

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No.: PJM 03-3317
)	
AMERIDEBT, INC., et al.,)	
)	
Defendants.)	
)	

**FEDERAL TRADE COMMISSION’S MEMORANDUM IN SUPPORT
OF MOTION FOR PRELIMINARY INJUNCTION INCLUDING
ASSET FREEZE, ACCOUNTING, AND REPATRIATION OF ASSETS**

Plaintiff Federal Trade Commission (“FTC” or Commission”) respectfully moves this Court for a preliminary injunction freezing the assets of Defendants Andris Pukke and DebtWorks, Inc. (“DebtWorks”) (collectively, “Defendants”). In addition, the FTC requests that the Court order an accounting from each of the Defendants, and require Mr. Pukke to repatriate assets that he has transferred offshore to the Cook Islands and the island nation of Nevis. This order is necessary to preserve the possibility of effective relief for consumers by preventing Mr. Pukke and DebtWorks from further dissipating their assets. Absent such relief, there is a substantial risk that Mr. Pukke will hide or dissipate assets to preclude satisfaction of any final order granting equitable monetary relief in this case.

As suggested by the Court in open court on March 28, 2005, the FTC requests that its motion be heard in conjunction with a similar motion that has been filed in *Polacsek v. Debticated Consumer Counseling, et al.*, No. PJM-04-CV-631. In order to promote judicial

economy, the FTC requests that these motions be heard together at the hearing scheduled for Friday, April 8, 2005, [*see* Paper No. 257 in *Polacsek*], or at another date to be agreed upon among counsel. Both the FTC's motion, and the related *Polacsek* motion, simply seek to maintain the status quo and preserve the possibility of effective relief for consumers. It is not necessary at this time for the court to determine the ultimate distribution of any assets frozen in this matter.¹

I. INTRODUCTION

The FTC filed this action in November 2003 to enjoin Defendants AmeriDebt, DebtWorks, and Mr. Pukke from making deceptive claims about the nature and costs of services provided by AmeriDebt, a so-called non-profit credit counseling organization, and to obtain redress for consumers injured by Defendants' deceptive practices. The FTC's Complaint alleges that the Defendants operated as a common enterprise to deceive consumers into paying for high-cost debt management plans, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a). The FTC's complaint also names Mr. Pukke's wife, Pamela Pukke, as a relief defendant.²

On March 18, 2005, the FTC filed its Motion for Summary Judgment Against Defendants DebtWorks, Inc. and Andris Pukke. In its motion, the FTC requests a finding of liability against DebtWorks and Mr. Pukke on Counts I - IV of the FTC's complaint and requests permanent

¹In *Polacsek*, the plaintiffs have requested the appointment of a receiver over the Defendants' assets. The FTC reserves the right to join in this request and to assist the court in choosing a receiver if one is appointed.

²The Court denied Mrs. Pukke's motion for summary judgment on March 28, 2005. [Paper No. 102]

injunctive and other equitable relief, including \$172 million to redress consumer injury in this case.³

After the FTC filed its summary judgment motion, and pursuant to the Court's order compelling Mr. Pukke's deposition, the FTC took Mr. Pukke's deposition on March 24, 2005. During his deposition, Mr. Pukke invoked his Fifth Amendment privilege and refused to answer virtually every question asked of him, including questions directly relevant to this preliminary injunction motion. Therefore, the Court may draw adverse inferences against Mr. Pukke for purposes of this motion. See *Baxter v. Palmigiano*, 425 U.S. 308, 318-19 (1976); *ePlus Tech., Inc. v. Aboud*, 313 F.3d 166, 179 (4th Cir. 2002); See also *Arango v. U.S. Dept. of the Treasury*, 115 F.3d 922, 926 n.10 (11th Cir. 1997) (adverse inference permitted in civil forfeiture proceedings, including inference that financial information, had it been provided, would have been unfavorable to defendant's claim of inability to pay); *U.S. v. Two Parcels of Real Prop. Located in Russell County, Ala.*, 92 F.3d 1123, 1129 (11th Cir. 1996) (adverse inference drawn in support of summary judgment decision); *FTC v. H.N. Singer, Inc.*, 1982-83 Trade Cas. (CCH) ¶ 65,011, at *17-19 (N.D. Calif. Oct. 26, 1982) (fact-finder may draw adverse inferences from defendant's exercise of privilege against self-incrimination); *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282, 1290-91 (D. Minn. 1985) (adverse inferences permitted from invocation of the privilege even where defendant later testifies). Mr. Pukke invoked his Fifth Amendment privilege in response to specific questions relevant to this motion, and therefore, the Court should

³The FTC and AmeriDebt have reached a settlement, subject first to certain procedures in AmeriDebt's bankruptcy case and then the approval of this Court.

draw adverse inferences in each instance.

II. STATEMENT OF FACTS

Documents that the FTC has obtained through discovery show that Mr. Pukke has engaged in a pattern of transferring assets, and that the assets necessary for consumer redress will be depleted or otherwise unavailable at the conclusion of this case absent an asset freeze order. More specifically, the FTC has uncovered evidence that Mr. Pukke has dissipated assets through (A) transfers to close friends and relatives, (B) transfers to trusts, and (C) a lavish lifestyle.

A. Mr. Pukke's Transfers to Close Friends and Relatives

Mr. Pukke has dissipated assets by transferring money to family members and friends, including at least the following instances:

- (a) In 2003-04, at Mr. Pukke's direction, DebtWorks transferred over \$2 million to an account in Latvia for the benefit of Mr. Pukke's father. Exh. 1, Deposition of Penny Wilson ("Wilson") at 211/24-212/24, 236/2-13;⁴ Exh. 2 at DW-FTC-000044, 56, 60; *see* Exh. 3, Deposition of Andris Pukke ("A. Pukke") at 111/25-112/5, 115/13-116/4 (invoking Fifth Amendment privilege).
- (b) In 2004, DebtWorks transferred at least \$200,000 to Angela Chittenden, Mr. Pukke's girlfriend, who has never worked for DebtWorks. Wilson at 166/2-4, 222/6-24, 226/2-7, 231/13-18; Exh. 2 at DW-FTC-000058, 61, 63, 66-68, 76, 79; *see* A. Pukke at 116/15-22 (invoking Fifth Amendment privilege).
- (c) Between June 2003 and December 2004, DebtWorks paid over \$215,000 in charges on the DebtWorks credit card attributed to Ms. Chittenden. Exh. 4; *see* A. Pukke at 118/7-14 (invoking Fifth Amendment privilege).

⁴Ms. Wilson testified that one of these DebtWorks payments was a loan to Andris Pukke's father, Janis Pukke, who repaid some of the money by payments into Mr. Pukke's personal accounts. Wilson at 212/25-213/24. The DebtWorks ledger shows only one payment from Janis Pukke into the DebtWorks account of \$100,000 on August 31, 2004. Exh. 2 at DW-FTC-000072.

- These charges include numerous clothing charges, such as a \$1,688.44 charge at a clothing store on December 10, 2004, and numerous travel charges, including a \$2,165.04 charge for three nights at the Viceroy Hotel in Santa Monica, dated December 13, 2004. Exh. 4 at AmEx 0000554.
- (d) In 2004, DebtWorks transferred at least \$250,000 to Mr. Pukke's wife Pamela Pukke, who never worked for DebtWorks. Exh. 2 at DW-FTC-000058, 60-63, 68, 76, 79; Exh. 5, Deposition of Pamela Pukke ("P. Pukke") at 116/17-19; *see* A. Pukke at 117/15-21 (invoking Fifth Amendment privilege).
- (e) Between June 2003 and December 2003, DebtWorks paid over \$150,000 in charges on the DebtWorks credit card attributed to Pamela Pukke. Exh. 4. Mrs. Pukke routinely used the DebtWorks credit card for meals and personal travel expenses. P. Pukke at 161/20-163/8; *see* A. Pukke at 117/23-118/5 (invoking Fifth Amendment privilege).

These payments, totaling over \$2.8 million to three individuals connected to Andris Pukke, comprise significant dissipation of assets. In addition, Defendants also transferred significant amounts of money from DebtWorks into Infinity Resources Group ("Infinity"), another company controlled by Mr. Pukke. Exh. 6; Exh. 7, Excerpts of Deposition of Penny Wilson as DebtWorks' 30(b)(6) designee ("DebtWorks Dep.") at 255/16-18; *see* A. Pukke at 17/16-18/5 (invoking Fifth Amendment privilege). According to the former Controller of DebtWorks, Penny Wilson, Mr. Pukke directed that she transfer money from DebtWorks to Infinity numerous times. Wilson at 181/21-182/17. In 2004, DebtWorks transferred at least \$1.62 million to Infinity at Andris Pukke's direction. *Id.* at 244/10-18; Exh. 2 at DW-FTC-000058, 60, 61, 63-64, 66-67, 76-77, 79. As discussed below, at least some of Infinity's assets have been put into a trust created by Mr. Pukke called The Pukke 2002 Family Irrevocable Trust.

B. Transfers Into Trusts

In May 2002, the FTC served AmeriDebt with a Civil Investigative Demand (“CID”) in connection with its investigation and, in August 2002, the FTC served DebtWorks with a CID. Exh. 8. Mr. Pukke, as the owner of DebtWorks, was no doubt aware of the FTC’s CIDs at the time they were served. A. Pukke at 78/25-79/14. Indeed, this Court can draw this adverse inference against Mr. Pukke because he invoked his Fifth Amendment privilege and refused to answer specific questions at his deposition relating to his awareness of the FTC investigation. *Id.* at 78/25-79/14, 102/19-103/13.

