



## TABLE OF CONTENTS

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

# INTRODUCTION

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 Group;" "Rushmore Financial Group;" and "Aggregate Merchants." (PX22 ¶7, Att. D at 6, 10,  
2 13, 18, 35, 55, 68, 70.)

3 The mailers promise recipients they will receive sizable payouts, stating, among other  
4 things:

- 5 x "Our office has issued this Certified Letter to your immediate attention regarding  
6 money due you from our current award distribution and to make available to you  
7 as a CASH AWARD WINNER the mandatorw7p p6(ofilon re 6, orw7p ))

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  
273

1 Burke is in constant contact with his network of associates around the world to keep track of his  
2 mailboxes, manage the mail directed to each box, direct the opening and closing of boxes as  
3 necessary. (PX22 ¶16, Att. M at 60-75.)

4 Once consumers send their money to one of Burke's boxes, his associates open and sort  
5 the returns. (Dkt. 155-4 at 6-7, PX2 ¶¶ 5-8; PX22 ¶16, Att. M at 12-13, 20-22.) Depending on  
6 Burke's arrangement with the associate who holds a particular box, cash may be sent directly to  
7 Burke, split between Burke and the box holder, or deposited into one of Burke's accounts. (Dkt.  
8 155-4 at 6, PX2 ¶6; PX22 ¶16, Att. M at 20-21, 27, 76.) Checks and money orders are harder to  
9 process, particularly as they are sent out to many different payees. E.g., PX22 ¶7, Att. D at 85-  
10 93, checks to Security Services, RDC, SSI, Election Entitlements, CAN, Processing Center, LFS,  
11 Peterson & Associates, and Hedge Funding Resources.) Burke has employed a range of  
12 solutions for this problem. For years, he agreed for his associates to open accounts at banks,  
13 including in Panama, willing to accept deposits of hundreds of checks each day. (PX22 ¶16, Att.  
14 M at 15, 17-22.) In one instance, to accomplish this, Burke agreed to pay a \$2,000 "required  
15 gift" through his associates. (PX22 ¶16, Att. M at 14-15.)

16 ~~Exhibit letter CANC 1 mucj /TT2 1 h(th(siTj -29PX22 ¶16 ee t22.)2 051iTj -2003 Tte02 Tc 0t22.)2 05~~

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22



1  
2  
3  
4

1 ask PAS [a list broker] to put NV back on the site to mail to? We thought the original reason for  
2 suppressing NV was so no one could walk right to the box location and  
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 million. That figure, however, does not account for cash received, credit-card payments, or  
2 checks processed through other channels, and thus likely significantly underestimates the amount  
3 consumers paid in response to Burke's mailers.

#### 4 ARGUMENT

5 Civil contempt is warranted where there is clear and convincing evidence the contemnor  
6 violated a specific and definite order of the court. *FTC v. Affordable Media, LLC*, 179 F.3d  
7 1228, 1239 (9th Cir. 1999). Here, in addition to the violations outlined in the FTC's First  
8 Contempt Motion, there is clear and convincing evidence that Burke's deceptive direct-mail  
9 scheme violates the specific and definite provision of the Permanent Injunction prohibiting  
10 misrepresentations. Thus, following a brief period of discovery to establish the extent of the  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Specifically, the additional mailer asks consumers what kinds of big-ticket items they purchased  
 2 with their purported winnings and pushes consumers who have not yet received the “winnings”  
 3 checks – which, in fact, include all consumers who receive the additional mailer – to send in a  
 4 fee while Burke’s fictitious company prepares the “replacement check.”

5 In reality, no consumer ever receives the promised winnings. The mailers do not come  
 6 from law firms, financial firms, or government agencies; instead, Burke and his team of hired  
 7 copywriters and designers create the letters and devise official-sounding name to emblazon  
 8 across the top. The purported “direct” creating a sense of urgency and legitimacy are false –  
 9 Burke simply routes consumers’ funds into his own accounts whenever they arrive. Most  
 10 importantly, not a single consumer ever receives the full amount of money the mailers so  
 11 prominently and repeatedly promise. If Burke sends consumers anything at all, he sends a check  
 12 or money order for less than \$2. These misrepresentations deceive consumers into paying  
 13 Burke’s fees, as demonstrated by the numerous complaints Burke received from consumers  
 14 (many of which he shreds) and the actions he took to hide his misrepresentations from law  
 15 enforcement.

### 16 III. Burke’s Direct Mail Violations Have Caused Millions in Consumer Harm.

17 After appropriate contempt proceedings, Burke should be found in contempt for both his  
 18 deceptive telemarketing and his deceptive mailings, and ordered to compensate victimized  
 19 consumers. The Court has broad authority to impose sanctions for violations of its orders,  
 20 including requiring compensation for losses sustained as a result of the failure to comply with the  
 21 order. *United States v. United Mine Workers of Am* 330 U.S. 258, 303-04 (1947); *Noninklijke*  
 22 *Philips Elec. N.V. v. KXD Tech., Inc.* 539 F.3d 1039, 1042 (9th Cir. 2008) (purpose of civil  
 23 contempt is coercive or compensatory). In FTC contempt action, consumer loss is an  
 24

25 <sup>2</sup> Some of the deceptive mailers include a block of text on the back titled “Consumer  
 26 Disclosure,” which does nothing to cure the misrepresentations featured prominently throughout  
 27 the mailer. (E.g., PX22 ¶7, Att. D at 69.) Indeed, the purported “disclosure” actually makes  
 28 additional misrepresentations – claiming, for instance, that as part of a so-called “premium  
 incentive” promotion, the consumer is “entitled” to receive a “prize” that may be thousands of  
 dollars. (d.) In fact, no consumer ever receives more than \$1.12.

1 appropriate measure of the compensatory remedy.

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

rkim1@ftc.gov, (202) 326-2272  
600 Pennsylvania Avenue NW, M-8102B  
Washington, DC 20580

Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION