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

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

APOGEE ONE ENTERPRISES LLC, a
Pennsylvania limited liability company,
d/b/a Apogee Enterprises LLC, Platinum
Trust Card, and Express Platinum Card,

MARQUEE MARKETING LLC, a Nevada
limited liability company, d/b/a Express
Platinum Card,

BLAKE RUBIN, individually and d/b/a
CR Ventures, LLC, Platinum Trust Card, Express
Platinum Card, and Maxim Management Group,
LLC,

CHASE RUBIN, individually and d/b/a
CR Ventures, LLC, Platinum Trust Card, Express
Platinum Card, Maxim Management Group, LLC,
and Oakmont Management Services, LLC,

JUSTIN DIACZUK, individually and as an officer
or owner of Apogee One Enterprises LLC,

JULES SHORE, individually and as an officer or
owner of Marquee Marketing LLC,

Defendants.

12cv588

Judge Matthew F. Kennelly
Magistrate Morton Denlow

**PLAINTIFF FEDERAL TRADE
COMMISSION'S MEMORANDUM
IN SUPPORT OF ITS *EX PARTE*
MOTION FOR A TEMPORARY
RESTRAINING ORDER WITH
ASSET FREEZE, APPOINTMENT
OF A RECEIVER, IMMEDIATE
ACCESS, AND OTHER
EQUITABLE RELIEF**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. DEFENDANTS’ DECEPTIVE BUSINESS PRACTICES 2

 A. Sales Pitch and Misrepresentations 3

 B. Unauthorized Bank Drafts 8

 C. Customer Service and Refunds 9

 D. Return Rates 12

III. DEFENDANTS 13

 A. Blake Rubin and Chase Rubin, d/b/a CR Ventures, LLC 13

 B. Justin Diaczuk and Apogee One Enterprises LLC 16

 C. Jules Shore and Marquee Marketing LLC 17

IV. ARGUMENT 18

 A. This Court has the Authority to Grant the Requested Relief 18

 B. A Temporary Restraining Order Is Appropriate and Necessary 19

 C. The Evidence Demonstrates an Overwhelming Likelihood that the FTC will
 Prevail on the Merits 19

 1. Defendants are Violating the FTC Act 19

 2. Defendants are Violating the Telemarketing Sales Rule 21

 3. The Individual Defendants are Personally Liable 22

 D. The Equities Tip in the Commission’s Favor 24

 E. The Temporary Restraining Order Should Include an Asset Freeze, a Temporary
 Receivership, and Other Ancillary Relief 24

 F. The Temporary Restraining Order Should Be Issued *Ex Parte* 25

V. CONCLUSION 26

TABLE OF AUTHORITIES

Cases

Opinions

<i>CFTC v. Hunt</i> , 591 F.2d 1211 (7th Cir. 1979)	19
<i>FTC v. Amy Travel Serv., Inc.</i> , 875 F.2d 564 (7th Cir. 1989)	19, 23
<i>FTC v. Bay Area Bus. Council, Inc.</i> , 423 F.3d 627 (7th Cir. Aug. 25, 2005)	1, 20, 23
<i>FTC v. Direct Mktg. Concepts, Inc.</i> , 648 F. Supp. 2d 202 (D. Mass. 2009)	19
<i>FTC v. Global Mktg. Group, Inc.</i> , 594 F. Supp. 2d 1281 (M.D. Fla. 2008)	12, 21
<i>FTC v. Febre</i> , 128 F.3d 530 (7th Cir. 1997)	19
<i>FTC v. Five-Star Auto Club, Inc.</i> , 97 F. Supp. 2d 502 (S.D.N.Y. 2000)	19
<i>FTC v. J.K. Publications, Inc.</i> , 99 F. Supp. 2d 1176 (C.D. Cal. 2000)	21
<i>FTC v. QT, Inc.</i> , 488 F. Supp. 2d 908 (N.D. Ill. 2006)	12, 20
<i>FTC v. Think Achievement Corp.</i> , 144 F. Supp. 2d 1013 (N.D. Ind. 2000)	19
<i>FTC v. World Media Brokers</i> , 415 F.3d 758 (7th Cir. 2005)	20, 23
<i>FTC v. World Travel Vacation Brokers, Inc.</i> , 861 F.2d 1020 (7th Cir. 1988)	19, 24, 25
<i>FTC v. World Wide Factors, Ltd</i> , 882 F.2d 344 (9th Cir. 1989)	24
<i>Kraft, Inc. v. FTC</i> , 970 F.2d 311, 322 (7th Cir. 1992)	20
<i>Orkin Exterminating Co., Inc. v. FTC</i> , 849 F.2d 1354 (11th Cir. 1988)	21
<i>United States v. W.T. Grant Co.</i> , 345 U.S. 629 (1953)	19

Orders and Filed Cases

<i>FTC v. 2145183 Ontario Inc., et al.</i> , No. 09 C 7423 (N.D. Ill. 2009)	18
<i>FTC v. 1522838 Ontario Inc., et al.</i> , No. 06 C 5378 (N.D. Ill. 2006)	18
<i>FTC v. Am. Tax Relief LLC, et al.</i> , No. 10 C 6123 (N.D. Ill. 2010)	18

<i>FTC v. API Trade, LLC, et al.</i> , No. 10 C 1543 (N.D. Ill. 2010)	18
<i>FTC v. Asia Pacific Telecom, Inc., et al.</i> , No. 10 C 3168 (N.D. Ill. 2010)	18
<i>FTC v. Bay Area Bus. Council, Inc.</i> , No. 02 C 5762 (N.D. Ill. 2003)	3
<i>FTC v. Cleverlink Trading Ltd.</i> , No. 05 C 2889 (N.D. Ill. 2005)	3, 18
<i>FTC v. Data Bus. Solutions, Inc., et al.</i> , No. 08 C 2783 (N.D. Ill. 2008)	18
<i>FTC v. Datacom Mktg., et al.</i> , No. 06 C 2574 (N.D. Ill. 2006)	18
<i>FTC v. Grant Connect, LLC</i> 2009 U.S. Dist. LEXIS 94201 (D. Nev. Sept. 22, 2009)	12
<i>FTC v. Integration Media, Inc., et al.</i> , No. 09 C 3160 (N.D. Ill. 2009)	18
<i>FTC v. Sili Neutraceuticals, LLC, et al.</i> , No. 07 C 4541 (N.D. Ill. 2007)	18
<i>FTC v. Spear Sys., Inc., et al.</i> , No. 07 C 5597 (N.D. Ill. 2007)	18
<i>FTC v. Union Consumer Benefits</i> , No. 08 C 2309 (N.D. Ill. 2008)	18
<i>FTC v. Windward Marketing, Ltd.</i> , 1997 U.S. Dist. LEXIS 17114 (N.D. Ga. 1997)	22
<i>FTC v. Yellow Page Mktg., B.V., et al.</i> , No. 11 C 05035 (N.D. Ill. 2011)	18

Statutes

Fed. R. Civ. P. 65(b)	25
Federal Trade Commission Act, 15 U.S.C. § 45(a)	1, 18, 20, 21
15 U.S.C. § 45(a)(2)	22
15 U.S.C. § 45(n)	21
15 U.S.C. § 53(b)	3, 18
15 U.S.C. §§ 6101-6108	1
Telemarketing and Consumer Fraud and Abuse Protection Act, 16 C.F.R. Part 310	1, 18
16 C.F.R. §310.3(a)(2)(iii)	21

16 C.F.R. §310.4(a)(4)	22
16 C.F.R. §310.4(a)(7)	22

I. INTRODUCTION

The Federal Trade Commission asks this Court to halt a massive telemarketing enterprise that has defrauded thousands of consumers across the country. Doing business as Platinum Trust Card and Express Platinum Card, Defendants promise that, in exchange for an advance fee of up to \$99 as well as a recurring monthly fee, they will provide a general-purpose credit card with a credit limit of \$5,000 to \$9,500. Defendants prey on consumers who are struggling financially, many of whom recently applied online for a payday loan. Consumers are assured that they can use Defendants' "credit cards" anywhere that accepts Visa, MasterCard or American Express, and that the cards will help build or repair consumers' credit ratings.

