**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

Case No. **08-21433-CIV-JORDAN/MCALILEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ALTERNATEL, INC.; G.F.G. ENTERPRISES LLC, also d/b/a MYSTIC PREPAID; VOICE PREPAID, INC.; VOICE DISTRIBUTORS, INC.; TELECOM EXPRESS, INC.; LUCAS FRIEDLANDER; MOSES GREENFIELD; NICKOLAS GULAKOS; and FRANK WENDORFF,

Defendants.

______________________________________/

**PLAINTIFF FEDERAL TRADE COMMISSION'S MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION WITH OTHER EQUITABLE RELIEF**

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## INTRODUCTION[1]

Plaintiff Federal Trade Commission ("FTC") moves this Court for a temporary restraining order ("TRO") and preliminary injunction with other equitable relief to put an immediate end to deceptive business practices that have defrauded consumers of millions of dollars. Individual Defendants Nickolas Gulakos, Moses Greenfield, Lucas Friedlander, and Frank Wendorff together operate a common enterprise that distributes prepaid calling cards through corporate defendants Alternatel, Inc., G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, defendants — Voice Prepaid, Voice Distributors, and Nickolas Gulakos — filed in June 2007;[3] and a private lawsuit alleging fraudulent marketing practices by a telecommunications service provider owned by another defendant — Moses Greenfield — filed in March 2007.[4]

[redacted] deceptive conduct.

Accordingly, entry of the requested TRO and preliminary injunction is necessary to [redacted]

Defendant **Alternatel, Inc. ("Alternatel")**, is a Florida corporation with its principal place of business in Pembroke Pines, Florida.[6] Defendant **G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid ("Mystic Prepaid")**, is a New Jersey limited liability company with its principal place of business in Hoboken, New Jersey.[7] Defendants **Voice Prepaid, Inc.**, **Voice Distributors, Inc.**, and **Telecom Express, Inc.** (collectively "**Voice Prepaid**") are Massachusetts corporations with their principal place of business in Medford, Massachusetts.[8]

[redacted]

also the founder, sole owner, and President of Voice Prepaid,[10] and an owner and Member/Manager of Mystic Prepaid.[11] Defendant **Moses Greenfield** is an officer, director, and [redacted]

50% owner of Alternatel,[12] as well [redacted] and Voice Prepaid calling cards.[14] Defendant **Lucas Friedlander** is an owner, a

[redacted]

Voice Prepaid.[15] Defendant **Frank Wendorff** is President and Chief Operating Officer of Alternatel,[16] and has been a signatory on a bank account of Telecom Express, Inc., one of the Voice Prepaid companies.[17]

[redacted]

Defendants develop, design, create, market, and distribute their own prepaid calling retail for between $2 and $10.[21] In 2006 and 2007, Defendants took in over $72 million from the sale of prepaid calling cards just through their Voice Prepaid bank accounts.[22]

