendants to receive online checks from consumers. (PX 16 ¶¶ 3, 4, Atts. A, B.)

All of the individual Defendants are in positions to control the practices of these closely held corporations, and, as a result of their intimate involvement with the companies, each had reason to know of their companies’ deceptive practices. *See, e.g., FTC v. Growth Plus Int’l Marketing, Inc.*, No. 00 C 7886, 2001 WL 128139, at *3 (N.D. Ill. Jan. 9, 2001) (defendants’ corporate roles

demonstrated knowledge); *FTC v. Windermere Big Win Int'l, Inc.*, No. 98 C 8066, 1999 WL 608715, at *5-6 (N.D. Ill. Aug. 5, 1999) (officer and director positions with companies provided “ample evidence” that individuals had authority to control the purported practices and acts at issue and had some knowledge of the deceptive practices). In light of the individual Defendants’ active involvement in this scheme, they should be held individually liable.⁵

4. **The TRO Should Be Entered *Ex Parte* and Should Include An Asset Freeze With Attendant Relief and a Provision Temporarily Disabling Defendants’ Web Sites.**

Ex parte relief is necessary here. An *ex parte* temporary restraining order is warranted where the facts show that irreparable injury, loss, or damage will result before the defendants can be heard in opposition. *See* Fed. R. Civ. P. 65(b). Consumer fraud cases such as this fit squarely into the category of cases where *ex parte* relief is appropriate and necessary to make possible full and effective final relief. Indeed, courts in this district have repeatedly granted the FTC *ex parte* relief in fraud cases brought under the FTC Act. *See, e.g., FTC v. TLD Network Ltd.*, No. 02 C 1475 (N.D. Ill. Feb. 28, 2002) (Holderman, J.); *FTC v. 1st Financial Solutions, Inc.*, No. 01-CV-8790 (N.D. Ill. Nov. 19, 2001) (Kocoras, J.); *FTC v. Growth Plus Int'l Marketing, Inc.*, No. 00-CV-7886 (N.D. Ill. Dec. 18, 2000) (Aspen, J.). As in the other cases in this district where courts have granted *ex parte* relief, irreparable injury, loss, or damage will likely result if Defendants receive notice of this action.

a. **A Temporary Asset Freeze with Attendant Relief Is Necessary.**

Defendants’ assets should be frozen to ensure that funds do not disappear during the course of this litigation, and immediate access to Defendants’ business premises, mail withholding and expedited discovery should be allowed to quickly and efficiently locate assets Defendants have

⁵ Because they act as a common enterprise, the corporate Defendants should be subject to joint and several liability with the individual Defendants. Corporations constitute a common enterprise where “the evidence shows that there [is] no real distinction among the companies.” *FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d 1176, 1201-02 (C.D. Cal. 2000).

wrongfully taken from consumers. As discussed *supra*, Defendants' business operations are permeated by, and reliant upon, deceptive practices. The FTC's past experiences have shown that defendants engaged in similar schemes may withdraw funds from bank accounts and move or shred inculpatory documents if given notice of the FTC's action.⁶ Moreover, both Barrero and Gonzalez have engaged in past criminal behavior demonstrating a lack of respect for the law. (PX 14 ¶ 17.)

This Court's power to order an asset freeze and other attendant relief derives from its equitable power to order consumer redress, *Febre*, 128 F.3d at 534, and courts in this district have repeatedly exercised this authority, *see e.g. FTC v. TLD Network Ltd.*, No. 02 C 1475 (N.D. Ill. Feb. 28, 2002) (Holderman, J.); *FTC v. 1st Financial Solutions, Inc.*, No. 01-CV-8790 (N.D. Ill. Nov. 19, 2001) (Kocoras, J.); *FTC v. Growth Plus Int'l Marketing Inc.*, 2001 WL 128139 (N.D. Ill. Jan. 9, 2001) (Aspen, J.). Without an immediate assets freeze and entry of the other attendant relief requested by the FTC, funds may not be available to satisfy any final order granting restitution to defrauded consumers.⁷

b. Defendants' Web Sites Should Be Immediately Disabled.

An order provision temporarily disabling Defendants' Web sites is necessary to prevent further consumer injury. These Web sites – including www.stuffingforcash.com and www.stuffingfordollars.com – have no legitimate purpose and are solely used to promote

⁶ See Declaration of Certification of Plaintiff'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.

⁷ The attendant relief sought by the FTC includes immediate access to Defendants' business premises, mail withholding and expedited discovery. In Section XIII of the proposed temporary restraining order, the FTC seeks access to business premises located at 4300 N. University Drive, Suite D-206, Fort Lauderdale, FL 33351. This premises appears to be the hub of Defendants' business activity. All mail delivered to Defendants' Chicago and New York mail drops is forwarded to this address. (See PX 14 ¶ 15, Att. H.) This location is an office in an office building that is always kept locked and has no sign designating the name of the business. (*Id.* ¶ 16.) In Section XIV of the proposed order, the FTC seeks to withhold mail addressed to corporate Defendants from being forwarded from the mail boxes in Chicago and New York to Defendants' Florida business premises. Again, these mail boxes appear to be solely used by Defendants to acquire money from consumers in conjunction with the envelope stuffing scam. (See PX 14 ¶¶ 6, 15; PX 15 ¶¶ 3-4, Atts. A p. 9, B p. 8, H.)


Defendants' scheme and fraudulently induce consumers to purchase their envelope stuffing materials. The FTC has been granted similar relief against other defendants who have utilized Internet Web sites to promote fraud. *See, e.g., FTC v. TLD Network Ltd.*, No. 02 C 1475 (N.D. Ill. Feb. 28, 2002) (Holderman, J.) (signed order viewable at <http://www.ftc.gov/os/2002/03/tldtro.pdf>); *FTC v. 1268957 Ontario Inc.*, 01-CV-423 (N.D. Ga. 2001) (signed order viewable over the Internet at <http://www.ftc.gov/os/2001/02/domannametro.pdf>); *FTC v. Pereira*, No. 99-1367-A (E.D. Va. 1999) (order viewable at <http://www.ftc.gov/os/1999/9909/atariztro.htm>). The Court here is faced with a case similar to those above and should thus order Defendants' Web sites temporarily disabled.⁸

VI. CONCLUSION

Defendants have caused and are likely to continue to cause consumer injury because of their FTC Act violations. This Court should issue the requested injunctive relief to prevent ongoing consumer harm and to help assure the possibility of effective final relief, including monetary redress.

Respectfully submitted,

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Dated: July 16, 2002

⁸ Defendants' Web sites may be disabled by ordering Defendants' Internet service provider to ensure that Defendants' Web sites cannot be accessed by the public. *See Proposed Temporary Restraining Order, § II.*