No one who pays Defendants' fees receives a general-purpose credit card or an improved credit rating. Instead, consumers gain access to an online shopping website stocked with a seemingly random assortment of off-brand, ludicrously overpriced products, most of which are only sold in bulk quantities. Defendants also frequently make unauthorized withdrawals from the bank accounts of consumers who have clearly declined Defendants' credit card offer. Consumer have lost millions of dollars to this scam.

Defendants' practices violate the Federal Trade Commission Act's ("FTC Act") prohibition of "unfair or deceptive acts or practices," 15 U.S.C. § 45(a), the Telemarketing and Consumer Fraud and Abuse Protection Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, and several provisions of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310. Several courts in this district, including the Seventh Circuit Court of Appeals, have found that highly similar practices violated the FTC Act and TSR. *See, e.g., FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d 627, 635 (7th Cir. Aug. 25, 2005) (finding defendants' "failure to provide a 'credit card' lies at the heart of this case" and affirming \$12.5 million summary judgment).

Defendants employ a variety of ruses to conceal their misconduct and promote the fiction that they run a legitimate business. Despite these efforts, Defendants have not escaped law enforcement scrutiny. In August 2011, the State of Utah Division of Consumer Protection brought several hundred charges of fraud against Defendants Blake and Chase Rubin for the very practices at issue here. After settling with Utah in September 2011, Defendants simply adopted a new d/b/a and a new address in neighboring Nevada. In virtually every other respect, Defendants' conduct has remained essentially unchanged.

The FTC brings this motion *ex parte* to seek an immediate halt to this operation and to freeze its assets. Defendants' pattern of fraud, as well as their attempts to conceal their identity and location, suggests that they would hide or dissipate assets if they received notice of this action. The requested relief is therefore necessary to preserve the Court's ability to provide effective final relief, such as refunds to victims.

II. DEFENDANTS' DECEPTIVE BUSINESS PRACTICES

Since early 2009, Defendants have pitched a combination general-purpose credit card and credit repair tool. Defendants target consumers in precarious financial condition, using payday loan applications as their main source of leads. Days after submitting such an application online, consumers receive a call from one of Defendants' telemarketers.¹ From approximately January 2009 to August 2011, Defendants did business as Platinum Trust Card using an address in Salt Lake City, Utah. After being sued by the State of Utah, Defendants began operating as Express Platinum Card, claiming to be based in Henderson, Nevada. In reality, Defendants' hub of

¹ PX 7, Brown ¶¶ 3-4; PX 8, Corley ¶¶ 3-4; PX 9, Dodd ¶¶ 3-4; PX 10, Johanson ¶¶ 3-4; PX 13, Nally ¶¶ 3-4; PX 14, Sanborn ¶¶ 3-4; PX 15, Scott ¶¶ 3-4; PX 16, Sigmon ¶¶ 3-4; PX 17, Tiggs ¶¶ 3, 5; PX 18, Waddill ¶¶ 3-4; PX 20, Castillo ¶¶ 3-4; PX 21, Hutchinson ¶¶ 3-4; PX 22, Lewis ¶¶ 3-4; PX 23, Mickle ¶¶ 3, 6; PX 24, Mitchell ¶¶ 3-4; PX 25, Oraclay ¶¶ 3-4; PX 27, Robinson ¶¶ 3-4.

operations is the Philadelphia area, where they run at least two telemarketing boiler rooms.² The scale of consumer injury caused by Defendants' illegal conduct is substantial. In less than three years, Defendants have taken in at least \$4.82 million.³ Moreover, this scam is ongoing and continues to victimize hundreds, if not thousands, of consumers each week. In the last two months alone, Defendants recorded over 10,000 sales.⁴

A. Sales Pitch and Misrepresentations

Whether doing business as Platinum Trust Card or Express Platinum Card, Defendants' sales pitch has remained essentially unchanged. In exchange for a one-time fee of \$69 to \$99 as well as a recurring monthly fee of \$19, Defendants promise to send consumers a general-purpose

² Defendants' operation is run out of three locations in the Philadelphia area. Two of the locations are telemarketing boiler rooms located at 2200 Michener Street, Suite 12, Philadelphia, PA 19115 and 419 Johnson Street, Jenkintown, PA 19046. PX 1, McKenney (FTC Investigator) ¶¶ 28(f) & 38(d) (bank records of rent checks for the Johnson Street location), ¶ 34(e) (bank records of rent checks for the Michener Street location). The bank accounts used to pay rent for these locations also fund the boiler room payrolls. *Id.* ¶¶ 28(i), 34(i), 38(g) (bank records showing names of employees who received payroll checks), ¶¶ 79-80, 82, 84 (sales data identifying telemarketers at each location). The third location is 309 Old York Road, Suites 200 and 300, Jenkintown, PA, 19046, which Defendants use as their mailing address for bank accounts, merchant accounts, and virtual office service agreements. *Id.* ¶¶ 16, 22, 26, 29.

The Court has personal jurisdiction over Defendants under the FTC Act's nationwide service of process provision, 15 U.S.C. § 53(b), because Defendants have minimum contacts with the United States. *See FTC v. Cleverlink Trading Ltd.*, No. 05 C 2889, 2006 WL 1735276, at *4 (N.D. Ill. June 19, 2006) (Kendall, J.); *FTC v. Bay Area Bus. Council, Inc.*, No. 02 C 5762, 2003 WL 21003711, at *2 (N.D. Ill. May 1, 2003) (Darrah, J.). Moreover, under the FTC Act's venue provision, an action may be brought wherever a corporation "resides or transacts business." 15 U.S.C. § 53(b). Here, Defendants have transacted business in this district. *See* PXs 10-11 and 17 (declarations of consumers residing in this district victimized by Defendants' scheme); PX 1, McKenney ¶¶ 71, 73-74, 77 (Defendants' websites accessible in this district). In addition, venue is proper over a corporation wherever it is subject to personal jurisdiction. *See Bay Area*, 2003 WL 21003711, at *2.

³ PX 1, McKenney ¶ 64 (total net sales from merchant processing activity).

⁴ *Id.* ¶¶ 83, 85 (sales reports showing number of net sales transactions in December 2011 and part of January 2012 for Defendants' two boiler rooms).

credit card with a substantial credit limit⁵ that will also help rebuild or repair consumers' credit rating.⁶ When consumers inquire if the cards are restricted to a particular website or store, Defendants respond unequivocally that no such limitations exist.⁷ Defendants assert that their cards are accepted by any merchant that takes general-purpose credit cards such as Visa, MasterCard, or American Express.⁸ Indeed, Defendants frequently claim outright that consumers will receive a branded credit card.⁹ Skeptical consumers often ask other questions, such as whether the cards can be used to make purchases at Wal-Mart, buy gasoline, or pay

⁵ PX 7, Brown ¶ 4 (\$89 advance fee, \$19 monthly fee, \$9,500 credit limit); PX 8, Corley ¶ 4 (\$89 advance fee); PX 9, Dodd ¶ 4 (\$89 advance fee, \$19 monthly fee, \$10,000 credit limit); PX 10, Johanson ¶ 4, PX 11, Kujawa ¶ 3, PX 13, Nally ¶ 4, PX 14, Sanborn ¶ 4, PX 15, Scott ¶¶ 4, 5, PX 16, Sigmon ¶ 4 (\$89 advance fee, \$9,500 credit limit); PX 17, Tiggs ¶ 3 (\$69 "processing" fee, \$9,500 credit limit); PX 18, Waddill ¶ 4 (\$89 advance fee, \$9,500 credit limit); PX 19, Anderson ¶ 4, PX 22, Lewis ¶ 3, PX 23, Mickle ¶ 3, PX 24, Mitchell ¶ 5, PX 26, Perez ¶ 5 (\$99 advance fee, \$5,500 credit limit); PX 20, Castillo ¶ 4 (\$99 "membership" fee); PX 21, Hutchinson ¶ 4, PX 27, Robinson ¶ 4 (\$99 advance fee, \$19 monthly fee, \$5,500 credit limit).

