

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WADE COOK FINANCIAL CORP., and
WADE COOK SEMINARS, INC.,

Defendants.

Case No. C00-1698Z

**MOTION FOR CONTEMPT AND
SANCTIONS AGAINST WADE COOK
FINANCIAL CORPORATION, STOCK
MARKET INSTITUTE OF LEARNING,
INC., successor to WADE COOK
SEMINARS, INC., and WADE BRUCE
COOK; AND SUPPORTING
MEMORANDUM**

Note on Motions Calendar
March 15, 2002

MOTION

Plaintiff, the Federal Trade Commission ("FTC"), moves this Court for an order holding Wade Cook Financial Corporation ("WCFC"), the Stock Market Institute of Learning, Inc. ("SMIL"), the successor corporation to defendant Wade Cook Seminars Inc. (collectively referred to as "WCFC"), and Wade Bruce Cook in contempt and imposing sanctions against them for violating the Consent Decree ("Order") between the FTC and defendant WCFC, entered by this Court on October 13, 2000. This motion is supported by the attached Memorandum and exhibits, that include transcripts of video and audio taped Financial Clinics at which WCFC's speakers blatantly violate the Order.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

¹Majority shareholder and president of WCFC, Wade Cook, is liable for WCFC’s Order violations under Rule 65 of the Fed. R. of Civ. P. Moreover, he has expressly agreed to be bound by the Order, though he is not a named defendant. In the section defining “defendants” the Order states, “Provided however that Wade Bruce Cook, who is not a named defendant in this matter, enters into this Consent Decree and agrees to be bound by each of its provisions.”

1 WCFC and Cook have also failed to comply with the requirements of the redress program
2 established by this Court's Order. They have improperly mailed the claim forms, and have failed to evaluate
3 claims in accordance with the Order. Moreover, WCFC took more than a year to pay the refunds under
4 Paragraph II.A of the Order that were due on December 22, 2000, and has been paying only four II.B claims
5 a week since mid-January 2002 for an average total amount of \$14,000. Some II.B claims have been past
6 due since May 2001. It will take defendants years to pay the claims at this rate. Cook is liable to pay redress
7 under the Order if there is a default by WCFC. Both WCFC and Cook have been on notice since May
8 2001 that WCFC was in default on the required redress payments. The FTC has made several requests that
9 WCFC and Cook propose a means of curing the default within a reasonably short time or document their
10 inability to do so. Neither WCFC nor Cook has complied with these requests.

11 Accordingly, WCFC and Cook should be found in civil contempt of the Order and coercive and
12 compensatory sanctions should be imposed. To compensate consumers injured by WCFC's and Cook's
13 contempt, the proposed civil contempt sanctions would require WCFC to expand the redress program to
14 permit refunds to consumers who paid to attend a WCFC or SMIL stock market seminar between entry of
15 the Order and the present. Both WCFC and Cook would be jointly liable to make the refunds under the
16 expanded redress program. To coerce compliance with the injunctive provisions of the Order, WCFC would
17 also be required to obtain a signed rate of return disclosure form from each consumer before accepting
18 payment from the consumer for any stock market investment seminar.

19 To coerce compliance with the redress provisions of the Order and the Contempt Order, the
20 proposed contempt sanctions would have the Court appoint a redress administrator to administer the redress
21 program. WCFC and Cook would be required to deposit \$5 million into a redress fund controlled by the
22 redress administrator for the payment of refunds. Because WCFC has not met its deadlines under the Order,
23 the Court would relieve consumers from the deadlines imposed by the Order, so that those consumers whose
24 claims were denied because of untimely return of documentation would be allowed to continue in the redress
25 program.

26 To ensure proper administration of the redress program, the requested relief would authorize the
27 redress administrator to re-mail redress program Notices to consumers eligible under the Order. WCFC's
28 decision to mail the Notices under the cover of SMIL was not a reasonable interpretation of the Order, and

1 caused over half the eligible consumers to disregard their claim forms. Further, claims denied because of an
2 incorrect application of the evaluation criteria of the Order would be reinstated.

3 **II. WCFC AND COOK'S VIOLATIONS OF THE ORDER**

4 A. WCFC's and Cook's Violations of the Order's Injunctive Provisions
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28 ²Exh. 1 at pp. 25-30.

