**10.06 LIABILITY OF OFFICERS, DIRECTORS, OWNERS**

Plaintiff alleges that [individual defendant] is personally liable for plaintiff’s damages. As the [officer] [director] [owner] of [corporate defendant], [individual defendant] is personally liable for the plaintiff’s damages if you find it is more likely true than not true that:

1. [Corporate defendant] committed an unfair or deceptive act or practice; and

2. [Individual defendant] had authority to control the act or practice; and

3. [Individual defendant]

(A) had actual knowledge that [corporate defendant] or one of its agents or employees engaged in the unfair or deceptive act or practice; or

(B) was recklessly indifferent to whether [corporate defendant]’s agents or employees were committing an unfair or deceptive act or practice; or

(C) knew it was highly probable that [corporate defendant]’s agents or employees were committing an unfair or deceptive act or practice and intentionally avoided the truth.

If you find it is more likely true than not true that all three of these factors were present, then [individual defendant] can be held personally liable for plaintiff’s damages.

Comment

This instruction comes directly from *Federal Trade Commission v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1170-71 (9th Cir. 1997), citing *FTC v. American Standard Credit Systems, Inc.*, 874 F. Supp. 1080, 1087 (C.D. Cal. 1994). Because Alaska’s consumer protection act directs courts to follow FTC guidance, it is likely that this test will be followed for finding personal liability of officers and directors in a consumer protection context. AS 45.50.545. Generally, courts take a flexible view of what type of participation is necessary to hold an officer or director personally liable under state consumer protection statutes. Under most states’ consumer protection statutes, officers, directors, owners, and parent companies are liable, just as corporate agents, to the extent they are directly involved in perpetrating the act or practice. *See, e.g.*, *FTC v. Gem Merchandising Corp.*, 87 F.3d 466 (8th Cir. 1996); *Knapp v. Americredit Fin. Servs. Inc.*, 245 F. Supp. 2d 841 (S.D. W. Va. 2003); *Meyer v. Dygert*, 156 F. Supp. 2d 1081 (D. Minn. 2001); *Fuller v. Pacific Medical Collections Inc.,*  891 P.2d 300 (Haw. Ct. App. 1995). Most courts hold it is not necessary for plaintiff to pierce the corporate veil to establish liability if direct involvement by the defendant is shown, although there is some split of authority. *See Unit Owners Ass’n. v. Miller*, 677 A.2d 138 (N.H. 1996) (New Hampshire UDAP plaintiff must pierce corporate veil to hold officer of corporation liable).

Other courts have required a showing that the defendant knew of the conduct and had authority to stop it, but failed to take reasonable action to do so. *See, e.g,*  *FTC v. Winward Marketing, Ltd.*, 1997 U.S. Dist. LEXIS 17114 (N.D. Ga. 1997); *Nader v. Citron*, 372 Mass. 96, 360 N.E. 2d 870 (1977);  *People by Spitzer v. Telehublink*, 756 N.Y.S.2d 285 (App. Div. 2003 (holding that officers’ and directors’ knowledge of fraudulent acts creates liability). In one case, the negligence of an officer to learn of and prevent fraudulent conduct was enough to create liability. *Meyer v. Dygert*, 156 F. Supp. 2d 1081 (D. Minn. 2001). These concepts are generally consistent with the factors set out in this instruction.