After being put on notice of the FTC’s investigation, in October 2002, Mr. Pukke established domestic and off-shore trusts into which he put substantial assets.⁵ Exh. 9 at DW-LIT-8191-8338. Despite the FTC’s CIDs, in connection with establishing the trusts, Mr. Pukke signed certifications that he was not, nor did he “reasonably expect to be,” under investigation by any federal agency. *Id.* at DW-LIT-8225, 8282, 8335. Clearly, however, Mr. Pukke created these trusts in an effort to put his assets out of reach of the FTC and other creditors. Indeed, the lawyer that created the trusts suggested as much in a letter to Mr. Pukke’s accountant and the trust managers:

[A]s we discussed with Andi [Mr. Pukke], one of the benefits of his foreign wealth protection structure is its ability to protect the underlying assets from the claims of future unforeseen creditors.

⁵In September 2002, Mr. Pukke had created six foreign companies, Puck Key Investments L-1 through L-6. Exh. 9 at DW-LIT-8071-8189. In January 2003, Mr. Pukke assigned the ownership of at least five of these entities to one of his trusts. *Id.* at DW-LIT-8133, 8146, 8160, 8175, 8189.

The most effective method of protecting the underlying assets in this structure is to hold the assets in an appropriate foreign jurisdiction and for each trust to have relatively few (if any) US contacts. ... [I]t is important for everyone involved in this matter to reevaluate the status of this structure and consider potential modifications that will help ensure the optimal protection of the underlying wealth.

Exh. 10 at DW-LIT-8058-59.

After creating the trusts, Mr. Pukke then gifted to the trusts various corporate entities, real property, and securities. *Id.*; see A. Pukke at 104/4-11, 106/22-107/3, 111/9-15 (invoking Fifth Amendment privilege). He designated his brother, Eriks Pukke, and his good friend, John Vipulis, as the trust protectors, and ostensibly divested himself of ownership over the property in the trusts. Exh. 9.⁶ As of June 30, 2004, Mr. Pukke's financial statements listed the value of these trusts as \$18,300,000. Exh. 11 at DW-LIT-15986; see A. Pukke at 119/2-8 (invoking Fifth Amendment privilege to question whether the document was a true and accurate copy of his Statement of Financial Condition).⁷ In fact, as discussed further below, Mr. Pukke has actual control over these three trusts: The Pukke 2002 Family Irrevocable Trust ("2002 Trust"), The P Family Trust, and The P II Family Trust. See A. Pukke at 103/15-20, 105/15-106/4, 110/8-24 (invoking Fifth Amendment privilege).

⁶The protector, an individual with specified powers under the trust documents, has the power to remove the trustee and appoint a new one under each of these trusts. Exh. 9 at DW-LIT-8207, 8262-63, 8315-16.

⁷Mr. Pukke may own or control other foreign assets as well, as Ms. Pukke alleged in her Memorandum of Grounds and Authorities in Support of Plaintiff's Motion for Appointment of Special Master/Auditor and an Accounting in the ongoing divorce case. See Exh. 12 at 5.

1. The Pukke 2002 Family Irrevocable Trust

Mr. Pukke formed the 2002 Trust on October 28, 2002. Exh. 9 at DW-LIT-8293. The trust has its situs in Delaware. *Id.* at DW-LIT-8322. The trustee is Commonwealth Trust Company, a corporation providing “administrative trustee” services for various types of trusts, including asset protection trusts. Exh. 13. The trust protector is Eriks Pukke, Andris Pukke’s brother. Exh. 9 at DW-LIT-8320; P. Pukke at 23. The beneficiaries are Mr. Pukke and his four young children, although any distributions to Mr. Pukke’s children require his consent. Exh. 9 at DW-LIT-8293-94; *see* A. Pukke at 103/22-25 (invoking Fifth Amendment privilege).⁸ Distributions of income and principal may be made from the trust to any of the beneficiaries, in the trustee’s discretion or at the direction of the trust protector. Exh. 9 at DW-LIT-8293-94, 8314.

As of August 25, 2004, the 2002 Trust had assets of just over \$8.8 million. Exh. 14. The trust assets purportedly include an investment in Infinity and a note receivable from Infinity. *Id.*; *see also* A. Pukke at 104/22-105/4 (invoking Fifth Amendment privilege). Throughout 2004, however, Mr. Pukke himself directed numerous transfers of cash from Infinity to DebtWorks. Wilson at 246/11-247/11, 247/20-248/9; Exh. 2 at DW-FTC-000063, 66, 68; *see* A. Pukke at 105/6-13 (invoking Fifth Amendment privilege). It appears that Mr. Pukke transfers funds to DebtWorks accounts when needed to pay bills, but otherwise ensures that there are only limited funds in the DebtWorks account.

⁸A person meeting the definition of “Qualified Spouse” is also a beneficiary, but Mr. Pukke does not appear to have a Qualified Spouse at this time because he is not living with his wife. *See* P. Pukke at 41/12-15.

