



**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF’S *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND OTHER EQUITABLE RELIEF**

**TABLE OF CONTENTS**

TABLE OF CASES ..... ii

I. INTRODUCTION ..... 1

II. DEFENDANTS’ DECEPTIVE BUSINESS PRACTICES ..... 4

    A. The Defendant’s Sales of Chances in the Canadian Lottery ..... 4

    B. The Defendant’s Claim Consumers Have Won the Jackpot ..... 8

III. THIS COURT SHOULD ENTER A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ..... 10

    A. This Court Has the Authority to Grant the Relief Requested ..... 10

    B. This Court Should Enter a Temporary Restraining Order and Preliminary Injunction ..... 12

1.	Applicable Standard for Injunctive Relief .....	12
2.	The Evidence Demonstrates Overwhelming Likelihood FTC will Prevail on Merits .....	13
C.	Liability of Corporate Defendants .....	15
D.	Individual Liability .....	15
E.	An Asset Freeze and an Accounting are Necessary to Preserve Assets for Effective Consumer Redress .....	20
F.	This Court Has the Authority to Order Repatriation .....	22
G.	Temporary Restraining Order, Asset Freeze, and Other Ancillary Relief Should Be Issued <i>Ex Parte</i> .....	22
IV.	CONCLUSION .....	23

**TABLE OF CASES**

*CSC Holdings, Inc. v. KDE Electronics Corp.*, No. 99 C 1556,  
2000 U.S. Dist. LEXIS 3231 (N.D. Ill. March 9, 2000) ..... 12

*Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962) ..... 21

*Donovan v. U.S. Postal Service*, 530 F. Supp. 894 (D.D.C. 1981) ..... 21

*FTC v. Amy Travel Service, Inc.*, 875 F.2d 564 (7<sup>th</sup> Cir. 1989) ..... 11, 14, 16

*FTC v. Atlantex*, 1987-2 Trade Cases ¶ 67,788 at 59, 254 (S.D. Fla. 1987),  
*aff'd on other grounds*, 872 F.2d 966 (11<sup>th</sup> Cir. 1989) ..... 14, 22

*FTC v. Elders Grain, Inc.*, 868 F.2d 901 (7<sup>th</sup> Cir. 1989) ..... 12

*FTC v. Febre*, 128 F.3d 530 (7<sup>th</sup> Cir. 1997) ..... 11

*FTC v. Gill*, 265 F.3d 944 (9<sup>th</sup> Cir. 2001) ..... 14

*FTC v. Growth Plus Int'l Marketing, Inc.*, No. 00-C-7886,  
2001 U.S. Dist. LEXIS 1215 (N.D. Ill. Jan. 4, 2001) ..... 2, 10, 11, 14, 16, 21

*FTC v. Singer*, 668 F.2d. 1107 (9<sup>th</sup> Cir. 1982). ..... 11, 21

*FTC v. U.S. Oil & Gas Corp.*, 748 F.2d. 1431 (11<sup>th</sup> Cir. 1984) ..... 21

*FTC v. U.S. Sales Corp.*, 785 F. Supp. 737 (N.D. Ill. 1992) ..... 14

*FTC v. Warner Communications, Inc.*, 742 F.2d 1156 (9<sup>th</sup> Cir. 1984) ..... 13

*FTC v. Windermere Big Win International, Inc.*, No. 98-C-8066,  
1999 U.S. Dist. LEXIS 12259 (N.D. Ill. Aug. 2, 1999) ..... 2, 11, 12, 16, 22

*FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020 (7<sup>th</sup> Cir. 1988) ..... 11-14, 21

*International Controls Corp. v. Vesco*, 490 F.2d 1334 (2<sup>d</sup> Cir. 1974),  
*cert. denied*, 417 U.S. 932 (1974) ..... 21

*Kraft, Inc. v. FTC*, 970 F.2d 311 (7<sup>th</sup> Cir. 1992) ..... 13, 14

<i>Regina v. World Media Brokers Inc.</i> , 40 W.C.B. (2d) 119, 1998 Ont. C.J.P. LEXIS 147 (Oct. 13, 1998) .....	3, 17-19
<i>Regina v. World Media Brokers Inc.</i> , 41 W.C.B. (2d) 147, 1999 W.C.B.J. LEXIS 2365 (Feb. 1, 1999) (sentencing) .....	3, 4, 17-19
<i>SEC v. Bankers Alliance Corp.</i> , 881 F. Supp. 673 (D.D.C. 1995) .....	22
<i>SEC v. Hardy</i> , 803 F.2d 1034 (9th Cir. 1986) .....	21
<i>SEC v. International Swiss Investments Corp.</i> , 895 F.2d 1272 (9th Cir. 1989) .....	22
<i>SEC v. Manor Nursing Centers, Inc.</i> , 458 F.2d 1082 (2d Cir. 1972) .....	21
<i>The Canadian Express Club, et al.</i> , U.S. Postal Service Docket No. 28/52 (P.S.D. Dec. 23, 1991) .....	3, 17
<i>The Canadian Express Club, et al.</i> , U.S. Postal Service Docket No. 28/52 (June 29, 1989) .....	3, 4, 17
<i>U.S. v. First National City Bank</i> , 379 U.S. 378 (1965) .....	22
<i>Washington v. Indiana High School Athletic Assoc., Inc.</i> , 181 F.3d 840 (7 <sup>th</sup> Cir. 1999) .....	12

## **I. INTRODUCTION**

This case involves a large Canadian telemarketing enterprise that is deceptively selling Canadian lottery packages to consumers across the United States. For more than a decade, the defendants have been employing deceptive claims to convince consumers to send them hundreds of dollars at a time to purchase Canadian lottery tickets. At other times the telemarketers falsely claim that consumers have won large sums in the lottery, but must pay a fee before obtaining their prize. All of these claims are false. Consumers typically know this enterprise as either Express Marketing Services or Canadian Catalog Services (“EMS” or “CCS”) The evidence shows that the defendants sell mainly to the elderly – and only to U.S. victims -- and has taken consumers for millions of dollars. This is one common enterprise composed of at least nine affiliated corporations, using numerous d/b/as, and its six principals and owners, George Yemec, Anita Rapp, Steven Rapp, Paul Teskey, Jean-Paul Teskey, and Dean Temple. We ask that the Court bring this scam to an end.

