

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PROPOSED FINDINGS OF FACT

I. PRIOR PROCEEDINGS

- A. In September 2007, the FTC filed a ~~motion~~ to hold Trudeau in contempt for violating the Stipulated Final Order ~~in~~ the underlying action by airing blatantly deceptive infomercials for his diet book, Weight Loss Cure DE62. In November 2007, the Court held Trudeau in contempt. DE93.
- B. The Court imposed a \$37.6 million ~~compensatory~~ contempt sanction against Trudeau, based on the total amount of ~~consumer~~ loss he caused. Specifically, the Court stated: Trudeau is ordered to pay forthwith plaintiff the sum of \$37,616,161." Corrected Supplemental Order at 13-14, DE372 (emphasis added). The Seventh Circuit affirmed the Supplemental Order in November 2010. FTC v. Trudeau 662 F.3d 947 (7th Cir. 2011).
- C. On June 2, 2010, following an appeal and additional proceedings on remand, the Court ordered Trudeau to compensate ~~the victims~~ of his second contempt in this matter. Specifically, the Court wrote: "Trudeau is ordered to pay forthwith the sum of \$37,616,161, representing the consumer loss resulting from Trudeau's contumacious and deceptive infomercial ~~marketing~~ of the Weight Loss Cures book." Order (June 2, 2010) (DE372) (the "Order To Pay").
- D. On July 13, 2012, the FTC moved to hold Trudeau in contempt for a third time. DE481.
- E. On August 17, 2012, the Court denied ~~Trudeau's~~ Motion for Modification of Order and Approval of Consumer Remedial Plan, in which Trudeau sought to institute a court-approved "consumer remediation plan" to pay the \$37.6 million he owes as a remedial sanction for his willful contempt of this Court's orders. Specifically, the Court stated that "[t]he ~~idea~~ notion that this court would allow, not to mention trust, Trudeau to participate in any fashion in the administration of the court's remedial sanction by 're-er[ecting] the infomercial business' is preposterous in light of Trudeau's duplicitous and contumacious history with this court and the thousands of consumers ~~that~~ he has deceived. Trudeau has little to no credibility with the court, and his criticism of the FTC's collection efforts for the

b. Trudeau created Global Information Network FDN (“GIN

4. In addition to the GIN-Related Entities described above, Trudeau controls various other companies which can be organized into three categories: the “KMT Fiduciary Trust Entities”; the “Trudeau-Owned Entities”; and “Other Entities.”
 - a. Trudeau controls the “KMT Fiduciary Trust Entities ” which includes 14 entities: Alliance Publishing Group, Inc.; Direct Response Associates LLC; KMT Fiduciary Trust; KT Capital Corporation; K.T. Corporation Limited; Natural Cures Holdings Inc.; Natural Cures, Inc.; TRUCOM, L.L.C.; Trudeau Approved Products Inc.; TruStar Marketing Corporation; TruStar Productions, Incorporated; The Whistle Blower, Inc.; 0913372 B.C. Ltd.; and 0913376 B.C. Ltd. (FTCX 4G; FT CX 4I; FT CX 13L.)
 - i. Alliance Publishing Group, Inc. (“Alliance”) is wholly owned by TRUCOM, L.L.C. and Lane is its Illinois registered agent. (FTCX 13L.)
 - ii. Trudeau is the manager of Direct Response Associates LLC ; Lane is the Illinois registered agent; and K.T. Corporation Limited is its sole member. (FTCX 13L.)
 - iii. Trudeau created KMT Fiduciary Trust in 1994. (FTCX 4G at 47-48.) KMT Fiduciary Trust is registered in Mauritius. (FTCX 4G at 47-55; FT CX 4I; FT CX 12E.)
 1. Lane admitted that Trudeau controls KMT Fiduciary Trust (Evid. Hr’g Tr. 173:6-10, June 27, 2013), although Trudeau’s parents and brother are its nominal beneficiaries.
 2. Lane stated that KMT Fiduciary Trust was “an indispensable component of Kevin’s current asset protection plan,” (FTCX 12E; Evid. Hr’g Tr. 49:1-3, June 26, 2013), and Lane’s asset protection related emails refer to Trudeau as having “ultimate beneficial ownership” of KMT Fiduciary Trust. (FTCX 12E.) Lane advised Sant that “the very existence” of KMT Fiduciary Trust “should continue to deter the FTC from aggressive collection action.” (FTCX 20Y.)
 3. Because Trudeau controls KMT, he also controls the numerous companies it owns directly or indirectly (Alliance, Direct Response Associates LLC, K.T. Corporation Limited, Natural Cures, Inc., Natural Cures Holdings Inc., TRUCOM, L.L.C., Trudeau-Approved Products Inc., TruStar

5. Trudeau Uses Figureheads as the Officers, Directors, and Managers of his Companies
 - a. Babenko
 - i. Babenko is the nominee officer and director of KTRN and GIN USA (Evid. Hr'g Tr.46:6-8, May 21, 2013; FTCX 2A; FTCX 2B; FTCX 14AA;FTCX 18A; FTCX 13J.)
 - ii. Babenko owns Advantage Solutions Ltd.; APC Trading Limited; NBT Trading Limited (via her ownership of APC Trading Limited); WSS (via her ownership of APC Trading Limited); and WSU (via her ownership of NBT Trading Limited). (FTCX 13J; FTCX 13K.) GIN FDN is a Nevis "Multiform Foundation" with no formal owner, but APC serves as the sole member of its "management board." Lane "intentionally recommended this structure for protection of the organization's assets." (FTCX 20M) Babenko receives a generous salary from the GIN-Related Entities. (FTCX 12Y-2; FTCX 87; FTCX 11Z.)
 - iii. Babenko also is the bank signatory for KTRN, GIN USA, and GIN FDN. (FTCX 2B; FTCX 14AA; FTCX 18A.)
 - iv. There is no evidence to support Trudeau's assertions that Babenko was a "successful businesswoman in her own right." (Contempt Opp. (DE508) (Sept. 25, 2012) at 5.) Babenko asserted her Fifth Amendment right rather than testify regarding her education and business experience. (FTCX 14, Babenko Dep. 96:13-97:13, May 17, 2013.) Lane testified that what he knew about Babenko's business expertise came from Trudeau, (Evid. Hr'g Tr. 182:4-12, June 27, 2013), and that some of Trudeau's claims regarding her education "might have been somewhat exaggerated." (Evid. Hr'g Tr. 183:2-3, June 27, 2013.)
 - v. When setting up GIN FDN, Trudeau instructed Sant that Babenko did not run GIN and that she knew "nothing." (Evid. Hr'g Tr. 51:16-52:12, May 21, 2013; FTCX 11F.)
 - vi. In 2012, Babenko executed a Power of Attorney, appointing Marc Lane as her agent and authorizing Lane to act on her behalf with respect to all "business operations," and "financial institution transactions," among other powers. (FTCX 14W; FTCX 14, Babenko Dep. 103:7-9, 103:14-17, 103:25-105:23, 106:15, 107:5-9, 107:14-16, 107:24-108:16, 108:20-109:14, 109:19-20, May 17, 2013.) Babenko did not limit or remove any the powers for which Lane was authorized to act on her behalf. (FTCX 14W.)

- vii. Sant asserted his Fifth Amendment right rather than testify regarding whether he reported to Trudeau or to Babenko. (FTCX 11, Sant Dep. 19: 8-20:8, May 9, 2013.)
- b. Sant
 - i. Sant has known Trudeau for twenty years and has worked for him since 1996. (Evid. Hr'g Tr. 41:15-20, May 21, 2013; FTCX 4F at 14:21-15:6.) Trudeau's companies continue to pay Sant legal fees. (FTCX 11A.)
 - ii. Sant served as Trudeau's nominee officer for seven companies that Trudeau owns or controls (six of which Marc Lane formed and all of which are located at 130 Quail Ridge Drive in Westmont). (FTCX 2A; FTCX 18A.) Among his many nominee roles, Sant was a KT Radio Network ("KTRN") officer, as well as the token President and Secretary of Website Solutions USA ("WSU"). (FTCX 2A; FTCX 18A.)
 - iii. Sant also served as a bank signatory for both WSU and KTRN. (FTCX 2B.)
 - 1. Trudeau referred to Sant as his "right hand man" and that others should "chat with [Sant] as if he were me." (FTCX 11C; Evid. Hr'g Tr. 39:4-12, May 21, 2013)
 - 2. Additionally, in 2008, Trudeau purchased gold bars from Golden Lion Mint ("Golden Lion"). (FTCX 19.) Trudeau paid for the gold bars with \$100,000 from a personal account. (FTXC 19.) On October 18, 2011, Sant travelled to Asheville, North Carolina, personally exchanged Trudeau's Golden Lion bars for \$100,000 worth of Scotia Bank gold bars, and left with \$100,000 in Scotia Bank gold.

