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1 to Section VIII of the Final Order, Eborn, therefore, is liable for the full amount of the remaining  
2 judgment plus interest.

3 **I. FACTS**

4 Eborn deceived the Court and the FTC in four ways: (1) he failed to disclose significant  
5 sums of money, including \$61,519 in cash; (2) he misrepresented his ownership and control of  
6 assets, including ownership stakes in companies; (3) he misrepresented the nature of payments to  
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1 statement) & 11 (teller posting journal showing this is as a cash deposit). About one week later,  
2 Eborn deposited an additional \$15,700 in cash. *See* Exhibit 4 at 3 (account statement) & 9  
3 (currency transaction report). By the end of that month, Home Savings Bank closed the account.  
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## 2. Eborn Deposited an Additional, Undisclosed \$38,319 in Cash

1 Eborn deposited an additional \$38,319 in cash between the date of the Temporary  
2 Restraining Order and November 2010,<sup>10</sup> more than \$30,000 of which he deposited, and then  
3 dissipated, while subject to an asset freeze. These deposits are inconsistent with Eborn's  
4 Financial Statements.

5 As with the \$23,200 discussed above, Eborn cannot account for these funds. As before,  
6 none of his disclosed employment accounts for these funds. Furthermore, when asked about  
7 these deposits at his deposition, Eborn stated that they were "loans" or "gifts," from whom he  
8 does not know, or were deposits from the \$42,400 in cash that he disclosed on the 2009  
9 Statement. *See e.g.*, Eborn Dep. at 45 (explaining that these later deposits were from "either a  
10 loan or a gift from people that we were scrambling to get money from in those days or they  
11 might have come from some of the money we had at our home, in my dresser"); *id.* 34-36  
12 (explaining that he spent and deposited some of the frozen cash on hand, which was the cash he  
13 kept in his dresser).

14 The "loan" explanation is incredible—despite the size of the deposits, he does not know  
15 who loaned him the money and he never disclosed the loans on his 2010 Statement. The gift  
16 explanation is also false. Inconceivably, he does not know who gave him these substantial gifts.  
17 *Id.* at 38 (when asked who may have given him the money, he stated "I don't recall" and then  
18 testified that he cannot remember any person giving him \$7,000 in cash after this Court entered  
19 the Temporary Restraining Order); *id.* at 45 (does not recall anybody that may have given him  
20 the cash). If Eborn was spending the frozen cash, he is claiming to have knowingly and willfully  
21 acted in contempt of this Court's orders, an act that could have both civil and criminal  
22 consequences. *See* Temporary Restraining Order at § IV; Preliminary Injunction at § IV.  
23 Furthermore, Eborn claims his alleged contempt accounts for only some of the deposits. Eborn  
24 Dep. at 45.

25  
26  
27 <sup>10</sup> These cash deposits include: (1) \$7,000 on September 11, 2009, Exhibit 5 at 11; (2) \$6,100 on July 28,  
28 2010, Exhibit 5 at 45; (3) \$8,000 on August 9, 2010, Exhibit 5 at 47; (4) \$9,200 on August 17, 2010, Exhibit 5 at 50;  
(5) \$5,250 on November 8, 2010, Exhibit 5 at 57; and (6) \$2,769 on November 23, 2010, Exhibit 5 at 60.

**B. Eborn Misrepresented His Ownership in or Control Over Multiple Entities**

Eborn also hid significant assets by shielding his ownership or control of Augusta Capital Group Inc. (“Augusta Capital”) and Link Media LLC (“Link Media”).<sup>11</sup>