⁶ PX 7, Brown ¶ 4; PX 14, Sanborn ¶ 4; PX 15, Scott ¶ 4; PX 19, Anderson ¶ 4; PX 22, Lewis ¶ 3; PX 23, Mickle ¶ 3; PX 24, Mitchell ¶ 5; PX 25, Oraclay ¶ 4; PX 26, Perez ¶ 5; PX 27, Robinson ¶ 4.

⁷ PX 11, Kujawa ¶ 3; PX 15, Scott ¶ 5.

⁸ PX 9, Dodd ¶ 4 (repeatedly assured that Platinum Trust Card "worked like a regular credit card, such as a MasterCard or Visa"); PX 11, Kujawa ¶ 3 (assured that Platinum Trust Card "was a general purpose credit card and that [consumer] could use it anywhere credit cards are accepted"); PX 15, Scott ¶ 5 (told that Platinum Trust Card "was a real MasterCard that could be used anywhere MasterCard is accepted"); PX 17, Tiggs ¶ 3 (told Platinum Trust Card "was a MasterCard that could be used anywhere MasterCard is accepted"); PX 18, Waddill ¶ 4; PX 19, Anderson ¶ 4; PX 20, Castillo ¶ 4; PX 21, Hutchinson ¶ 4 (assured that Express Platinum Card was a "real credit card" and that consumer "could use it like a Visa credit card"); PX 22, Lewis ¶ 5 (assured that Express Platinum Card could be used "anywhere Visa or MasterCard was accepted"); PX 23, Mickle ¶ 4 (Express Platinum Card "worked like a Visa or MasterCard"); PX 24, Mitchell ¶ 5 (Express Platinum Card could be used "anywhere that accepted Visa, MasterCard or American Express"); PX 25, Oraclay ¶ 6 ("Express Platinum Card could be used just like a Visa or MasterCard and would be accepted where these credit cards were accepted"); PX 26, Perez ¶ 5; PX 27, Robinson ¶ 4.

⁹ PX 15, Scott ¶ 5 (MasterCard); PX 17, Tiggs ¶ 3 (MasterCard); PX 18, Waddill ¶ 4; PX 24, Mitchell ¶ 5 (affiliated with American Express).

miscellaneous bills in the same way that a general-purpose credit card can be used. In every case, the answer is yes.¹⁰

No one who pays Defendants' fees receives the promised general-purpose credit card or anything else of value.¹¹ At most, Defendants send consumers a thin plastic card with the shape and appearance of an authentic credit card.¹² A letter from Defendants extolling the benefits of Platinum Trust Card states in part:

Now reporting to Innovis Credit Bureau

Now you have the money you need...To buy the things you want...At the lowest price guaranteed!!!

The letter instructs consumers to visit the website www.platinumtrustcard.com to "activate your card."¹³ Some consumers do not receive the card or letter, but simply an email with an account number directing them to another website, www.expressplatinumcard.com. This email advises recipients to: "Let your \$5,500 line of credit and your payment history with EPC help you buy

¹⁰ PX 11, Kujawa ¶ 3 (told that Platinum Trust Card could be used "for whatever [consumer] wanted except for cash [advances]"); PX 15, Scott ¶ 5 (assured that Platinum Trust Card could be used to "buy groceries, pay for repairs to car, buy furniture, and pay for bills online"); PX 17, Tiggs ¶ 4 (repeatedly assured that Platinum Trust Card was a "real credit card"); PX 18, Waddill ¶ 4 (told that Platinum Card could be used "anywhere," including to purchase gas for car); PX 19, Anderson ¶ 4 (assured that Express Platinum Card could be used to purchase groceries or pay for car repairs); PX 22, Lewis ¶ 5 (representative told consumer that he "could go online and purchase anything I wanted"); PX 24, Mitchell ¶ 5 (Express Platinum Card accepted at Wal-Mart).

¹¹ Defendants obtain payment by credit and debit card as well as through the use of so-called demand draft checks. *See, e.g.*, PX 1, McKenney ¶¶ 54-58 (discussing Defendants' accounts with credit card merchant processor); PX 10, Johanson Atts. A & C (copies of checks). A demand draft is a paper check created by a merchant with a consumer's checking account number on it, but without the consumer's original signature. In place of a signature, demand drafts generally include a statement that the account holder authorized the check.

¹² PX 7, Brown ¶ 7, Att. B; PX 18, Waddill ¶ 6.

¹³ PX 7, Brown ¶ 7, Att. B.

the things you want and build your credit rating by extending your capacity to borrow.”¹⁴ Many consumers receive absolutely nothing from Defendants.¹⁵

The Platinum Trust and Express Platinum Cards serve only one purpose: they allow consumers to access a group of ten online stores operated by Defendants.¹⁶ Using an account and password issued by Defendants, consumers access these stores through Defendants’ websites.¹⁷ Defendants claim that their stores, which are not available to the general public, offer over 75,000 “exciting & new name-brand products” from companies like Apple, Calvin Klein and Sony “all with a low price guarantee.”¹⁸ Instead of the shopper’s paradise that Defendants make them out to be, consumers who log into Defendants’ websites find nothing of value or interest to them.¹⁹ In fact, Defendants’ stores appear designed to discourage sales. Without exception, they are stocked with a seemingly random assortment of off-brand, overpriced, and downright bizarre products, most of which are sold only in comically large

¹⁴ PX 19, Anderson ¶ 12, Att. D; PX 23, Mickle ¶ 7, Att. B; PX 26, Perez ¶ 7, Att. A; PX 27, Robinson ¶ 7, Att. B.

¹⁵ PX 10, Johanson ¶ 10; PX 15, Scott ¶ 7; PX 16, Sigmon ¶ 6; PX 24, Mitchell ¶ 9.

¹⁶ Even Defendants seem unsure exactly what they are selling to consumers, variously describing their business to merchant processors as “debt collection,” an “online membership program,” and a “billing service for memberships to an online shopping program.” PX 1, McKenney ¶¶ 48, 56-57, 59.

¹⁷ *Id.* ¶¶ 71-73, 77-78; PX 7, Brown ¶ 7 Att. B; PX 17, Tiggs ¶ 9; PX 18, Waddill ¶ 6; PX 23, Mickle ¶¶ 8-9; PX 26, Perez ¶¶ 7-8; PX 27, Robinson ¶¶ 7-8.

¹⁸ PX 1, McKenney ¶ 72, Att. U (p. 1) and ¶ 78, Att. X (p. 1).

¹⁹ PX 7, Brown ¶ 7, Att. B; PX 17, Tiggs ¶ 9; PX 18, Waddill ¶ 6; PX 23, Mickle ¶¶ 8-9; PX 26, Perez ¶¶ 7-8; PX 27, Robinson ¶¶ 7-8.

quantities.²⁰ For example, consumers can purchase “washable poster paints” from the store “Your Shopping Basket,” but only if they are willing to spend \$863.28 for a case containing 72 packages of this product.²¹ The same quantity of the exact product is available from Amazon.com for \$103.²² Similarly ludicrous deals are the norm, not the exception.²³ In the unlikely event that consumers find a product they are willing to buy, they must pay a substantial portion of the price themselves up front and can only use their Platinum Trust and Express Platinum Cards to finance part of the cost.²⁴

Consumers derive no credit building or credit repair benefits from the Platinum Trust and Express Platinum Cards. Defendants’ assertion that they report to the “Innovis Credit Bureau” is an especially outrageous falsehood. Innovis does not offer any products that are used to make credit decisions or that could, in any way, influence a consumer’s credit score.²⁵ Moreover,

²⁰ *Id.*; PX 1, McKenney ¶¶ 74-76. (comparing the prices of various products sold by Defendants with identical items available at Amazon.com).

²¹ Each package contains 6 colors for a grand total of 432 individual paints. *See id.* ¶ 76.

²² *Id.* ¶ 76, Att. W (p. 5).