1 speaker Lance Strauss told the Clinic attendees that if they applied the strategies they would learn at the Wall
2 Street Workshop, they would be millionaires within three years. Mr. Strauss also stated that they could
3 accomplish this with as little as \$1700 in starting capital because they would make on average 20% per month
4 returns on their investments. Based on Mr. Strauss' representations, Ms. Vasquez had paid \$5,790 to attend
5 the Wall Street Workshop.³

6 While these misrepresentations were not Order violations, they did allow the FTC to warn WCFC
7 that they would be in contempt of the Order if the claims continued unless WCFC could substantiate the
8 claims. WCFC has never provided any substantiation for the claims made by Lance Strauss on September
9 30, 2000, or for any success claim made by WCFC in any promotional venue.⁴

10 The FTC asked WCFC to review the videotape⁵ of the September 30 Financial Clinic and asked
11 that, if the tape confirmed that Mr. Strauss had made the reported claims, that WCFC take appropriate steps
12 to ensure that the claims were immediately stopped. The tape confirmed that Mr. Strauss had made the
13 representations.⁶ The following is a representative excerpt from the tape transcript.

14 I want to address those of you who are in your late 40's early 50's, and all of
15 a sudden you've gotten real concerned about planning for retirement, right? . .
16 here's what you need to do. . .all you got to do is save an extra eight
17 thousand a month for the next six years. . .It ain't going to happen. Well I've
18 got hope for you. In fact I want to set a goal – **I don't care what age you**
19 **are, I want all of you retired in three years. So write that down. We**
20 **are going to be retired on September 30 of the year 2003.** And we are
21 going to use the stock market to accomplish that goal, but guess what? . . I
22 don't want you trading every day, every other day, once a week, once every
23 other week. I want you to give me one hour per month over the next three
24 years to do one stupid trade a month on the stock market. That's all I want. .
25 .you retire in three years, we're going to do one trade a month. Now we
26 teach 13 different cash flow strategies
27 . . I want you to become proficient, not expert, at just one strategy. Okay.

22 ³Exh. 2 at pp. 53-56, 64-69, 77, 80, 101; Exh. 3 at pp. 275-282.

23 ⁴WCFC has substantiated various rate of return claims and has provided letters to support some
24 testimonials. On numerous occasions the FTC has asked for, but not received, substantiation for high rate of return
25 claims, and claims that consumers will replace their income or retire early using the WCFC strategies. Exh. 2 at pp.
26 45-53, 59-63, 72, 80, 81, 101, 104-105, 115, 117-148.

27 ⁵WCFC requires its speakers to videotape their presentations.

28 ⁶WCFC gave Ms. Vasquez a refund after the FTC reviewed the tape (without admitting that the claims were
deceptive).

1 So we got one trade a month, one strategy, three years. Now we've got to
2 start with some money. . **I want your start with a lousy \$1,700. . .At the**
3 **end of three years you will have in your brokerage account. . .one**
4 **million dollars.** Now, I know you probably think I've been smoking
something before the seminar, but I haven't been. Because I'll show you. .
.how you will do this.⁷ (Emphasis added.)

5 Two weeks after entry of the Order, Mr. Strauss continued his deceptive sales presentations.
6 According to Dana Rose, at an October 28, 2000, Financial Clinic led by Lance Strauss, Strauss stated that

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

⁷Exh. 4 at pp. 298-300.

⁸Exh. 5 at p. 425-427.

⁹Exh. 2 at p. 82. WCFC has not, to the FTC's knowledge, reviewed the tape or given Ms. Rose a refund.

¹⁰Exh. 6 at pp. 428-434.

¹¹Exh. 2 at p. 83. WCFC has not, to the FTC's knowledge, reviewed the tape or given Mr. Bluestein a
28 refund.

1 this. How many of these strategies do you have to get good at to be retired in
2 say three to five years? One. . . **[B]eginners really love this training**
3 **because it's kind of like auto-pilot cash** (inaudible). The strategy that
4 we're going to cover in the last ten minutes. . . is covered calls. . . This is a very
5 low maintenance trading. If you are like super-busy, this is your trade.
6 We're talking about checking on your stock. . . like once every two or three
7 days. Okay? Number two, this is a very conservative trade. . . Number three,
8 this is a high rate of return. **We're talking about rate of returns of 10, 20**
9 **percent monthly.** And number four, this is a quick return. . . Where will you
10 go as a Wade Cook student, go with one click of a mouse to find all the
11 covered call deals you ever want to find? Answer WIN [Wealth Information
12 Network]. . . I'd be very surprised if you couldn't find at least one or two
13 covered calls that would give you a rate of return greater than 20 percent. .
14 .[W]hy do you have money sitting in mutual funds making you a lousy four
15 percent annually . . . I said in three years you would be retired. . . Okay.
16 Month one, we're going to start out with \$1700. We're going to go to WIN.
17 Try to have a covered call that's at least 20 percent. Okay. We have
18 \$1,700 and get a 20 percent return, that's \$340. So after that trade is
19 complete, in our account we have \$2,040. . . Month two comes around.
20 Our \$2,040 is available for us to do another trade. Go to WIN, find our
21 covered call, 20 percent return, and after that trade is complete we have
22 \$2,448 in our account. The same thing in month three. We have \$2,448, it
23 turns into \$2,937. I won't bore you with 36 months of calculations, but if you
24 did this for three years. . . **in three years in your account you would have**
25 **one million dollars. . . I'll put that in writing.** . . Are the little hairs on the
26 back of your head starting to stand up? They should be. . . Understand this
27 kicks out, cha-ching, cha-ching, cha-ching. . . can you learn this on your own?
28 Probably not. Has your stockbroker taught you this. Well if he had, you
probably wouldn't be here, right?¹² (Emphasis added.)

16 The FTC notified WCFC of the March 3 misrepresentations by Strauss on March 14, 2001. WCFC
17 was asked to outline its proposal for correcting the problems at the Financial Clinics and disciplining or firing
18 sales staff who failed to comply with the Order.¹³ Strauss, however, was still making the same claims on
19 August 3, 2001. James Abney, an investigator for the Texas State Securities Board, attended the August
20 Financial Clinic conducted by Strauss. Mr. Abney has testified that Strauss told the group at the Financial
21 Clinic that he would show them all how to make a lot of money and that they would learn ways to make
22 money whether the market was going up or down. Strauss indicated that Cook's trading strategies were an

23
24 did th4of your he4d startian

25
26
27 ¹²Exh 7. at pp. 520-535.

28 ¹³Exh. 2 at pp. 106-107.

1 would teach them how to do this.¹⁴

2 As recently as January of this year Lance Strauss was still making the same misrepresentations. FTC
3 investigator Jan Daniels taped the Financial Clinic conducted by Strauss in Chicago on January 9, 2002.¹⁵ At
4 the January 2002 Financial Clinic Strauss told consumers that they would begin making money while trading
5 at the Wall Street Workshop. He told them that after taking the Wall Street Workshop they would not lose
6 money in the stock market in the future, and he told them that they would all be retired in three years. “And
7 I’m serious about this, three years. And let’s not start with like gobs of money, let’s just start with a little bit
8 of money. Let’s start with \$1,700. And let’s not trade – do thousands of trade every day or be glued in front
9 of computer screens. Let’s not even do one trade a week. Let’s do it with just one trade a month.”¹⁶

10 Financial Clinic speaker Pat James is another WCFC speaker who has continued to deceptively
11 promote the WCFC seminars. Tape excerpts from a January 25, 2001, Financial Clinic attended by Brett
12 Smart, an attorney at the Los Angeles office of the FTC, show James claiming:

