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GLASSER, J.

GOLD, M.J.

Civil Action No. 16-_____

CV 16 1 2770

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

TRENDS SERVICE IN KOMMUNIKATIE,
B.V., KOMMUNIKATIE SERVICE
BUITENLAND, B.V., and ERIK DEKKER,
individually and as an officer of TRENDS
SERVICE IN KOMMUNIKATIE, B.V., and
KOMMUNIKATIE SERVICE
BUITENLAND, B.V.,

Defendants.

**UNITED STATES' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER, ORDER TO SHOW CAUSE,
AND PRELIMINARY INJUNCTION**

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Pursuant to the Anti-Fraud Injunction Statute, 18 U.S.C. § 1345, the United States of America seeks a temporary restraining order, preliminary injunction, and other equitable relief in this matter to prevent Defendants from committing further violations of the mail fraud statute, 18 U.S.C. § 1341. Defendants are engaging in multiple international direct mail fraud schemes that are causing losses to American victims of an estimated \$18 million annually. Section 1345 authorizes a district court, upon a showing of probable cause to believe that the defendants have engaged in mail fraud, to enter “such restraining order or prohibition, or take such other action, as is warranted to prevent a continued and substantial injury to . . . any person or class of persons for whose protection the action is brought.” The injunction sought by the United States will prevent the ongoing victimization of vulnerable, American victims both within the Eastern District of New York and nationwide.

Because the United States has met its burden by establishing probable cause to believe that Defendants have committed, and are continuing to commit, federal mail fraud offenses, the United States moves the Court to enjoin Defendants’ fraudulent conduct pursuant to Section 1345.

I. STATEMENT OF FACTS

Trends Service in Kommunikatie, B.V., (“Trends”), Kommunikatie Service Buitenland, B.V., (“KSB”), and Erik Dekker (collectively “Defendants”), are engaged in ongoing mail fraud schemes that have already defrauded hundreds of thousands of consumers of more than \$18 million annually through false and misleading direct mail solicitations. *See* Decl. of Postal Inspector Joseph R. Bizzarro in Support of Mot. for Temporary Restraining Order, Order to Show Cause, & Preliminary Injunction (“Bizzarro Decl.”) ¶ 27. Trends and KSB are businesses

registered in the Netherlands. *Id.* ¶ 46. Trends and KSB are wholly owned by Erik Dekker, through a firm called Stecha Holding, B.V. *Id.*

A. The Fraudulent Solicitations

Potential victims throughout the United States receive solicitations that originate from outside of the United States and are placed into the United States mail. *Id.* ¶ 4. The solicitations use various fraudulent tactics designed to induce elderly and vulnerable victims to send money.

Many of the solicitations fraudulently claim that the victim is the sole recipient of the solicitation, or one of a small number of recipients. *Id.* ¶¶ 5, 23-24, 36-37. In fact, the solicitations are not unique or personalized, but are form letters mailed to thousands of recipients. *Id.* ¶¶ 5, 23-24, 36-37. For example, one solicitation claims that the recipient has won a check for \$30,000 and asserts, “One single person had indeed received this coupon . . . It’s you and you alone!” Compl. Ex. D at 5. Under the “personal coupon code,” is the following text: “Sent only to: [victim name]; Enables the Finance Department to identify the GRAND WINNER of \$30,000.00.” *Id.* Despite these misrepresentations, however, the identical solicitation with the identical numerical code was sent to other potential victims. *Compare* Compl. Ex. D *with* Compl. Ex. E.

Other solicitations fraudulently claim that they were sent to the individual victim based on his or her personal attributes. They refer, for example, to the recipient’s “personal financial situation,” *see* Compl. Ex. F at 9, or to the purported author’s belief that the individual recipient “urgently” needs help, *see* Compl. Ex. H at 9. In fact, the victims receive the solicitations because their names and addresses appear on a mailing list. Bizzarro Decl. ¶¶ 5, 34, 37.

Another type of solicitation fraudulently claims that the individual recipient has already won, or will soon win or receive, cash or valuable prizes. The advertised prize is typically a

large check or a luxury car. *See* Compl. Exs. A-E. In fact, the victims have won nothing, there is no lottery, and the victims will receive no cash or prize. Bizzarro Decl. ¶¶ 5, 7-8, 51, 57-58.

Yet another category of solicitations contains fraudulent claims that products and services offered for sale, some of which are divinatory in nature, will bring wealth to the recipient. The services are described in vague terms and guaranteed to work. For example, one solicitation states that, “This is TURBO-TOP-AWARDS, the extremely profitable and absolute top secret method used by the greatest millionaires that will help you IN ALL CASES to become rich within 12 weeks by playing games of chance!” Compl. Ex. F. at 8. In other cases, the services offered for sale are mystical. For example, one solicitation promises that someone named “Olivia Kramer” will “magnetize” the victim’s chosen numbers using her extraordinary powers so that the victim can win the lottery using those numbers. *See* Compl. Ex. H at 8 (“I will magnetize these 6 numbers only for you”; “You will soon be rich with at least \$ 150,000.00 in your account”). In fact, the advertised products and services do not bring wealth to their purchasers as promised. Bizzarro Decl. ¶¶ 5, 7, 51, 57-58.

All of the solicitations request payments from the victims, usually in amounts between \$15 and \$55, and indicate that the victims will receive the promised money or prize or fortune if they pay. *Id.* ¶¶ 5, 6, 27. In actuality, the victims never receive the promised money or prizes. *Id.* ¶¶ 5, 7, 51, 57-58.

The solicitations often contain inconspicuous fine print that purports to set out terms and conditions. Some of these “disclaimers” reiterate the misrepresentations that appear throughout the solicitation. *See, e.g.*, Compl. Ex. C at 6. In other solicitations, the fine print directly contradicts the claims in the main body of the solicitation. For example, the heading of a

solicitation may claim that the victim is a “confirmed” winner of a large check, while the fine print discloses that the prize drawing has not yet taken place. *See, e.g.*, Compl. Ex. D at 5-8.

All of the solicitations contain purportedly personalized letters and response cards that serve as order forms. *Id.* ¶ 9. Victims fill out the response card and provide their credit card information or enclose payment in the form of cash, check, or money order. *Id.* Victims send their responses and payments through the United States mail in pre-printed return envelopes provided with the solicitation. *Id.* The solicitations that are the subject of this action all contain return envelopes addressed to post office (“P.O.”) boxes in the Netherlands that are registered to Trends and KSB. *Id.*

Investigators have identified dozens of different fraudulent mailing campaigns with form-letter solicitations and pre-printed return envelopes addressed to Defendants’ P.O. boxes in the Netherlands, all containing similar blatant misrepresentations. Bizzarro Decl. ¶ 44.

B. Defendants

Defendants receive hundreds of thousands of victims’ responses and payments each year for multiple international direct mail fraud schemes. *Id.* ¶ 10. Defendants control over fifty P.O. boxes in the Netherlands which they use in furtherance of the mail fraud schemes. *Id.* ¶ 9.

Trends and KSB open the mail, review and sort it, and record the victim’s response and payment method and amount in a customer database. *Id.* ¶ 10. Defendants also identify which recipients send money in response to the solicitations. *Id.* ¶ 11. Defendants handle the victims’ payments, forwarding them on to other entities or arranging for the cash to be deposited in a Dutch bank. *Id.* ¶ 10. These services are known in the direct mail industry as “caging” services. *Id.* As a result of Defendants’ gathering and transmitting victims’ information, the victims are then bombarded with numerous additional, similar solicitations. *Id.* ¶ 11.

In addition to victims' payments, Defendants receive thousands of handwritten letters from victims. *Id.* ¶ 51. These letters often contain evidence that the victims are particularly vulnerable, discussing topics like receiving Social Security benefits, large debts, and medical illnesses or ailments. *Id.* ¶ 56; *see, e.g.*, Compl. Ex. K at 5-6, Ex. M at 4. These letters reveal victims' beliefs that they have won a lottery or sweepstakes competition, or that they are corresponding directly with a psychic in response to a personalized solicitation—neither of which are true. *Id.* Many victims complain that they sent in the required fee, but never received the promised winnings or received a worthless item. *Id.* ¶¶ 51, 55; *see e.g.*, Compl. Ex. J at 1-4, Ex. L at 5. The same victims are often defrauded repeatedly, because they continue to believe the false representations in the solicitations. *Id.* ¶ 55; *see, e.g.*, Compl. Ex. I at 3, Ex. J at 1-4.

