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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FEDERAL TRADE COMMISSION, )  
)  
Plaintiff, )  
)  
v. )  
)  
FINANCIAL RESOURCES UNLIMITED, )

Case No. 03 C 8864  
Magistrate Judge  
Martin C. Ashman

INC., MARK E. SHELTON, individually )  
and as an officer of the corporate defendants, )  
d/b/a L. Lewis & Associates, A. Joseph )  
& Associates, )  
)  
Defendants. )

MEMORANDUM OPINION AND ORDER

On February 2, 2006, this Court entered a stipulated order that held Defendant, Mark E. Shelton, in civil contempt for violating the November 24, 2004 Stipulated Permanent Injunction and Final Judgment Order ("November 2004 Final Order") and held Defendant liable for consumer redress to compensate the injury caused by his conduct. Plaintiff, the Federal Trade Commission ("FTC"), then moved this Court for an order entering judgment for consumer redress in the amount of \$1,493,793.69 against Defendant, Mark E. Shelton, and for an order

evidence, the written submissions of the parties and the arguments of counsel. The following are the Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure

so be considered the Court's conclusions of law. Similarly, to the extent matters contained in the conclusions of law may be deemed findings of fact, they shall also be considered the Court's factual findings.

liability should be limited to the \$117,452.82 that he received in exchange for his consulting services and any modifications to the November 2004 Final Order should be minimal. Defendant also argues that the FTC's proposed judgment of \$1,493,793.69 for consumer redress is improperly computed, punitive in nature, and does not take Defendant's financial hardship into account.

**B. The Parties**

I. BAN ON SALE OF WORK-AT-HOME OPPORTUNITIES

IT IS THEREFORE ORDERED that Defendants are hereby permanently restrained and enjoined from engaging, participating, or assisting others in any manner or in any capacity whatsoever, whether directly or indirectly, in concert

with others, or through any intermediary, third party, business entity, or device, in the marketing, advertising, promotion, offering for sale, or sale of work-at-home opportunities.

IT IS ORDERED THAT THE FOREGOING RESTRAINTS SHALL BE ENFORCED BY THE COURT.

operating business entities engaged in work-at-home opportunities, namely Pure Home Air Profits Co. ("PHAP") and Wholesale Marketing Group ("WMG"). The FTC submitted evidence in support of this claim.<sup>1</sup>

7. On February 2, 2006, Defendant stipulated and agreed that (1) he violated

Sections I, II.A, II.B, II.D, and II.G of this Court's November 2004 Final Order, (2) through his violations of Sections I and II he is in civil contempt of this Court, and (3) he is liable for consumer redress to compensate the injury caused by his contumacious conduct. (Stipulated Contempt Order, p. 2.) This Court accepted Defendant's stipulations and set an evidentiary hearing for March 14, 2006, to determine the size of the judgment to be entered against Defendant and what modifications, if any, to make to the November 2004 Final Order.

8. At the evidentiary hearing, the FTC presented evidence of harm to consumers

Resources Unlimited (one of Defendant's work-at-home businesses that was targeted by this Court's November 2004 Final Order and shut down by the FTC for violations of Section 5 of the

**E. Cardona, PHAP and WMG Marketed, Advertised, Promoted and Sold Work-At-Home Opportunities.**

12. Cardona, PHAP and WMG solicit consumers through the Internet, television, and

seeking people to mail promotional advertising brochures from home. (Evid. Hearing: Aviles  
Testimony, Tr. at 18, 23-24, 26; FTC Mot. Show Cause: PX # 5 (Beyers Decl.) ¶ 2.)

13. PHAP and WMG advertisements appear across the country and promise  
substantial steady earnings and that no selling will be involved. (FTC Mot. Show Cause: PX # 7

(Daniels Decl.) ¶¶ 2, 4, & Attach. A, B, PX # 9 (Janella Decl.) ¶ 2 & Attach. A.) Cardona

16. WMG operated the following websites: (1) www.asseenontvmailers.com;

(2) www.dundalk eagle.com; (3) www.boulderweekly.com. WMG's internet sites contained

introductory letters nearly identical to the PHAP and WMG introductory letters sent by mail that

promised consumers substantial income for mailing out brochures and stressed that no selling or

advertising was required. (FTC Mot. Show Cause: PX # 1 (Lewis Decl., Nov. 9, 2005) ¶¶ 15-17

& Attachs. P-R.)