2. The P Family Trust

Mr. Pukke formed The P Family Trust on October 28, 2002. Exh. 9 at DW-LIT-8191. The trust was established under the laws of Nevis, an island nation in the Caribbean. *Id.* at DW-LIT-8209. The trustee is Meridian Trust Company Limited, a corporation that acts as trustee for “asset protection trusts” based in Nevis. Exh. 15. From time to time, DebtWorks paid the administrative fees to the trustees from its accounts, at Mr. Pukke’s direction. Wilson at 205/21-25; *see also id.* at 239/11-17; Exh. 2 at DW-FTC-000043, 45.

The trust protector is John Vipulis, Andris Pukke’s longtime close friend. Exh. 9 at DW-LIT-8222; P. Pukke at 23/14-19; *see* A. Pukke at 8/10-15 (invoking Fifth Amendment privilege). The beneficiaries are Mr. Pukke and his children. Exh. 9 at DW-LIT-8191; *see* A. Pukke at 106/14-20 (invoking Fifth Amendment privilege). At the time of the trust’s formation, Mr. Pukke wrote a memo to the trustee of The P Family Trust “requesting” that it distribute to him *all of the net income and such portions of the principal* of the trust “as the Trustee may deem advisable.” Exh. 9 at DW-LIT-8232-33 (emphasis added). In addition, Mr. Pukke has the power to appoint the trust assets to certain qualified charities. *Id.* at DW-LIT-8192.

On January 15, 2003, Mr. Pukke assigned the ownership of five separate companies that he created in or around September 2002 (called Puck Key Investments L-2, L-3, L-4, L-5, and L-6) to the P Family Trust. Exh. 10 at DW-LIT-8058; Exh. 9 at DW-LIT-8133, 8146, 8160, 8175, 8189 These transfers were gifts to the trustee. *Id.*; *see* A. Pukke at 106/22-107/3 (invoking Fifth Amendment privilege). As of June 2004, The P Family Trust had assets of \$9 million. Exh. 11 at DW-LIT-15986.

Significantly, it appears that Mr. Pukke also has the ability to direct the trustee to return

assets to him, and that the trustee will comply with the request. For example, in response to a request from Branch Banking and Trust Company (“BB&T”) in August 2003, Mr. Pukke’s attorney wrote:

[Mr. Pukke] will immediately request the trustee of this trust to assign the membership interest in Ballenger/DW LLC to him personally and it [sic] anticipated that the trustee will comply with this request immediately.

Exh. 16 at DW-LIT-16015. Again, this Court may draw adverse inferences against Mr. Pukke regarding his control of the P Family Trust, because Mr. Pukke invoked his Fifth Amendment privilege and refused to answer specific deposition questions relating to this issue. *See* A. Pukke at 107/13-110/6 (invoking Fifth Amendment privilege).

3. The P II Family Trust

Mr. Pukke formed The P II Family Trust on October 28, 2002. Exh. 9 at DW-LIT-8248. The trust was established under the laws of the Cook Islands. *Id.* at DW-LIT-8265. The trustee is AsiaTrust Limited, a corporation that acts as trustee for “asset protection trusts” based in the Cook Islands. Exh. 17. The trust protector is John Vipulis, Andris Pukke’s long-time close friend. Exh. 9 at DW-LIT-8279; P. Pukke at 23/14-19; *see* A. Pukke at 8/10-15 (invoking Fifth Amendment privilege). The beneficiaries of The P II Family Trust are Mr. Pukke and his children. Exh. 9 at DW-LIT-8248; *see* A. Pukke at 111/1-7 (invoking Fifth Amendment privilege). At any time during the trust term, the trustee, with written consent of the protector, may pay or apply the whole or any part of the income or principal for the benefit of one or more beneficiaries as the trustee may deem advisable. Exh. 9 at DW-LIT-8249. At the time of the trust’s formation, Mr. Pukke wrote a memo to the trustee of The P II Family Trust “requesting” that it distribute to his wife, his children, and/or to him all of the net income and such portions of

the principal of the trust “as the Trustee may deem advisable.” *Id.* at DW-LIT-8285. As of June 2004, The P Family Trust had assets of \$1.3 million. Exh. 11 at DW-LIT-15986.

In addition, Mr. Pukke has taken at least four loans from Puck Key Investments L-1, a company owned by The P Family Trust and The P II Family Trust. Exh. 18; Exh. 10 at DW-LIT-8057; *see also* A. Pukke at 106/6-12. These loans totaled \$902,500, in February-March 2004. Exh. 18. There is no evidence that Mr. Pukke has repaid any part of these loans, and these loans do not appear as liabilities on his June 30, 2004 Financial Statement. Exh. 11.