**1. Eborn Misrepresented His Interest in Augusta Capital**

Eborn hid his ability to tap Augusta Capital’s corporate assets by falsely claiming to be the “Retail Accounts Manager” when he was actually an officer and principal. 2010 Statement, Item 7. First, Augusta Capital did not have “retail accounts” for him to manage.<sup>12</sup> Second, aside from his self-serving testimony, all evidence shows that he was an officer and principal. The FTC obtained a corporate resolution that Augusta Capital submitted to a bank listing Eborn as an officer. Eborn Dep. at 189 (admits to having represented to a bank that he was an officer of Augusta Capital); Exhibit 9 (corporate resolution for bank account showing that Eborn was Vice President and Secretary). The FTC also obtained a signed letter seeking health insurance for Augusta Capital employees indicating that Eborn was a principal of Augusta Capital. Exhibit 10 (letter from Augusta Capital seeking health insurance identifying Eborn as a principal). When asked at his deposition why others may have thought he was a principal, Eborn answered, “because of the active role that I had in the business.” Eborn Dep. at 192. Similarly, Mannion, Augusta Capital’s purported owner, testified that Eborn was the moving force behind most if not all of Augusta Capital’s business deals. Mannion Dep. at 41 (“Most of these came through [Eborn]. I think almost all of them came through [Eborn].”). Furthermore, the company paid him like an officer or principal. Eborn received 44.5% of all known Augusta Capital receipts, with no other person or entity receiving more than 12.6%, and the purported principal, Pace Mannion, receiving none.<sup>13</sup> See Declaration of Thomas P. Van Wazer at Exhibit A.<sup>14</sup>

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<sup>11</sup> In addition to hiding assets, if the Commission knew he controlled these entities it may well have insisted on additional or different injunctive relief. At a minimum, the Commission would have insisted on much more information regarding these companies before approving any settlement. If nothing else, this reinforces Eborn’s predilection to lie to the Commission, even when placed under penalty of perjury.

<sup>12</sup> Eborn Dep. at 193-94 (explaining that his role was designing a product to sell to consumers and that they ultimately did no business); Mannion Dep. at 60-62 (Augusta Capital only had two “clients,” both were coaching companies that did not operate retail stores).

<sup>13</sup> As discussed in more detail below, Eborn timed these payments to avoid disclosing this sizable income to the FTC.

## 2. Eborn Misrepresented His Involvement With Link Media

1 Eborn also falsely claimed to be an “Account Executive” with Link Media. In reality, he  
 2 was a principal. Notably, Eborn did not oversee any accounts, despite claiming “Account  
 3 Executive” as his job title. 2010 Statement, Item 7; Eborn Dep. at 95 (claiming to be nothing  
 4 more than a “consultant” and stating “I didn’t have any day-to-day responsibilities”); Arnell Dep.  
 5 at 36-38 (claiming Eborn’s role was opening his rolodex of contacts of lead generators and  
 6 buyers). In exchange for part time consulting, Eborn received 30% of Link Media’s profits.  
 7 Eborn Dep. at 98-99. In contrast, Clint Arnell, Link Media’s putative owner, received just  
 8 10%.<sup>15</sup> *Id.* It is also incredible that Arnell, a former Infusion Media employee and Eborn  
 9 subordinate, was the true Link Media principal when Link Media was merely a continuation of  
 10 Arnell’s business role at Infusion Media. Eborn Dep. at 77-78 (describing Arnell as a former  
 11 Infusion Media employee); Arnell Dep. at 20-22 (same); Arnell Dep. at 36-40 (describing how  
 12 Link Media sprang from him simply continuing to do his job with Infusion Media after this  
 13 Court entered the Temporary Restraining Order).

### C. Eborn Misrepresented the Nature and Amounts of Payments Made to Him

14 Eborn misrepresented the nature and amount of payments he received, including  
 15 \$145,500 in payments from Augusta Capital and an additional \$292,628.83 from PDR, the  
 16 payroll company for Infusion Media. Furthermore, Eborn admitted to fabricating his claimed  
 17 income on his 2010 statement.  
 18

#### 1. Eborn Received Significant Payments From Augusta Capital, and a Related Entity, That Are Inconsistent With his Financial Statement

19 Augusta Capital and a related entity transferred \$145,500 to Eborn, all of which Eborn  
 20 deposited shortly after signing the 2010 Statement. Each payment from Augusta Capital is  
 21 shown in Chart 2 in the Appendix. As described there, Augusta Capital paid Eborn \$140,500.  
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24  
 25 <sup>14</sup> The FTC does not have sufficient information to state with specificity how much Eborn effectively hid.  
 26 The FTC’s analysis of known bank records indicates that while Eborn was its principal, Augusta Capital received  
 27 \$326,882.33. Declaration of Thomas P. Van Wazer at Exhibit A. Interestingly, Augusta Capital’s tax return for that  
 28 year shows minimal receipts. We do not know whether this is because the payments were, in fact, treated as flowing  
 through Augusta Capital to Eborn, or if there is some other explanation. *See* Exhibit 11 (2010 Augusta Capital tax  
 return); Mannion Dep. at 31-32.