13 But anyway, if someone really was going to trade you one million for
14 \$10,000, could you come up with it, yes or no? AUDIENCE: Yes.
15 PAT: Totally. I don't care how destitute you are, you can come up with it
16 somehow, some way, okay? If you get a 20 percent rate of return on
17 \$10,000, that's \$2,000, correct? This is per month. Remember, we're selling
18 these options on a monthly basis, per month. How many months are there in
19 a year? So, at the end of the year, that would be, what, \$24,000? Yes or
20 no? AUDIENCE: No. PAT: Not even close. Because the next month you
21 have \$12,000 to invest. And the next month it goes to \$14,400 to invest.
22 And so on and so forth. **In 25 months, Donald, 25 months, 25 months**
23 **later, if you do this, you will have over \$1 million.** Let me repeat that. If
24 you start out with \$10,000, and all you do is covered calls, **I've never lost.**
25 I don't know how you lose doing it. Half the time I'm stuck owning the stock,
26 but then I just do it again, right? Big deal. If you start out with \$10,000 and
27 you do this for 25 months, you do this 25 times, and you get a 20 percent rate
28 of return, and I got a 35 percent on the one that I did today. That is over
one million -- that is compounding interest. That's how you do it. That's how
you do it. Pat, I don't -- you told me a minute ago, Donald, you told me you
had about \$2,000. Is that accurate? You can come up with that, okay? This
is -- okay, \$2,000. **You start out with \$2,000, you guys, guess what? It**
takes 32 months. In 32 months, it will be \$1.1 million. . . . I'll tell you
what, let me take you under my arm for an entire

14Exh. 8 at pp. 542-586.

15Exh. 21 at pp. 1201-1349.

16Exh. 21 at pp. 1223-1224. The “retire in three years” claim is repeated at pp. 1345-1348.

1 added.)¹⁷

2 At a February 2, 2001, Financial Clinic James made similar claims to Robert and Claire Smith. James
3 told the Smiths that he started with \$1500 and in 38 months had earned over \$1 million using Wade Cook's
4 trading strategies. He claimed he was making \$124,000 per month, and that they could make 20% per month
5 writing covered calls. James stated that if clinic participants had \$2000 to invest they would earn \$1.1 million
6 in 32 months. James told them they could retire on the money they made using Wade Cook's trading
7 strategies.¹⁸ The Smiths attended another Financial Clinic conducted by James on July 14, 2001. At the July
8 Clinic, James repeated the claim that with just \$2000 consumers would make \$1.1 million in just 34 months
9 using the Wade Cook strategies, and that anything listed on WCFC's Wealth Information Network would get
10 a 20% return.¹⁹

11 James made similar claims on August 10, 2001 to Everardo Cantu, an employee of the Texas State
12 Attorney General. Mr. Cantu has testified that James said that he had started trading using Wade Cook's
13 trading strategies in 1997 with \$1,500. In four years he had earned \$1.1 million (he showed the group a
14 stock value statement dated May 31, 2000). James said he was currently making BIG money writing
15 covered calls. James said consumers could make 20% per month writing covered calls, so that if you started
16 with \$2,000, in 34 months you would have \$1.1 million.²⁰

17 Yet another WCFC speaker who has repeatedly violated the Order is Sal Salcillo. Lydia DeVito
18 attended a February 9, 2001, Financial Clinic led by Salcillo. According to Ms. De Vito, Salcillo discussed
19 the Wade Cook strategies and told her that she could take \$1,300 and make \$1 million in just three years
20
21
22
23

24 ¹⁷Exh. 9 at pp. 739-743.

25 ¹⁸The Smiths spent over \$15,000 on Wade Cook seminars. The Smiths contacted WCFC to report the
26 violations but WCFC has continued to deny their refund request.

27 ¹⁹Exh. 10 at pp. 750-806.

28 ²⁰Exh. 11 at pp. 807-872.

1 produce the February 9 tape and to take steps to deal with the situation.²¹ The tape was not produced.

2 On August 4, 2001, Salcillo was taped making these and other misrepresentations by William Wong,
3 a law clerk for the Office of the Attorney General of Kansas.²² The following are excerpts from the tape
4 transcript.

5 What we're going to do is show you today where to get advice to be able to
6 cash flow the stock market from \$5 to \$50,000 a month. . . the stock market
7 is a cash flow generator if you know how to get your share of the money. . .if
8 you need an extra \$1,000 a month we'll show you how to take that. . . .If you
9 need an extra \$10,000 a month, we'll show you how to take that. . . .If you
10 want an extra \$1,000, we'll show you, you know, you can get that very, very
11 easily. If you want an extra \$5,000, \$10,000, it's there for you.²³

12 Salcillo also explained to the group that each of them could retire in three years if they invested just
13 \$1,300 and made one transaction a month that yielded 20% (he claimed there were five to six such trades a
14 day posted on the WCFC website), then after three years they would have \$1 million. He told them that it
15 was easy and after the first year was totally risk free.²⁴

16 On July 27, 2001, Anthony Carter, a securities examiner for the Washington State Department of
17 Financial Institutions, attended a Financial Clinic conducted by Kent Severson. Severson made claims similar
18 to those made by Strauss, James, and Salcillo. Severson told the participants at the Financial Clinic that with
19 the strategies WCFC taught you could make money in the stock market no matter how the market was doing.
20 Severson said that 75% to 80% of the time you would make money buying and selling rolling stock, and that it
21 was easy. The hard part was picking stocks and WCFC would provide lists of rolling stocks on its Wealth
22 Information Network. He told them there were thousands of stocks that rolled regularly and all you had to do
23 was make a trade a month and with \$2000 you would make \$10,200 over the next year. He claimed the
24 "worst case scenario" would be investing in just one rolling stock and making \$5,600 over a year. According
25 to Severson, clinic participants would certainly make enough money just from buying rolling stock to pay for
26 the cost of the Wall Street Workshop (\$8,000), probably in less than six months. Severson also discussed

25 ²¹Exh. 2 at pp. 94, 101, 104, 115, 118.

26 ²²Exh. 12 at pp. 874-876.

27 ²³Exh. 12 at pp. 912, 915, 916.

28 ²⁴Exh 12 at pp. 1001-1004.

1 options trading and stated that no matter what the market was doing they could make cash trading options.
2 Severson told them that if for nothing else they needed to come to the Wall Street Workshop to learn how to
3 make covered calls. There was no downside to covered calls, and it was a win/win situation. He said they
4 could earn 10% a month on covered calls and that if they learned how to write covered calls they would be
5 successful.²⁵

6 The FTC has repeatedly advised WCFC of the ongoing misrepresentations by its sales staff,²⁶ asking
7 them to substantiate the challenged claims, or to take steps to correct the problems at the Financial Clinics.
8 WCFC has never provided any substantiation. On April 4, WCFC sent the FTC a letter indicating that if
9 WCFC asked a speaker to change his presentation and the speaker did not do so, there would be
10 disciplinary action ranging from forfeiture of the 5% trading bonus to termination. The letter stated that the
11 policy had been communicated to Lance Strauss, Pat James and Sal Salcillo by telephone and would be
12 presented to the other speakers by letter. Further, WCFC indicated that Strauss, James and Salcillo were
13 advised by WCFC to change their presentations (no details of the requested changes were provided).²⁷
14 WCFC has not followed through on the policy because the same speakers continued after April 4 to make
15 the same extravagant success claims without substantiation, claims belied by WCFC's actual rates of return.²⁸
16

17 Between January 2000 and September 2001, WCFC had revenue of \$71 million from the sale of
18 seminars.²⁹ Assuming a \$5,000 average purchase this represents approximately 14,000 additional consumers
19 who have purchased WCFC's seminars since entry of the Order. According to WCFC, the bulk of its
20 seminar sales are made at Financial Clinics. Therefore, as many as 14,000 more consumers have been misled
21

22 ²⁵Exh. 13 at pp. 1010-1026.

23 ²⁶The FTC notified WCFC about the Financial Clinic speakers on November 1, 2000, January 17, 2001,
24 January 25, 2001, March 14, 2001, and March 27, 2001. Additionally, the FTC has notified WCFC about similar claims
in print materials. Exh. 2 at pp. 45-55, 59-63, 72, 80-83, 85, 101-104, 107, 115, 117-149.

25 ²⁷Exh. 2 at pp. 150-152.

26 ²⁸Exh. 14 at p. 1043 and Exh. 20 at pp. 1194-1197a.

27 ²⁹WCFC's year 2000 10-K filing with the Securities Exchange Commission reports net revenues of \$47.827
28 million from the sale of seminars. Net revenues for the first nine months of 2001 were \$23.547 million. Exh. 14 at p.
1033.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1

2

3

4

5

1 B. WCFC and Cook's Violations of the Order's Redress Provisions

2 WCFC has violated the redress provisions of the Order by 1) failing to comply with the deadlines set
3 for processing claims; and 2) failing to make payments to qualifying consumers whose claims have been
4 approved. Cook has violated the Order by failing to pay the defaulted redress payments. WCFC has also
5 misinterpreted the Order requirements by mailing the Redress Program Notices to consumers using WCFC's
6 return address on the envelope instead of the FTC Redress Program return address. This is not a reasonable
7 interpretation of the Order, which was drafted to ensure that consumers received fair notice of the FTC
8 Redress Program. As a result of the improper mailing, over half the eligible consumers likely did not learn of
9 the Redress Program. Further, WCFC has incorrectly applied the evaluation criteria under the Order,
10 disqualifying consumers for failing to provide additional documentation that is not required by the Order, and
11 for having gains in stock transactions that are not included under the Order.

12 1. Failure to Timely Process and Pay Refunds (Paragraphs II.C and II.D)

13 Paragraphs II.C and II.D of the Order establish time deadlines within which consumers and WCFC
14 must complete each step in the redress program. Within thirty days of the postmark date of a timely returned
15 Proof of Claim or fifteen days from the postmark date of subsequently requested documentation, WCFC
16 must either grant or deny the claim, and if granted issue a refund check. WCFC began sending out claim
17 forms in mid-December 2000. Consumers had ninety days to return the Proof of Claim. Allowing ninety
18 days for the return and allowing the maximum amount of time for WCFC to dispose of the claim if additional
19 information was requested, or in total about five months, the first payments under Paragraph II.C should have
20 been made in May 2001. In fact, WCFC records indicate that the first II.C claims were approved beginning
21 in mid-May.³⁸ WCFC began making payments to claimants under Paragraph II.C until January 2002. At
22 this time it is paying about 4 claims a week, for a total of about \$14,000 a week. WCFC has approved
23 about \$600,000 in refunds, between 800 and 900 claims are still pending evaluation, and it has denied, many
24 of them improperly, about 900 claims. A conservative estimate of the amount it will owe to these consumers
25 is about \$4 million. At the current rate of payment it will take over five years for WCFC to pay all of the
26 claims it presently owes under the Order.

27
28

 ³⁸Exh. 23 at pp. 1408.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

³⁹Exh. 14 at pp. 1027-1063.

⁴⁰Some of the assets may already be pledged as collateral for loans, but WCFC has not provided any

1 received from WCFC or Cook about the redress payments are the weekly notifications of the few refunds
2 that are being paid.

3 The FTC did not agree to let WCFC pay the refunds on this piecemeal basis, and has asked WCFC
4 and Cook on numerous occasions to put forth a proposal for bringing the redress program up to date within a
5 reasonably short period of time.⁴⁶ WCFC and Cook have never complied with this request. The FTC has
6 advised WCFC and Cook on several occasions that Cook was responsible for making the defaulted redress
7 payments unless he could document his inability to make the payments.⁴⁷ Cook has refused to provide
8 documentation of his financial condition,⁴⁸ or to make the past due redress payments.

9 3. Notice and Proof of Claim Mailing Issues (Paragraph II.B).

10 In addition to WCFC's violations of Paragraphs II.C, II.D, and Cook's violations of Paragraph II.
11 H, WCFC has also violated Paragraph II.B of the Order by mailing the FTC Redress Program Notice and
12 Proof of Claim to consumers in envelopes bearing only the Stock Market Institute of Learning, Inc., name,
13 logo, and address. Paragraph II.B of the Order required WCFC to notify consumers of the redress program
14 using a Notice with the words "United States of America, Federal Trade Commission" at the top of the page
15 to indicate that the Notice was from the Federal Trade Commission. The notice required by Paragraph II. B
16 also included the following mailing address to be used for return of the claim forms – FTC Redress Program,
17 P.O. Box xxxx, Seattle, WA 98104.⁴⁹ The reason a return address was specified in the mandated Notice
18 was to ensure that consumers would know that they were receiving something from the FTC, not receiving
19 another of the numerous routine promotional mailings made by WCFC. Using an envelope with the Stock
20 Market Institute of Learning logo and return address made the Notice and Proof of Claim mailing appear to
21 be just that – another WCFC promotional mailing. Many consumers on receiving this mailing simply threw
22

23 ⁴⁶Exh. 2 at pp. 159, 182, 195, 237, 248, 254, 274.12.