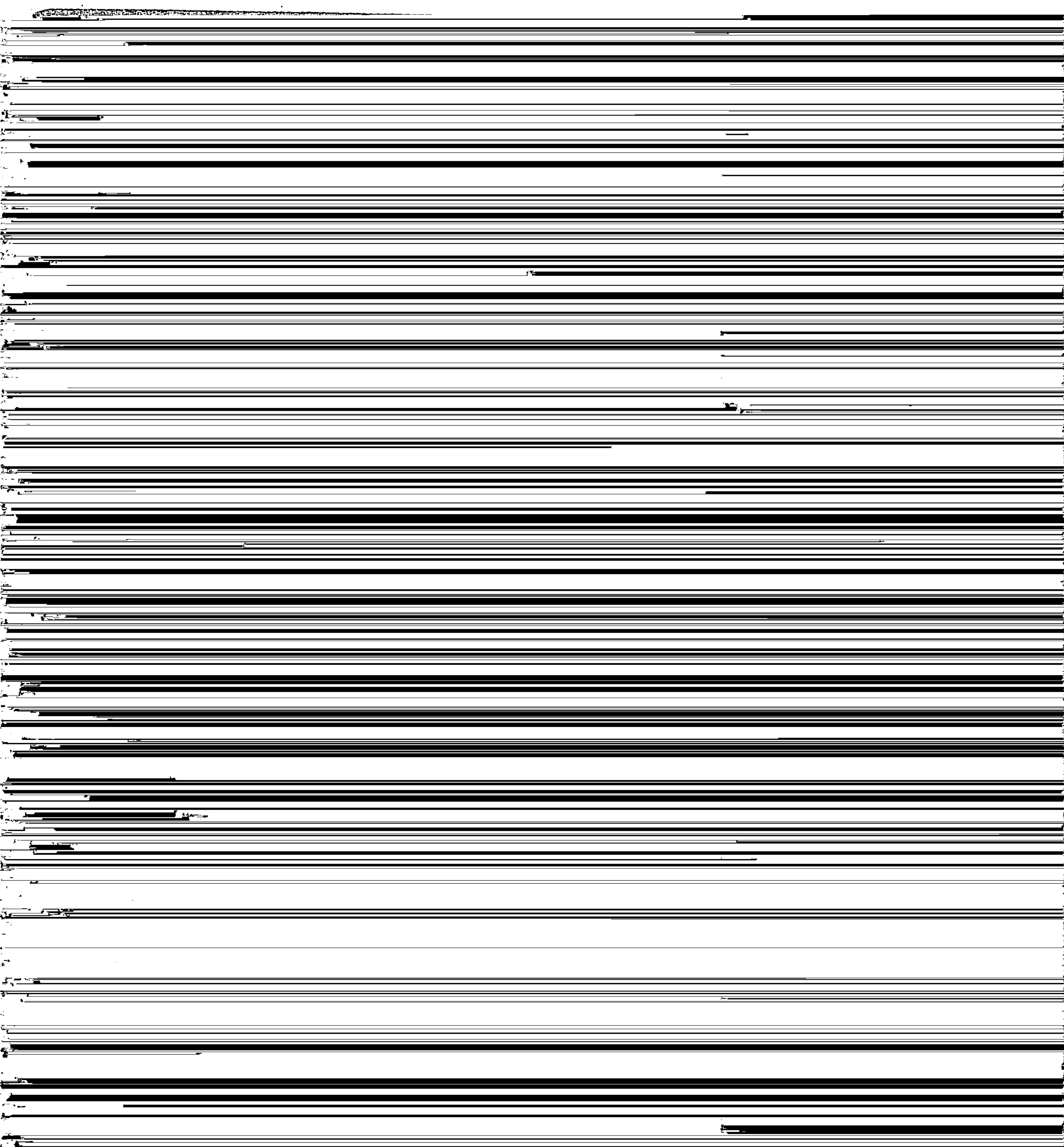
Although Defendants do not provide the underlying telecommunications service for their calling cards — which they pay third parties to provide — it is Defendants that design, print, and market their cards.[23] As Voice Prepaid has admitted in court filings:

> Voice Prepaid is engaged in the business of developing, creating, **marketing** and distributing prepaid telephone calling cards . . . . Voice Prepaid purchases long-distance telephone minutes from a connection service provider and then distinguishes this relatively [redacted] that it incorporates into its prepaid calling cards. Voice Prepaid incurs the costs of designing, printing, shipping, and **marketing** these original works and then sells the prepaid telephone cards through a network of local sub-distributors * * * **Based upon Voice Prepaid's industry knowledge and skill, it [has] targeted certain key demographics, identified popular international calling destinations, negotiated rates for minutes with Dollar Phone for**

Defendants' cards typically display the name or logo of Alternatel, Mystic Prepaid, or Voice Prepaid along with one of a wide variety of Defendants' "brand" names, including: "Aló Mamá," "Tree Monkey," "Rey de Florida," "Taco Libre," "Oi Brasil," "Coffee Time Call Me Time," "Dangerous Minutes!," "Mama Africa," "Martini," "Voz Do Brasil," and "Nigeria Connect."[25] Although Alternatel, Mystic Prepaid, and Voice Prepaid operate in different geographic regions,[26] they often sell the same brands of cards, to which Voice Prepaid owns the trademark.[27] For example, Alternatel, Mystic Prepaid, and Voice Prepaid each distribute "Aló Mamá," "Tree Monkey," and "Coffee Time Call Me Time" cards in their respective geographic regions. Whether distributed by Alternatel, Mystic Prepaid, or Voice Prepaid, Defendants' cards, and the marketing materials for the cards, are nearly indistinguishable in appearance.[28]