<sup>15</sup> The remaining profits were paid to Eborn’s former Infusion Media partner McLain Miller, who received  
 30%, and Dave Rasmussen, an individual who runs a “coaching service,” received the last 30%. *Id.*



1 The first payment was on June 9, 2010, just three days after Eborn signed the 2010 statement.  
2 Neither Eborn nor Mannion, Augusta Capital’s purported owner, could explain why Eborn did  
3 not receive any payments prior to June 2010, despite Eborn claiming to have worked for August  
4 Capital since December 2009. Eborn Dep. at 214-15 (suggesting that Mannion only paid him  
5 when he expressed a need for money and Eborn had not asked for any money until June 2010).  
6 Additionally, Eborn held a May 18, 2010, \$5,000 check from Pagani Corp., an entity controlled  
7 by Pace Mannion, for three weeks before depositing it on June 10, 2010, four days after signing  
8 the 2010 Statement. Of course, Eborn did not disclose this check on his 2010 Statement.  
9 Mannion testified that if he dated the check May 18, 2010, he would have given Eborn the check  
10 on May 18, 2010—he had no reason to think he would not have done so. Mannion Dep. at 23-  
11 24.

12 Curiously, Eborn falsely reported earning \$44,300 from Augusta Capital between January  
13 1 and June 6, 2010. 2010 Statement, Item 7. According to his bank statements, Augusta Capital  
14 did not transfer any money to Eborn until June 9, 2010—three days after he signed the 2010  
15 Statement. *See* Exhibit 5 (collecting Eborn’s bank statements); Eborn Dep. at 214-18. Eborn has  
16 since denied that there are any other bank accounts where these payments could have been  
17 deposited. Eborn Dep. at 217. Also, as noted above, Pace Mannion, Augusta Capital’s  
18 purported principal, testified that he never paid Eborn in cash or made any payments other than  
19 the \$145,500 discussed above. When asked why he reported \$44,300 in income, Eborn testified,  
20 “I don’t know where I would have come up with that. . . . I don’t know what was in my mind  
21 when I wrote that.” *Id.* at 215-16. Eborn also denies that he was reporting money he was owed  
22 but had not yet been paid: “Augusta [Capital] didn’t owe me any money that I’m aware of.” *Id.*

## 23 **2. Eborn Misrepresented Numerous Transfers As “Loans”**

24 Additionally, Eborn misrepresented the nature of a dozen large transfers totaling  
25 \$292,628.83 from PDR, Infusion Media’s former payroll company. Although characterized as  
26 “loans,” PDR was holding Eborn’s money during the pendency of the case and distributing it  
27 whenever Eborn asked. Eborn accessed the money by calling Johnnie Tolman,<sup>16</sup> the PDR sales

28 <sup>16</sup> Tolman is the brother of Eborn’s current attorney, Brett Tolman.

1 person that serviced Infusion Media, or Jeff Benson, one of PDR's principals. Eborn Dep. at  
2 130-31, 133-34, 146, 150; Exhibit 12, Declaration of Jeff Benson ("Benson Decl.") at ¶ 20.  
3 With no questions or paperwork, PDR would make the desired transfer via check or wire transfer  
4 wherever Eborn wanted. *Id.* Transfers included deposits to Eborn's bank account, payment for a  
5 new house Eborn moved to, payment for a \$13,100 piano, and a transfer to a third-party business  
6 Eborn was attempting to start. Chart 3 in the Appendix documents each of these transfers.

7       There was no contemporaneous loan agreement documenting these transfers.<sup>17</sup>  
8 Ultimately, Eborn signed a promissory note for \$196,700 on August 30, 2010, but only after all  
9 of the transfers. *See* Exhibit 13 (promissory note). The note is a sham document. PDR has  
10 made no attempts to collect on it. Furthermore, the final two payments, totaling \$40,928.83,<sup>18</sup>  
11 were made less than three weeks prior to when Eborn signed the alleged promissory note. But,  
12 neither Eborn nor PDR included them in the promissory note. Benson Decl. at ¶ 18 (identifying  
13 all payments included in the promissory note). Additionally, it inexplicably excluded the July 2,  
14 2009 payment, the October 30, 2009 payment, and the January 19, 2010 payment. *Compare*  
15 Chart 3 in the Appendix *with* Benson Decl. at ¶ 18. All told, the promissory note failed to  
16 include \$95,928.83 in transfers to Eborn.