²³ Among other items, Defendants sell a case of 3,240 “dolphin shaped craft embellishments” for \$356.40 (72 packages, each containing 45 pieces), 96 packages of “mini duct tape” rolls for \$1,055, a case of 100 headlamps for \$1,899, and a case of 144 children’s flutes for \$573, to name just a few. *Id.* ¶ 75.

²⁴ Defendants’ terms and conditions provide that consumers must first cover up to 51% of an item’s total purchase cost using their own form of payment. *Id.* ¶ 72, Att. U (p. 6) and ¶ 78, Att. X (p. 6). In fact, many products require a significantly higher initial payment, up to 84% of the purchase price. This “initial payment,” which is not financed by Defendants, appears to underwrite the item’s actual retail value plus a significant mark up. For example, a consumer seeking to purchase La Prairie Cellular Hydrating Skin Serum priced at \$185 must first pay \$155.66 of the purchase price out of pocket as an initial payment. *Id.* ¶ 76, Att. W (p. 19-21). This item is available from Amazon.com for \$128.89. *Id.*

²⁵ PX 2, Van Schoyck ¶ 3 (“Innovis does not offer any products used by third parties to make credit granting decisions, or that could, in any way, influence a consumer’s credit score or creditworthiness”).

neither Innovis nor any of the three credit reporting agencies that do compute scores used by lenders to determine creditworthiness – Equifax, Experian, and TransUnion – have any record of Defendants furnishing data to them.²⁶

B. Unauthorized Bank Drafts

Defendants frequently withdraw funds from the bank accounts of consumers who refuse to purchase the Platinum Trust and Express Platinum Cards. Loan applications used as leads by Defendants typically contain all of the information needed to make these withdrawals, including consumers' bank account number, social security number, and home address. This information somehow ends up in Defendants' possession.²⁷ Many consumers clearly reject Defendants' sales pitch only to discover later that their accounts have been debited anyway, sometimes more than once.²⁸ Other consumers continue to be charged by Defendants after canceling, or attempting to

²⁶ *Id.* ¶ 4; PX 3, Quinn ¶¶ 4-6 (TransUnion); PX 4, Christie ¶¶ 4-6 (Equifax); PX 5, Puckett ¶¶ 3-6 (Experian).

²⁷ PX 10, Johanson ¶ 5; PX 16, Sigmon ¶ 4; PX 19, Anderson ¶ 5; PX 22, Lewis ¶ 4 (recited part of consumers' checking account and bank routing information, asked to confirm accuracy); PX 17, Tiggs ¶ 5 (representative already had consumer's bank account information); PX 20, Castillo ¶ 4, PX 21, Hutchinson ¶ 6 (representative already had consumers' bank account number, social security number, and address); PX 25, Oraclay ¶ 5 (representative already knew consumer's social security number and bank account information).

²⁸ PX 8, Corley ¶ 4 (consumer initially accepted offer, but informed representative later in the call that she was no longer interested "and asked him not [to] place any charges on my debit card or withdraw any funds from my bank account"; although representative acknowledged consumer's request, Defendants withdrew \$89 from her account, resulting in a \$35 overdraft fee); PX 10, Johanson ¶ 4 (although consumer declined representative's offer and did not provide her bank account information, Defendants withdrew \$89 from her account and another \$19 two weeks later, forcing consumer to close her account); PX 13, Nally ¶¶ 4-5 (consumer discovered \$89 withdrawal for Platinum Trust Card after declining to purchase card); PX 16, Sigmon ¶ 4 (although consumer told representative that she could not afford the advance fee and never provided her bank account information during call, Defendants withdrew \$89 from consumer's account several days later); PX 19, Anderson ¶¶ 5-9 (although consumer repeatedly refused to purchase the Express Platinum Card and did not provide any of her bank account information, Defendants withdrew \$99 from consumer's account, resulting in \$36 bank overdraft fee).

cancel, their account.²⁹

C. Customer Service and Refunds

Consumers who attempt to complain about Defendants' practices, obtain a refund, or cancel their card are subjected to a customer service nightmare of infuriating and abusive conduct that limits refunds and exhausts consumers.³⁰ For example, many consumers wait on hold for a half hour or more only to be suddenly hung up on without notice or explanation.³¹ Defendants

²⁹ PX 12, Landry ¶ (Defendants continued withdrawing \$19 every month from consumer's bank account despite consumer's extensive efforts to stop withdrawals, ultimately forcing consumer to close her account); PX 10, Johanson ¶¶ 6-9 (after 60 to 70 unsuccessful cancellation attempts by consumer, Defendants withdrew \$19 from consumer's account, prompting her to close her bank account); PX 21, Hutchinson ¶¶ 9-10 (after agreeing to cancel consumer's account and providing a cancellation number, Defendants withdrew \$19 two weeks later).

³⁰ PX 8, Corley ¶ 9 (consumer failed to speak with representative despite 10 calls and mailing of a certified letter); PX 10, Johanson ¶ 6 (after initially being told that consumer's refund request could not be accommodated because of computer problems related to "Hurricane Irene," consumer made 60 to 70 additional unsuccessful attempts to speak with a representative before finally giving up and closing her bank account); PX 12, Landry ¶ 5 (rude, disrespectful representative told consumer that her refund request could not be accommodated unless consumer faxed her bank statement to Defendants); PX 15, Scott ¶ 9 (dozens of calls to Defendants' customer service telephone number, most resulting in either a busy signal or transfer to voice mail system, where consumer left messages that Defendants never returned; when consumer managed to speak with representatives, was directed to call other "customer service" numbers that "appeared to be cell phone numbers of people who claimed to know nothing about the Platinum Trust Card"); PX 18, Waddill ¶ 7 (initially spoke with employee who promised a manager would call her back in a few days; after not hearing from Defendants, consumer made repeated attempts for over a month to speak with a representative, often being placed on hold until being disconnected); PX 19, Anderson ¶ 7 (transferred from one automated recording to another); PX 20, Castillo ¶ 6 (representative refused to help consumer who declined to provide his social security number); PX 21, Hutchinson ¶¶ 9-11 (after initially being told that account had been canceled, consumer discovered another withdrawal by Defendants and explained problem to a representative, who accused consumer of lying); PX 22, Lewis ¶ 8 (placed on hold for long periods of time and transferred between different automated systems before being directed to representative at Defendants' "corporate office in Las Vegas," who refused to provide a refund and treated consumer in a rude, disrespectful manner); PX 26, Perez ¶ 10 (rude, unprofessional treatment).

³¹ PX 13, Nally ¶ 6 ("I was either placed on hold for long periods of time, directed to multiple recorded messages, or simply disconnected"); PX 14, Sanborn ¶ 6 (over 15 calls to two different telephone numbers, all of which either went straight to voice mail or resulted in being placed on hold for as long as 30 minutes before disconnecting); PX 24, Mitchell ¶ 8 (consumer never managed to speak with
(continued...))

often claim to possess recordings of sales calls that disprove consumers' allegations of deception, but never make these recordings available.³² Although Defendants claim in their Better Business Bureau responses and payment processor applications to follow a liberal refund policy,³³ consumers who manage to reach a live representative are invariably told that the company does not issue refunds under any circumstances.³⁴ The only consumers who manage to obtain refunds

³¹(...continued)

customer service representative despite over 120 calls, most of which resulted in being placed on hold, sometimes as long as two hours, before being disconnected).

³² PX 10, Johanson ¶ 8 (representative “rudely” told consumer that Defendants recorded sales calls, claimed that it would take at least a day for the company to review her call, and “sarcastically advised that [consumer] could either call back tomorrow or remain on hold for the next 24 hours”); PX 11, Kujawa ¶ 6 (representative claimed that recording showed no misrepresentation, refused to play for consumer, and told him “in an extremely unprofessional tone that I had spoken to all of the managers already and that no matter who I spoke to, I was not going to get my money back”); PX 13, Nally ¶ 7 (“extremely rude and unprofessional” representative told consumer “that the company had listened to the tape recording [of the sales call] and concluded that [consumer] did not qualify for a refund,” promised to play recording for consumer at a later date, but never called back); PX 16, Sigmon ¶ 8 (“extremely rude” representative claimed to possess recording of sales call which Defendants would use to rebut consumer’s threatened BBB complaint, but did not play for consumer); PX 23, Mickle ¶ 11 (representative claimed recording showed no misrepresentation, but refused to play for consumer because it “was confidential”); PX 25, Oraclay ¶ 10 (“rude and unprofessional” representative told consumer that \$99 fee was non-refundable, refused to provide “the name or number of anybody higher in the company,” and assured consumer that recording of initial sales call would show that consumer “had agreed to the terms and conditions of the card,” but refused to play recording).