The claims that the defendants make to consumers violate the Federal Trade Commission Act (“FTC Act”) and also the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310. First, the defendants misrepresent consumers’ chances of winning the Canadian lottery. Contrary to the defendants claims, the odds are very long. Second, they often deceptively claim that it is legal for U.S. consumers to purchase tickets in the Canadian lottery. In fact, it is a crime. Moreover, it is deceptive for the defendants to fail to disclose that it is a crime for them to sell these tickets to U.S. consumers and for U.S. consumers to purchase them. Finally, in some of the calls the defendants make they tell consumers that they have won a large prize and request money to redeem it. These consumers never receive the large sum promised them.

The FTC has brought several recent cases against similar enterprises selling Canadian lottery tickets to consumers in the United States. These firmly establish that such conduct violates the FTC Act and TSR. In fact, in two previous cases filed by the FTC in this district against similar enterprises located in or near Toronto, judges ordered precisely the relief we are seeking today.<sup>1</sup>

There is an abundance of evidence showing that deceptive claims are uniformly made and that they are wholly untrue. In addition to sworn declarations from more than twenty consumers detailing the misrepresentations made by the defendants, we have attached the transcripts of twenty-two tape recordings made by law enforcement officials who were called and pitched by the defendants. The tape recordings were made in the regular course of business by various federal and state law enforcement officials in their efforts to curb telemarketing fraud. The tapes amply corroborate the experiences of the consumers. Nearly every tape includes many express statements about the consumer's chance of winning, the legality of selling foreign lottery tickets in the United States, or both.

Moreover, the defendants know full well that their conduct violates U.S. law. This is not the first action taken by law enforcement against the defendants for this conduct. As early as 1989, the United States Postal Service brought an administrative action against several of the defendants, including George Yemec and Anita Rapp, for using the mails to conduct an illegal lottery in violation of 39 U.S.C. § 3005.<sup>2</sup> Despite being subject to a cease and desist order forbidding them to use the

---

<sup>1</sup> See *FTC v. Growth Plus Int'l Marketing, Inc.*, No. 00-C-7886, 2001 U.S. Dist. LEXIS 1215 (N.D. Ill. Jan. 4, 2001) (Report and Recommendation by M.J. Schenkier, adopted by J. Aspen (Feb. 7, 2001)); *FTC v. Windermere Big Win International, Inc.*, No. 98-C-8066, 1999 U.S. Dist. LEXIS 12259 (N.D. Ill. Aug. 2, 1999) (J. Marovich).

<sup>2</sup>See *The Canadian Express Club, et al.*, U.S. Postal Service Docket No. 28/52 (June 29, 1989) (initial decision of Administrative Law Judge), PX 45; *The Canadian Express Club, et al.*,

United States mail to send material “of any kind relating to any lottery,” the two volumes of exhibits filed with the FTC’s motion amply demonstrate that the defendants have ignored the Postal Orders against them.

In fact, in a Canadian criminal proceeding in 1999 which named most of these defendants, the court concluded that it is illegal for the defendants to sell lottery tickets to Americans.<sup>3</sup> The proceeding was specifically concerned with the defendants’ sale of tickets in the Spanish and Australian (i.e., non-Canadian) lottery. The sales were entirely to U.S. residents, although that was not relevant to the statute under which they were prosecuted. Thus, the prosecution did not directly address the sale of Canadian lottery tickets in the U.S., but the Court’s opinion clearly stated that it is illegal to sell lottery tickets from other countries into the United States.<sup>4</sup> In fact, despite their knowledge that such solicitations were illegal under United States law, the defendants’ Canadian counsel admitted to the court in the sentencing hearing that the defendants continued to sell Canadian lottery tickets to

---

U.S. Postal Service Docket No. 28/52 (P.S.D. Dec. 23, 1991) (final decision of Postal Service), PX 46.

<sup>3</sup>See *Regina v. World Media Brokers Inc.*, 40 W.C.B. (2d) 119, 1998 Ont. C.J.P. LEXIS 147 (Oct. 13, 1998), PX 47; *Regina v. World Media Brokers Inc.*, 41 W.C.B. (2d) 147, 1999 W.C.B.J. LEXIS 2365 (Feb. 1, 1999) (sentencing), PX 48.

<sup>4</sup>The Canadian statute contains an exemption for any conduct which would be legal in the target locality, *i.e.*, there would be no liability under Canadian law if the sale of foreign lottery tickets was legal in the United States. The defendants asserted the exemption constituted an affirmative defense, but the Canadian court rejected the defense, concluding that sending foreign lottery material was illegal in the United States. *Regina v. World Media Brokers Inc.*, 40 W.C.B. (2d) 119, 1998 Ont. C.J.P. LEXIS 147 at \*35-38 (Oct. 13, 1998), PX 47.



consumers in the United States.<sup>5</sup> The corporations in that case were fined \$100,0000 (CDN).

Thus, the defendants have had ample notice that their scheme is illegal, but they have elected to brazenly continue their efforts to defraud consumers throughout the United States. The Court should enter an order immediately enjoining the defendants from continuing their deceptive conduct, as well as granting the other equitable relief sought by the FTC, including freezing the defendants' U.S. assets, ordering repatriation of any other assets which the defendants illegally obtained from U.S. victims, and requiring that the defendants provide an immediate accounting and other information about their enterprise.

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

Since at least 1987, the defendants have been in the business of defrauding U.S. consumers with telemarketing calls offering to sell packages of tickets in the Canadian lottery and other foreign lotteries.<sup>6</sup> They supplement this line of business with wholly false claims that consumers have actually won large sums in the lottery.

### **A. The Defendant's Sales of Chances in the Canadian Lottery**

The defendants' consistent modus operandi is to offer consumers packages of chances in the Canadian lottery, generally including a combination of individual chances and "group" chances. In these group plays, the consumer buys a share in a group purchase of lottery tickets and the "winnings"

---

<sup>5</sup>See *Regina v. World Media Brokers Inc.*, 41 W.C.B. (2d) 147, 1999 W.C.B.J. LEXIS 2365 at \*16 (Feb. 1, 1999), PX 48.