17       Although Eborn listed a loan from PDR on his 2010 Statement, he failed to disclose more  
18 than half of the total amount he had received as of the 2010 Statement. Eborn disclosed an  
19 \$119,000 loan, but had received \$251,700 by the time he signed the 2010 Statement. Eborn has  
20 no realistic explanation for his failure to report the majority of this "loan." The only rational  
21 explanation is that, as explained above, it was not a loan and he was attempting to hide wealth  
22 from the FTC.

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26 <sup>17</sup> At best, some of the documents that PDR produced to the FTC state in memo descriptions that the  
27 payments were for a loan. Other documents indicate that the payments related to "taxes," and Eborn claims that  
those indications are not accurate. *See, e.g.*, Eborn Dep. at 162-64.

28 <sup>18</sup> Neither PDR nor Eborn can explain why these last two transfers were for uneven amounts when all prior  
transfers were for round figures.

**3. Eborn Fabricated His Income on His 2010 Statement**

Eborn hid his true income by fabricating his average monthly income on his 2010 Statement. Eborn’s 2010 Statement claimed \$9,100 in monthly income. *See* 2010 Statement, Item 32. When asked how he calculated the \$9,100 amount, Eborn initially testified that he must have simply “pulled it out of my head.” Eborn Dep. at 260. He then suggested that it was based

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1 Despite his obligation to report his living address, Final Order § XV.A, Eborn continued to  
 2 report that he resided in the Sandy, UT home in an April 1, 2011, compliance report.<sup>21</sup> Exhibit  
 3 15 (April 1, 2011 compliance report).

4 Although Eborn is generally untrustworthy, he estimated that the Sandy, UT home had  
 5 between \$42,948 and \$3,000 in equity. 2009 Statement at Item 22 (\$49,000 in equity); 2010  
 6 Statement at Item 22 (\$3,000 in equity). The Utah homestead exemption would have protected  
 7 \$40,000 if he lived in the home. UT ST 78B-5-503 (2010) (setting homestead exemption for  
 8 owned residence of \$20,000 for an individual and \$40,000 for a married couple). After moving  
 9 out of the home, Eborn was limited to the \$10,000 exemption for a non-primary residence. *Id.*<sup>22</sup>  
 10 Because the FTC did not know that he had moved, the home appeared to have no or little value.

11 **2. Eborn Hid, \$33,100 of Personal Property That Should Have Been**  
 12 **Included In His 2010 Statement**

13 Eborn also omitted \$33,100 of personal property from his 2010 Statement. When Eborn  
 14 moved to the Draper, UT house in October 2009, he purchased \$20,000 worth of home  
 15 furnishings, Exhibit 14 (lease option agreement), but did not disclose them on his 2010  
 16 Statement. Additionally, Eborn acquired a \$13,100 piano after he signed the 2009 Statement.  
 17 He also did not disclose the piano on the 2010 Statement. *Compare* 2009 Statement, Item 20  
 18 *with* 2010 Statement, Item 20 (listing the same property and omitting the new property). Eborn  
 19 has no explanation for these omissions.

20 **II. ARGUMENT**

21 Under the Final Order, Eborn is liable for the full judgment because of the numerous  
 22 misrepresentations and omissions catalogued above.  
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26 <sup>21</sup> Eborn finally provided notice of his move by a letter dated July 28, 2011. Exhibit 16 (Eborn's notice of  
 27 change in address). When the FTC asked why he failed to provide notice until the summer of 2011, Eborn's lawyers  
 28 advised him not to answer, asserting the attorney client privilege. Eborn Dep. at 68-71.

<sup>22</sup> *Houghton v. Miller*, 118 P.3d 293, 296 (Ut. Ct. App. 2005) (“[O]ccupancy is a requirement for the [primary  
 personal residence] exemption.”).

1           **A.     The Final Order Must Be Applied According to its Plain Language, and a**  
2           **New Modified Judgment Entered Against Eborn**

3           The Final Order, like all court orders, must be applied according to its plain language,  
4           which requires that a \$26,971,926.50 judgment be entered against Eborn. *United States v.*  
5           *Armour & Co.*, 402 U.S. 673, 682 (1971) (holding that consent decrees are interpreted based on  
6           their “four corners, and not by reference to what might satisfy the purposes of one of the parties  
7           to it”). Here, the Final Order unambiguously states that the full judgment shall be entered  
8           against Eborn, “without further adjudication,” if he made any material misrepresentations or  
9           omissions on his Financial Statements. Final Order at § VIII.B. The Final Order so provides  
10          because the Commission relied on those Financial Statements in agreeing to the monetary relief  
11          in Section VI of the Final Order. The Final Order states that the “Commission’s agreement to  
12          and the Court’s approval of this Order are expressly premised upon the truthfulness, accuracy,  
13          and completeness of [Eborn’s] Financial Statements.” Final Order at § VIII.A. Furthermore, the  
14          Final Order states that Eborn’s “Financial Statements provide the basis” for the suspended  
15          monetary judgment in Section VI of the Final Order. *Id.*

16           **B.     Eborn Triggered The Modified Judgment Provision Through His Numerous**  
17           **Misrepresentations and Omissions on His Financial Statements**

18          Eborn’s numerous misrepresentations and omissions are material, both individually and  
19          collectively, thus triggering Section VIII.B of the Final Order. Eborn’s misrepresentations and  
20          omissions include: (1) his failure to report \$61,519 in cash, which should have been frozen and  
21          turned-over to the FTC; (2) his misrepresentations concerning his control over other businesses,  
22          affecting the FTC’s ability to refuse to settle with Eborn unless he used those companies to  
23          partially satisfy his judgment;<sup>23</sup> (3) his failure to accurately report his income or his assets parked  
24          with third parties, thus hiding at least \$274,828.80;<sup>24</sup> and (4) his misrepresentations regarding his  
25          real and personal property, affecting the FTC’s ability to refuse to settle unless he liquidated his

25          <sup>23</sup>       Furthermore, his ownership or control over these companies would have affected the FTC’s decision to  
26          settle with Eborn for any amount without a full inquiry into the business practices of those companies, including  
27          whether Eborn was effectively violating the Preliminary Injunction.

28          <sup>24</sup>       Eborn received \$145,500 from Augusta Capital and related entities. He “disclosed” a non-existent \$44,300  
                in payments from Augusta Capital. Eborn also received \$292,628.83 from PDR, disclosing \$119,000. Giving him

1 non-primary residence residential property and turned over \$33,100 in personal property. As  
2 painstakingly detailed above, Eborn hid at least \$369,547.80, plus less firm values of the  
3 corporate entities and Sandy, UT home. This is more than Eborn actually turned over to the  
4 FTC.

5 Eborn's thorough deception, covering what he earned, what he owned, where he worked,  
6 and where he lived, is more than sufficient to trigger Section VIII.B. of the Final Order,  
7 justifying the imposition of a judgment in the full amount of consumer harm, "without further  
8 adjudication."

9 **III. CONCLUSION**

10 Because of Eborn's numerous misrepresentations and omissions that, taken individually  
11 or collectively, are material, the Final Order requires a new modified judgment be entered  
12 against Eborn in the amount of \$26,971,926.50, with interest accruing from October 4, 2010.

13 DATED this 25<sup>th</sup> day of March 2014.

14 Respectfully submitted,

15 FEDERAL TRADE COMMISSION

16  
17 /s/ Benjamin J. Theisman  
18 Benjamin J. Theisman  
19 Michael J. Davis  
20 Attorneys for the Federal Trade Commission  
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1                   **APPENDIX: CHART 2, PAYMENTS BY AUGUSTA CAPITAL**

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<b>Date</b>	<b>Payment Amount</b>	<b>Evidence</b>
6/9/10	\$10,000	Exhibit 5 at 40*
6/28/10	\$25,000	Exhibit 5 at 41
7/24/10	\$20,000	Exhibit 5 at 44*
8/18/10	\$20,000	Exhibit 5 at 51

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