3. Also beginning in 2009, various Trudeau-affiliated companies began paying Trudeau's personal expenses. (FTCX 11, Sant Dep. 13:2-13, May 9, 2013.) Specifically, Natural Cures paid Trudeau's personal credit bills prior to 2010, after which WSU paid Trudeau's personal credit and charge card bills (including American Express, Chase, Bank of America, and Diner's Club). (FTCX 10, Dow Dep. 72:16 - 74:13, 85:2-16, May 8, 2013; FTCX 10F; FTCX 10G.)
4. In addition to first-class flights and expensive hotels (the Ritz Carlton, the Four Seasons), Trudeau's credit card statements—bills all paid by Trudeau's companies—show hundreds of thousands of dollars in more mundane but obviously personal charges including groceries (often Whole Foods but sometimes Trader Joe's) (FTCX 6E; FTCX 6J), gym memberships (L.A. Boxing Club) (FTCX 6F-6G), salons (Vidal Sassoon) (FTCX 6H; FTCX 6I), and \$4,327.00 for draperies. (FTCX 6E.)
5. Trudeau authorized the GIN-Related Entities to open bank accounts overseas, stating "gin MUST get money out of the usa and into banks overseas...never keep more money in the usa than needed...TAP, NCINC, KTRN, NCHI, WSS, and every company NEEDS accounts OFF SHORE!!!!!!!!!! Very little money should be held in us accounts." (FTCX 11M.)
6. GIN FDN maintains a Liechtenstein bank account. (FTCX 10). In February 2012, Trudeau funded the escrow account he established under Part III of the Supplemental Order. GIN USA received this \$2 million from WSU, which itself received the money from GIN FDN. (Evid. Hr'g Tr. 52:13-53:14, 54:1-54:17, May 21, 2013; FTCX 11R; FTCX 12K; FTCX 3H.) Trudeau also arranged to have his salary at WSS paid from GIN FDN's Liechtenstein account. (FTCX 11R.) The "due from" items on GIN USA's P&L statement reflect this \$2 million as due from Trudeau himself. (See DX5A.)
7. Trudeau used his various businesses to pay the more than \$6.7 million in legal fees that generated in this case between June 2010 and March 2013 (FTCX 6C; FTCX 6D; FTCX 6E.) Specifically, Winston & Strawn received more than \$1.7 million in legal fees, including more than \$800,000 paid by IPT (which Trudeau owns) and more than \$300,000 paid by WSU (which Trudeau controls).

4. Trudeau instructed the KMT Fiduciary Trust Entities (including Trudeau Approved Products, referred to as "TAP" and Natural Cures, referred to as "NCINC") to open bank accounts overseas, stating "gin MUST get money out of the usa and into banks overseas...never keep more money in the usa than needed...TAP, NCINC, KTRN, NCHI, WSS, and every company NEEDS accounts OFF SHORE!!!!!!!!!! Very little money should be held in us accounts." (FTCX 11M.)

iii. Trudeau-Owned Entities

1. The Law Offices of Marc J. Lane, P.C. received fees paid from the Trudeau Entities (International Pool Tour Inc.; Pool Licensing LLC; Trudeau Management Inc.; and Natural Cures Health Institute) (FTCX 12C.)
2. Natural Cures paid Trudeau's personal credit card bills prior to 2010, after which WSU paid Trudeau's personal credit card bills. (FTCX 10, Dow Dep. 72:16 - 74:13, 85:2-16, May 8, 2013; FTCX 10F; FTCX 10G.)
3. Trudeau instructed the Natural Cures Health Institute (referred to as "NCHI") to open bank accounts overseas, stating "gin MUST get money out of the usa and into banks overseas...never keep more money in the usa than needed...TAP, NCINC, KTRN, NCHI, WSS, and every company NEEDS accounts OFF SHORE!!!!!!!!!! Very little money should be held in us accounts." (FTCX 11M.)

iv. Other Entities

1. Babenko asserted her Fifth Amendment right rather than testify regarding Trudeau's control over three additional entities she nominally owns, Sovereign Trust, N.T. Trading S.A., and Advantage Solutions. (FTCX 14, Babenko Dep. 40:18-41:13, 41:25-42:2, 42:22-25, 44:21-23, 137:1-3, 137:19-21; 50:12-52:24 (May 17, 2013).

2. Control Over the Companies' Business Decisions

a. Trudeau controls the GIN-Related Entities. For example:

- i. Trudeau controls GIN USA. (Evid. Hr'g Tr. 46:6-47:13, 47:25-49:11, May 21, 2013).

4.

3. Lane provided advice to Sant regarding WSS's ownership and Swiss bank account. (FTCX 26.)
 4. Trudeau made employment decisions on behalf of WSS, such as the decision that WSS would "employ" Trudeau (Evid. Hr'g Tr. 41:4-5, May 21, 2013; FTCX 7A; DX 25 at 12) and payments of Trudeau's salary (FTCX 11R).
- vii. Trudeau controls NBT Trading Limited. For example:
1. NBT Trading Limited, a Hong Kong corporation, owns WSU (FTCX 13K; FTCX 41). NBT Trading Limited is wholly owned by APC. (FTCX 13K.)
 2. Babenko generated wire payments from her Fifth Third bank account to the NBT Trading Limited bank account at Valar Bank in Liechtenstein. (FTCX 2D.)
 3. Sant asserted his Fifth Amendment right rather than respond to questions regarding whether he reported to Babenko in her role as officer or director for various GIN-Related Entities, including NBT Trading Limited. (FTCX 11, Sant Dep. 18:3-21:14, May 9, 2013.) Sant further asserted his Fifth Amendment right when asked whether Trudeau controlled NBT Trading Limited. (FTCX 11, Sant Dep. 32:18-20, May 9, 2013.)
 4. When asked whether Trudeau controlled NBT Trading Limited, Babenko refused to answer, citing the fact that the answer might incriminate her. (FTCX 14, Babenko Dep. 45:13-15, 46:16-47:9, May 17, 2013.)
- b. Trudeau controls the KMT Fiduciary Trust Entities. Specifically:
- i. Trudeau made legal decisions on behalf of KMT Fiduciary Trust. (Evid. Hr'g Tr. 48:6-10, May 21, 2013; FTCX 11Q.)
 - ii. Lane advised Trudeau regarding Natural Cures. (FTCX 22.)
 - iii. Lane performed legal work on behalf of KMT Fiduciary Trust. (FTCX 12E; FTCX 26.)
 - iv. Lane advised Trudeau regarding the transfer of KTRN's intellectual property rights to TruStar Marketing Corporation rather than TruStar Management Inc. (FTCX 12G.)

- v. As recently as April 2013, Trudeau determined who the Alliance officers would be. (FTCX 11DD.)
 - vi. As recently as April 2013, Trudeau determined who the Trudeau Approved Product officers would be. (FTCX 11DD (referring to "TAP," or Trudeau approved products.))
 - vii. Lane advised Trudeau regarding TruStar Productions, Inc. (FTCX 29.)
- c. Trudeau controls the Trudeau-Owned Entities. For example:
- i. Lane advised Trudeau regarding International Pool Tour Inc. (FTCX 12D.)
- d. Trudeau controls the Other Entities. In particular:
- i. Trudeau controls the legal decisions for the companies nominally owned by Babenko. (Evid. Hr'g Tr., 48:3-5, May 21, 2013; FTCX 11Q)
 - ii. When asked whether Sovereign Trust, NT Trading, and Advantage Solutions were asset protection vehicles that Trudeau has used to keep assets from the FTC, Babenko refused to answer, citing the fact that the answer might incriminate her. (FTCX 14, Babenko Dep. 44:8-45:6; 50:12-52:24, May 17, 2013.) Trudeau also "took the Fifth" with respect to Sovereign Trust (Evid. Hr'g Tr. 105:2-16, May 21, 2013.)

C. Trudeau, and his Companies, Have Assets

1. GIN is a purported wealth building program and multilevel marketing scheme in which members pay \$1,000 to join and \$150 monthly dues (\$1,800 per year), and earn compensation by recruiting new members, from their "downline." Members receive 20 percent of the monthly dues and initiation fee paid by any new affiliates that they recruit. (FTXC 1V; FTCX 10, Dow Dep. 90:4-95:10, May 2013.) At its peak, GIN had between 16,000 to 20,000 members. (FTCX 10, Dow Dep. 90:4-95:10, May 8, 2013.)
2. Trudeau is the highest ranking member of GIN (FTCX 10, Dow Dep. 90:4-95:10, May 8, 2013) and earns millions of dollars of commissions from GIN. (Evid. Hr'g Tr. 45:10-24, May 21, 2013). As of December 31, 2012 GIN FDN owed Trudeau \$911,303.50 in commissions. (FTCX 10, Dow Dep. 96:23-97:25, May 8, 2013; FTCX 10G at WSU 8696.)
3. KTRN and Natural Cures are also GIN members and earn compensation from GIN commissions. (FTCX 10, Dow Dep. 90:4-95:10, May 8, 2013; FTCX 10G at 8690; FTCX 10G at 8696.)

4. K.T. Corporation Limited owns Trudeau's home in Ojai, California.
(FTCX 10, Dow Dep. 18:15 - 19:17, May 8, 2013; FTCX 26.)