C. Mr. Pukke’s Spending on His Lavish Lifestyle

Although DebtWorks has not processed debt management plans since it sold its assets to The Ballenger Group in late December 2002, Mr. Pukke has continued to use DebtWorks funds to pay for lavish personal expenses and investments unrelated to DebtWorks’ business. *See* Wilson at 195/14-196/4; DebtWorks Dep. at 76-77; Exh. 2. These expenses have included the following:

- \$565,000 to Triton Mariculture Limited, an entity in Costa Rica. Wilson at 231/14-242/10; Exh. 2 at DW-FTC-000063, 66, 68.
- \$178,990 to Michael Brian Interiors, an interior decorator for Mr. Pukke’s personal residence. Wilson at 245/21-246/5; Exh. 2 at DW-FTC-000066.
- \$180,000 to John A. Turchin Construction, for expenses related to a personal residence of Mr. or Mrs. Pukke. Wilson at 229/1-10; 242/11-16; Exh. 2 at DW-FTC-000061, 63, 68.
- \$13,457.31 to California Coast Yachts. Exh. 19; Exh. 2 at DW-FTC-000066.
- Numerous restaurant bills, including a charge for \$2,551.60 at Le Passage in Illinois on October 3, 2004 and a charge for \$1756.72 at Sutra Lounge in Costa Mesa, California, on 10/31/04; Exh. 4 at AmEx 0000520, 535.
- Numerous hotel and airline expenses, including a charge for \$806.48 on October 15,

2004, for a ticket purchased for Mr. Pukke to travel to Belize City, Belize, and a charge for \$1,314.14 at the Hard Rock Hotel in Las Vegas, Nevada, on 11/6/04; Exh. 4 at AmEx 0000523.

These payments comprise only a fraction of the total amount transferred from DebtWorks last year. DebtWorks also makes mortgage payments for residences and loan payments for vehicles used for personal purposes by Mr. Pukke, Mrs. Pukke, and Ms. Chittenden. DebtWorks makes up to six mortgage payments from its account each month. Wilson at 233/4-236/1, 249/4-7; Exh. 2. DebtWorks also makes payments on five vehicles that are no longer used for DebtWorks' business. Wilson at 139/17-142/11; Exh. 2.

III. ARGUMENT

This Court should issue a preliminary injunction freezing assets, ordering an accounting, and ordering repatriation of assets. To obtain preliminary relief in a statutory enforcement action such as this, the Commission need only show a likelihood of success on the merits and that the balance of equities tips in its favor, giving far greater weight to the public interest. Here, the FTC will show that (A) the Court has authority to grant the preliminary injunction; (B) the Commission meets the standard for a preliminary injunction; and (C) an asset freeze, an accounting, and the repatriation of assets are necessary to preserve the possibility of effective final relief for consumers.

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

The Commission filed this action under Section 13(b) of the FTC Act to secure permanent injunctive relief and other equitable relief, including rescission, reformation, restitution, and disgorgement. To remedy violations of Section 5(a) of the FTC Act, Section 13(b) provides that “[i]n proper cases the Commission may seek, and after proper proof, the court

may issue, a permanent injunction.” 15 U.S.C. § 53(b). The authority to grant permanent injunctive relief also includes the power to grant any ancillary relief necessary to accomplish complete justice. *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. Gem Merch.*, 87 F.3d 466, 469-70 (11th Cir. 1996); *FTC v. Sec. Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1314-15 (8th Cir. 1991); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1112-13 (9th Cir. 1982); *FTC v. Southwest Sunsites, Inc.*, 665 F.2d 711, 717-19 (5th Cir. 1982). The power to grant ancillary equitable relief under Section 13(b) includes the power to order equitable monetary relief for consumer redress through repayment of money, restitution, rescission, or disgorgement of unjust enrichment. *Febre*, 128 F.3d at 534; *Gem Merch.*, 87 F.3d at 469; *Singer*, 668 F.2d at 1112-13.

Further, the Court may order whatever additional temporary or preliminary relief is necessary to insure that any final relief is complete and meaningful. *See FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989); *FTC v. World Travel Vacation Brokers*, 861 F.2d 1020, 1026 (7th Cir. 1988); *Singer*, 668 F.2d at 1112-13. Thus, a court may order an asset freeze in order to make permanent relief possible. *Gem Merch.*, 87 F.3d at 469. An asset freeze is appropriate to “assure that restitution [will] be available as a remedy to defrauded consumers” *FTC v. Med Resorts Int’l, Inc.*, No. 00 C4893, 2000 WL 1889635, at *3 (N.D.Ill. Dec. 27, 2000). Other courts in this district and other districts in the Fourth Circuit have granted such preliminary injunctive relief.⁹

⁹*See, e.g., FTC v. Nwaigwe*, Civ. No. HAR 96-2690 (D. Md. Aug. 28, 1996) (ordering ex parte temporary restraining order with asset freeze and expedited discovery); *FTC v. Commercial Electrical Supply, Inc.*, No. WMN 96-1892 (D. Md. June 26, 1996) (ordering *ex parte* temporary restraining order with asset freeze, appointment of receiver, expedited discovery, and immediate access to premises); *FTC v. Global Patent Research Servs., Inc.*, No. 96-676-A (E.D. Va. May 17, 1996) (ordering *ex parte* temporary restraining order with asset freeze, immediate access to premises, and expedited discovery); *FTC v. Independence Medical, Inc.*, No. 2-95-1581-18 (D.