17. PHAP advertised on the internet, including on the website



different earning potential and corresponding fee. (FTC Mot. Show Cause: PX # 9 (Ianello Decl.) ¶¶ 6-7 & Attach. D.)

20. PHAP and WMC consumers paid anywhere between \$60 and \$190 to receive the

work-at-home materials and were led to believe that they would earn substantial money and be

paid a specific amount for each envelope or brochure they mailed. (FTC Mot. Show Cause: PX # 6 (Connelly Decl.) ¶¶ 4, 7-9, PX # 9 (Ianello Decl.) ¶¶ 6-7 & Attachs. C-D.)

21. In addition, PHAP and WMC

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Show Cause: PX # 1 (Lewis Decl., Nov. 9, 2005) ¶ 24, PX # 7 (Daniels Decl.) ¶¶ 10-13 & Attach. G, PX # 8 (Deitrick Decl.) ¶ 15.) Consumers who attempted to mail out the brochures often found that a large portion of the mailers were returned as undeliverable because the addresses supplied by PHAP and WMG were wrong. (FTC Mot. Show Cause: PX # 5 (Beyers Decl.) ¶ 11.)

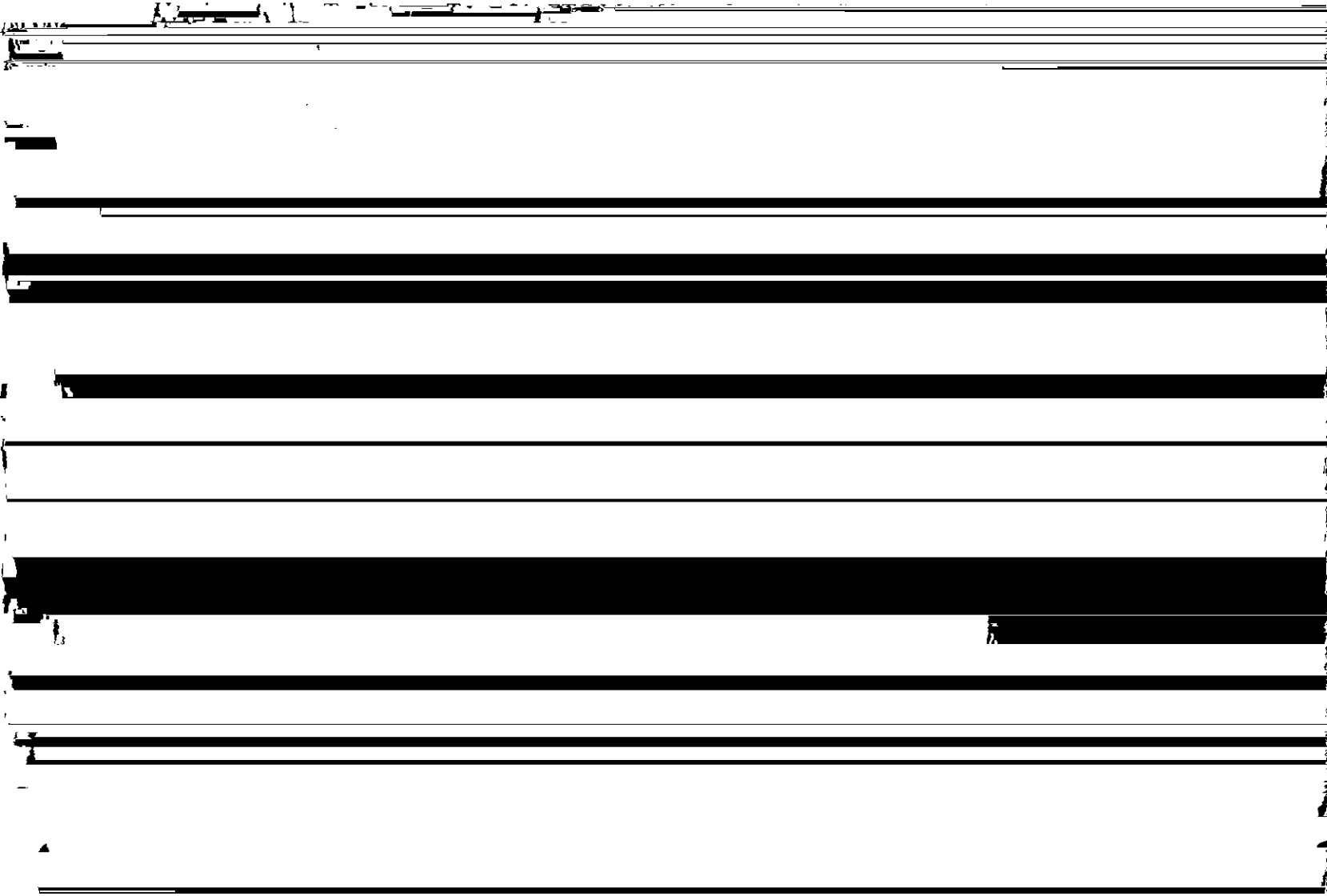
24. The FTC is not aware of any consumers who have actually received any payment

27. Wilson opened two business checking accounts under the name Jeremy T. Wilson d/b/a Pure Home Air Profits. (Evid. Hearing: PX # 5, 6; Lewis Decl. (Feb. 23, 2006) ¶ 7 & Attach. C.) From November 2004 until May 2005, \$117,988.33 was deposited into PHAP's First Personal Bank account. (Evid. Hearing: PX # 12.) From April 2005 until September 2005, \$110,767.00 was deposited into PHAP's First Personal Bank account. (Evid. Hearing: PX # 12.)

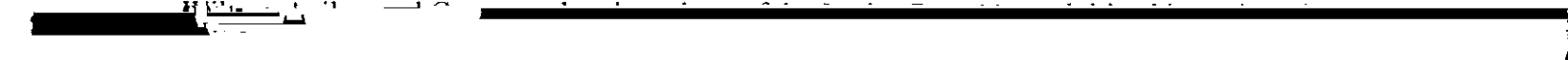
deposits into PHAP's accounts were postal money orders and checks from consumers across the country. (Evid. Hearing: PX # 5, 6; Lewis Decl. (Feb. 23, 2006) ¶ 7 & Attach. C.)

28. WMG business accounts exist at Bank of America, Washington Mutual Bank, and Oxford Bank & Trust. (Evid. Hearing: PX # 7, 8, 9, 21; Lewis Decl. (Feb. 23, 2006) ¶ 8 &

operated out of the exact same location, namely 828 Justina Street in Hinsdale, Illinois. (Evid.



30. A U.S. Postal Inspector observed Defendant's actions at the Justina Street property on several occasions, including his interaction with the alleged principals of WMG and PHAP. Specifically, Postal Inspectors observing the Justina Property witnessed Gomez and another male load Priority Mail boxes and envelopes into a mini-van and drop them off at the post office. These boxes and envelopes were stamped with return addresses from either PHAP or WMG and were addressed to individuals across the country. Postal inspectors also witnessed Gomez drive from PHAP's private mailbox location to the Justina Property, and saw Defendant talk with



Shirley Chynoweth, DM # 2 (Lewis Decl., Dec. 19, 2005) # 19-8-Attack (B)

[REDACTED]

37

[REDACTED]