³³ Defendants typically respond to BBB complaints with an identical form letter stating in part: “Our policy for consumers that cancel following their enrollment for this program is to refund their money back (if requested) to the account that was debited for the Enrollment/Membership fee.” *See, e.g.*, PX 15, Scott Att. C (Platinum Trust Card); *see also* PX 25, Oraclay Att. B (full refunds provided on request for Express Platinum Card “enrollment fee”). Similarly, in merchant processing applications, Defendants characterize their policy as “full refund upon request.” PX 1, McKenney ¶¶ 48, 59.

³⁴ PX 7, Brown ¶ 9, Att. D (email stating consumer’s “account has been cancelled but the fee is non-refundable”); PX 10, Johanson ¶ 8; PX 11, Kujawa ¶¶ 5-6; PX 17, Tiggs ¶ 8 (\$69 fee “non-refundable”); PX 21, Hutchinson ¶ 11 (\$19 fee withdrawn after Defendants agreed to cancel consumer’s account declared non-refundable); PX 23, Mickle ¶ 11, Att. C (email from Defendants stating “all fees associated with our card are going to remain nonrefundable”); PX 26, Perez ¶ 11, Att. B (same); PX 27, Robinson ¶ 9, Att. C (same).

do so either by disputing the fraudulent charges with their banks³⁵ or by filing a complaint with the Better Business Bureau.³⁶

The experience of Jessica Mitchell is, unfortunately, typical of the practices that thousands of consumers have been subjected to by Defendants. Sometime around the end of October 2011, Defendants called Ms. Mitchell's elderly, terminally ill father after he applied for a short term loan online.³⁷ Ms. Mitchell, who cares for her father and handles many of his affairs, spoke to one of Defendants' telemarketers. In exchange for a \$99 "application" fee, the telemarketer promised to send Ms. Mitchell and her father an Express Platinum Card with a credit limit of \$5,500 that would also help improve their credit rating by reporting to the three major credit bureaus.³⁸ When Ms. Mitchell asked if she could use the Express Platinum Card to make purchases at Wal-Mart, the telemarketer assured Ms. Mitchell that the card could be used at Wal-Mart as well as anywhere else that accepts Visa, MasterCard, or American Express. In fact, the telemarketer claimed, Express Platinum was affiliated with American Express.³⁹ Based on these representations, Ms. Mitchell authorized Defendants to withdraw the \$99 activation fee from her father's bank account. Ms. Mitchell subsequently discovered, however, that

³⁵ PX 10, Johanson ¶ 10; PX 13, Nally ¶ 9.

³⁶ PX 7, Brown ¶ 10; PX 11, Kujawa ¶ 10; PX 23, Mickle ¶ 12; PX 26, Perez ¶ 12. Not all consumers promised a refund by Defendants actually receive a refund. PX 14, Sanborn ¶¶ 7-8; PX 25, Oraclay ¶¶ 12-14; PX 27, Robinson ¶¶ 10-11.

³⁷ PX 24, Mitchell ¶ 3.

³⁸ *Id.* ¶ 5.

³⁹ *Id.*

Defendants withdrew their \$99 fee twice.⁴⁰ For this reason, and because of complaints she discovered on the Internet about Defendants, Ms. Mitchell decided to cancel the card and seek a refund. Despite placing over 120 calls to the customer service telephone number on the Express Platinum Card website, Ms. Mitchell never managed to speak with a representative. Virtually every single time she reached an automated system, pressed the option to speak with a representative, and waited on hold for as long as two hours until the line disconnected.⁴¹ Ms. Mitchell, who has a 10 year old son, lives on a very tight budget. Like scores of other consumers victimized by Defendants, this has been a devastating financial blow for her.⁴²

D. Return Rates

Defendants' transactions produce alarmingly high return rates. A "return" is a transaction that has been reversed or sent back by the consumers' bank for any number of different reasons, including insufficient funds, a closed account, a non-existent account, or notice by the consumer that the transaction was unauthorized. Return rates that deviate substantially from normative or average rates are considered a sign of fraud.⁴³ In an application submitted to

⁴⁰ *Id.* ¶ 7.

⁴¹ *Id.* ¶ 8.

⁴² *Id.* ¶ 10; *see also* PX 12, Landry ¶ 7 (elderly widow on fixed income forced to close her bank account to stop unauthorized monthly debits of \$19).

⁴³ A high refund rate is probative of consumer dissatisfaction and deception. *See, e.g., FTC v. Grant Connect, LLC*, 2009 U.S. Dist. LEXIS 94201, at *19, *25-26 (D. Nev. Sept. 22, 2009); *FTC v. QT, Inc.*, 448 F. Supp. 2d 908, 936 (N.D. Ill. 2006), *aff'd*, 512 F.3d 858 (7th Cir. 2008) (court considered defendants' refund rate of at least 25% in granting judgment for FTC in deceptive advertising case); *FTC v. Global Mktg. Group, Inc.*, 594 F. Supp. 2d 1281, 1289 (M.D. Fla. 2008) (high return rates for defendants' products evidence of actual knowledge of illegal activity).

one payment processor, Defendants indicated that they expected an overall return rate of 70%,⁴⁴ 70 times the average total return rate in 2010 for the Automated Clearing House network (“ACH”).⁴⁵ The clearest indicator of potential fraud, the volume of Defendants’ transactions returned as unauthorized,⁴⁶ is even more outrageous. Over the first nine months of 2011, Defendants generated an unauthorized return rate with one payment processor of 6.51%, more than two hundred times comparable industry averages.⁴⁷

III. DEFENDANTS

The parties responsible for these practices are four individuals, Blake and Chase Rubin, Justin Diaczuk, and Jules Shore, and two corporations, Apogee One Enterprises LLC, and Marquee Marketing LLC.

A. **Blake Rubin and Chase Rubin, d/b/a CR Ventures, LLC**

Individual defendant Blake Rubin, also doing business as Maxim Management Group, LLC,⁴⁸ serves as the account representative and signatory in relationships with payment

⁴⁴ PX 1, McKenney ¶ 49.

⁴⁵ The ACH network is a nationwide funds transfer system that replaces paper checks with electronic payments. It is managed by NACHA, a private industry trade group. *Id.* ¶ 89. The underlying transactions referenced above involved the use of demand draft checks. In contrast to ACH, there is no single entity that monitors check returns or tabulates overall return rates. Using ACH as a baseline, Defendants’ projected overall return rate of 70% is 70 times the average overall return rate in the ACH network for 2010 of 1.0%. *Id.* ¶ 90, Att. DD (p. 1).

⁴⁶ *Id.* ¶ 90, Att. DD (p. 3).

⁴⁷ *Id.* ¶ 60. Again, using ACH as a basis of a comparison, the 6.51% unauthorized return rate generated by Defendants is 217 times higher than the 2010 industry-wide unauthorized return rate in the ACH network of 0.03%. *Id.* ¶ 90, Att. DD (p. 2).