<sup>6</sup>*The Canadian Express Club, et al.*, U.S. Postal Service Docket No. 28/52 (June 29, 1989) (A.L.J. decision) at 1, PX 45.

are shared among the other members of the group.<sup>7</sup> The ticket packages range in price from \$77 to almost \$1,000, depending on how many individual plays and group plays are purchased, as well as how many weeks of draws the consumers purchase.<sup>8</sup> The telemarketers typically call consumers month after month, targeting the same consumers.<sup>9</sup>

The callers attempt to convince consumers that the purchase of Canadian lottery tickets from the defendants is very different than buying lottery tickets at a local store in the United States.<sup>10</sup> The defendants emphasize that by playing with EMS/CCS the consumer will have access to a special “Top Picks Computer Program,” suggesting that the chance of winning will be much higher if they purchase

---

<sup>7</sup>*See, e.g.*, Kearney Decl., PX 17, Att. A; Larson Decl., PX 19, Att. A; Marakovitz Decl., PX 20, Att. A; Rand Decl., PX 21, Att. A; Schmitz Decl., PX 22, Att. A; William Emmett Decl., PX 27, Att. C; Frey Decl., PX 29, Att. A; Kajencki Decl., PX 31, ¶ 5; Mendelsohn Decl., PX 35, ¶ 3; Tiernan Decl., PX 41, Att. B.

<sup>8</sup>*See, e.g.*, Kearney Decl., PX 17, Att. A; Larson Decl., PX 19, Att. A; Marakovitz Decl., PX 20, Att. A; Rand Decl., PX 21, Att. A; Schmitz Decl., PX 22, Att. A; William Emmett Decl., PX 27, ¶ 4 & Att. A; Gable Decl., PX 30, ¶ 5; Kajencki Decl., PX 31, ¶ 5; Mendelsohn Decl., PX 35, ¶ 4; Tiernan Decl., PX 41, ¶¶ 3, 4 & Att. A.

<sup>9</sup>*See, e.g.*, Stephen Caudell Decl., PX 24, ¶ 7; Grove Decl., PX 42, ¶¶ 4, 8, 9, 11 & Atts. A, C, D; Winget Decl., PX 43, ¶ 5; Yousko Decl., PX 44, ¶ 11.

<sup>10</sup>There are two national lotteries in Canada, LOTTO 6/49 and LOTTO SUPER 7. Although they are jointly administered by the ten Canadian provinces, they operate similarly to lotteries in the U.S. For LOTTO 6/49, players choosing the 6 correct numbers (out of 49) win a minimum of \$2 million (\$ CAN), and the jackpot increases after each drawing in which there was no winner, or as ticket sales increase. There are two drawings per week for LOTTO 6/49. LOTTO SUPER 7 has only one drawing per week, requires 7 correct numbers (out of 47), and pays out a minimum of \$2.5 million (\$ CAN). Both lotteries include smaller prizes for fewer correct numbers. As in the U.S., tickets are legally sold exclusively through independent authorized retailers who are paid a commission pursuant to their contracts with the provincial lottery officials. Ferrara Decl., PX 13.

their packages.<sup>11</sup> They emphasize that the Canadian payouts are lump sum and that the winnings are “tax-free.”<sup>12</sup> (While there is no Canadian tax on lottery winnings, any winnings by a U.S. resident would still be taxable in the U.S.). The telemarketers tell consumers that they have been “specially” selected to play the lottery and that their chances of winning a large prize or jackpot in the lottery are “extremely high” by playing with them.<sup>13</sup> The callers also often relate stories of other U.S. consumers who have purchased lottery packages with EMS/CCS and won.<sup>14</sup>

None of these claims are true. In fact, the odds of winning a jackpot in the Canadian LOTTO 6/49 are nearly 1 in 14 million, and nearly 1 in 21 million for LOTTO SUPER 7.<sup>15</sup> The odds of winning second prize (which average less than \$100,000 for both games) is greater than 1 in 2 million for LOTTO 6/49 and almost 1 in 3 million for LOTTO SUPER 7.<sup>16</sup> There is no “special” system for

---

<sup>11</sup>See, e.g., Halferty Decl., PX 16, Atts. A & B; Kozma Decl., PX 18, Att. A.

<sup>12</sup> See, e.g., Mehaffie Decl., PX 34, § 17; Colvin Decl., PX 14, Atts. E, F, H & I; Cumbie Decl., PX 15, Att. A; Halferty Decl., PX 16, Att. B; Kearney Decl., PX 17, Att. A; Kozma Decl., PX 18, Att. B; Larson Decl., PX 19, Att. A; Marakovits Decl., PX 20, Att. A; Rand Decl., PX 21, Att. A; Schmitz Decl., PX 22, Att. A.

<sup>13</sup>See, e.g., Kearney Decl., PX 17, Att. A (“you are going to recover all the money you lost”); Larson Decl., PX 19, Att. A (“best winning package . . . very, very high chances”); Loescher Decl., PX 32, ¶ 4 (“a great chance of me winning big”); Mehaffie Decl., PX 34, ¶ 17 (chances of winning “greatly increased . . . also suggested CCS had methods of determining which numbers would likely be drawn”).

<sup>14</sup>See, e.g., Colvin Decl., PX 14, Atts. C, D, F, G & H; Halferty Decl., PX 16, Atts. A & B; Kozma Decl., PX 18, Atts. A & B; Larson Decl., PX 19, Att. A; Marakovits Decl., PX 20, Att. A; Rand Decl., PX 21, Att. A; Schmitz Decl., PX 22, Atts. A & C;

<sup>15</sup>Ferrara Decl., PX 13, ¶¶ 3 & 4.

<sup>16</sup>Ferrara Decl., PX 13, ¶¶ 3 & 4.

selecting winning numbers.<sup>17</sup>

Since the defendants rarely send the actual lottery tickets to consumers there is some question whether the defendants bother to actually purchase tickets at all. Even if they do, the logic of their own system suggests that only a small fraction of the money consumers spend – less than 20% – actually goes to lottery tickets, which would inevitably shrink the already tiny odds of winning.<sup>18</sup>

The callers also often expressly represent to consumers that these lottery transactions are legal.<sup>19</sup> They suggest to consumers that EMS/CCS is affiliated with, or registered by, the Canadian government.<sup>20</sup> In other cases, they state that they are authorized by the Canadian government and “specialize” in providing United States residents the opportunity to play the Canadian lottery, implying

---

<sup>17</sup>Ferrara Decl., PX 13, ¶¶ 3 & 4.

<sup>18</sup> For example, in one of the tapes we have submitted, the caller offers, for \$79 (presumably CDN), 300 group tickets plus one individual ticket for 6 draws of Lotto 6/49. Marakovitz Decl., PX 20, Att. A. In the Canadian lottery each ticket costs \$1 (CDN). The consumer would get six tickets in the 6/49 lottery, in which he or she would theoretically obtain all the proceeds. This would cost \$6 (CDN).