C. Determinations of Non-Mailability

The records of United States Postal Inspection Service (“USPIS”) administrative enforcement actions provide further evidence of Defendants’ engagement in the mail fraud schemes. Dozens of different fraudulent mailing campaigns with solicitations that contained return envelopes addressed to Defendants’ P.O. boxes have been the subject of USPIS Determinations of Non-Mailability. A Determination of Non-Mailability (“DON”) is an administrative action undertaken by the USPIS, pursuant to Title 39, United States Code, Section 3005 (False Representations; Lotteries), which authorizes the United States Postal Service (“USPS”) to take administrative action to enjoin fraud schemes operating through the mail.

Section 3005 states in pertinent part:

Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, including the mailing of matter which is nonmailable under [Title 39] section 3001(d), (h), (i), (j), or (k) of this title, or is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind,

the Postal Service may issue an order which . . . requires the person or his representative to cease and desist from engaging in any such scheme, device, lottery, or gift enterprise.

Through the DON process, inbound mail is searched as it enters the country at five international airports that have been designated USPS International Service Centers. Bizzarro Decl. ¶ 20. When the mail contains lottery-related matter, in violation of 18 U.S.C. § 1302, or facsimile checks, in violation of 39 U.S.C. § 3001(k), the USPIS issues a DON. *Id.* ¶ 22. The USPIS mails the DON to the return address provided in the improper solicitation, along with a sample solicitation and an explanation that the solicitation violated either 18 U.S.C. § 1302 or 39 U.S.C. § 3001(k). *See id.* ¶ 22. In 2015, the USPIS issued and mailed approximately 70 DONs to P.O. boxes registered to Trends and KSB, each containing an example of the violative solicitation. Bizzarro Decl. ¶ 23; *see also, e.g.*, Compl. Exs. A-H. Previously, between 2012 and 2014, the USPIS issued DON's for approximately 67 different mailing campaigns that contained solicitations with pre-printed return envelopes addressed to P.O. boxes registered to Trends; the USPIS intercepted and destroyed over 160,000 pieces of mail related to those DONs. Bizzarro Decl. ¶ 24.

D. The Scope of the Fraud

Defendants have been performing caging services for mail fraud schemes since at least 2012 and currently continue to perform such services. *Id.* ¶¶ 28-29. Complaints have been received by the U.S. Federal Trade Commission for P.O. boxes controlled by Trends and KSB dating back to 2012, and the USPIS DON actions discussed above further corroborate that Trends has been active for at least that long. *Id.* ¶¶ 24, 28.

The Government estimates that Defendants receive over 530,000 victim payments each year, totaling more than \$18 million. *Id.* ¶ 27. On any given day, it is likely that Defendants receive at least 1,000 victim responses at their P.O. boxes in the Netherlands, however the

typical daily number is probably much higher. *Id.* The payments sent by victims generally range from \$15 to \$55, with an average estimated payment of \$35. *Id.*

II. ARGUMENT

The United States is entitled to relief under the Anti-Fraud Injunction statute. The facts set forth in the attached Declaration of Postal Inspector Joseph R. Bizzarro establish probable cause to believe that Defendants are engaged in multiple extensive schemes to commit mail fraud. The Court should issue immediate injunctive relief pursuant to 18 U.S.C. § 1345 in order to protect current and future victims of the fraud schemes from further substantial monetary losses.

A. Congress Enacted 18 U.S.C. § 1345 to Quickly Stop Ongoing Frauds

Plaintiff's Claim for Relief is brought under § 1345 of Title 18, which was enacted as part of the Comprehensive Crime Control Act of 1984. *See* Pub. L. No. 98-473, § 1205(a), 98 Stat. 1837, 2152 (1984). Section 1345 provides in pertinent part:

If a person is . . . violating or about to violate this chapter [i.e., § 1341] . . . the Attorney General may commence a civil action in any Federal court to *enjoin such violation*. . . . The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before the final determination, *enter such a restraining order or prohibition, or take such other action*, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought.

(emphasis added).

The legislative history of § 1345 clearly explains that the law was enacted in response to Congressional dissatisfaction with the limited remedies available to the United States to civilly combat mail fraud, and in order to provide the government with a tool to quickly address such fraud:

While present law provides limited injunctive relief [under 39 U.S.C. § 3005], this relief is inadequate. First, the relief is restricted to the detention of incoming mail. It does not reach the situation where letters continue to be sent to further a scheme . . . or to fraudulent schemes which do not entail the use of the mails. Second, the required administrative proceedings entail considerable delay which is compounded by the extra time and energy necessary to bring an injunctive suit in the district court while the administrative proceedings are pending

Experience has shown that even after indictment or the obtaining of a conviction, the perpetrators of fraudulent schemes continue to victimize the public. For these reasons, the Committee has concluded that whenever it appears that a person is engaged or is about to engage in a criminal fraud offense proscribed by Chapter 63, the Attorney General should be empowered to bring suit to enjoin the fraudulent acts or practices.

S. Rep. No. 225, 98th Cong., 2d Sess. 401-02, reprinted 1984 U.S.C.C.A.N. 3182, 3539-40 (the “Senate Report”); *see also United States v. Belden*, 714 F. Supp. 42, 44 (N.D.N.Y. 1987) (“The legislative history of § 1345 indicates that Congress was concerned about the possibility that innocent people would continue to be victimized by fraudulent schemes during the often lengthy period of time required to investigate such schemes and bring criminal charges against its perpetrators.”). Section 1345 was enacted as a tool to assist the government in putting a “speedy end” to mail fraud schemes. *Id.* at 45 (citing Senate Report at 402, U.S.C.C.A.N. 1984, p. 3540).

Courts in this Circuit and district have regularly granted temporary or preliminary injunctive relief pursuant to 18 U.S.C. § 1345. *See, e.g., United States v. Narco Freedom, Inc.*, 95 F. Supp. 3d 747, 755 (S.D.N.Y. 2015); *United States v. CLGE Inc.*, No. 2:14-cv-06792-DJF-GRB, Dkt. Entry No. 5, Temporary Restraining Order and Order to Show Cause (E.D.N.Y. Nov. 19, 2014); *United States v. Metro Data Mgt.*, No. 2:14-cv-06791-SJF-GRB, Dkt. Entry No. 5, Temporary Restraining Order and Order to Show Cause (E.D.N.Y. Nov. 19, 2014); *United States v. Madison Home Equities*, No. 1:08-cv-04295-NGC-VVP, Dkt. Entry No. 4, Temporary Restraining Order (E.D.N.Y. Oct. 23, 2008); *United States v. Fed. Record Serv. Corp.*, No. 99 CV 3290, 1999 WL 335826 (S.D.N.Y. May 24, 1999).

B. Under Section 1345, the United States Need Only Show Probable Cause That Defendants Are Committing or Are About to Commit a Fraud

In *United States v. Belden*, 714 F. Supp. 42, 45-46 (1987), the district court in the Northern District of New York determined that the usual common law requirements of “irreparable harm” and “probable success on the merits” do not apply to an action brought under § 1345.

In *United States v. Savran*, Judge Spatt of this District agreed, holding:

To support an application for a preliminary injunction under 18 U.S.C. § 1345, the Government must demonstrate that ‘probable cause’ exists to believe that the defendant is currently engaged or about to engage in a fraudulent scheme violative of either the mail, wire or bank fraud statutes.

755 F. Supp. 1165, 1177 (E.D.N.Y. 1991) (citing *Belden*, 714 F. Supp. at 45-46); *see also United States v. Weingold*, 844 F. Supp. 1560, 1573 (D.N.J. 1994) (“Proof of irreparable harm is not necessary for the Government to obtain a preliminary injunction” under Section 1345); *United States v. Payment Processing Ctr., LLC*, 435 F. Supp. 2d 462, 463-64 (E.D. Pa. 2006).

Irreparable harm is not a required showing, because it is presumed to exist once the Government satisfies the statutory conditions under 18 U.S.C. § 1345. The *Savran* Court noted that where the United States acts under statutes which expressly authorize equitable relief to protect the public interest, such as 18 U.S.C. § 1345, “the courts have consistently held that irreparable harm need not be demonstrated, and that so long as the statutory conditions are met, *irreparable harm to the public is presumed.*”¹ 755 F. Supp. at 1179 (emphasis added); *see also*

¹ In this case, even if the Court were to require a showing of traditional irreparable harm, it is easily established. In *Savran*, Judge Spatt held that “[e]ven though a showing of irreparable harm is not necessary under section 1345...[p]ermitting the defendants to continue to perpetrate this alleged extensive mail fraud, in this Court’s view, constitutes irreparable harm.” 755 F. Supp. at 1180. Here, if Defendants are not enjoined from continuing to engage in the fraudulent mailing campaigns, thousands of victims could irretrievably lose their money to Defendants. *See Bizarro Decl.* ¶¶ 29, 53-54.