⁴⁸ Maxim Management, a Florida company owned by Defendants Blake and Chase Rubin, has received over \$813,000 in proceeds of the scam. PX 1, McKenney ¶¶ 9, 46(b).

processors connected to Platinum Trust Card.⁴⁹ He is the primary contact in complaints filed by consumers with the Better Business Bureau against Platinum Trust Card, holding himself out in responses to these complaints as a “manager.”⁵⁰ He is also the registrant of several of the Internet domain names associated with Defendants’ telemarketing scheme.⁵¹ He has received over \$759,000 in proceeds from this scam.⁵²

Individual defendant Chase Rubin is a member of Maxim Management Group, LLC, and Oakmont Management Services, LLC, two Florida entities that have received in excess of \$1.29 million in “management” fees traceable to Defendants’ scam.⁵³ He either registered or paid for registration of the domain names platinumtrustcard.com and expressplatinumcard.com.⁵⁴ He is also an applicant on accounts with payment processors used to obtain funds from consumers as well as a signatory on bank accounts that receive funds from these processors.⁵⁵

Blake and Chase Rubin hold themselves out variously as “president,” “owner,” “member,” “managing member,” “registered agent,” and “director” of CR Ventures, LLC, a Utah limited liability company that does business as Platinum Trust Card and which they claim

⁴⁹ *Id.* ¶¶ 48-49, 56-57, 59.

⁵⁰ *See id.* ¶ 88(d); PX 7, Brown Att. C; PX 15, Scott Att. C. *See also* PX 1, McKenney ¶ 14 (signed settlement agreement with State of Utah as “manager” of CR Ventures, LLC).

⁵¹ *Id.* ¶¶ 69, 71, 73-74.

⁵² *Id.* ¶¶ 28(d), 45.

⁵³ *Id.* ¶¶ 9, 10, 46(b) & (c).

⁵⁴ *Id.* ¶¶ 68, 70.

⁵⁵ *Id.* ¶¶ 21, 25, 28(h) (signature on refund checks), 28(i) (signature on boiler room payroll checks), 55 (merchant account application).

is based in Salt Lake City.⁵⁶ On behalf of CR Ventures, LLC, the Rubins have prepared tax returns, opened accounts with banks and payment processors, registered Internet domain names, and even settled fraud charges with the State of Utah.⁵⁷ Most of these actions are connected in some way with Defendants' telemarketing scam. For example, bank accounts titled to CR Ventures, LLC fund one of Defendants' boiler room payrolls and have received millions of dollars in proceeds from victimized consumers.⁵⁸ Two websites prominently connected to Defendants' scam are registered in the name of CR Ventures, LLC.⁵⁹

In reality, Blake and Chase Rubin do not own or control CR Ventures, LLC. They formed two similarly-named Utah corporations in 2009, CR Ventures Now LLC and CR

⁵⁶ The Rubins appear to have trouble keeping their imaginary titles straight, separately identifying themselves "president" of CR Ventures, LLC in different documents executed within weeks of one another. *See id.* ¶ 21 (Chase Rubin, bank signature card dated November 13, 2009) and ¶ 57 (Blake Rubin, merchant account application dated December 4, 2009). Similar contradictions abound. A merchant processor reviewing underwriting materials for one of Defendants' accounts noted that while the application identified Blake Rubin as the sole owner CR Ventures, LLC, tax returns accompanying the application listed Blake and Chase Rubin each as 50% owners of the company. *Id.* ¶ 52(a); *see also* ¶ 25 (Chase Rubin identified as "owner" on bank signature card). The underwriter also questioned why the business address provided on Defendants' application differed from the address of CR Ventures, LLC found on the Utah Secretary of State website. *Id.* ¶ 52(c) (an "update" explained that the "company no longer uses the address on record at the Utah corporate site. They have two offices, one in Jenkintown PA and another one in Salt Lake City Utah"). In other records, Blake and Chase Rubin assume the titles of "registered agent," "director," "member" and "managing member" of CR Ventures, LLC. *See, e.g., id.* ¶ 14 (September 2011 Utah settlement agreement identifying each as "members"), ¶ 50 (document purporting to be the State of Utah Articles of Incorporation for CR Ventures, LLC, submitted to one of Defendants' merchant processors, identifying Blake Rubin as the company's registered agent and sole director), ¶ 55 (March 2009 merchant account application identifying Chase Rubin as "member"), ¶¶ 56 and 59 (Blake Rubin identified as "managing member" on merchant account applications).

⁵⁷ *See supra* n.56; *see also id.* at ¶ 52(a) (2009 and 2010 IRS tax returns for CR Ventures, LLC submitted with merchant processor application, each identifying Blake and Chase Rubin as 50% owners).

⁵⁸ *Id.* ¶¶ 28(i), 62.

⁵⁹ *Id.* ¶ 68 (Chase Rubin registered the domains platinumtrustcard.com and platinumtrustclub.com, listing registrant as "CR Ventures, LLC").

Ventures One, LLC, but allowed them to expire the following year without ever using them in connection with Platinum Trust or Express Platinum.⁶⁰ The only Utah corporation named CR Ventures, LLC belongs to a real estate agent from Saint George, Utah who has no connection to any of the Defendants and no involvement in the conduct at issue here.⁶¹ The misuse of this entity, along with the confusion it has created,⁶² is one of many steps Defendants have taken to hide from law enforcement and angry consumers.⁶³

B. Justin Diaczuk and Apogee One Enterprises LLC

Individual defendant Justin Diaczuk owns corporate defendant Apogee One Enterprises LLC.⁶⁴ Contact telephone numbers found on the Express Platinum website and in checks used by Defendants to obtain fees from Platinum Trust Card victims are registered to Diaczuk and Apogee.⁶⁵ Diaczuk is the only signatory on a bank account titled to Apogee that has received

⁶⁰ *Id.* ¶ 11(b) and (c).

⁶¹ *Id.* ¶ 11(a); PX 6, Rasmussen ¶ 2 (does not know Defendants and has never communicated or transacted business with any of them).

⁶² The real owner of CR Ventures, LLC has received a steady stream of complaints about Platinum Trust Card since September 2010 from consumers, the Better Business Bureau, and various state agencies. *Id.* ¶¶ 3-4. Indeed, as of January 2012, the “business review” of Platinum Trust Card available on the BBB website still incorrectly displays the registered address for CR Ventures, LLC. PX 1, McKenney ¶ 88, Att. CC (p. 1).

⁶³ For example, Defendants pretend to do business thousands of miles from their true location in the Philadelphia area. In communications with third parties, Defendants use addresses in Salt Lake City, Utah and Henderson, Nevada. *See, e.g., id.* ¶ 88(d) and (e) (Better Business Bureau); *id.* ¶ 14 (law enforcement); *id.* ¶¶ 16, 22, 26 & 39 (banks); *id.* ¶¶ 48-50, 55, 56, 57 & 59 (merchant processors); *id.* ¶¶ 68, 70 (domain registrars), *id.* ¶¶ 72, 78 (contact information on websites); and PX 7, Brown Att. B and PX 23, Mickle Att. D (consumers). Defendants facilitate this deception, in part, through the use of mail forwarding services. *Id.* ¶¶ 65-66. Defendants also conceal their involvement through the use of privacy-protected website registrations. *Id.* ¶¶ 69-70.

⁶⁴ *Id.* ¶¶ 7, 31.

⁶⁵ *Id.* ¶¶ 86-87.

\$1.97 million in proceeds from this scam.⁶⁶ This account is used extensively in the promotion of the Platinum Trust and Express Platinum Cards, issuing refund checks to consumers, funding the payroll of one of Defendants' boiler rooms, purchasing telecommunications services, paying for office furniture, and leasing office space.⁶⁷ Diaczuk has withdrawn over \$80,000 in cash from this account.⁶⁸

C. Jules Shore and Marquee Marketing LLC

Individual defendant Jules Shore is the registered agent and sole member of corporate defendant Marquee Marketing LLC, a Nevada corporation formed on March 18, 2011.⁶⁹ Shore registered an Internet domain name as well as two virtual office services used in connection with Platinum Trust Card and Express Platinum Card.⁷⁰ He is also the sole signatory on three bank accounts titled to Marquee.⁷¹ These accounts are intimately connected with the operation of Defendants' scam. They have received hundreds of thousands of dollars from consumer victims as well as other defendants; paid over \$120,000 in "management fees" to entities owned by Defendants Blake and Chase Rubin; issued refund checks to consumers; leased office space; and funded one of the boiler room payrolls.⁷²

⁶⁶ *Id.* ¶¶ 31, 46(a).