The consumer would also get a share of 300 group tickets for each of the 6 draws. Consumers are told that there are 200 total consumers in each group, and the group will split any winnings. Buying the tickets to cover this would cost \$1,800 (CDN) ((300 group tickets) X (6 draws) X (\$1 per ticket) = 1,800). Thus it would cost \$1,800 to buy the group tickets for 200 consumers, or \$9 worth of tickets for each consumer ( $\$1,800 \div 200 \text{ consumers} = \$9$ ).

Adding it up, each consumer gets \$6 in individual tickets, plus \$9 worth of group tickets. So each consumer would, at most, receive \$15 ( $\$6 + \$9 = \$15$ ) worth of tickets. But they pay the defendants \$79 for this package, more than five times the “value” of the package.

<sup>19</sup>*See, e.g.*, Colvin Decl. PX 14, Att. D; Kajencki Decl., PX 31, ¶ 6; Mehaffie Decl., PX 34, ¶¶ 11 & 18; Mendelsohn Decl., PX 35, ¶ 10.

<sup>20</sup>*See, e.g.*, Colvin Decl., PX 14, Atts. C, F & I; Cumbie Decl., PX 15, Att. A; Marakovits Decl., PX 20, Atts. A & B; Schmitz Decl., PX 22, Att. C.

that the sale of Canadian lottery tickets in the United States is legal.<sup>21</sup> They never disclose the salient fact that it is a felony to sell these tickets to Americans and for consumers to purchase them.<sup>22</sup> Moreover, the defendants are not authorized by the Canadian government to sell Canadian lottery tickets to anyone, including Canadians.<sup>23</sup>

**B. The Defendant's Claim Consumers Have Won the Jackpot**

In addition to their mainstay lottery scam, the defendants' telemarketers also call consumers with much excitement and tell them that they are the big winner in the lottery and will receive a huge sum or money.<sup>24</sup> The catch? The consumer must pay a substantial sum -- sometimes thousands of dollars - - in duties or other fees before collecting the prize.<sup>25</sup> Of course, even after paying the defendants what often amounts to their last remaining savings, these consumers never see a dime.<sup>26</sup>

---

<sup>21</sup>See, e.g., Colvin Decl., PX 14, Atts. C & E; Halferty Decl., PX 16, Atts. A & B; Kozma Decl., PX 18, Att. A.

<sup>22</sup>The sale and trafficking in foreign lotteries is a violation of federal criminal law, including laws prohibiting the importing and transmitting of lottery materials by mail and otherwise, 18 U.S.C. §§ 1301 and 1302, and anti-racketeering laws relating to gambling, 18 U.S.C. §§ 1952, 1953, and 1084. Just as it is not illegal under these statutes for a person to travel to another state to purchase lottery tickets for himself or herself in that state's lottery, it is not illegal to travel to another country to personally participate in that country's lottery.

<sup>23</sup>Ferrara Decl., PX 13, ¶ 7.

<sup>24</sup>See, e.g., Bowman Decl., PX 23, ¶ 4; Fox Decl., PX 28, ¶ 3; Frey Decl., PX 29, ¶ 3; Gable Decl., PX 30, ¶¶ 10 & 22; Lombardo Decl., PX 33, ¶ 3; Mehaffie Decl., PX 34, ¶ 5; Ragsdale Decl., PX 38, ¶ 3; Thornton Decl., PX 40, ¶ 3; Yousko Decl., PX 44, ¶ 3.

<sup>25</sup>See, e.g., Bowman Decl., PX 23, ¶ 5; Fox Decl., PX 28, ¶ 5; Frey Decl., PX 29, ¶ 5; Gable Decl., PX 30, ¶¶ 11 & 23; Lombardo Decl., PX 33, ¶ 3; Mehaffie Decl., PX 34, ¶ 6; Ragsdale Decl., PX 38, ¶ 5; Thornton Decl., PX 40, ¶ 5; Yousko Decl., PX 44, ¶ 4.

<sup>26</sup>See, e.g., Gable Decl., PX 30, ¶27; Ragsdale Decl., PX 38, ¶ 5.

The defendants make every attempt to sound legitimate to the consumers, including lying about who they are. In most cases, the defendants' telemarketers claim they are calling from the defendants' "winning department," or are outside lawyers or government officials.<sup>27</sup> Typically, they first call the consumer to congratulate the consumer for having won the lottery, and say that a "customs official" will contact the consumer about claiming the prize.<sup>28</sup> The consumer is told that they must pay 1% or more of the prize for taxes, insurance, or to secure a "government release" on the funds.<sup>29</sup> These fees supposedly have to be paid not to the defendants, but to the customs agent who is, of course, simply another of the defendants' telemarketers.<sup>30</sup> When consumers ask whether the fees can be deducted from their winnings, they are sometimes offered a "loan" by the defendants to cover part of the fee, but told they must still pay several hundred or thousand dollars up front.<sup>31</sup>

The victims of this scam are devastated when it slowly dawns on them that there is no prize --

---

<sup>27</sup>*See, e.g.*, Bowman Decl., PX 23, ¶¶ 4, 5 & 6 (representative and "head of security" at "Canada Customs"); Gable Decl., PX 30, ¶¶ 10 & 23 (attorney and representative of Canada Customs); Mehaffie Decl., PX 34, ¶¶ 13 & 18 (from the "Canadian customs office" and "working for the Canadian government"); Ragsdale Decl., PX 38, ¶ 3 (agents for the Canadian lottery); Yousko Decl., PX 44, ¶ 5 (customs agent "at the Canadian border").

<sup>28</sup>*See, e.g.*, Bowman Decl., PX 23, ¶¶ 4, 5 & 6; Mehaffie Decl., PX 34, ¶¶ 13 & 18; Ragsdale Decl., PX 38, ¶ 3; Yousko Decl., PX 44, ¶ 5.

<sup>29</sup>*See, e.g.*, Bowman Decl., PX 23, ¶ 5; Fox Decl., PX 28, ¶ 5; Frey Decl., PX 29, ¶ 5; Gable Decl., PX 30, ¶¶ 11 & 23; Mehaffie Decl., PX 34, ¶ 6; Thornton Decl., PX 40, ¶ 5; Yousko Decl., PX 44, ¶ 4.

<sup>30</sup>*See, e.g.*, Bowman Decl., PX 23, ¶ 5; Gable Decl., PX 30, ¶ 13; Yousko Decl., PX 44, ¶ 4.

