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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

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

Mustafa Qattous, individually and as an  
d/b/a Clifton Telecaron, DC# 4751.3004 TD-.0007 All T\*.0DE COMMISSION,

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## **I. SUMMARY**

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

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

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## II. JURISDICTION AND VENUE

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

## III. STATEMENT OF FACTS

### A. THE DEFENDANTS

Defendant **Clifton Telecard Alliance One LLC, d/b/a Clifton Telecard Alliance, and CTA, Inc.** ("CTA"), is a limited liability company formed in New Jersey in 2002.<sup>6</sup> CTA has its principal place of business at 8901 Kennedy Blvd. in North Bergen, New Jersey 07047.<sup>7</sup> CTA promotes and sells prepaid phone cards to consumers through its web sites: [www.ctacard.com](http://www.ctacard.com) and [www.cliftontelecard.com](http://www.cliftontelecard.com), a distributor network, and retail outlets.<sup>8</sup>

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<sup>6</sup>FTC Ex. 1, p. 2.

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

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

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<sup>9</sup>FTC Ex. 1, p. 4.

<sup>10</sup>FTC Ex. 4, ¶ 97, p. 218, Att. V.

<sup>11</sup>FTC Ex. 4, ¶ 97, pp. 206, 209, Att. V.

<sup>12</sup>FTC Ex. 4, ¶ 96, pp. 206, 210, 212, 12130 T318624 Tm2001 Tm.0006 Tc-.0011. 404FTC

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<sup>17</sup>CTA has registered several of its own card names with the U.S. Patent and Trademark Office including: “African Dream;” “Bachata;” “Original Gold”

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

<sup>21</sup>*See* FTC Ex. 3, ¶ 7, p. 2.

<sup>22</sup>*See* FTC Ex. 3, ¶ 7, p. 2. It is not clear how frequently CTA changes its posters, but the available evidence suggest

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<sup>24</sup>FTC Ex. 3, ¶ 7, p. 2.

<sup>25</sup>FTC Ex. 4, ¶ 107.

<sup>26</sup>FTC Ex. 4, ¶ 108, pp. 236-37, Att. Y.

<sup>27</sup>FTC Ex. 4, ¶ 106, p. 232, Att. X.

<sup>28</sup>FTC Ex. 4, ¶ 108, pp. 238-39, Att. Z.

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

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

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

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<sup>29</sup>FTC Ex. 4, ¶ 106, p. 233, Att. X.

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

<sup>31</sup>FTC Ex. 3, p. 37, Att. F.

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

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

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

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

<sup>33</sup>FTC Ex. 3, pp. 39, 40, Atts. H, I.



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

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

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

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<sup>34</sup>See Section II.B.3.

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

<sup>36</sup>FTC Ex. 3, pp. 39, 40, Atts. H, I.

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

## 2. Using CTA's Cards

To use a CTA card, a consumer first dials an access number designated on the back of the card.<sup>37</sup> A pre-recorded message prompts the consumer to enter the PIN found on the back of the card.<sup>38</sup>

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<sup>37</sup>FTC Ex. 3, ¶ 13, p. 3.

<sup>38</sup>FTC Ex. 3, ¶ 13, pp. 3-4.

<sup>39</sup>FTC Ex. 3, ¶ 13, p. 4.

<sup>40</sup>FTC Ex. 3, ¶ 13, p. 4.

<sup>41</sup>FTC Ex. 3, ¶ 14, p. 4.

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

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

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

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

<sup>44</sup>FTC Ex. 10 ( Frempong ), ¶¶ 6-8, p. 2.

<sup>45</sup>FTC Ex. 10 ( Frempong ), ¶ 14, p. 2.

Second, as described above, CTA's disclosures about fees that will reduce the value of the card are vague, confusing, and nearly illegible in approximately four point font or less. Moreover, the disclosures are frequently written in English for a predominantly immigrant population. The FTC received many consumer complaints regarding CTA's inadequate and confusing disclosures that are difficult to read,<sup>46</sup> including one from a consumer who had to photocopy and enlarge the image of the card just to read it.<sup>47</sup> For example, declarant Nsalambi Nkongolo purchased a CTA card for \$5.00.<sup>48</sup> Nkongolo photocopied the top portion of the card and enlarged the fine print on the card in order to read it. Nkongolo discovered that not only were the disclosures regarding the fees hard to read, but

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

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

<sup>48</sup>FTC Ex. 11 (Nkongolo), ¶ 3, p. 1.

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

Finally, although CTA sells its cards for certain denominations and makes representations regarding delivering a certain number of minutes for a specified amount of money, it does not disclose, on either its posters or cards, that consumers will be charged even when the CTA card fails to connect a telephone call. In fact, many consumers have complained that they are frequently unable to connect to their destination when using CTA cards.<sup>50</sup> Instead of having their calls connected, consumers hear a fast busy signal<sup>51</sup> or complete silence<sup>52</sup> or the phone simply rings.<sup>53</sup> In two instances, consumers were told that the destination number

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<sup>49</sup>FTC Ex. 11 (Nkongolo), ¶ 4, pp. 1-2.

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

<sup>51</sup>FTC Ex. 13 (Trezevant), ¶¶ 7, 8, p. 2.

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

<sup>53</sup>FTC Ex. 7 (Belamri), ¶¶ 6, 8, p. 2; FTC Ex. 11 (Nkongolo), ¶ 7, p. 2; FTC Ex. 8 (Belete), ¶ 10, p. 2; FTC Ex. 6 (Ayitou), ¶¶ 6, 11, p. 2.