United States v. Diapulse Corp. of Am., 457 F.2d 25, 27-28 (2d Cir. 1972) (action under Food, Drug, and Cosmetic Act).

The court noted that an earlier-enacted statute, 39 U.S.C. § 3007, requires only a showing of probable cause to believe that mail fraud is being committed to support issuance of an injunction authorizing the detention of mail by the Postal Service for temporary periods. The *Savran* court then examined the legislative history of Section 1345, described *supra* in Section II.A., and explained that the statute “was intended to make it *easier* for the government to obtain preliminary injunctions ... terminating fraudulent schemes ... than had been possible under 39 U.S.C. § 3007.” *Id.* at 1179 (citing *Belden*, 714 F. Supp. at 45) (emphasis added). Accordingly, the United States here need only show that probable cause exists to believe that the Defendants are currently engaged in or about to engage in fraudulent actions violating the mail fraud statutes.²

“A showing of ‘probable cause’ requires the Government to establish a set of facts which would cause a reasonably prudent and intelligent person to believe that a cause of action . . . exists.” *Weingold*, 844 F. Supp. at 1571; *see also United States v. All Right, Title & Interest*, 901 F.2d 288, 291 (2d Cir. 1990) (probable cause requires “reasonable grounds . . . above the level of mere suspicion but need not amount to . . . ‘prima facie proof.’”). The United States may meet its burden of establishing probable cause by adducing direct or circumstantial evidence, and may use hearsay in support of its application. *See United States v. Premises & Real Prop. at 4492 S.*

² A few courts outside this Circuit have applied a preponderance of the evidence standard. *See generally United States v. Fang*, 937 F. Supp. 1186, 1194-95 (D. Md. 1996) (discussing evidentiary standards adopted by courts under § 1345). The Bizzarro Declaration and the exhibits filed by the Government establish beyond a preponderance of the evidence standard that Defendants are engaging in mail fraud. *See Narco Freedom*, 95 F. Supp. 3d at 755 (holding that it was unnecessary to decide which standard applied because Government met higher preponderance standard).

Livonia Rd., 889 F.2d 1258, 1267-69 (2d Cir. 1989), *reh'g denied*, 897 F.2d 659 (1990); *Asseo v. Pan Am. Grain Co.*, 805 F.2d 23, 25-26 (1st Cir. 1986) (“affidavits and other hearsay materials are often received in preliminary injunction proceedings.”); *Weingold*, 844 F. Supp. at 1571; *Zeneca Inc. v. Eli Lilly & Co.*, No. 99 Civ. 1452 (JGK), 1999 WL 509471, at *2 (S.D.N.Y. July 15, 1999) (“[T]he court may consider hearsay evidence in a preliminary injunction hearing.”).

C. The Government Has Demonstrated Probable Cause to Believe That Defendants Are Committing Mail Fraud

The evidence presented in the Declaration of Postal Inspector Joseph R. Bizzarro establishes probable cause to believe that Defendants are engaged in multiple mail fraud schemes. A person violates the mail fraud statute if he devises “any scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, . . . [and] places in any post office . . . any matter or thing whatever to be sent or delivered by the Postal Service.” 18 U.S.C. § 1341. The elements of a mail fraud violation are, therefore: (1) a scheme to defraud; (2) furthered by use of the mails; and (3) for the purpose of obtaining money or property. *United States v. Tocco*, 135 F.3d 116, 124 (2d Cir. 1998).

1. *Courts Have Found That Similar Direct Mail Solicitations Constitute Schemes To Defraud*

The Second Circuit has held that “[t]he scheme-to-defraud element is construed broadly to encompass ‘everything designed to defraud by representations as to past or present, or suggestions and promises as to the future.’” *United States v. Reifler*, 446 F.3d 65, 95 (2d Cir. 2006) (quoting *United States v. Altman*, 48 F.3d 96, 101 (2d Cir. 1995)). Moreover, “[a]lthough the Government must prove that the defendant had a specific intent to defraud, a showing of evil motive on the part of the defendant is not necessary and such intent may be inferred through circumstantial evidence.” *Savran*, 755 F. Supp. at 1181; *see also United States v. Gelb*, 700 F.2d

875, 880 (2d Cir. 1983). For example, specific intent to defraud can be reasonably inferred based on “a pattern of conduct or coordinated activities,” *United States v. Panza*, 750 F.2d 1141, 1149 (2d Cir. 1984), or based on a *modus operandi*, *United States v. Reid*, 533 F.2d 1255, 1264 (D.C. Cir. 1976).