<sup>31</sup>*See, e.g.*, Fox Decl., PX 28, ¶ 5; Frey Decl., PX 29, ¶ 6; Thornton Decl., PX 40, ¶ 5.

that this is simply a cruel fraud.<sup>32</sup> When consumers call or write to find out what happened to their money, either the phone number or address are no longer valid, or the consumer is referred to the defendants' "investigation department."<sup>33</sup> Either way, the consumers never hear from the defendants again.<sup>34</sup>

We do not believe that these practices should be allowed to continue. For over ten years this enterprise has been fleecing the senior citizens of the United States. We request that this Court take action to bring these practices to an end. The discussion that follows details the legal authority that permits the Court to take necessary measures to stop the scam and move toward getting money back to the victims.

### **III. THIS COURT SHOULD ENTER A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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

The FTC seeks an *ex parte* temporary restraining order and a preliminary injunction to prevent the defendants from committing further law violations pending a final resolution of this case. The FTC is also seeking an asset freeze in order to preserve the possibility of effective final relief.

In fact, the relief sought by the FTC in this action is nearly identical to the relief ordered in two

---

<sup>32</sup>*See, e.g.*, Gable Decl., PX 30, ¶27; Ragsdale Decl., PX 38, ¶ 5.

<sup>33</sup>*See, e.g.*, Gable Decl., PX 30, ¶¶ 18-20, 25.

<sup>34</sup>They sometimes call their victims later claiming that, for another fee, they can recover the money the consumer lost to the earlier scam. *See, e.g.*, Ragsdale Decl., PX 38, ¶ 4. Needless to say, such follow-up operations, known as "recovery rooms," just compound the earlier scam.

other recent cases brought by the FTC in this district against Canadian lottery telemarketing enterprises -- *FTC v. Growth Plus Int'l Marketing, Inc.*, No. 00-C-7886, 2001 U.S. Dist. LEXIS 1215 (N.D. Ill. Jan. 4, 2001) (Report and Recommendation by M.J. Schenkier, adopted by J. Aspen (Feb. 7, 2001)); *FTC v. Windermere Big Win International, Inc.*, No. 98-C-8066, 1999 U.S. Dist. LEXIS 12259 (N.D. Ill. Aug. 2, 1999) (J. Marovich, adopting Report and Recommendation by M.J. Rosemond).<sup>35</sup>

The FTC Act provides the Court with full authority to grant all of the relief requested by the FTC in this case. Section 13(b) of the FTC Act provides that "in proper cases the FTC may seek, and after proper proof, the Court may issue, a permanent injunction." Courts have held that a "proper case" includes any matter involving a violation of a law enforced by the Federal Trade Commission. *See, e.g., FTC v. Febre*, 128 F.3d 530, 534 (7<sup>th</sup> Cir. 1997); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1026-28 (7<sup>th</sup> Cir. 1988) (false and deceptive advertising to induce purchase is a proper case). Courts have not hesitated to invoke the remedies of Section 13(b) in cases such as this where there is evidence of fraud. *World Travel*, 861 F.2d at 1024-28; *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1111 (9<sup>th</sup> Cir. 1982); *Growth Plus*, 2001 U.S. Dist. LEXIS 1215 at \*5. It is well established that the grant of equitable authority under Section 13(b) of the FTC Act authorizes judges to exercise the full breadth of their equitable authority in actions brought under that statute, including the

---

<sup>35</sup>The preliminary injunction is still in effect and defaults have been entered against all defendants in *Growth Plus*. In the *Windermere* case, Judge Zagel took over the litigation after Judge Marovich's retirement, and ultimately entered summary judgment in favor of the FTC, ordering the defendants to pay \$19.8 million (\$ US) in redress, in addition to entering a broad permanent injunction against the defendants.



authority to order rescission and restitution and the authority to freeze assets in order to preserve them for subsequent distribution. *Febre*, 128 F.3d at 534; *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, 571-72 (7<sup>th</sup> Cir. 1989); *Growth Plus*, 2001 U.S. Dist. LEXIS 1215 at \*11-12; *Windermere*, 1999 U.S. Dist. LEXIS 12259 at \*10. *See also CSC Holdings, Inc. v. KDE Electronics Corp.*, No. 99 C 1556, 2000 U.S. Dist. LEXIS 3231 at \*9 (N.D. Ill. March 9, 2000) (J. Pallmeyer). Section 19(b) of the FTC Act also authorizes this Court to grant such relief as it finds necessary to redress injury to consumers, including, but not limited to, “rescission or reformation of contracts, the refund of money [and] return of property,” resulting from violations of an FTC rule affecting unfair or deceptive practices, such as the Telemarketing Sales Rule. 15 U.S.C. § 57b.

**B. This Court Should Enter a Temporary Restraining Order and Preliminary Injunction**

**1. Applicable Standard for Injunctive Relief**

Section 13(b) of the FTC Act authorizes a temporary restraining order and a preliminary injunction “[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.” Unlike litigation between private parties, in which the movant must show a strong or substantial likelihood or probability of success on the merits, the FTC need only make the statutory showing of a likelihood of ultimate success. *World Travel*, 861 F.2d at 1028-29. Irreparable injury is presumed in a statutory enforcement action. *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 903 (7<sup>th</sup> Cir. 1989). *See also CSC Holdings*, 2000 U.S. Dist. LEXIS 3231 at \*19. Accordingly, the Commission satisfies its burden if it demonstrates to the Court’s satisfaction “some chance of probable success on the merits” to issue a preliminary injunction. *World*

*Travel*, 861 F.2d at 1029. See *Windermere*, 1999 U.S. Dist. LEXIS 12259 at \*17 (quoting *Washington v. Indiana High School Athletic Assoc., Inc.*, 181 F.3d 840 (7<sup>th</sup> Cir. 1999)) (“the FTC must merely demonstrate a likelihood of success on the merits, i.e., a ‘better than negligible’ chance of succeeding on the merits.”).

Once the FTC has established the likelihood of ultimate success, it is appropriate to issue the injunction, based on the public interest in enforcement of the law. In balancing the public and private interests, the public interest should receive greater weight. *World Travel*, 861 F.2d at 1029 (following *FTC v. Warner Communications, Inc.*, 742 F.2d 1156, 1165 (9th Cir. 1984)).

**2. The Evidence Demonstrates Overwhelming Likelihood  
FTC will Prevail on Merits**

The evidence submitted in support of the FTC's motion for a Temporary Restraining Order and Preliminary Injunction, including twenty-two declarations from consumers and twenty-two undercover tape recordings of the defendants' telemarketers, establishes an overwhelming likelihood that the FTC can prove that the defendants' have violated both the FTC Act and the Telemarketing Sales Rule.