24 ⁴⁷Exh. 2 at pp. 182, 200, 225, 256-259, 274.10, 274.12.

25 ⁴⁸Cook provided a "personal" financial statement, which stated his net worth to be \$267,000. Exh. 2 at pp.
26 261-262. This statement grossly inadequate because it intentionally excluded the bulk of Cook's assets, which are
27 held for him through corporations and trusts. Exh. 2 at pp. 274.9, 274.10. According to SEC filings, between 1997
28 and 2000 Cook was paid between \$13 million and \$20 million in royalties by WCFC.

⁴⁹See Attachments A and B to the Order. Exh. 1 at pp. 38-40.

1 the whole thing out unopened and were thereby deprived of the opportunity to participate in the redress
2 program.⁵⁰

3 The FTC did not learn of the problem with WCFC's return address until May 2001 when it first was
4 given access to WCFC redress records.⁵¹ By this time the mailing was two-thirds completed. In late June
5 WCFC provided a mailing list of the consumers to whom it had mailed Notices and Proofs of Claim.⁵² Using
6 this list, staff from the offices of the attorney general offices in four states surveyed consumers concerning
7 receipt of the WCFC redress mailing. They found that more than 50% of those contacted did not recall
8 receiving the mailing. In Texas, 68.8% of those who responded to the survey did not receive or did not recall
9 receiving the Proof of Claim from WCFC.⁵³ In North Carolina, 60% of the consumers contacted had not
10 received or did not recall receiving the Proof of Claim.⁵⁴ In Kansas, 66.6% of those contacted stated they
11 had not received or did not recall receiving the Proof of Claim.⁵⁵ In Alaska, 51% of those contacted claimed
12 they did not receive the mailing.⁵⁶

13 WCFC has copies of addressed and metered envelopes in its claim files. Either WCFC did not
14 actually mail a large number of these envelopes or consumers disregarded them. Many of the consumers
15 contacted indicated that they had been expecting something concerning the FTC Redress Program, but that
16 they would likely have thrown away any mailing they received from SMIL without opening the envelope.
17 Others had been anticipating receiving such a mailing and did not routinely throw out WCFC mailings but did
18 not receive the Notice. The FTC staff has also been contacted directly by numerous consumers who claim
19

20 ⁵⁰Exh. 2 at pp. 64-65, 77, 149.

21 ⁵¹ Access to records was delayed six weeks as a result of the earthquake on February 28, which caused
22 considerable damage to WCFC's offices.

23 ⁵² The Order required WCFC to prepare a listing of eligible consumers for the FTC prior to commencing
24 mailing of the claim forms, however, WCFC was unable to comply with this requirement until after the mailing was
25 completed.

26 ⁵³Exh. 16 at 1087-1151.

27 ⁵⁴Exh. 17 at pp. 1152-1168.

28 ⁵⁵Exh. 18 at 1169-1190.

⁵⁶Exh. 19 at 1192-1193.

1 they did not receive the WCFC mailing, but to whom WCFC claims to have mailed it.⁵⁷ On July 27 and
2 again on September 12, the FTC advised WCFC of this issue and asked for a re-mailing, or some other
3 action, to address this problem. WCFC indicated it would not re-mail the proofs of claim and has denied all
4 requests for relief from consumers who have indicated they did not receive the Redress Program Notice.⁵⁸

5 While the Order does not explicitly state the wording to appear on the outside of the mailing, the only
6 reasonable interpretation of the Order is that the envelopes used to mail the FTC Redress Program Notices to
7 consumers would carry the return address to be established for the FTC Redress Program. In conjunction
8 with seeking contempt sanctions from the court for WCFC's overall failure to abide by the Order, the FTC
9 requests the court to rule on the correct interpretation of Paragraph II.B in this regard and order a re-mailing
10 of the FTC Redress Program Notices. Such relief is within the equitable power of the court.