## A. Defendants' Cards

Below is a photocopy of one of Defendants' calling cards[29]:



[redacted]

instructions are usually provided in both English and Spanish, these disclosures are in many cases provided in English only.[30] The disclosures typically state:

[redacted]

before applicable charges and fees, application of surcharges and fees have an effect of reducing total minutes on cards. One or all of the "voice prompt" announcing the number of minutes of time ostensibly available on the card.[35] After the call is connected and before the card's value is exhausted, the caller typically receives a warning telling him or her that there is one minute of calling time remaining.[36] The call is cut off once the card has no remaining value.[37]

### C. Defendants' Advertising

[redacted]

**Dominican Republic, 405 Medellin, 650 for Bogota, Colombia,**

[redacted]

Minu tes! From the Dangerous Minutes card! The calling card with

[redacted]

In contrast to the large and conspicuous claims about the number of calling minutes that dominate Defendants' posters, the bottom of the posters contain fee disclosures in much smaller print. Such disclosures are often provided in English only and state:

[redacted]

the most generous way to measure how many minutes of calling time a card provides because it [redacted]

typical consumer experience because most consumers use calling cards to make multiple calls.[47]

[redacted]

In another example, on March 10, 2008, an FTC investigator tested Defendants' $2 [redacted] of sale, provides 320 calling minutes to Rio de Janeiro, Brazil. The investigator received only 70 minutes over seven calls to Rio de Janeiro, Brazil.[51]

Similarly, on March 28, 2008, an outside firm retained by the FTC tested Defendants' $2 "Coffee Time, Call Me Time" which, according to Defendants' poster displayed at the point of sale, would deliver 33 calling minutes to Guatemala City, Guatemala. The tester found that a single call to Guatemala City cut off after 16 minutes.[52]

**E. Misrepresentations Are an Integral Part of Defendants' Business Practices**

Emails between Voice Prepaid and CVT Prepaid Solutions ("CVT"), a telecommunications service provider, demonstrate that providing advertisements that [redacted]

[redacted]

wrote, “*24" delivered? Or prompted? if it's 24" delivered, let's put 36" on poster. If it's only*

[redacted]

practices. *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996). In determining

Cir. 1950); *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999) ("Misrepresentations or omissions of material facts made to induce the purchase of goods or services constitute deceptive acts or practices that violate § 5(a) of the FTC Act."). Defendants have engaged in deceptive acts or practices in two ways, by: (1) falsely representing the number of minutes consumers will receive when using Defendants' calling cards, and (2) failing to disclose or to disclose adequately the fees associated with Defendants' cards.

The FTC need not prove that these misrepresentations and omissions were done with an intent to deceive, or were made in bad faith. *See, e.g.*, *FTC v. Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1202 (10th Cir. 2005); *FTC v. Wolf*, 1996 WL 812940, at *5 (S.D. Fla. Jan. 31, 1996) ("A company that deceives consumers through reckless, even simply negligent, disregard of the truth may do just as much harm as one that deceives consumers knowingly."). Nor does the FTC need to show actual reliance by consumers; it is enough that the representations were likely to be relied on by ordinary consumers. *See, e.g.*, *FTC v. Verity Int'l, Ltd.*, 443 F.3d 48, 63 (2d Cir. 2006), *cert. denied*, 127 S. Ct. 1868 (2007); *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).