As described in Section III above, the defendants have violated Section 5 of the FTC Act and the Telemarketing Sales Rule by: (1) misrepresenting the chances of winning the lottery; (2) misrepresenting that the sale and purchase of foreign lottery tickets is legal or failing to disclose that the transactions are in fact illegal; and (3) misrepresenting to consumers that they had already won the lottery.

The FTC has submitted ample evidence which establishes that the defendants have engaged in deceptive acts and practices in violation of the FTC Act. Section 5 of the FTC Act prohibits deceptive

acts or practices. A deceptive act or practice is established if it is shown that the defendants made a material representation or omission that was likely to mislead consumers acting reasonably under the circumstances. *Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992); *World Travel*, 861 F.2d at 1029; *Growth Plus*, 2001 U.S. Dist. LEXIS 1215 at \*6. A statement or practice is material if it is likely to affect the consumer's decision to buy the product or service. *FTC v. Atlantex*, 1987-2 Trade Cases ¶ 67,788 at 59, 254 (S.D. Fla. 1987), *aff'd on other grounds*, 872 F.2d 966 (11th Cir. 1989). Omissions of material facts are deceptive under Section 5(a) of the FTC Act. *See Amy Travel*, 875 F.2d at 575. Moreover, in deciding whether particular statements or omissions are deceptive, courts must look to the "overall net impression" of consumers. *See FTC v. Gill*, 265 F.3d 944, 956 (9th Cir. 2001); *Kraft, Inc. v. FTC*, 970 F.2d at 322; *FTC v. U.S. Sales Corp.*, 785 F. Supp. 737, 785 (N.D. Ill. 1992). As demonstrated by the voluminous consumer declarations filed in this action, the defendants' misrepresentations and omissions clearly convinced consumers to pay the defendants for foreign lottery tickets and prizes, and thus establish that the defendants violated the FTC Act.

Similarly, the defendants' conduct violates the Telemarketing Sales Rule. The TSR prohibits sellers and telemarketers from making a false or misleading statement to induce any person to pay for goods or services.<sup>36</sup> 16 C.F.R. § 310.3(a)(4). Moreover, Section 310.3(a)(1)(ii) of the TSR prohibits

---

<sup>36</sup>Defendants are "sellers" or "telemarketers" as defined by the Rule and are engaged in "telemarketing" as defined in the Rule. 16 C.F.R. § 310.2(r), (t), and (u). Section 310.2(r) of the Rule defines "seller" as "any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. Section 310.2(t) of the Rule defines "telemarketer" as "any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer." Section 310.2(u) of the Rule defines "telemarketing," in relevant part, as "a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more

telemarketers from failing to clearly and conspicuously disclose, prior to the consumer's purchase of the offered good or services, all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are offered for sale. The defendants' misrepresentations and omissions thus violated the TSR.

**C. Liability of Corporate Defendants**

Each of the corporate defendants was directly involved in this scheme, and they operate as a single enterprise. Although they have erected a confusing network of corporations using various and overlapping registered and unregistered business names, the evidence firmly establishes that these entities have the same principals, use common offices and facilities, and employ the same telemarketers.<sup>37</sup> As cited above, a variety of sources confirm these connections, including the business names given to consumers on the telephone, the return addresses on the mailings sent to consumers, the corporate entities that cash their checks, the telephone numbers of the businesses, and the addresses given in corporate registrations. In short, there is direct evidence of the involvement of each of these corporations, and each of them is liable for the law violations identified.

**D. Individual Liability**

There is also abundant evidence directly showing that six individuals are the central characters

---

than one interstate telephone call.”

<sup>37</sup>*See, e.g.*, Schmitz Decl., PX 22 Att. C (undercover tape recording in which Michael David identifies himself as calling from Express Marketing Services) and Colvin Decl., PX 14 Att. I (undercover tape recording in which Michael David identifies himself as calling from Canadian Catalog Services); Colvin Decl., PX 14, Att. A (undercover tape recording in which telemarketer identifies himself as calling from EMS and Canadian Catalog Services); Colvin Decl., PX 14 Att. G (undercover tape recording in which telemarketer identifies herself as calling from Canadian Catalog Services and Express Marketing Services).

in this operation. George Yemec, Anita Rapp, Steven Rapp, Paul Teskey, Jean-Paul Teskey and Dean Temple are individually liable for violations of the FTC Act and the TSR by the corporate defendants. It is well-established that individuals may be held liable for corporate violations of the FTC Act if the FTC can show that the individual defendants actively participated in or had authority to control a corporation's deceptive practices, and that the individual had or should have had knowledge or awareness of the practices. *Amy Travel*, 875 F.2d at 573-4; *Windermere*, 1999 U.S. Dist. LEXIS 12259 at \*14. Authority to control a company can be established by demonstrating that an individual assumed the duties of a corporate officer. *Amy Travel*, 875 F.2d at 573; *Growth Plus*, 2001 U.S. Dist. LEXIS 1215 at \*10. In addition, "degree of participation in business affairs is probative of knowledge." *Amy Travel*, 875 F.2d at 574. The knowledge requirement does not rise to the level of a subjective intent to defraud consumers, but is, instead, a knowledge or awareness of the misrepresentations on the part of the defendants. *Id.*; *Windermere*, 1999 U.S. Dist. LEXIS 12259 at \*14-15. The evidence shows that the FTC is likely to prevail in establishing that the individual defendants' actions meet the standard for holding them individually liable.

**1. George Yemec** is an owner and principal of various corporate defendants. Mr. Yemec was the incorporator and is the first and only listed director of World Media Brokers, Inc.<sup>38</sup> He is also the president and secretary of World Media Brokers, Inc.<sup>39</sup> Mr. Yemec was the first director, incorporator, and sole shareholder of Faby Games Inc.<sup>40</sup> As secretary for Faby Games Inc., he filed a

---

<sup>38</sup>World Media Brokers, Inc. Ontario Corporation Profile Report, PX 1.

<sup>39</sup>World Media Brokers, Inc. Ontario Corporation Profile Report, PX 1.