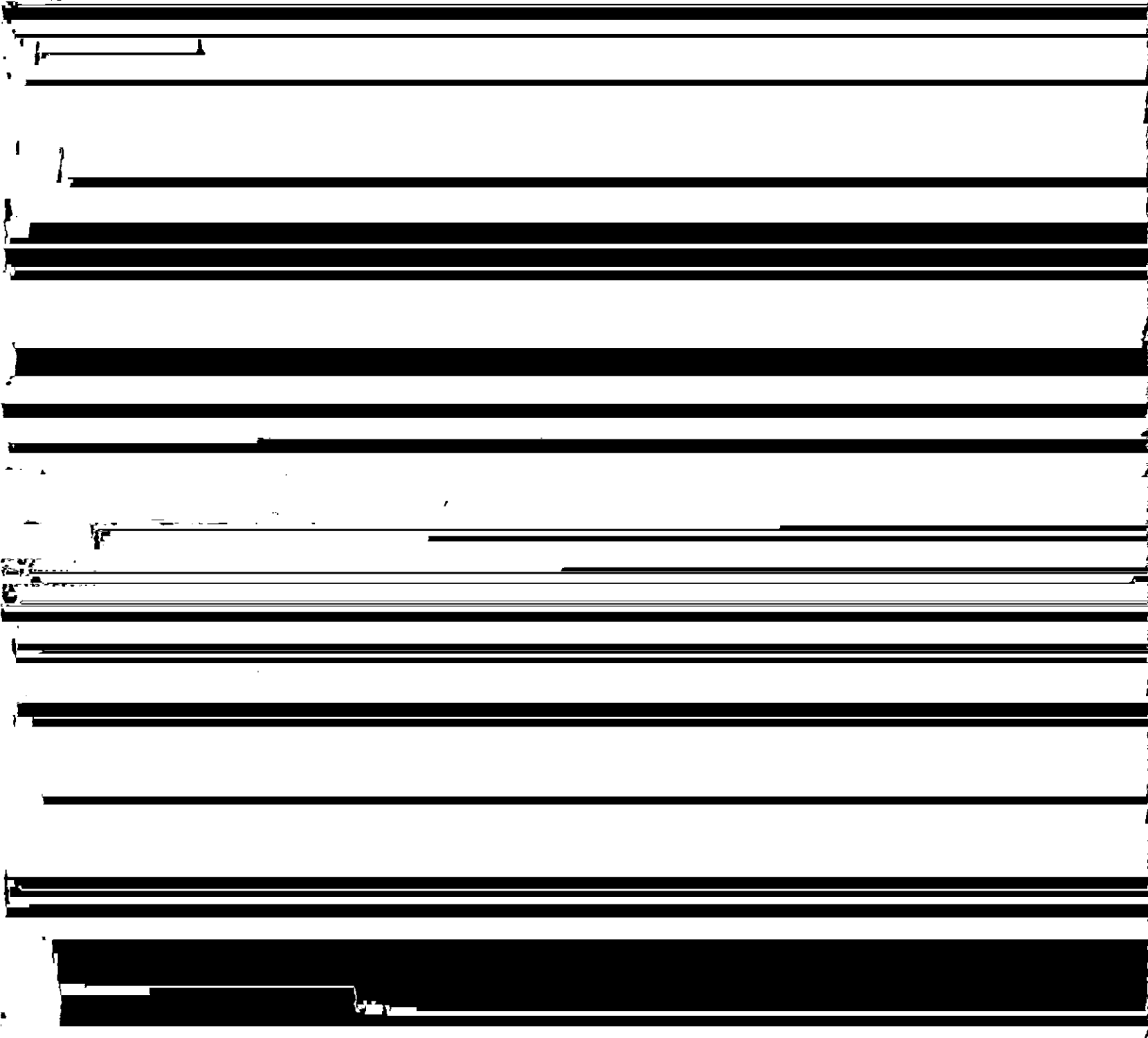
three different WMG accounts. (Suppl. FTC Mot. Show Cause: PX # 2 (Lewis Decl., Dec. 19,

2005) # 19-8-Attack (B)) During the said FTC hearing on 4/13/06, I stated that I had

[REDACTED]

35. During the November 2005 raid on the Justina Property, investigators found pictures and personal items of Defendant and his family. (Evid. Hearing: PX # 17-19, Lewis Testimony, Tr. at 79.)

U.S. DEPARTMENT OF JUSTICE



2. Pure Home Air Profits Co.

39. In 2004, Defendant asked Wilson to create PHAP. Wilson was paid by Defendant to sign documents on behalf of PHAP but Wilson did no work for PHAP. (Evid. Hearing: Aviles Testimony, Tr. at 21-22.) Defendant signed PHAP checks when Wilson did not sign.<sup>4</sup> (Evid. Hearing: Aviles Testimony, Tr. at 24-25.)

controlled all of PHAP's business operations, including advertising, marketing, payroll, and hiring. (Evid. Hearing: Aviles Testimony, Tr. at 21-25.) Additionally, Defendant bought CDs containing lists of potential customers to whom PHAP mailed work-at-home solicitations. (Evid

43. Defendant shut down PHAP in 2005 after a local district attorney began asking Wilson questions about the business. (Evid. Hearing: Aviles Testimony, Tr. at 24.)

3. WMG

44. Though he was not listed as an officer, director, or shareholder, Defendant

controlled WMG's business operations. (Evid. Hearing: Aviles Testimony, Tr. at 24.)

responsible for running errands, depositing checks, typing up orders and sending out mailings.



19 Defendant's Affidavit in Support of Motion for Summary Judgment

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**I. Defendant's Deposition Testimony**

50. Defendant was deposed by FTC attorneys on December 13, 2005. (Evid. Hearing: PX # 1.) In response to the following questions, Defendant invoked the Fifth Amendment of the United States Constitution and refused to answer:

Q. And isn't it true that over that course of time Pure Home Air Profits was paying money to different companies on your behalf?

A. I plead the Fifth. (Evid. Hearing: PX # 1, Def.'s Dep. p. 44.)

Q. Pure Home Air Profits was paying credit card bills and car payments on your behalf, isn't that true?

[REDACTED]

Q. Mr. Shelton, let's talk about the Pure Home Air Profits and

A. [REDACTED]

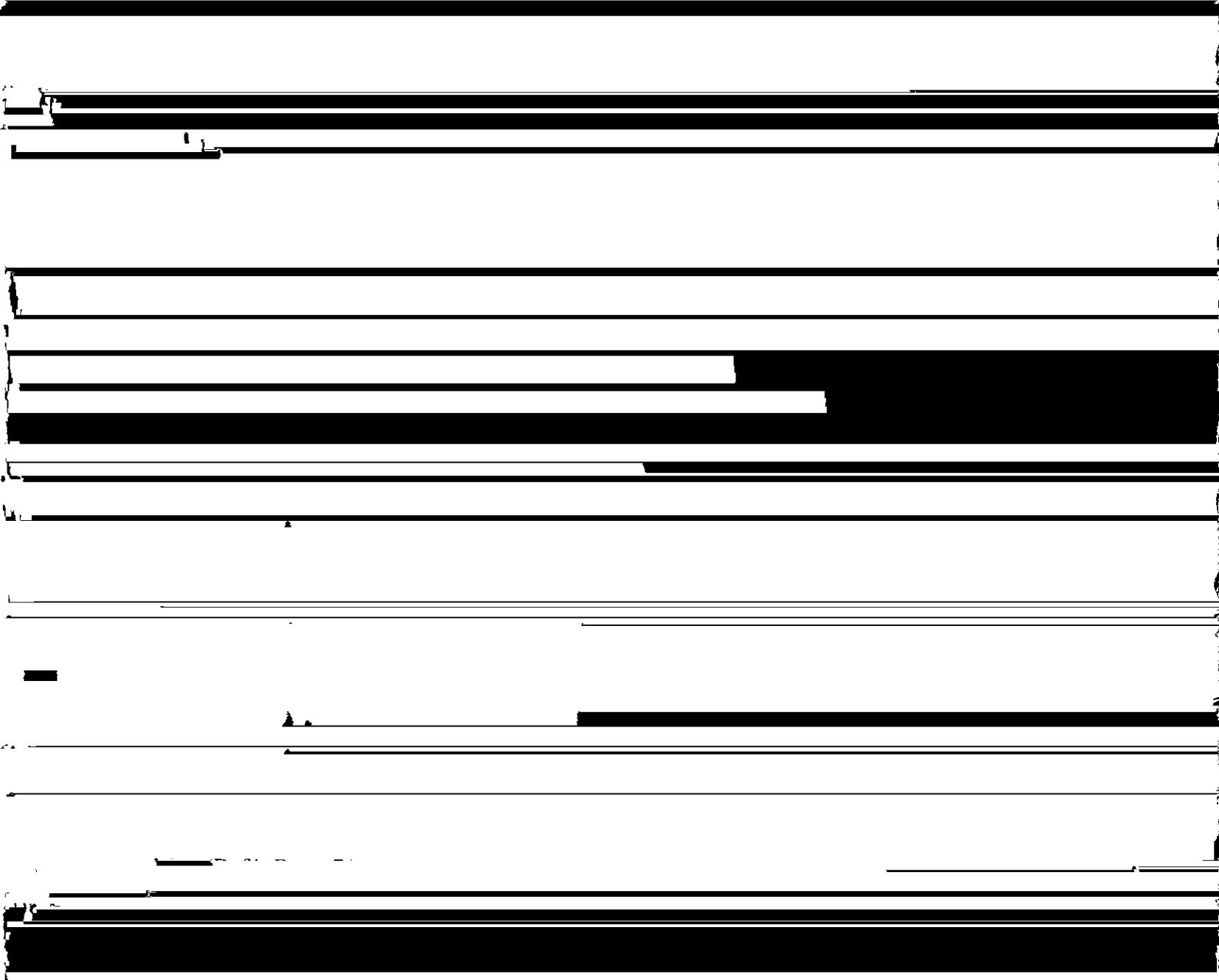
Q. And isn't it true that you earned money from the business of Cardona Consulting, Inc.?