3. Finally, on April 6, 2012, Trudeau's domestic worker Matthew Green visited the casino by himself, driving a Jeep Rubicon titled to KTRN. He went directly to a cashier to cash \$124,000 in chips. Casino records state that he was acting as an agent for Babenko. He received the cash in a brown paper bag and left the casino. (FTCX 1P; FTCX 1S.)
- G. Additionally, in 2008, Trudeau purchased gold bars from Golden Lion Mint ("Golden Lion"). (FTCX 19.) Trudeau paid for the gold bars with \$100,000 from a personal account. (FTXC 19.) On October, 2011, Sant travelled to Asheville, North Carolina, personally exchanged Trudeau's Golden Lion bars for \$100,000 worth of Scotia Bank gold bars, and flew with \$100,000 in Scotia Bank gold that Trudeau originally purchased and almost certainly controls.
- H. On April 24, 2012, Trudeau asked to "find a place where I can buy gold in Switzerland." (FTCX 83)

IV. TRUDEAU'S SPENDING AND DISSIPATION OF ASSETS

- A. Trudeau spent at least \$12 million after the Court's June 2, 2010 Order To Pay through March of this year. When asked about charges for things ranging from groceries to interneting, both Trudeau and Babenko invoked their Fifth Amendment privilege against self-incrimination. [Tr. 112:1-115:23 (May 21, 2013); FTCX 14 at 55:19-58:23]
- B. Credit Cards/Personal Spending
 1. From June 2, 2010 to March 2013, Trudeau \$3.28 million in Diner's Club and American Express payments charges (FTXC 18B). These charges include first-class airfare (FTCX 2G; FTCX 89-90); expensive hotels (the Ritz Carlton, the Four Seasons) (FTCX 2G; FTCX 89-90); groceries (often Whole Foods but sometimes Trader Joe's) (FTCX 6E; FTCX 6J); gym memberships (L.A. Boxing Club) (FTCX 6F-6G); salons (Vidal Sassoon) (FTCX 6H; FTCX 6I); and—~~one~~ week after this Court ordered him to pay the \$37 million judgment—\$4,327.00 for draperies (FTCX 6E.).
 2. Trudeau has a history of extravagant personal spending. Between August 2007 and April 2009, these expenditures included \$122,000 on purchases

V. LACK OF EVIDENCE PUT FORTH BY TRUDEAU

A. Trudeau offers no evidence explaining what happened to the \$14 million in net profit that GIN USA's "profit and loss" statement reports. (DX 5A)

B.

Furthermore, the KMT Entity bank account statements do not cover the entire period from June 2, 2010 to the present.

- G. With respect to KMT Entity Natural Cures, Trudeau introduced no evidence explaining the facts that suggest it possessed (and may possess) assets. In 2009, attorneys at Lane's firm noted that Natural Cures was "revenue generating," and had the "potential to be sold taken public through an initial public offering." (FTCX 12M at 762) Also in 2009, Lane wrote that Natural Cures "has one of the highest earnings of any of the companies the group" of firms owned by Trudeau or KMT. (FTCX 20U) Although the Natural Cures April 2013 "weekly cashflow summary" provides an incomplete picture, it shows \$20.3 million in accounts receivable against \$15.7 million in "bills due." (DX13A) At least \$10 million of the "bills due" amounts owed to GIN-related entities, and the exhibit provides no information regarding the receivables. (See id.) Trudeau offers no evidence addressing these facts.
- H. With respect to KMT Entity Natural Cures Holdings ("NCH"), Trudeau offers no evidence explaining how it made \$557,177 payments to the Lane firm after June 2, 2010. (FTCX 18D). In fact, Trudeau offers only two pieces of evidence regarding NCH: a Westlaw printout containing basic, non-financial information about the company (DX 12A) and a bank account statement showing that the company closed an account in 2011 (DX 12B). However, NCH continued to make payments to Lane's firm in 2012 (FTCX 12C), which illustrates that the financial information Trudeau provided regarding NCH's accounts is incomplete.
- I. Trudeau's evidence is also significantly incomplete regarding the entities he owns directly (International Pool Tour ("IPT"), Pool Licensing, and Trudeau Management) and his legal defense fund (Natural Cures Health Institute). Trudeau offered no testimony regarding these entities, and their various financial records are incomplete. Trudeau also failed to offer evidence explaining how IPT made \$829,901 in payments to Winston & Strawn after June 2, 2010 (FTCX 18E), along with another \$140,836 to Lane's firm (FTCX 18D).
- J. In Trudeau's sworn financial statement, Trudeau does not disclose asset transfers (DX 25), he claims to hold only \$4500 at three banks with address[es] unknown" to him (DX 25 at 4), and he denies knowing anything about his wife, including her street address, whether she owns vehicles, or what other assets she has. (DX

- M. Trudeau and Babenko purchased \$285,500 in casino chips between November 2011 and January 2012 (\$200,000 by Babenko and \$85,500 by Trudeau). (FTCX 1N; FTCX 1O; FTCX 1P.) Trudeau then cashed out \$158,375 in casino chips (and Babenko cashed out another \$124,000). (FTCX 1N; FTCX 1O; FTCX 1P.) None of Trudeau's evidence explains what happened to this money. Furthermore, when asked about their casino activities, both Trudeau and Babenko asserted their Fifth Amendment rights rather than respond. (Tr. 11:4-25, FTCX 14:77-78:18.)
- N. None of Trudeau's evidence explains how he can afford a personal "Executive Project Manager." (FTCX 11 at 80:14; FTCX 11Z; FTCX14 at 58:24-59:23.)
- O. Finally, none of his evidence addresses how companies he controls – and companies he indisputably owns – have paid more than \$6.7 million in legal expenses since June 2, 2010. (FTCX 18D-E.)

VI. LACK OF CREDIBILITY

- A. The Court previously found that Trudeau is not credible. See *FTC v. Trudeau*, 708 F. Supp. 2d 711, 716 (N.D. Ill. 2010) ("Trudeau has little credibility with this court. Based on his demeanor and conduct, the court has found, and continues to find, that Trudeau cannot be trusted; *FTC v. Trudeau*, 572 F. Supp.2d 919, 924 (N.D. Ill. 2008) ("Trudeau is not a credible witness."). Nothing Trudeau presented changes that finding.
- B. In fact, Trudeau's lavish lif

PROPOSED CONCLUSIONS OF LAW

I. THE FTC'S PRIMA FACIE CASE

- A. A prima facie contempt case exists when (1) the order sets forth an unambiguous command; (2) the defendant violated that command; (3) the violation was significant, meaning the defendant did not substantially comply with the order; and (4) the defendant failed to take steps reasonably and diligently to comply with the order. *FTC v. Trudeau*, 579 F.3d 754, 763 (7th Cir. 2009).
- B. The Court's June 2, 2010 order (the "Order To Pay") unambiguously commands Trudeau "to pay forthwith to plaintiff the sum of \$37,616,161, representing the consumer loss resulting from Trudeau's contumacious and deceptive infomercial marketing of the Weight Loss Cure book." Order To Pay (DE372) at 13-14.
- C. It is undisputed that Trudeau has not paid \$37,616,161.
- D. Trudeau has not paid anything beyond "eleventh-hour," token payments totaling \$54,000. Accordingly, Trudeau has not "substantially complied" with the Order To Pay.
- E.

- E. Trudeau must show “categorically and in detail” his complete inability to pay. See, e.g., *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1241 (9th Cir. 1999) (quotation omitted).
- F. Because an “inability to comply” defense is unavailable to a defendant responsible for his own inability to comply, Trudeau must also show that any inability to pay was not self-induced. See e.g., *United States v. Bryan*, 339 U.S. 323, 330-32 (1950) (noting that a party may be held in contempt for failing to produce documents that he does not possess “if he is responsible for their unavailability”); *Chicago Truck Drivers Union v. Brotherhood Labor Leasing*, 207 F.3d 500, 506 (8th Cir. 2000) (“[A] mere assertion of ‘present inability’ is insufficient to avoid a civil contempt finding. Rather, alleged contemnors defending on the ground of inability must establish . . . that their inability to comply was not self-induced[.]” (citation omitted)); *re Power Recovery Sys., Inc.*, 950 F.2d 798, 803 (1st Cir. 1991) (“[A] party may defend contempt and failure to comply on the grounds that noncompliance was impossible; self-induced inability, however, does not meet the test.”); *Peraplastic, C.A. v. Cincinnati Milacron Co.*, 799 F.2d 1510, 1521-22 (11th Cir. 1986) (“In the present case, Tedruth and the Law Firm cannot raise the defense of impossibility because their own actions were responsible for the subsequent inability to comply.”); *United States v. Lay*, 779 F.2d 319, 320 (6th Cir. 1985) (holding contempt finding where defendant induced his purported inability to pay by divesting himself of assets); *United States v. Seetapun*, 750 F.2d 601, 605 (7th Cir. 1984) (holding that inab

- H. Finally, Trudeau must show that he has made in good faith “all reasonable efforts” to comply. Chicago Truck Drivers, 207 F.3d at 506 n re Power Recovery Sys., Inc., 950 F.2d 798, 803 (1st Cir. 1994). Affordable Media, 179 F.3d at 1239 (quotation omitted).
- I. Courts strictly construe the “all reasonable efforts” standard. Even a showing of diligent and substantial effort, without a showing of all reasonable efforts, is insufficient to rebut a prima facie showing of contempt. Custable, 1999 WL 92260 at *2. When an alleged contemnor asserts an “inability to pay” defense, but has dissipated assets rather than pay, he necessarily has not made “all reasonable efforts” to comply. A defendant ordered to pay cannot avoid contempt by dissipating assets and then asserting he cannot comply.
- J. An “inability to pay” contempt defense is a “difficult” one to establish. Dystar Corp. v. Cantor, 1 F. Supp. 2d 48, 55 (D. Mass. 1997).

III. TRUDEAU UTTERLY FAILED TO ESTABLISH AN INABILITY TO PAY.

- A. Trudeau controls multiple entities that his wife, Nataliya Babenko, nominally owns. FOF II.B.1.a-d. These entities include six enterprises associated with the “Global Information Network” (GINUSA, KT Radio Network, Website Solutions USA (“WSU”), Website Solutions Switzerland,

- H. Trudeau also failed to present evidence explaining what happened to specific corporate and personal assets that he could have used to comply with the Order To Pay. Among other things, GIN USA earned more than \$14 million since its inception, DX 5A, but Trudeau offers no evidence regarding where this money went. There are also many suspicious company transfers between Trudeau's companies. DX 24A, FOF V.C. Many of these transfers involved millions of dollars, see DX 5A, 10A, and 24A, but Trudeau offers no evidence explaining them. Additionally, the WSU "profit and loss" statement Trudeau produced (DX 24A) reflects \$486,000 in transfers to Trudeau (and \$523,000 to Babenko), but Trudeau does not explain where this money went. Furthermore, the FTC presented evidence that Trudeau purchased \$100,000 in gold bars, FOF II.A.5.b., FOF III.G, and cashed out \$158,375 in casino chips from Rivers Casino (Babenko cashed out another \$124,000), FOF III.E-F, but Trudeau introduced no evidence concerning the gold bars or his casino activities.
- I. In fact, when asked about these subjects, both Trudeau and Babenko refused to answer on Fifth Amendment grounds, from which the Court infers that their answers would have been adverse to Trudeau. Specifically, the Court infers that Trudeau controls \$100,000 in gold bars and \$282,375 in cash that he and his wife received from Rivers Casino. For this reason as well, Trudeau has not met his burden to produce evidence demonstrating "clearly, plainly and unmistakably" that he cannot pay anything more to compensate his victims. See, e.g., Resource Tech, 624 F.3d at 387 (citation omitted).
- J. Trudeau introduced his personal tax returns. These tax returns, however, are not credible. At least \$6 million in federal and state tax liens have been filed against Trudeau, which suggests that Trudeau has overstated his income to authorities previously. Additionally, Trudeau's corporate counsel, Marc Lane prepared the returns. In 2008, Lane prepared a "balance sheet" that purported to show Trudeau's poverty, but the Court concluded that the "balance sheet" was "not worth the paper it is written on." Mem. Op. (Aug. 7, 2013).

- M. Finally, at trial, Trudeau did not call any witnesses. When the FTC called Trudeau, he asserted his Fifth Amendment privilege in response to 382 questions. This does not satisfy his burden. See

with this court. Based on his demeanor and conduct, the court has found, and continues to find, that Trudeau cannot be trusted. *FTC v. Trudeau*, 572 F. Supp.2d 919, 924 (N.D. Ill. 2008) (“Trudeau is not a credible witness.”). The Court has already found, and continues to find, that Trudeau is not credible. Given Trudeau’s contemptuous history, lavish lifestyle, and his attempts to hide assets, his general claim of poverty is not credible and carries no weight.

- G. Trudeau’s extensive “asset protection” (moving assets offshore, placing them in trusts, and funneling them through his wife’s trusts) provides still further evidence that Trudeau has not established an “inability to pay.” In fact, the evidence, viewed as a whole, establishes that Trudeau could have paid vastly more than he has, and that Trudeau conspires to control significant assets that he could use to comply with the Court’s order that he compensate his victims.
- H. Trudeau is in contempt of the Court’s June 2, 2010 Order To Pay.

V. INCARCERATION IS THE ONLY WAY TO COERCE TRUDEAU TO COMPLY WITH THE COURT’S ORDER TO PAY.

- A. The Court has the inherent power to enforce its Order To Pay by holding Trudeau in civil contempt and imposing coercive sanctions. See, e.g., *Shillitani v. United States*, 384 U.S. 364, 370 (1966); *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947); *Jones v. Lincoln Elec. Co.*, 188 F.3d 709, 737 (7th Cir. 1999).
- B. The Seventh Circuit and other circuits have repeatedly held that analogous orders to pay monetary relief are enforceable by contempt. See, e.g., *Resource Tech.*, 624 F.3d at 376 (holding company in contempt for violating order to pay \$500,000 into escrow account); *Central States Fund v. Wirtz*, 255 F.3d 868, 875-76 (7th Cir. 1998) (holding company owner in contempt for violating order to pay employee pension liability payments); *Huber v. Marine Midland Bank*, 51 F.3d 5, 11 (2d Cir. 1995) (holding attorney in contempt for failing to pay court-ordered fines); *CFTC v. Wellington Precious Metals*, 150 F.2d 1525, 1529-30 (11th Cir. 1992) (securities fraud disgorgement order enforceable by contempt).
- C. FRCP 69(a)(1) provides that “[a]ny judgment is enforced by a writ of execution, unless the court directs otherwise.” (Emphasis added). This “otherwise clause” allows courts to enforce judgments through other means (such as contempt) when “well-established principles so warrant.” *Aetna Cas. v. Markarian*