<sup>40</sup>Faby Games Inc. Ontario Corporation Profile Report, PX 4.

special resolution for that corporation limiting the number of directors and shareholders to one.<sup>41</sup> Mr. Yemec is the registered agent for 624654 Ontario Ltd.<sup>42</sup> He is also a director and the secretary and treasurer of 624654 Ontario Ltd.<sup>43</sup> Mr. Yemec is the registered agent for 637736 Ontario Ltd.<sup>44</sup> He is also the only current director and president, secretary and treasurer of 637736 Ontario Ltd.<sup>45</sup> Mr. Yemec is the only current director and president, secretary and treasurer of 537721 Ontario Inc.<sup>46</sup> He registered the business name “Express Money Services” and renewed the business name “Canadian Expre\$\$ Club” for 537721 Ontario Inc.<sup>47</sup> Finally, Mr. Yemec has clearly known not only of his companies’ conduct but that their activities are illegal, since he was personally named and involved in both the U.S. Postal case against several of his companies,<sup>48</sup> and in the Ontario prosecution of his companies.<sup>49</sup>

**2. Anita Rapp** is an owner and principal for various corporate defendants. Ms. Rapp is a

---

<sup>41</sup>Faby Games Inc. Ontario Corporation Profile Report, PX 4.

<sup>42</sup>624654 Ontario Ltd. Ontario Corporation Profile Report, PX 5.

<sup>43</sup>624654 Ontario Ltd. Ontario Corporation Profile Report, PX 5.

<sup>44</sup>637736 Ontario Ltd. Ontario Corporation Profile Report, PX 7.

<sup>45</sup>637736 Ontario Ltd. Ontario Corporation Profile Report, PX 7.

<sup>46</sup>537721 Ontario Inc. Ontario Corporation Profile Report, PX 9.

<sup>47</sup>537721 Ontario Inc. Ontario Corporation Profile Report, PX 9.

<sup>48</sup>*See The Canadian Express Club, et al.*, PXs 45 & 46.

<sup>49</sup>*See Regina v. World Media Brokers, Inc.*, PXs 47 & 48.

director and president of 624654 Ontario Ltd.<sup>50</sup> She registered and renewed the business names “Express Sales,” “First Telemedia Group” and “First Telegroup Marketing” for 624654 Ontario Ltd.<sup>51</sup> She also registered and later canceled the use of the business name “Express Marketing Services” on behalf of 624654 Ontario Ltd.<sup>52</sup> and later registered the name on behalf of 63376 Ontario Ltd. Anita Rapp was formerly the president, secretary and treasurer, and remains an authorized signing officer, of 633736 Ontario Ltd.<sup>53</sup> She registered the business name “First Telegroup Management” for 633736 Ontario Ltd.<sup>54</sup> She also filed the formal name change for the corporation from “Sam’s Lottery Agency Ltd.” to 633736 Ontario Ltd.<sup>55</sup> Finally, Ms. Rapp has clearly known not only of her companies’ conduct but that the activities are illegal, since she was involved in the Ontario prosecution of her companies.<sup>56</sup>

**3. Steven Rapp** is the only listed officer and shareholder of Express Marketing Services Ltd., registered in Prince Edward Island.<sup>57</sup> Mr. Rapp is also president, secretary and treasurer of Express

---

<sup>50</sup>624654 Ontario Ltd. Ontario Corporation Profile Report, PX 5.

<sup>51</sup>624654 Ontario Ltd. Ontario Corporation Profile Report, PX 5; 624654 Ontario Ltd. Prince Edward Island Registration of Business Name Declaration, PX 6.

<sup>52</sup>624654 Ontario Ltd. Ontario Corporation Profile Report, PX 5.

<sup>53</sup>637736 Ontario Ltd. Ontario Corporation Profile Report, PX 7.

<sup>54</sup>637736 Ontario Ltd. Ontario Corporation Profile Report, PX 7, 637736 Ontario Ltd. Prince Edward Island Registration of Business Name Declaration, PX 8.

<sup>55</sup>637736 Ontario Ltd. Ontario Corporation Profile Report, PX 7.

<sup>56</sup>*See Regina v. World Media Brokers, Inc.*, PXs 47 & 48.

<sup>57</sup>Express Marketing Services Ltd. Prince Edward Island Annual Return, PX 10.

Marketing Services Ltd.<sup>58</sup> Mr. Rapp has also identified himself as president of Express Marketing Services in Vancouver, British Columbia, and has admitted that his company sold Canadian lottery tickets to residents of the United States.<sup>59</sup> Finally, Mr. Rapp has clearly known not only of his companies' conduct but that the activities are illegal, since he was involved in the Ontario prosecution of his companies.<sup>60</sup>

**4. Paul Teskey** is a director, and was one of the founding directors, of 1165107 Ontario Inc.<sup>61</sup> Paul Teskey was also president, secretary and treasurer of 1165107 Ontario Inc.<sup>62</sup> He registered the name "Canadian Catalogue" for that corporation.<sup>63</sup> Paul Teskey is listed on the Business Certificate filed for Canadian Catalogue in Erie County, New York.<sup>64</sup>

**5. Jean-Paul Teskey** is a director, and was one of the founding directors, of 1165107 Ontario Inc, a/k/a Canadian Catalog Services and CCS.<sup>65</sup> He is also president, secretary and treasurer

---

<sup>58</sup>Express Marketing Services Ltd. Prince Edward Island Annual Return, PX 10.

<sup>59</sup>See, e.g., Randy Thiemer & Steven Rapp, *Attorney-General Puts At Risk a B.C. Industry: Two Lottery Ticket Resellers Write That Their Companies are Good Apples. And They Ask Why the Government Would Throw Out the Good With the Bad*, Vancouver Sun, Jan. 12, 1996, at A19 (editorial); Steven Rapp, *Export Lotteries Pay Out*, Vancouver Sun, Nov. 8, 1995, at A12 (editorial).

<sup>60</sup>See *Regina v. World Media Brokers, Inc.*, PXs 47 & 48.

<sup>61</sup>116507 Ontario Inc. Ontario Corporation Profile Report, PX 2.

<sup>62</sup>116507 Ontario Inc. Ontario Corporation Profile Report, PX 2.

<sup>63</sup>116507 Ontario Inc. Ontario Corporation Profile Report, PX 2.

<sup>64</sup>Canadian Catalogue Erie County, NY Business Certificate, PX 3.

<sup>65</sup>116507 Ontario Inc. Ontario Corporation Profile Report, PX 2.



of 1165107 Ontario Inc.<sup>66</sup> He is listed on, and signed, the Business Certificate filed for Canadian Catalogue in Erie County, New York.<sup>67</sup> He personally signed small winnings checks sent to one consumer (most of which were refunded for insufficient funds).<sup>68</sup> Jean-Paul Teskey is also the only listed current director, and is president, secretary and treasurer of Faby Games Inc.<sup>69</sup>

**6. Dean Temple** is the chairman of the board, chief executive officer and registered agent for Intermarketing Services, Inc.<sup>70</sup> Mr. Temple is listed as the only officer or director of Intermarketing Services, Inc.<sup>71</sup> Mr. Temple is also the chairman of the board and executive officer for Cash & Prizes, Inc.<sup>72</sup>

All of these individuals meet the standard and should be held individually liable for the conduct alleged in the Commission's complaint. Each defendant participated in, and possess the authority to control, the acts and practices of the corporations. They also possessed sufficient knowledge, by virtue of just knowing the type of business they were involved in (lottery sales), to hold them individually liable.

**E. An Asset Freeze and an Accounting are Necessary to Preserve Assets for Effective Consumer Redress**

---

<sup>66</sup>116507 Ontario Inc. Ontario Corporation Profile Report, PX 2.

<sup>67</sup>Canadian Catalogue Erie County, NY Business Certificate, PX 3.

<sup>68</sup>See Loescher Decl., PX 32, Att. E.

<sup>69</sup>Faby Games Inc. Ontario Corporation Profile Report, PX 4.

<sup>70</sup>Intermarketing Services, Inc. Certificate of Incorporation, PX 11.

<sup>71</sup>Intermarketing Services, Inc. Certificate of Incorporation, PX 11.

<sup>72</sup>Cash & Prizes, Inc. LEXIS Corporate Record, PX 12.

Part of the relief sought by the FTC in this case is restitution to consumers who were defrauded by defendants' misrepresentations. Thus, the Court should order an immediate freeze of the defendants' assets to preserve the possibility of such relief, and order an immediate accounting to prevent concealment or any dissipation of assets pending final resolution of this litigation. Inasmuch as two of the corporate defendants are located in New York, there may be significant assets in the U.S., which could be preserved for any future restitution ordered by the Court. An asset freeze simply permits the Court to supervise the finances, maintain the status quo, and prevent money from leaving the U.S.

The Court should also freeze the assets of the individual defendants for the same reasons. The FTC is likely to prevail in showing that they are liable for consumer redress for the companies' practices. As discussed above, their knowledge of, and participation in or authority to control, the practices which violated the FTC Act and the TSR and their failure to act within their authority to control those practices makes them individually liable for monetary damages. *World Travel*, 861 F.2d at 1031; *Growth Plus*, 2001 U.S. Dist. LEXIS 1215 at \*12-13.

When, as in this case, business operations are permeated by fraud, the likelihood that assets may be dissipated during the pendency of the legal proceedings is strong. *See, e.g., International Controls Corp. v. Vesco*, 490 F.2d 1334, 1347 (2d Cir. 1974), *cert. denied*, 417 U.S. 932 (1974); *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972). Mindful of this, courts have ordered the freezing of assets solely on the basis of pervasive fraudulent activities such as those found in this case. *See, e.g., FTC v. U.S. Oil & Gas Corp.*, 748 F.2d. 1431, 1434 (11th Cir. 1984); *FTC v. H. N. Singer*, 668 F.2d at 1113. Thus, absent a freeze, the possibility of meaningful consumer redress will disappear.

The FTC also requests that this Court order an accounting to determine what has happened to the money defendants obtained from numerous defrauded consumers. Such an accounting will enable the FTC to determine, *inter alia*, whether the individual defendants have wrongfully converted corporate assets to their personal use. It falls within the equitable powers of the Court to order an accounting where, as here, the "accounts between the parties are of such a complicated nature that they can be satisfactorily unraveled only by a court of equity." *Donovan v. U.S. Postal Service*, 530 F. Supp. 894, 900-01 (D.D.C. 1981) (quoting Harlan, J., concurring in *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 480 (1962)). *See also SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986); *Windermere*, 1999 U.S. Dist. LEXIS 12259 at \*17.

**F. This Court Has the Authority to Order Repatriation**

The district court also has jurisdiction over foreign assets not located within the U.S. Once personal jurisdiction over a party is obtained, the district court has authority to order the defendants to "freeze" property under their control, whether the property is within or outside of the United States. *U.S. v. First National City Bank*, 379 U.S. 378, 384 (1965). The court also has authority to order the defendants to provide an accounting of assets held abroad and disgorge money held overseas, *SEC v. International Swiss Investments Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1989), and to repatriate funds transferred to overseas accounts. *SEC v. Bankers Alliance Corp.*, 881 F. Supp. 673, 676 (D.D.C. 1995).

**G. Temporary Restraining Order, Asset Freeze, and Other Ancillary Relief Should Be Issued Ex Parte**

This is an appropriate case for the issuance of an *ex parte* Temporary Restraining Order.

Absent *ex parte* relief, there is a real risk that defendants will take measures to dissipate or conceal assets. The persistent pattern of defendants' fraudulent practices and their complicated use of different corporate structures over time strongly suggests that *ex parte* relief is necessary. Issuing the Temporary Restraining Order with asset freeze, without notice, will help preserve the possibility of full and effective relief. See *Atlantex Associates*, 872 F.2d at 968. As discussed in the attached Declaration in Support of *Ex Parte* Motion pursuant to Fed. R. Civ. P. 65, it is commonplace for defendants engaged in fraudulent conduct to attempt to transfer funds or destroy documents once they learn of the litigation, even where courts have frozen their assets. The FTC intends to effect service of any of this Court's orders in compliance with the procedures set out by all applicable treaties in order to ensure that this Court's jurisdiction over the defendants is recognized under Canadian law.

#### **IV. CONCLUSION**

The defendants have caused and are likely to cause injury to consumers as a result of their unlawful practices in violation of Section 5(a) of the FTC Act and the Sections 310.3(a)(1)(ii) and (a)(4) of the Telemarketing Sales Rule. To prevent ongoing consumer harm and to help assure the possibility of effective final relief in the form of monetary redress to consumers, this Court should issue the requested *ex parte* Temporary Restraining Order with Asset Freeze, as well as the Preliminary Injunction.

Dated: September 30, 2002

Respectfully submitted,

WILLIAM E. KOVACIC  
General Counsel

---

DAVID A. O'TOOLE  
Attorney for Plaintiff  
Federal Trade Commission  
55 East Monroe, Ste. 1860  
Chicago, IL 60603  
(312) 960-5634  
(312) 960-5600 (fax)