Multiple courts have held that “the Government may establish intent to defraud under Section 1341 simply by showing that the Defendants ‘made material misrepresentations of fact with reckless disregard to their truth or falsity.’” *Weingold*, 844 F. Supp. at 1574 (citing *United States v. Cen-Card Agency/C.C.A.C.*, 724 F. Supp. 313, 316-17 (D.N.J. 1989); *United States v. Frick*, 588 F.2d 531, 536 (5th Cir. 1979), *cert. denied*, 441 U.S. 913 (1979) (citing *United States v. Amrep Corp.*, 560 F.2d 539, 543 (2d Cir. 1977)).

Courts have upheld mail fraud convictions based on lottery schemes like the solicitations at issue here. In *United States v. Getto*, 729 F.3d 221 (2d Cir. 2013), the Second Circuit affirmed mail and wire fraud convictions based on a scheme similar to the schemes at issue here. The defendant in *Getto* operated a lottery telemarketing scheme in which he and his co-conspirators would call victims, tell them they had won cash prizes in sweepstakes, and extract “taxes and fees” which the victims paid in the hope of obtaining the nonexistent prizes. *Id.* at 225; *see also United States v. Sommer*, 815 F.2d 15, 16 (2d Cir. 1987) (affirming mail fraud conviction where defendant sent direct mail solicitations informing people they had won a cash “gift” which they would receive if they paid \$3.50 for postage and handling).

Courts have long acknowledged that the mail fraud statute reaches those who run schemes to defraud under the auspices of supernatural, psychic, or mystical powers. For example, in *United States v. White*, 150 F. 379 (D. Md. 1906), the defendant, through a fraudulent mailing campaign, offered victims personalized psychic readings and charms with

special powers. When charging the jury, the court instructed that it was their job to determine whether the defendant intended to send personalized psychic readings as promised, or whether the defendant “intend[ed] to send to every applicant who paid the \$1 fee the same reply, printed by thousands, and made up and sent without reference to the individual applicant, or his lock of hair, or photograph, or piece of cloth, or any impression which the defendant had received with the application?” *Id.* at 390. The court emphasized, “To determine this question you do not have to determine whether or not there is such a thing as Pyschometry or Clairvoyance and Trance Readings, but simply was this, on the part of the defendant, a conscious and intentional fraud.” *Id.*

In *United States v. Weingold*, 844 F. Supp. 1560, the government obtained an injunction under Section 1345 enjoining defendants from operating multiple schemes similar to the instant schemes. The lead defendant in *Weingold* was the principal in, and controlled the acts of seven corporate defendants, each with a unique mailing campaign. *Id.* at 1562. These solicitations offered psychic readings, good luck and mystical pendants, lottery devices and sweepstakes, and awards and purported delivery notices. *Id.* at 1562-70.

For example, the *Weingold* defendants mailed solicitations from purported psychics regarding psychic predictions, lucky numbers, and mystical pendants. *Id.* at 1563-64, 1567. The solicitations represented that the recipient’s name appeared to the psychic through an individualized vision and guaranteed responding consumers lucky numbers that would allow them to win the lottery. *Id.* at 1563. Other solicitations promised victims a “secret formula” that provided an “ultimate 93% chance of winning” a lottery, *id.* at 1565-66; advised victims that they were a “Cash Prize Winner” of “\$25,000,” *id.* at 1569; and offered the victims “free gifts” and “award[s],” if they paid a “processing fee,” *id.* at 1570. The court found that the solicitations

were in fact form letters sent to recipients identified from commercial mailing lists. *Id.* at 1563. The Court found probable cause to believe that Defendants were engaged in mail fraud. *Id.* at 1574; *see also, e.g., Gottlieb v. Schaffer*, 141 F. Supp. 7, 10 (S.D.N.Y. 1956) (upholding USPS administrative action based on magazine advertisements that “induced readers to remit money through the mail for certain ‘magical or necromantic articles’ which included a variety of so-called good luck items and perfumes, by means of false and fraudulent pretenses, representations and promises”); *United States v. Calwer*, 292 F. 1007, 1007-08 (D. Mont. 1923) (declining to dismiss mail fraud indictment against defendant who claimed to possess supernatural power to activate charms and talismans that could ward off evil spirits); *United States v. Schlatter*, 235 F. 381, 382-83 (S.D. Cal. 1916) (declining to dismiss mail fraud indictment against defendants who claimed ability to bless ordinary objects that could then cure victims’ ailments).