⁶⁷ *Id.* ¶ 34(a) - (i).

⁶⁸ *Id.* ¶ 34(c).

⁶⁹ *Id.* ¶ 8.

⁷⁰ *Id.* ¶¶ 65-66, 70.

⁷¹ *Id.* ¶¶ 35, 39.

⁷² *Id.* ¶ 37 (\$141,000 received from CR Ventures, LLC and Apogee), ¶ 38(c) (\$75,757 paid to Maxim Management, \$45,079 paid to Oakmont Management), ¶ 38(d) (office rent), ¶ 38(f) (refund
(continued...))

IV. ARGUMENT

Defendants' business practices violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and multiple provisions of the TSR, 16 C.F.R. Part 310. To prevent further injury to innocent consumers, the Commission asks that the Court issue *ex parte* its proposed TRO. That order would prohibit Defendants' ongoing illegal practices, freeze their assets, and appoint a receiver over the corporate defendants who could make an independent report of Defendants' activities to the Court. The Court has full authority to enter the requested relief, which is strongly supported by the evidence. Courts in this district have repeatedly granted similar TROs in FTC actions.⁷³

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

The FTC Act provides that "in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction." 15 U.S.C. § 53(b). Once the Commission invokes the federal court's equitable powers, the full breadth of the court's authority is available, including the power to grant such ancillary final relief as rescission of contracts and restitution.

⁷²(...continued)

checks), 38(g) (payroll checks), and ¶ 40 (\$219,368 in deposits from a merchant processor).

⁷³ See, e.g., *FTC v. Yellow Page Mktg., B.V., et al.*, No. 11 C 05035 (N.D. Ill. July 26, 2011) (Leinenweber, J.) (*ex parte* TRO with asset freeze); *FTC v. Am. Tax Relief LLC, et al.*, No. 10 C 6123 (N.D. Ill. Sept. 24, 2010) (Kocoras, J.) (*ex parte* TRO with asset freeze and appointment of a receiver); *FTC v. Asia Pacific Telecom, Inc., et al.*, No. 10 C 3168 (N.D. Ill. May 25, 2010) (Hart, J.) (*ex parte* TRO with asset freeze and appointment of receiver); *FTC v. API Trade, LLC, et al.*, No. 10 C 1543 (N.D. Ill. March 10, 2010) (Guzman, J.) (*ex parte* TRO with asset freeze); *FTC v. 2145183 Ontario Inc., et al.*, No. 09 C 7423 (N.D. Ill. Nov. 30, 2009) (Grady, J.) (*ex parte* TRO with asset freeze and appointment of receiver); *FTC v. Integration Media, Inc., et al.*, No. 09 C 3160 (N.D. Ill. May 27, 2009) (Bucklo, J.) (*ex parte* TRO with asset freeze); *FTC v. Data Bus. Solutions, Inc., et al.*, No. 08 C 2783 (N.D. Ill. May 14, 2008) (Dow, J.) (same); *FTC v. Union Consumer Benefits*, No. 08 C 2309 (N.D. Ill. April 23, 2008) (Aspen, J.) (same); *FTC v. Spear Sys., Inc., et al.*, No. 07 C 5597 (N.D. Ill. Oct. 3, 2007) (Andersen, J.) (same); *FTC v. Sili Neutraceuticals, LLC, et al.*, No. 07 C 4541 (N.D. Ill. Aug. 13, 2007) (Kennelly, J.) (same); *FTC v. 1522838 Ontario Inc., et al.*, No. 06 C 5378 (N.D. Ill. Oct. 4, 2006) (Gettleman, J.) (same); *FTC v. Datacom Mktg., et al.*, No. 06 C 2574 (N.D. Ill. May 9, 2006) (Holderman, C.J.) (same); *FTC v. Cleverlink Trading Ltd., et al.*, No. 05 C 2889 (N.D. Ill. May 16, 2005) (St. Eve, J.) (same).

FTC v. Febre, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir. 1989). The court may also enter a temporary restraining order, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief. *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1026 (7th Cir. 1988); *see also Amy Travel*, 875 F.2d at 571. Such ancillary relief may include an asset freeze to preserve assets for eventual restitution to victimized consumers. *World Travel*, 861 F.2d at 1031. Injunctive relief is appropriate even if a defendant has ceased its illegal activities if there is “cognizable danger of recurrent violation,” *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), and the commission of past illegal conduct is “highly suggestive of the likelihood of future violations.” *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979). *See also FTC v. Direct Mktg. Concepts, Inc.*, 648 F. Supp. 2d 202, 212 (D. Mass. 2009); *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1017 (N.D. Ind. 2000); *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 536 (S.D.N.Y. 2000).

B. A Temporary Restraining Order Is Appropriate and Necessary

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

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

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

1. Defendants are Violating the FTC Act

There is no question that Defendants’ activities qualify as deceptive acts or practices

under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances. *See Bay Area Bus. Council*, 423 F.3d at 635; *FTC v. World Media Brokers*, 415 F.3d 758, 763 (7th Cir. 2005); *FTC v. QT, Inc.*, 448 F. Supp. 2d 908, 957 (N.D. Ill. 2006). The materiality requirement is satisfied if the misrepresentation or omission involves information that is likely to affect a consumer’s choice of, or conduct regarding, a product or service. *See Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992), *cert. denied*, 507 U.S. 909 (1993). In deciding whether particular statements are deceptive, courts must look to the “overall net impression” of consumers. *See id.*

Defendants have violated the FTC Act by falsely claiming that consumers who pay an advance fee as well as a recurring monthly fee will receive a general-purpose credit card that will build or repair their credit ratings. As demonstrated by the 21 consumer declarations submitted by the FTC, these misrepresentations are a central aspect of Defendants’ fraudulent sales pitch. Consumers solicited by Defendants reasonably relied on these misrepresentations when deciding whether to pay Defendants’ fees.⁷⁴ Moreover, consumers consistently state that they would not have paid the fees if they had known that they would only be receiving a shopping card that would not help improve their credit rating.⁷⁵ Accordingly, these misrepresentations are

⁷⁴ *See, e.g.*, PX 7, Brown ¶ 4 (credit card with \$9,500 limit that would help rebuild credit seemed “seemed like a great deal” to consumer with poor credit rating who did not think he “could qualify for a conventional credit card”); PX 11, Kujawa ¶ 3 (consumer asked “numerous times” whether Platinum Trust Card was a general-purpose credit card because he “wanted to be absolutely certain” he was not signing up for a shopping card); PX 22, Lewis ¶ 5 (consumer initially agreed to purchase Express Platinum Card based on representative’s assurances that it was “a general purpose credit card that could be used just like a Visa or MasterCard”).

⁷⁵ *See, e.g.*, PX 7, Brown ¶ 11; PX 9, Dodd ¶ 4; PX 15, Scott ¶ 8; PX 17, Tiggs ¶ 3; PX 20, (continued...)

deceptive and violate Section 5(a) of the FTC Act.

Defendants also routinely make unauthorized withdrawals from consumers' bank accounts. These practices are "unfair" and also violate Section 5. Under Section 5(n) of the FTC Act, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or to competition. *See* 15 U.S.C. § 45(n); *see also Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354, 1363-66 (11th Cir. 1988). Courts have consistently held unauthorized charges to be unfair under the FTC Act. *See, e.g., FTC v. Global Mktg. Group, Inc.*, 594 F. Supp. 2d 1281, 1288-89 (M.D. Fla. 2008); *FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d 1176, 1201 (C.D. Cal. 2000).