The exercise of this broad equitable authority is particularly appropriate where, as here, the public interest is at stake. *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) (when public interest is involved, the court’s equitable powers “assume an even broader and more flexible character than when only a private controversy is at stake”). The exercise of this equitable power is in the Court’s sound discretion. *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1943).

B. The Commission Has Made the Showing Required for Issuance of a Preliminary Injunction.

1. The Applicable Standard

Before entering a preliminary injunction in an action under Section 13(b) of the FTC Act, the district court is required (i) to weigh the equities; and (ii) to consider the FTC’s likelihood of success on the merits. *See FTC v. Food Town Stores, Inc.*, 539 F.2d 1339, 1343 (4th Cir. 1976); *FTC v. Affordable Media*, 179 F.3d 1228, 1233 (9th Cir. 1999). Unlike private litigants, the Commission need not prove irreparable injury, because “harm to the public interest is presumed.” *Id.*; *see also FTC v. Virginia Homes Mfg. Corp.*, 509 F. Supp. 51, 59 (D. Md. 1981) (holding that when considering whether to issue a permanent injunction in an government injunction suit “[n]o balancing of the equities is required, or even permitted, in such circumstances”) (citing *Hecht Co. v. Bowles*, 321 U.S. 321 (1944)).

2. The Commission Has Shown It is Likely to Succeed On The Merits.

Generally, the FTC “meets its burden on the likelihood of success issue if it shows preliminarily, by affidavits or other proof, that it has a fair and tenable chance of ultimate success

S.C. May 22, 1995) (ordering *ex parte* temporary restraining order with asset freeze, appointment of temporary receiver, immediate access to financial records, and expedited discovery).

on the merits.” *FTC v. Beatrice Foods Co.*, 587 F.2d 1225, 1229 (D.C. Cir. 1978) (internal citation omitted). The FTC has already made its case that it is likely to prevail on the merits through the evidence and arguments presented in its motion for summary judgment that it filed against Mr. Pukke and DebtWorks on March 18, 2005, and which the FTC incorporates herein by this reference. While that motion remains under submission with this Court, the standard for summary judgment is stricter on the FTC than the standard for the present motion. Here, the FTC need only merely demonstrate that it is *likely* to prevail if a trial were to be held.

Under this more lenient standard, the combination of the inferences that can be drawn from Mr. Pukke’s refusal to answer deposition questions based on his assertion of the Fifth Amendment and the detailed factual showing that the FTC made in its summary judgment motion, leaves no question that the FTC has met its burden of showing likelihood of success on the merits.

3. The Balance of Equities Weighs in the FTC’s Favor.

When weighing the public and private equities in an FTC action for injunctive relief, the public interest should receive greater weight. *See World Wide Travel*, 861 F.2d at 1030. Indeed, the Fourth Circuit has held that private injuries “are not proper considerations for granting or withholding injunctive relief under §13(b).” *See FTC v. Food Town Stores*, 539 F.2d 1339, 1346 (4th Cir. 1976). Where, as here, the evidence demonstrates that the defendants’ business practices are rooted in deception, a court “is under no duty ‘to protect illegitimate profits or advance business which is conducted [illegally].” *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 143 (2d. Cir. 1977) (internal citations omitted).

In this case, the balance of equities weighs in favor of granting preliminary relief. The

FTC has presented substantial evidence showing that the defendants have deceived consumers nationwide. The consumer injury in this case is at least \$172 million. The public equities strongly favor injunctive relief to preserve the possibility that effective relief can be provided to these consumers.

C. An Asset Freeze, An Accounting, and the Repatriation of Assets Are Necessary to Preserve the Possibility of Effective Final Relief.

1. Asset Freeze and Immediate Accounting

As part of the final remedy in this case, we seek equitable monetary relief, including restitution and disgorgement. To preserve the possibility of restitution to the victims of Defendants' deceptive scheme, we now seek to freeze the assets of Andris Pukke and DebtWorks. As discussed in detail in the FTC's summary judgment motion, Defendant DebtWorks reported revenues of almost \$119 million between the years 1999 and 2002. Exh. 20. Mr. Pukke and his wife, relief defendant Pamela Pukke, received income from DebtWorks of over \$70 million during the period 1998 to 2003. *Id.*

Despite these ill-gotten gains, as of February 2005, DebtWorks had only about \$1500 in its bank accounts, and, as of June 2004, Andris Pukke estimated his assets to be worth only about \$3.4 million. Exh. 2 at DW-FTC-000083-84; Exh. 11 at DW-LIT-15985. It is unclear where all of the Defendants' ill-gotten gains have gone, but there is no question that Mr. Pukke has transferred a substantial portion of this money to his close friends and relatives, and to the off-shore accounts he created in October 2002. At the same time, Mr. Pukke retains access to significant sums of money – for example, on December 30, 2004, he wired \$250,000 into the DebtWorks Operating Account, and on February 1, 2005, he wired \$150,000 into that account.

Exh. 2 at DW-FTC-000079, 83. Without an asset freeze to ensure that Andris Pukke's and DebtWorks' assets are available to fund a judgment, there may be no meaningful relief for injured consumers.

As discussed above, a district court's authority to enter orders preserving defendants' assets is ancillary to its equitable authority to order redress. *Singer*, 668 F.2d at 1113; *Gem Merch.*, 87 F.3d at 469. Courts have frequently frozen corporate and individual assets as preliminary relief in Commission cases. *See e.g. Singer*, 668 F.2d at 1113; *Amy Travel*, 875 F.2d at 574-76; *World Travel Vacation Brokers*, 861 F.2d at 1031 (individual assets). As the Seventh Circuit explained in upholding an asset freeze in an FTC case: "[T]he district court had a duty to ensure that the assets of the corporate defendants were available to make restitution to the injured customers." *World Travel Vacation Brokers, Inc.*, 861 F.2d at 1031. Every court to order an asset freeze has done so on the basis of the very weighty public equity of justice for all victims in the form of consumer redress.¹⁰

The Fourth Circuit has held that an asset freeze is proper in order to preserve the future availability of permanent equitable relief. *See CFTC v. Kimberlynn Creek Ranch Inc.*, 276 F.3d 187, 193 (4th Cir. 2002). In addition, this Circuit has held that an asset freeze is proper even if

¹⁰*See Med Resorts*, 2000 WL 1889635, *3 (N.D.Ill. 2000) (holding that "an asset freeze is appropriate to the extent it is needed to assure that restitution would be available as a remedy to defrauded consumers if a finding is made that the defendants are in violation of [consumer protection statutes] at the conclusion of proceedings."). *See also, e.g., Affordable Media*, 179 F.3d at 1236-37 (upholding asset freeze); *Gem Merch.*, 87 F.3d at 468 (upholding freeze); *FTC v. Atlantex Assocs.*, 872 F.2d 966, 969-70 (11th Cir. 1989) (noting asset freeze order); *World Travel Vacation Brokers, Inc.*, 861 F.2d at 1031 (upholding freeze); *FTC v. Am. Nat'l Cellular, Inc.*, 810 F.2d 1511, 1514 (9th Cir. 1987) (upholding freeze on grounds that "FTC's power to petition the district court for injunctive relief and to freeze assets is well established."); *U.S. Oil & Gas Corp.*, 748 F.2d 1431(11th Cir. 1984) (upholding asset freeze); *Singer*, 668 F.2d 1107, 1113 (9th Cir. 1982) (upholding asset freeze).

some assets might not be the fruit of wrongdoing, upon “a showing of fraud, mismanagement, or other reason to believe that, absent a freeze order, the assets would be depleted or would otherwise become unavailable.” *Kemp v. Peterson*, 940 F.2d 110, 114 (4th Cir. 1991).

Here, a freeze of Defendants’ assets is appropriate to preserve the *status quo* and ensure that funds do not disappear during the remainder of this litigation. Defendants have engaged in deceptive business activities, and have engaged in a pattern of transferring money to overseas trusts and third parties. A freeze on Defendants’ assets will reduce the risk of dissipation and preserve assets for possible redress to victimized consumers and disgorgement of Defendants’ ill-gotten gains. Any hardship that an asset freeze imposes on Defendants is temporary and outweighed by the public interest in preserving available assets for redress.

The asset freeze should include a freeze on the assets of the 2002 Trust as well as the assets held under the names of Andris Pukke and DebtWorks.¹¹ As shown above, Mr. Pukke has actual control over the assets of the 2002 Trust. Specifically, he has directed numerous transfers of cash from one of the assets purportedly held by the 2002 Trust, the corporate entity Infinity. Wilson at 246/11-247/11, 247/20-248/9; Exh. 2 at DW-FTC-000063, 66, 68; Exh. 14; *see* A. Pukke at 105/6-13 (invoking Fifth Amendment privilege).

Additionally, for the purposes of locating and securing assets for final relief, the FTC requests that the Court order the defendants to make a full financial accounting. *See Kemp v. Peterson*, 940 F.2d at 113 (affirming district court’s order requiring monthly accounting and financial disclosure statement). An accounting, combined with an asset freeze, will increase the

¹¹In addition, as discussed below, the FTC seeks an order requiring Mr. Pukke to repatriate the assets held in the two overseas trusts, the P Family Trust and the P II Family Trust; with repatriation, these assets would also be subject to the proposed asset freeze.

likelihood of preserving assets pending a final determination in this matter.