2. *The Government Has Established the Elements of Mail Fraud*

a. Defendants Knowingly Engaged in Multiple Schemes to Defraud

The evidence establishes probable cause to believe that Defendants are engaged in multiple schemes to defraud. Defendants in this case act as a hub, receiving and processing hundreds of thousands of victim responses and remittances on behalf of multiple international mail fraud schemes. As described above, the solicitations are replete with false and misleading representations that they are personalized letters and that victims have won or will soon win or receive money, prizes or other great fortune. Victims send payments to Defendants’ P.O. boxes, but do not receive anything of value in return. These direct mail campaigns constitute schemes to defraud within the meaning of 18 U.S.C. § 1341. *See, e.g., Weingold*, 844 F. Supp. at 1574.

The evidence also demonstrates that Defendants possess the requisite specific intent to defraud. Contrary to the representations in the solicitations, Defendants know that each mailing

campaign is sent to thousands of potential victims throughout the United States, because Defendants receive hundreds of thousands of victim responses each year at their P.O. boxes in the Netherlands. Bizzarro Decl. ¶¶ 4, 10. The nature of the fraud is plain from the face of the completed response cards, which Defendants open, receive, sort, and catalogue. *Id.* ¶¶ 10, 50. For example, response cards direct victims to send payment in exchange for a large check or prizes worth tens of thousands of dollars. *See e.g.*, Compl. Ex. C at 7. It is obvious that thousands of people could not have won such valuable awards. Similarly, other completed response cards represent that the offer is exclusive or secret, representations that Defendants know to be false. *See, e.g.*, Compl. Ex. F at 12.

The DONs mailed to Defendants' P.O. boxes by the USPS further establish Defendants' knowledge of the fraudulent content of the solicitations. In 2015 alone, seventy DONs were issued and mailed to Defendants' P.O. boxes by the USPS. Bizzarro Decl. ¶ 23. Each DON contained a sample of the entire fraudulent solicitation (i.e., not just the response card that victims fill out and mail) and an explicit warning that it was unlawful. *See, e.g.*, Compl. Exs. A-H.

Moreover, as the providers of caging services, Defendants are in the best position to know how the victims are affected, because they receive the victim payments, as well as victims' handwritten responses which make it clear that the victims believe the false claims in the solicitations. *See, e.g.*, Compl. Ex. K at 5-6. Defendants also receive thousands of complaints from victims who have paid the requested "fees," often repeatedly, but never received the promised prize or award. *See, e.g.*, Compl. Ex. J at 1-4. Defendants cannot escape liability for mail fraud simply because they target vulnerable or gullible victims. *See United States v. Thomas*, 377 F.3d 232, 243 (2d Cir. 2004). The evidence establishes probable cause to believe

that Defendants are engaged in multiple schemes to defraud and possess the requisite specific intent to defraud.

The fact that the solicitations sometimes contain inconspicuous, difficult-to-read “disclaimers” does not forestall a finding of intent to defraud. None of the purported “disclaimers” correct the overall false impressions conveyed by the text of the solicitations. A court addressed such a contention in *Gottlieb v. Schaeffer*, 141 F. Supp. 7, 17 (1956), when it rejected a challenge to a USPS mail fraud enforcement action. It held that the advertisements at issue should be examined as a whole and agreed with the USPS’ finding that “the disclaimers inserted inconspicuously in the sales literature, [do not] unsay what is said elsewhere.” *Id.*; *see also Fed. Record Serv. Corp.*, 1999 WL 335826, at *18 (The court granted an injunction under 18 U.S.C. § 1345, stating that disclaimers were “strategically placed so as to draw minimal attention” and did not undermine the fraudulent impression given by mailings at issue.); *United States v. Schlusser*, No. 08 CR. 694 (JFK), 2008 WL 5329969, at *1 (S.D.N.Y. Dec. 15, 2008) (rejecting challenge to mail fraud indictment and holding that disclaimer at issue did not negate alleged intent to defraud). Courts have repeatedly recognized this principle in the context of civil violations as well. *See e.g., FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1200-1201 (9th Cir. 2006) (finding that disclosures in small print on back of check regarding monthly fee for internet access were insufficient to defeat net impression that check was refund or rebate); *FTC v. Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 42-43 (D.C. Cir. 1985) (holding that cigarette advertisement of tar content was deceptive despite truthful, fine-print explanation in corner of advertisement of how tar was measured).

b. Defendants Caused the Use of the United States Mail

Defendants caused the United States mail to be used in furtherance of the schemes to defraud. Proof that a defendant personally mailed the matter or specifically knew about or intended the mailing or transmission to occur is unnecessary. “Where one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, then he ‘causes’ the mails to be used.” *Pereira v. United States*, 347 U.S. 1, 8-9 (1954); accord *United States v. Bortnovsky*, 879 F.2d 30, 37-38 (2d Cir. 1989). Defendants here receive and record the victim responses and payment information in a database, and, as a result, the victims who respond then receive multiple follow-up solicitations that contain similar misrepresentations and are sent through the United States mail. Bizzarro Decl. ¶¶ 10-11.

c. For the Purpose of Obtaining Money or Property

The purpose of the schemes is to obtain money from recipients of the fraudulent solicitations to benefit Defendants. The Government estimates that Defendants take in at least \$18 million in victim payments annually. *Id.* ¶ 27. Each day it is believed that Defendants receive more than 1,000 victim responses at over fifty P.O. boxes that they control in the Netherlands. *Id.* Approximately 72 percent of the mailed-in responses contain some form of victim payment, and Defendants open the envelopes and handle the payments by forwarding the checks on to other entities and arranging for the cash to be deposited in a Dutch bank. *Id.* ¶¶ 10, 27. Defendants derive revenues for providing caging services in furtherance of the fraudulent mailing campaigns. *Id.* ¶ 12.

D. The Government’s Proposed Injunction is An Appropriate Remedy Under Section 1345

The language of Section 1345 is broad, authorizing this Court to “enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought.” Defendants’ fraud schemes are ongoing, and will continue to cause monetary injury to victims throughout the United States unless enjoined. *See Bizzarro Decl.* ¶¶ 29, 54. The existence of past illegal conduct is “highly suggestive” of future violations. *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 807 (2d Cir. 1975). In this case, Defendants have been engaging multi-million dollar mail fraud schemes since at least 2012. The long duration and high revenue of the fraud schemes are highly suggestive of future violations.

Immediate injunctive relief is warranted in order to prevent the further victimization of U.S. residents. The U.S. investigation team is coordinating with Dutch law enforcement, and the Dutch authorities are seizing control of Defendants’ P.O. boxes located in the Netherlands at the same time as this § 1345 action is being filed. *Bizzarro Decl.* ¶ 26. Additional action in this Court to prohibit the Defendants from committing mail fraud in violation of 18 U.S.C. § 1341 is nonetheless necessary, given the international nature of the mail fraud schemes at issue, because such relief will prevent Defendants from establishing new P.O. boxes, in the Netherlands or outside the jurisdiction of Dutch authorities, and continuing to victimize U.S. residents. *See id.* ¶¶ 29, 54.

The proposed injunctive relief would protect current and future victims by enjoining Defendants from: (1) using United States mail to send the solicitations at issue in this case or any similar solicitations; (2) receiving, opening, processing, handling, or forwarding responses or payments from U.S. residents; (3) recording, handling, or forwarding data about U.S. residents;

(4) selling or leasing lists of U.S. residents who have responded to the solicitations, which would further victimize these individuals by making them subject to other similar schemes. The proposed injunction would also authorize the USPS to detain all of Defendants incoming mail responsive to the fraudulent solicitations, and to detain outgoing fraudulent solicitations that contain return envelopes addressed to Defendants' P.O. boxes.

III. CONCLUSION

The facts summarized above and in the Declaration of Postal Inspector Joseph R. Bizzarro establish that Defendants are committing mail fraud in violation of 18 U.S.C. § 1341, and, unless enjoined, will continue to cause financial harm to vulnerable Americans. Accordingly, injunctive relief under 18 U.S.C. § 1345(a)(1) and (b) is warranted.

WHEREFORE, the United States requests that this Court, pursuant to 18 U.S.C. § 1345, grant the instant motion and such other equitable relief as the Court might find appropriate. A proposed Temporary Restraining Order and Order to Show Cause is submitted herewith.

Dated: June 1, 2016

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