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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION, )

Plaintiff, )

vs. )

NATIONAL PRIZE INFORMATION GROUP )  
CORP., and JOHN RINCON, )

Defendants. )

2:06-cv-01305-RCJ-PAL

**ORDER**

Before the Court is Plaintiff’s Motion for Summary Judgment (#62, #66).<sup>1</sup> The Court has considered the motions and pleadings on file before the Court. Defendants have failed to oppose the Motion; pursuant to Local Rule 7-2(d), Defendants’ failure to oppose constitutes a consent to the granting of the motion. Nevertheless, an analysis on the merits is found below and for the following reasons, the Motion for Summary Judgment (#62, #66) is *granted*.

**BACKGROUND**

John Rincon is the principal officer of National Prize Information Group (“NPIG”), serving as its president, secretary, treasurer, and director. (#15-18, Ex. 2 at 1-3). NPIG is a Nevada corporation that acts under various corporate names in sending mail solicitations to consumers throughout the United States. These solicitations generally represent that the consumer has won a substantial cash prize (several million dollars), and directs the individual to claim the prize by

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<sup>1</sup> #66 is a redacted version of the #62 Motion for Summary Judgment.

1 sending in a small \$20 fee. (*See, e.g.*, #15-3). Upon mailing the fee, consumers do not receive the  
2 prize, but are usually flooded with further mailings regarding sweepstakes that they have either  
3 already won or can enter. (*See, e.g.*, #15-5, Ex. 1).

4 Over the past several years, Defendants have sent millions of such mailers to consumers, with  
5 suggestive seals, fonts, and language promising large sums of money in already approved cash  
6 prizes. (#8-24, Ex. 1 at 3; #15-3; #15-17). Some of the mailers refer to the consumer as a “verified  
7 recipient.” Many mailers claim that other recipients have already collected the “confirmed prize.”  
8 The name of the consumer is listed, and the “confirmed prize” amount is generally over three million  
9 dollars. All of the mailers contain detachable response forms that instruct recipients to remit \$20  
10 to Defendants in an included, pre-paid envelope to collect the winnings. One such form, for  
11 example, is titled “Acceptance of Disbursement,” and states that “disbursement made at once  
12 following confirmation.” Defendants admit that approximately 294,000 consumers sent them money  
13 in response to their mailers and that the scheme brought in approximately \$27 million dollars in  
14 revenue between 2004 and 2005. (*See* #8-24, Ex. 2 at 1; #66-3, Ex. 2). Defendants admit that they  
15 disburse no prizes, but vow or avow that their actual business is selling consumers a weekly  
16 newsletter that rhni approximately \$27 million (on)Tj

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1 **II. Deceptive Acts and Practices.**

2 Section 5(a) of the FTC Act prohibits deceptive acts and practices in or affecting commerce.  
3 15 U.S.C. § 45(a). To prevail under the FTC Act, the Commission must show that “first, there is a  
4 representation, commission or practice that, second, is likely to mislead consumers acting reasonably  
5 under the circumstances, and third, the representation, omission, or practice is material.” *In re*  
6 *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 164-65 (1984).

7 \_\_\_\_\_First, Defendants’ mailers represented to the consumers who submitted a fee that they would  
8 receive a substantial money prize. “A solicitation may be likely to mislead by virtue of the net  
9 impression it creates even though the solicitation also contains truthful disclosures.” *FTC v.*  
10 *Cyberspace.com*, 453 F.3d 1196, 1200 (9th Cir. 2006). While some of the mailers Defendants sent  
11 out contained language claiming to disclose that they were selling a report about sweepstakes, many  
12 mailers contained suggestive seals, fonts, and language promising large sums of money in already  
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1 the misrepresentations in the mailers were material “[b]ecause it is unlikely the consumers would  
2 have sent in the \$20 fee if they did not think that they had won the advertised prize money.” (#47  
3 at 7).

4 Plaintiff has demonstrated that Defendants misrepresented consumers acting reasonably  
5 under the circumstances and that the misrepresentation is material. Because of the deceptive acts  
6 and practices of the Defendants, the Commission seeks a permanent injunction and liability for  
7 consumer restitution from both NPIG and John Rincon.

8 **A. Injunctive Relief Against NPIG.**

9 The Commission seeks a permanent injunction against NPI  
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1           **D.     John Rincon’s Individual Liability for Consumer Redress.**

2           The Commission moves the Court to make Rincon individually liable for consumer redress.  
3 To establish a finding for individual liability, the Commission must show: (1) Rincon’s liability for  
4 injunctive relief; and (2) Rincon’s knowledge of the deception. *Publ’g Clearing House*, 104 F.3d  
5 at 1171. As already discussed above, Rincon is liable for injunctive relief. To show knowledge of  
6 the deception, “[t]he extent of an individual's involvement in a fraudulent scheme alone is sufficient  
7 to establish the requisite knowledge for personal restitutionary liability.” *FTC v. Affordable Media*,  
8 179 F.3d 1228, 1235 (9th Cir. 1999).

9           \_\_\_\_\_ Rincon knew of NPIG’s deceptive practices. His name appears on the mailers sent to  
10 consumers. (*See* #66-4, Exs. 1-4). Rincon admitted to receiving numerous consumer complaints  
11 and Rincon’s signature appears on responses to complaints. (*See*

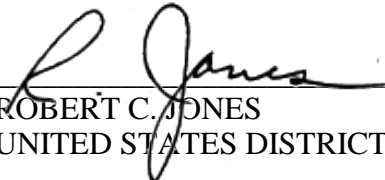
1 award because Rincon is individually liable for the corporation's actions. The Court will rule on  
2 monetary damages at a further point in time, following briefing by both sides.

3 **CONCLUSION**

4 IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment is *granted*  
5 (#62, #66).

6 IT IS FURTHER ORDERED that Plaintiff's Motion to Strike is moot and is, therefore,  
7 *denied* (#56).

8 DATED: July 28, 2008

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11 ROBERT C. JONES  
12 UNITED STATES DISTRICT COURT JUDGE  
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25 (mr)