2. Repatriation of Assets

Many courts have ordered repatriation of assets to ensure the possibility of effective relief in FTC cases. *See, e.g., Affordable Media*, 179 F.3d at 1239; *FTC v. Crescent Publ'g Group, Inc.*, 129 F. Supp.2d 311, 325-26 (S.D.N.Y. 2001).¹² In *FTC v. Affordable Media*, for example, the court affirmed the finding of civil contempt against defendants for refusing to repatriate funds in violation of a temporary restraining order and preliminary injunction ordering the defendants to transfer all assets held in foreign countries to the United States. The Court rejected Defendants' argument that it was impossible for them to repatriate funds held in a trust in the Cook Islands because they were not the trustees, as they had previously been able to obtain over \$1 million from the trust to pay taxes. Moreover, the trust documents themselves granted the defendants significant control over the trust. The court also noted that the defendants had set up the "asset protection" trust "to frustrate the power of United States' courts to enforce judgments." *Affordable Media*, 179 F.3d at 1243.

In *FTC v. Crescent Publishing*, the court ordered the repatriation of assets on the grounds that there was a serious prospect of substantial monetary relief for consumers; the corporate defendants' balance sheet showed that they were not in a position to satisfy the potential judgment; and the defendants had used a Montserrat bank operating in Guatemala. The court stated that there was substantial reason to conclude that "the defendants, absent relief from the

¹²*See also FTC v. SkyBiz.com, Inc.*, 2001 WL 1673645 at *12, *18-19 (N.D. Okla. Aug. 31, 2001) (preliminary injunction ordering defendants to repatriate all offshore assets and provide full accounting of same); *FTC v. SlimAmerica*, 77 F. Supp.2d. 1263, 1275, 1277 (S.D. Fla. 1999) (noting previous order to repatriate overseas assets and, in permanent injunction, declaring subsequent transfer of funds offshore void and ordering receiver to effectuate repatriation).

Court, [would] place additional assets beyond its reach.” *Crescent Publ’g*, 129 F.Supp.2d at 325.

Here, Defendants have transferred a substantial amount of assets overseas. Similar to the Defendants in *Affordable Media*, it appears that Mr. Pukke transferred the amounts as a means of protecting his assets from potential liability. It is telling that Mr. Pukke formed these trusts in October 2002, shortly after DebtWorks received the FTC’s Civil Investigative Demand.

Although the trustees ostensibly have control over the funds in the trusts, each of the trustees is a corporate entity in the business of asset protection. Exhs. 9, 13, 15, 17. The protectors of the trusts are Mr. Pukke’s brother and his close friend. Exh. 9. The P Family Trust and the P II Family Trust are based overseas (in Nevis and the Cook Islands, respectively), presumably in order to take advantage of laws favorable to asset protection. As discussed more fully above, Mr. Pukke has transferred over \$10 million into the two overseas trusts, yet Mr. Pukke has retained actual control over the assets. *See* A. Pukke at 103/15-20, 105/15-20, 110/8-15 (invoking Fifth Amendment privilege). This is clear from the fact that in August 2003, Mr. Pukke’s lawyer promised to BB&T bank that Mr. Pukke would seek the return of a corporate entity purportedly held by The P Family Trust, and he “anticipated that the trustee [would] comply with this request immediately.” Exh. 16 at DW-LIT-16015; *see* A. Pukke at 107/13-110/6 (invoking Fifth Amendment privilege). When asked at his deposition if this is in fact what occurred, Mr. Pukke took the Fifth and refused to answer. *Id.*

As Mr. Pukke has transferred substantial assets into trusts but retained actual control over those assets, it is proper and necessary to order him to repatriate the transferred funds in order to preserve the possibility of meaningful consumer redress. This will not be a hardship on Mr. Pukke. In contrast, it would be extremely expensive and difficult, if not impossible, for the FTC

to attempt to untangle these offshore trusts and return the assets to the United States.

Accordingly, Mr. Pukke should be ordered to repatriate these assets.

IV. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court grant its motion for a preliminary injunction including asset freeze, accounting and repatriation of assets.

Dated: March 29, 2005

Respectfully submitted,

FEDERAL TRADE COMMISSION
William Blumenthal
General Counsel

/s/ Allison I. Brown

LUCY E. MORRIS
ALLISON I. BROWN
MAIYSHA R. BRANCH
JAMES A. SILVER
Federal Trade Commission
600 Pennsylvania Ave., NW
Mail Stop NJ-3158
Washington, D.C. 20580
(202) 326-3295 (telephone)
(202) 326-3768 (facsimile)

Local Counsel
JEANNE M. CROUSE - #05329
RAMONA D. ELLIOTT - #05738
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Mail Stop H-286
Washington, D.C. 20580
(202) 326-3312 (telephone)
(202) 326-3799 (facsimile)