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

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

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

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

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

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

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

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

In response to CTA's deceptive marketing of its cards, consumers have filed complaints with the FTC, state Attorneys General offices, and the Better Business Bureau. CTA has responded to the Better Business Bureau's inquiries regarding these practices since at least 2005.<sup>61</sup> CTA has provided wholly inadequate responses to consumer complaints about being charged for unconnected calls or failing to receive the minutes promised and being disconnected during a call. For example, one consumer complained that the balance on her CTA card was reduced when she attempted to place a cell phone call that was never connected. CTA answered her complaint by referencing the disclosures on the back of the card and providing the statement: "We are not responsible for cell phones."<sup>62</sup> In other

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

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

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

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

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

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<sup>63</sup>FTC Ex. 2, pp. 19, 28, 33, 50, 52.

<sup>64</sup>FTC Ex. 2, pp. 17, 19, 30, 33, 40, 50, 52.

<sup>65</sup>FTC Ex. 2, pp. 17, 19, 28, 40, 50, 55.

<sup>66</sup>The FTC's investigators conducted these tests by completing a single call with a CTA card from a landline located in the United States to a landline located in one of the advertised international destinations. *See* FTC Ex. 3, ¶ 13, pp. 3-4; FTC Ex. 4, ¶¶ 17, 19, p. 5. Depleting a card in a single call from and to a landline is the most conservative way to meas



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<sup>67</sup>FTC Ex. 4, ¶¶ 15, 57, p. 4, 14.

<sup>68</sup>FTC Ex. 4, ¶ 58, p. 14.

<sup>69</sup>FTC Ex. 4, ¶¶ 73-75, 78-80, pp. 18, 19-20. In addition to being the only cards we tested that we purchased from the Internet, these are the only two cards we tested that use STi tn6repanadpanadpanadpaae7tested that use STi tn6Dw.5i t4hased from 51.

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\$2.50.<sup>78</sup> Twenty-five of these tests were single call tests<sup>79</sup> from a landline located in the United States to a landline located in one of the following international destinations: the Dominican Republic, Ghana, Guatemala, Honduras, and Nigeria.<sup>80</sup>

Four of the tests were multiple calls tests<sup>81</sup> from a landline located in the United States to a landline located in one of the following international destinations: the Dominican Republic, Mexico, and Nigeria.<sup>82</sup> Not a single one of the 30 cards tested by the contractor delivered 100% of the minutes advertised for the tested destinations.<sup>83</sup>

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

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<sup>78</sup>FTC Ex. 16, ¶ 8, pp. 3, 18-23.

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

<sup>80</sup>FTC Ex. 16, ¶ 3, p. 2, 18-20, Att. D.

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

<sup>82</sup>FTC Ex. 16, ¶ 3, pp. 2, 21-23, Att. D.

<sup>83</sup>FTC Ex. 16, ¶ 8, pp. 3, 18-23.

<sup>84</sup>FTC Ex. 16, ¶ 8, pp. 3, 18-20.

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<sup>85</sup>FTC Ex. 16, ¶ 8, pp. 3, 20.

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

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

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<sup>91</sup>FTC Ex. 16, ¶ 8, pp. 3, 22.

<sup>92</sup>FTC Ex. 16, ¶ 8, pp. 3, 22.

<sup>93</sup>FTC Ex. 16, ¶ 8, pp. 3, 22.

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

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

### 3. CTA's Relationship with the Telecommunications Providers

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

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<sup>95</sup>FTC Ex. 4, ¶ 66, p. 16, Att. Q.

<sup>96</sup>FTC Ex. 4, ¶ 83, p. 20.

<sup>97</sup>FTC Ex. 4, ¶¶ 63-65, pp. 15-16, Att. P.

<sup>98</sup>FTC Ex. 4, ¶ 59, p. 15-16.

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

### C. CONSUMER INJURY

As described above, CTA's deceptive business practices have injured thousands of consumers across the country<sup>103</sup> and caused them to lose tens of millions of dollars. Clifton Telecard Alliance One LLC's gross revenue in 2007

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

<sup>100</sup>FTC Ex. 4, ¶¶ 63-64, pp. 15-16.

<sup>101</sup>*See supra* notes 20-23 and accompanying text.

<sup>102</sup>*See infra* notes 122-123.

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

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

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

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

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

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

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

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

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

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

deceptive conduct repeatedly and knowingly engaged in by defendants over the

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

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

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

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

a. CTA Fails to Deliver Advertised Minutes

Defendants print and distribute posters that advertise a certain number of deliverable minutes to particular countries, and these representations are undeniably false. As described in Section III.B *supra*, the consumer complaints, tests, and other evidence clearly demonstrate that CTA routinely promises a certain number of deliverable minutes on its posters and voice prompts<sup>107</sup> that CTA cards do not deliver.

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

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

<sup>108</sup>*See supra* notes 42-45.

b. CTA Fails to Disclose Adequately Fees and Charges

Not only have defendants misrepresented the number of minutes consumers will receive when using CTA cards, but they also have failed to disclose or disclose adequately fees and charges that effectively reduce the value of CTA cards, and thus, the number of minutes consumers will actually receive, as alleged in Count Two. The deceptive disclosures that CTA provides to consumers are

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<sup>109</sup>*See supra* note 28-29, 32-33.

<sup>110</sup>*See supra* notes 46-49.

<sup>111</sup>*See supra* notes 32, 35.



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

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

<sup>113</sup>*See infra* note 115.

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

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

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

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

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

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

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

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

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

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

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

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<sup>118</sup>*See supra* note 9..

<sup>119</sup>*See supra* notes 10-11.

<sup>120</sup>*See supra* note 12.

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

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





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<sup>125</sup>FTC Ex. 4, ¶ 110, p. 270, Att. AA (

CTA and the ongoing litigation in which CTA is a party, Qattous knew or recklessly disregarded knowledge of CTA's deceptive business practices. Qattous

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

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

## V. CONCLUSION

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

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