- D. The FTC is seeking to enforce an order based on a serious violation of the FTC Act. When a court issues an order that furthers “public policies embodied in [a] statutory scheme,” the order necessarily directs that enforcement alternatives include contempt. See *Markarian*, 114 F.3d at 349 n.4. Accordingly, the FTC may enforce the Order to Pay through contempt.
- E. In fact, Courts of Appeals have twice reversed District Courts that have

- H. Although the FD CPA presents an alternative means by which the FTC could execute against Trudeau's assets, this is not feasible because Trudeau has carefully dispersed his assets among multiple entities, none of which he owns directly, and most of which he strategically placed overseas in asset protection havens. FOF II, III.
- I. When evaluating a coercive sanction, "the court must 'consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested action bringing about the result desired.'" Custale 1999 WL 92260 at *2 (quoting United Mine Workers, 330 U.S. at 303-04). Here, the harm is significant: no recovery for Trudeau's 800,000 victims. More important, no sanction other than coercive incarceration will "bring[] about the result desired," which is a loss for those victims.
- J. Any alternative that requires the FTC to use normal judgment collection processes will fail because Trudeau holds his assets largely offshore in trusts or entities his wife nominally owns.
- K. Fining Trudeau will not work. He has already ignored multiple orders, including the Order To Pay. Adding to his unmet financial obligations will not bring about his compliance.
- L. Ordering Trudeau to cooperate with independent accountants also will not work. This is Trudeau's third contempt. FOF I.A.-D. Trudeau has demonstrated repeatedly that court orders without actual sanctions are meaningless to him. Furthermore, unless Trudeau is incarcerated, he will move any assets an accounting reveals, and consumers will not receive compensation.
- M. The absence of feasible alternatives explains why courts have incarcerated contemnors in similar cases. See e.g., Affordable Media 179 F.3d at 1241-42 (9th Cir. 1999) (incarcerating contemnors Denyse and Michael Anderson until they repatriated offshore assets); at 1240-42 ("The asset protection' aspect of these foreign trusts arises from the ability of people . . . to frustrate and impede the United States courts by moving their assets beyond those courts' jurisdictions"; incarcerating contemnors until they repatriated offshore assets); re Lawrence 279 F.3d 1294, 1300 (11th Cir. 2002) (ordering contemnor who created an offshore trust incarcerated because contemnor had created an asset protection trust "in an obvious attempt to shelter his funds from an expected adverse arbitration award").
- N. Accordingly, Trudeau must be incarcerated to coerce him to comply with the Order To Pay.

I. ORDER

- A. Trudeau is ordered to surrender to United States Marshals Service for the Northern District of Illinois within twenty-four hours (or the Court will issue a writ of bodily attachment and instruct the Marshals to take Trudeau into custody).

- B. Trudeau will remain in the custody of the United States Marshals or the Bureau of Prisons until one of three conditions is satisfied: (1) Trudeau fully complies with the Court's Order To Pay; (2) the Court finds that continued incarceration no longer serves a coercive purpose; or (3) Trudeau completes a full accounting and turns over all assets and the controls.
- C. The FTC is ordered to nominate an appropriately qualified independent accounting firm within two business days.
- D. Trudeau is ordered to pay to engage the firm the FTC nominates.
- E. Trudeau, as well as the companies he controls, are ordered to cooperate fully with that firm (including any requests for information it makes).

Dated: July 15, 2013

David O'Toole (dotoole@ftc.gov)
 Federal Trade Commission
 55 West Monroe Street, Suite 1825
 Chicago, Illinois 60603-5001
 Phone: (312) 960-5601
 Fax: (312) 960-5600

Respectfully Submitted,

/s/ Amanda B. Kostner
 Michael Mora (mmora@ftc.gov)
 Jonathan Cohen (jcohen2@ftc.gov)
 Amanda B. Kostner (akostner@ftc.gov)
 Federal Trade Commission
 600 Pennsylvania Ave., N.W. M-8102B
 Washington, DC 20580
 Phone: 202-326-3373; -2551
 Fax: 202-326-2551

CERTIFICATE OF SERVICE

I, Amanda B. Kostner, hereby certify that on July 15, 2013, I caused to be served true copies of the foregoing by ~~electronic~~ means, by filing such documents through the Court's Electronic Case Filing System, ~~which~~ will send notification of such filing to:

Kimball Richard Anderson
kanderson@winston.com

Thomas Lee Kirsch, II
tkirsch@winston.com

Katherine E. Rohlf
kcroswell@winston.com

/s/ Amanda B. Kostner
Amanda B. Kostner (akostner@ftc.gov)
Attorney for Plaintiff
Federal Trade Commission