2. Defendants are Violating the Telemarketing Sales Rule

Defendants have violated the TSR by telephoning consumers and misrepresenting that they will provide consumers with a general-purpose credit card that will build or repair their credit ratings. These falsehoods fall squarely within the TSR's prohibition of misrepresentations concerning any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii). Moreover, even if consumers had received the promised credit cards, Defendants' request for and receipt of a fee in advance of providing such cards still would violate the TSR's express prohibition of "requesting or receiving payment of any fee or consideration in advance of obtaining a loan or

⁷⁵(...continued)

Castillo ¶ 4; PX 21, Hutchinson ¶ 4; PX 23, Mickle ¶ 9; PX 24, Mitchell ¶ 6; PX 25, Oraclay ¶ 6; PX 26, Perez ¶ 8; PX 27, Robinson ¶ 8.

other extension of credit. . . .” 16 C.F.R. § 310.4(a)(4).⁷⁶ Finally, Defendants’ practice of making unauthorized withdrawals from consumers’ bank accounts violates the TSR’s prohibition against billing consumers without their “express informed consent.” 16 C.F.R. § 310.4(a)(7).

3. The Individual Defendants are Personally Liable

Defendants Blake and Chase Rubin are directly liable for their deceptive and unfair practices. *See FTC v. Windward Marketing, Ltd.*, 1997 U.S. Dist. LEXIS 17114, at *38 (N.D. Ga. 1997) (“individual defendants are directly liable for their own violations”); 15 U.S.C. § 45(a)(2) (“The [FTC] is . . . empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair or deceptive acts or practices in or affecting commerce”). Doing business as CR Ventures, LLC, Blake and Chase Rubin have advanced this scam in numerous ways, opening accounts with banks and payment processors, registering website addresses, responding to Better Business Bureau complaints, issuing refund checks to consumers, and accepting hundreds of thousands of dollars in “management fees.”

Defendants Justin Diaczuk and Jules Shore are personally liable for the illegal conduct engaged in by their companies, corporate defendants Apogee One Enterprises LLC and Marquee Marketing LLC. An individual defendant may be held liable for injunctive relief and monetary restitution under the FTC Act if the Court finds (1) that the defendant participated directly in or had some measure of control over a corporation’s deceptive practices, and (2) had actual or

⁷⁶ No legitimate credit card issuer charges a fee in advance of providing a credit card to consumers. *See* Federal Trade Commission, *Advance-Fee Loan Scams: ‘Easy’ Cash Offers Teach Hard Lessons* (2008), available at <http://www.ftc.gov/bcp/edu/pubs/consumer/telemarketing/tel16.shtm> (“If you’re asked to pay a fee for the promise of a loan or credit card, you can count on the fact that you’re dealing with a scam artist”).

constructive knowledge of the practices. See *World Media Brokers*, 415 F.3d at 764; *Bay Area*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 573-74. Authority to control may be evidenced by “active involvement in the corporate affairs, including assuming the duties of a corporate officer.” *World Media Brokers*, 415 F.3d at 764 (citing *Amy Travel*, 875 F.2d at 573). The knowledge requirement is satisfied by a showing that the defendant (1) had actual knowledge of the deceptive acts or practices, (2) was recklessly indifferent to the truth or falsity of the representations, or (3) had an awareness of a high probability of fraud coupled with an intentional avoidance of the truth. *Id.*; *Bay Area*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 573. An individual’s “degree of participation in business affairs is probative of knowledge.” *Id.* The Commission need not prove subjective intent to defraud. See *id.*

The status of Justin Diaczuk and Jules Shore as owners of closely held corporations is more than sufficient to establish their ability to control the acts and practices of corporate defendants Apogee One Enterprises LLC and Marquee Marketing LLC. See *World Media Brokers*, 415 F.3d at 764-65; *Amy Travel*, 875 F.2d at 574. Diaczuk and Shore are, respectively, the sole owners and officers of corporate defendants Apogee One Enterprises LLC and Marquee Marketing LLC. The evidence demonstrates that they participated in or controlled the deceptive practices at issue, and that they knew or should have known about the misrepresentations. Their participation in Defendants’ telemarketing scheme is demonstrated by their signature on incorporation papers, bank accounts, and payroll checks. Diaczuk is also the contact for customer service telephone numbers registered to Apogee and used by Defendants in connection with the Platinum Trust and Express Platinum Cards. Shore registered the Internet domain name expressplatinumcard.com. Diaczuk and Shore should therefore each be held individually liable, jointly and severally.

D. The Equities Tip in the Commission's Favor

Once the Commission has decidedly shown a likelihood of success on the merits, the Court must balance the equities, assigning “far greater weight” to the public interest than to any of defendants’ private concerns. *World Travel*, 861 F.2d at 1029. The public equities in this case are compelling, as the public has a strong interest in halting Defendants’ illegal activities and preserving assets necessary to provide effective final relief to thousands of victims. Defendants, by contrast, have no legitimate interest in continuing to engage in illegal conduct. *See FTC v. World Wide Factors, Ltd*, 882 F.2d 344, 347 (9th Cir. 1989) (upholding 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”).

E. The Temporary Restraining Order Should Include an Asset Freeze, a Temporary Receivership, and Other Ancillary Relief

The FTC requests that the Court issue a TRO that prohibits future law violations and preserves assets and documents to ensure that the Court can grant effective final relief in this case.⁷⁷ Part of the relief sought by the Commission in this case is restitution for the victims of Defendants’ fraud, which has caused millions of dollars of consumer loss. This conduct is particularly egregious given that Defendants specifically target consumers in precarious financial condition. To preserve effective final relief for these consumers and prevent concealment or dissipation of assets, the FTC seeks an immediate freeze of Defendants’ assets.

An asset freeze is appropriate once the Court determines that the Commission is likely to prevail on the merits and that restitution would be an appropriate final remedy. *See World Travel*, 861 F.2d at 1031 & n.9. The district court, at that juncture, has “a duty to ensure that the

⁷⁷ A Proposed TRO has been filed concurrently with the FTC’s TRO motion.

assets of the corporate defendants [are] available to make restitution to injured consumers.” *Id.* at 1031 (upholding freeze of company and individual assets). The freeze here should extend to individual assets as well because the Commission is likely to succeed in showing that the individual defendants are liable for restitution. *See id.* at 1031.

The appointment of a temporary receiver would prevent the destruction of documents and the dissipation of assets while the case is pending. Such an appointment is particularly appropriate in light of Defendants’ pervasive fraud, which presents the likelihood of continued misconduct. If Defendants are allowed to remain in control of their business, it is likely that evidence will be destroyed and the fruits of their fraud will be dissipated. A temporary receiver would eliminate those risks with a minimal disruption of any legitimate business activity. The receiver also would be helpful in assessing the extent of Defendants’ fraud, tracing the proceeds of that fraud, preparing an accounting, and making an independent report of Defendants’ activities to the Court.

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

To prevent Defendants from dissipating or concealing their assets, the requested TRO should be issued *ex parte*. An *ex parte* TRO is warranted where the facts show that immediate and irreparable injury, loss, or damage will occur before the defendants can be heard in opposition. *See* Fed. R. Civ. P. 65(b). Here, as in similar FTC actions in this district where courts have granted an *ex parte* TRO (*see supra* n.73), there is a serious risk that assets and evidence stemming from the illegal activity will disappear if Defendants receive prior notice.⁷⁸

⁷⁸ *See* Declaration and 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 and Motion to Temporarily Seal File (describing need for *ex parte* relief and citing cases in which defendants who

(continued...)

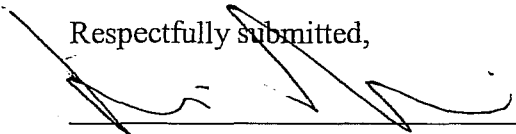
In this case, the blatantly deceptive nature of Defendants' scheme and the steps they take to avoid the detection of law enforcement, all indicate there is a serious risk that Defendants will destroy documents and dissipate assets if given advance notice of the Commission's motion.

V. CONCLUSION

For the foregoing reasons, Plaintiff Federal Trade Commission requests that this Court enter the proposed Temporary Restraining Order *Ex Parte* and issue an Order to Show Cause Why a Preliminary Injunction Should Not Issue.

Respectfully submitted,

DATED: January 27, 2012



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⁷⁸(...continued)

learned of impending FTC action withdrew funds, destroyed vital documents, and fled the jurisdiction).