A. I plead the Fifth. (Evid. Hearing: PX # 1, Def.'s Dep. p. 140.)

**J. Defendant's Financial Resources**

51. Although Defendant's brief includes a chart that purports to list Defendant's assets, including bank accounts, automobiles, and real property, Defendant presents no evidence to substantiate the chart. (Def.'s Br. at 6-7.)

52. Although Defendant claims that he and his wife have considerable debt and a daughter with serious medical problems, Defendant presents no evidence in support of his

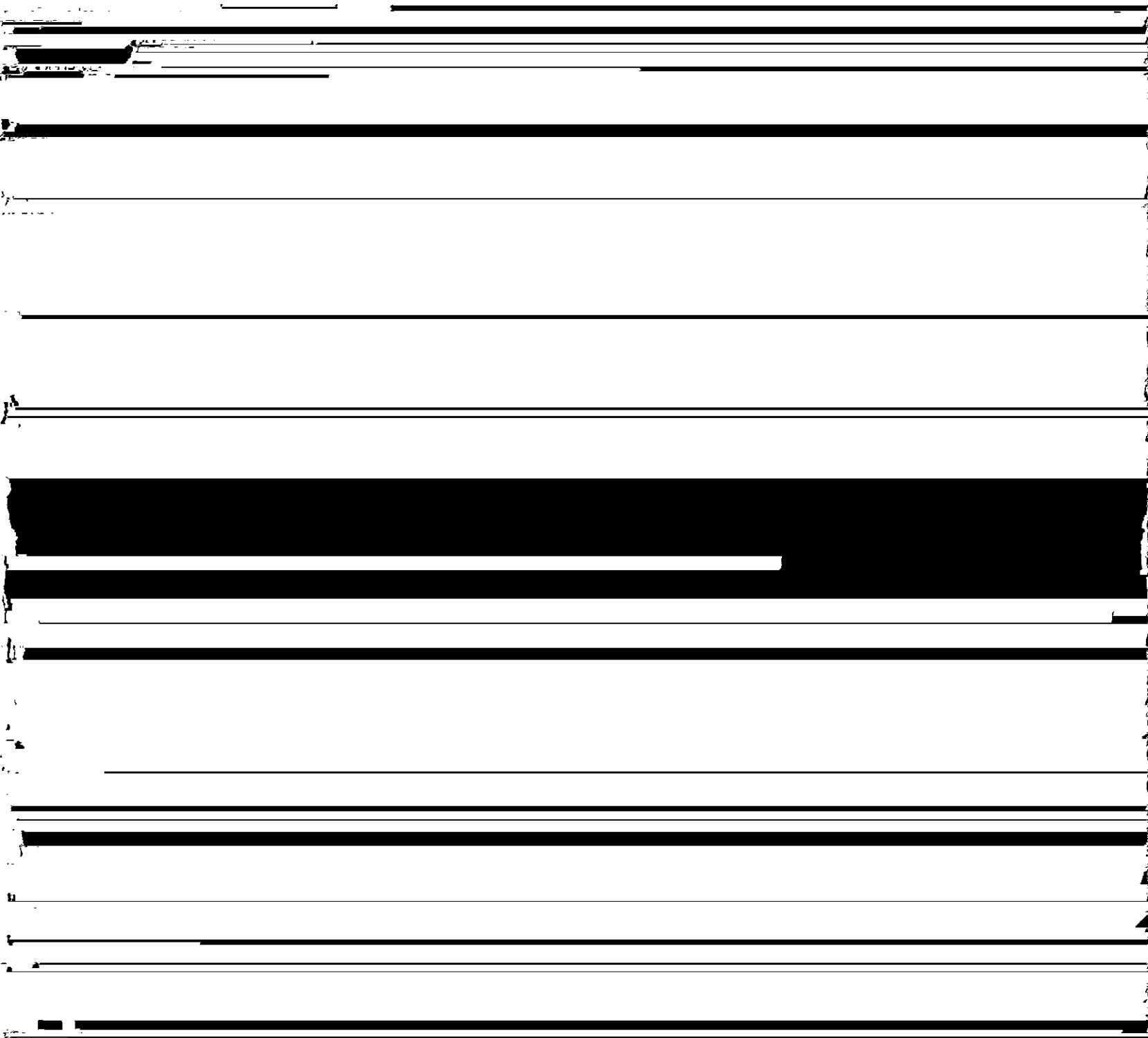


**B. Defendant Is In Civil Contempt of This Court**

5. Defendant agreed and stipulated that (1) he violated Sections I, II.A, II.B, II.D,

caused by the violation. *FTC v. Kuykendall*, 371 F.3d 745, 764 (10th Cir. 2004); *McGregor v. Chierico*, 206 F.3d 1378, 1387-88 (11th Cir. 2000); *FTC v. Febre*, 128 F.3d 530, 534-37 (7th Cir. 1997).

10. If the FTC shows through clear and convincing evidence that Defendant was engaged in a pattern or practice of contemptuous conduct, the Court may use the Defendant's



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

directly in the practices or acts or had authority to control them. *Id.* Authority to control the

[REDACTED]

PHAP and WMG, operated PHAP and WMG from his Justina Street property, and was directly involved in the management of Cardona, PHAP and WMG.

18. Defendant is personally liable for the practices of Cardona, PHAP and WMG and for the actual losses sustained by complainants in this case.

3. Consumer redress for \$1,493,793.69 is appropriate.

19. The \$1,493,793.69 in gross income recorded by Cardona, PHAP and WMG was generated by unfair or deceptive acts, in violation of the FTC Act and this Court's November 2004 Final Order, so \$1,493,793.69 is the amount necessary to redress injuries caused to consumers by those entities. It follows that Defendant is liable for \$1,493,793.69 for consumer redress.

20. Defendant notes that the Court should avoid punitive sanctions when finding civil contempt. *United States v. Dowell*, 257 F.3d 694, 699 (7th Cir. 2001).

21. Ordering payment of consumer redress for injury caused by Defendant's violations of this Court's Order does not constitute a punitive action. *Id.*

22. Defendant notes that the Court may take Defendant's financial situation into account when awarding sanctions. *United Mine Workers of Am.*, 330 U.S. at 304.



4. Modification of the November 2004 Final Order  
s' appropria te.

24 The Court has the power to modify the terms of its injunctions in the event that

changed circumstances require it. *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 249 (1968); *SEC v. Advance Growth Capital Corp.*, 539 F.2d 649, 651 (7th Cir. 1976). This power to modify in light of changed circumstances extends to the modification of consent decrees. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 383-84 (1992); *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932).

25. In light of Defendant's contemptuous behavior and direct violations of the November 2004 Final Order, the circumstances in this case have changed such that modification of the November 2004 consent decree as to Defendant is necessary.

Shelton are entered. It follows that judgment is entered against Defendant for \$1,493,793.69 and this Court's November 2004 Final Order is modified.



A handwritten signature in black ink, appearing to read "Martin C. Ashman", is written over a horizontal line.

**MARTIN C. ASHMAN**  
United States Magistrate Judge

Dated: April 25, 2006.

Copies have been mailed to:

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