**1. Defendants Falsely Represent the Number of Calling Minutes**

There is overwhelming evidence that Defendants misrepresent the number of minutes particular international destinations.[60] With rare exception, these representations are false. Extensive testing of Defendants' cards between December 13, 2007 and April 17, 2008

[illegible]

demonstrates that Defendants routinely advertise their cards as delivering a number of minutes that their cards fail to provide. ***On average, the 87 tested cards delivered only 50.4% of advertised minutes***.[61] Seventy-seven of the 87 cards failed to provide the number of advertised minutes.[62] Twenty-three of the tested cards delivered less than 25% of the advertised minutes, and some cards delivered as little as 5.4% of the advertised minutes.[63]

In addition, there is powerful evidence that misrepresentations about the number of calling minutes are central to Defendants' business practices. As discussed above, Defendants openly admit in emails with CVT, one of their telecommunications providers, that if a card delivers 24 calling minutes, Defendants will state in the poster that it delivers 36 minutes; and if

Defendants' claims regarding the number of calling minutes, like all express claims, are

100% - minutes and/or seconds are rounded to multiple minutes increments.[65]

According to this disclosure, it is possible for a consumer to purchase a $2 "Tree Monkey" card, place a call for one minute, and have the remaining value of the card depleted because of fees. Even consumers who see, read, and try to understand Defendants' disclosures have no way to know which fees actually apply, the amount of the actual fee, or when they apply. The disclosure does not state that the fees "will" apply, but rather that they "***may***" apply. Additionally, it does not identify the circumstances under which such fees are triggered. Nor does the disclosure spell out what those fees will be when they do apply; instead it provides an enormously broad range for the fees. For example, it states that the card may be subject to a "destination surcharge of ***between 0% and 100%***"

[redacted]

### B. The Balance of Equities Mandates Entry of a TRO and Preliminary Injunction

The balance of equities mandates [redacted]

[redacted]

Therefore, it is clear that only the entry of the requested TRO and preliminary injunction will [redacted]

[redacted]

of ability to control a small, closely-held corporation." *Transnet Wireless*, 506 F. Supp. 2d at 1270 (citations omitted); *see also, e.g.*, *Five Star Auto Club*, 97 F. Supp. 2d at 535 ("assuming the duties of a corporate officer establishes authority to control"). Gulakos is the founder and sole owner of Voice Prepaid; he is a 50% owner of Alternatel, and an officer and director of the corporation; likewise, he is a Member and a Manager of Mystic Prepaid.[70] Like Gulakos, Greenfield is a 50% owner, officer, and director of Alternatel, and a Member and a Manager of Mystic Prepaid.[71] Friedlander is a Member and a Manager of Mystic Prepaid and the Controller of Voice Prepaid.[72] Finally, Wendorff is President of Alternatel and has been a signatory on a bank account of Telecom Express, one of the Voice Prepaid companies.[73] This evidence of the

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[69](...continued)

[redacted]

[redacted]

defendants is, by itself, ample basis to subject them to an injunction under the FTC Act.[74]

## III. A MONITOR IS NECESSARY TO PREVENT ONGOING DECEPTION AND PRESERVE EFFECTIVE FINAL RELIEF

In addition to conduct prohibitions, the TRO and preliminary injunction should provide for the appointment of a Monitor to ensure Defendants' compliance with the Court's order and to preserve the possibility of full and effective final relief. In an accompanying filing, the FTC has submitted two candidates, Jane W. Moskowitz and Mark A. Raymond, for the Court's

Md. 2005). In this case, the FTC does not seek an asset freeze or appointment of a receiver, because there is no reason that a company cannot market prepaid calling cards in a lawful manner, despite Defendants' refusal to do so. Instead, the FTC urges the far more modest proceedings, causing irreparable injury to the FTC's ability to obtain consumer redress and/or disgorgement. *See World Wide Factors*, 882 F.2d at 347; *SEC v. Manor Nursing Ctrs., Inc.*, 458 [redacted] Court and the FTC if concealment or dissipation of assets has occurred and whether further steps are necessary to preserve them for consumers. The FTC has demonstrated a likelihood that Defendants will be ultimately held liable; accordingly, it is necessary to preserve the possibility of full and effective monetary equitable relief.

**CONCLUSION**

For the foregoing reasons, the Court should grant the FTC's motion for a TRO and