11 4. Improper Evaluation of Claims (Order Attachments A through D)⁵⁹

12 The FTC and WCFC have had many disputes over the correct application of the Order to the claims
13 evaluation process. Some of these disputes have been resolved. Others, however, have not and have
14 resulted in many claims being improperly disqualified. WCFC has taken the position, without reasonable
15 justification under the Order, that it is not enough for consumers to document their trading losses with either
16 brokerage records or tax records as the Order requires.⁶⁰ WCFC has consistently required additional
17 documentation on the ground that it is entitled to ask for whatever documentation it thinks it needs to assure
18 itself that the consumer's claim to have lost money is true.⁶¹ Most consumers who were asked for additional
19 information by WCFC, and whose claims were ultimately denied, were denied because they failed to return
20

21
22 ⁵⁷Exh. 2 at pp. 274.4-274.5. For example 19 people listed in this correspondence contacted the FTC because
23 they had not received a Proof of Claim from WCFC. WCFC records, however, show that Proofs were mailed to these
24 consumers.

25 ⁵⁸Exh. 2 at 254, 257, 263. Only about 500 envelopes (2% of the total mailing) were returned by the Post
26 Office as undeliverable.

27 ⁵⁹Attachments C, D, and E are filed under seal.

28 ⁶⁰The FTC agreed to allow WCFC to continue to ask for both brokerage and tax records, and in some
instances other information, but without waiving its objection to WCFC's position that it is entitled to it.

⁶¹Exh. 2 at pp. 218-219, 234-237, 248-249.

1 the additional requested information, or they returned it untimely.⁶² This has unfairly deprived many
2 consumers of a refund to which they are entitled.⁶³ WCFC has also taken the position that if a claimant made
3 any money in the stock market during the relevant period they are disqualified from the redress program even
4 if the gains were made on stocks purchased before attending the Wall Street Workshop or were carry-over
5 gains from a prior period.⁶⁴ For example, claimant Burnette King was denied a refund because stock that she
6 was given as part of her salary plan sold for a gain during the twelve-months after she attended the Wall
7 Street Workshop, although she submitted documentation of trades she did on her own, which lost money.
8 Dr. Bill Friend was denied a refund because he had gains in a managed IRA, though he lost money on trades
9 he transacted himself.⁶⁵ These denials are not justified under a reasonable interpretation of the Order, which
10 requires WCFC to refund to consumers tuition paid for the Wall Street Workshop less any gains from trades
11 made using strategies taught at the Wall Street Workshop.

12 III.

22 ⁶²Exh. 2 at pp. 274.4-274.5. For example, claimant Mike White writes that he sent his full 12-months
23 brokerage statements twice, and then was asked to send his Schedule D from his tax returns, which he did, but his
24 claim was denied because he returned the tax return late. Exh. 22 at p. 1398.

25 ⁶³Of the 962 claims WCFC reports it has denied through 1/17/02, 761 were denied because the claimant failed
26 to provided the requested information or returned materials untimely. Exh. 23 at pp. 1412-1441.

27 ⁶⁴Exh. 2 at pp. 202, 220-223, 226, 249. The FTC will agree that any trade completely transacted during the
28 relevant twelve month period can be included, but not gains from trades initiated prior to attending the Wall Street
Workshop.

⁶⁵Exh. 22 at pp. 1399-1407.

1
2
3
4
5
6
7
8
9

1 determine if the company can continue to operate and comply with the Order, and if not to
2 take whatever steps are necessary and prudent to achieve maximum compliance with the
3 Order.

- 4 5. The Court should exercise its power in equity to authorize the redress administrator to re-mail
5 the FTC Redress Program Notices under the Order to eligible consumers in envelopes
6 bearing the FTC Redress Program return address established by the Redress Administrator
7 or the return address for the FTC's Northwest Regional Office, and to reinstate the claims of
8 those consumers whose claims were improperly denied.

9 **IV. CONCLUSION**

10 For the reasons stated above, the FTC requests that the Court order WCFC and Cook to appear
11 and show cause why they should not be held in civil contempt of court and coercive and compensatory
12 sanctions imposed.

13 Dated: February 21, 2002

Respectfully submitted,

14
15 _____
16 Eleanor Durham
17 Randall H. Brook
18 Attorneys for Plaintiff
19 Federal Trade Commission
20
21
22
23
24
25
26
27
28