

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

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 03-C-3904
)	
v.)	
)	
KEVIN TRUDEAU,)	
)	
Defendant.)	

**REPLY IN SUPPORT OF MOTION TO HOLD DEFENDANT TRUDEAU IN
CONTEMPT FOR VIOLATING THE JUNE 2, 2010 ORDER, INCARCERATE HIM,
AND ORDER HIM TO PROVIDE AN ACCOUNTING OF AND TURNOVER ASSETS**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. ARGUMENT	2
A. Trudeau Has Not Demonstrated “Reasonable and Diligent” Efforts To Comply With the Court’s Order	2
1. Trudeau’s Requests To Resume Infomercials Are Not “Reasonable and Diligent” Efforts To Comply	2
2. Trudeau’s Token “Eleventh-Hour” Payments Are Not a “Reasonable and Diligent” Attempt To Comply	3
B. Trudeau Has Not Established His Complete Inability To Pay	4
1. Trudeau’s Tax Returns Are Not Credible	6
2. Trudeau Cannot Reconcile His Lifestyle With His Asserted Poverty	7
3. Trudeau Fails To Refute His Control Over Multiple Corporations and an Offshore Trust	9
C. Trudeau’s Complete Failure To Disclose Credible Financial Information in His Opposition Demonstrates the Necessity of Immediate Incarceration To Coerce His Compliance	11
III. CONCLUSION	13
CERTIFICATE OF SERVICE	14

TABLE OF AUTHORITIES

Andrews v. Holloway, 2010 U.S. Dist. LEXIS 75349 (D.N.J. July 26, 2010) 3-4

Box v. A & P Tea Co., 772 F.2d 1372 (7th Cir. 1985) 5

Chicago Truck Drivers Union Pension Fund v. Brotherhood Labor Leasing,
207 F.3d 500 (8th Cir. 2000)..... 5, 10

Dystar Corp. v. Canto, 1 F. Supp. 2d 48 (D. Mass. 1997) 5

FTC v. Affordable Media, LLC, 179 F.3d 1228 (9th Cir. 1999)..... 1, 10-11

FTC v. Trudeau, 579 F.3d 754 (7th Cir. 2009) 2

Huber v. Marine Midland Bank, 51 F.3d 5 (2d Cir. 1995)..... 5

In re Kademoglou, 199 B.R. 35 (N.D. Ill. 1996) 9

In re Resource Technology Corp., 624 F.3d 376 (7th Cir. 2010)..... 5

Nasco v. Calcasieu Television & Radio, Inc., 583 F. Supp. 115 (W.D. La. 1984)..... 12

SEC v. Custable, 1999 U.S. Dist LEXIS 1776 (N.D. Ill. Feb. 10, 1999) 5, 9

SEC v. Solow, 682 F. Supp. 2d 1312 (S.D. Fla. 2010)..... 4

SEC v. Zubkis, 2003 U.S. Dist. LEXIS 16152 (S.D.N.Y. Sept. 11, 2003) 5

United States v. Lippitt, 180 F.3d 873 (7th Cir. 1999)..... 12

United States v. Rylander, 460 U.S. 752 (1983)..... 1

Womack v. United States, 673 A.2d 603 (D.C. 1996) 8

I. INTRODUCTION

Trudeau's opposition goes to great lengths to obfuscate the key issue in these contempt proceedings: it is Trudeau's burden to show his complete inability to pay. In its contempt motion, the FTC established that Trudeau has utterly failed to take "reasonable and diligent" steps to comply with this Court's order to pay. Neither Trudeau's proposal to re-enter the infomercial business, Opp. at 3-4, nor his "eleventh hour" offer to pay \$53,951, *id.* at 2, comes close to meeting that standard. Thus, the burden has shifted to Trudeau to establish "categorically and in detail" his complete inability to pay. *See, e.g., United States v. Rylander*, 460 U.S. 752, 761 (1983); *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1241 (9th Cir. 1999).

This Trudeau utterly fails to do. His brief is not evidence, and the unsworn, largely unsupported assertions it contains cannot meet his burden. The only actual evidence Trudeau offers is a set of implausible tax returns that neither reveal his personal assets nor assets he controls indirectly. Moreover, he has failed to refute the overwhelming evidence that he controls multiple companies and a Mauritius-based trust specially designed to protect assets from the reach of American courts. Nor has he credibly explained his more than \$5 million in credit card charges since entry of the initial judgment. PX3:J (\$2.6 million); PX6:A (\$2.8 million).¹ These charges thoroughly document Trudeau's posh lifestyle, not "business expenses" as he claims.

Significantly, Trudeau's unsupported denials and misguided attempts to shift the blame and legal burden to the FTC highlight that after more than two years of asset concealment and dissipation only incarceration will force his full compliance. Indeed, immediate incarceration is

¹ Citations herein to FTC's exhibits and attachments are abbreviated as "PX :_" With this reply, the FTC includes a declaration from Mary Rose Luceri attaching summaries of newly-obtained records illustrating Trudeau's post-judgment credit card activity (June 2010 – August 2012). *See* PX6. Although Trudeau presumably has his own credit card records, the FTC produced additional copies to his counsel on September 18, 2012. In addition, the FTC's exhibits include declarations from Ronald Lewis responding to new assertions in Trudeau's opposition regarding his taxes and newly-disclosed offshore entities, and from prior Global Information Network ("GIN") Director of Marketing Peter Wink responding to claims in Trudeau's opposition concerning GIN and Trudeau's lifestyle. *See* PX7-8.

the only way to coerce Trudeau to turn over all the assets he controls along with a genuine, evidence-backed accounting that proves he has fully complied.

II. ARGUMENT

A. **Trudeau Has Not Demonstrated “Reasonable and Diligent” Efforts To Comply With the Court’s Order.**

Trudeau does not dispute that the FTC has established the first three elements of contempt, namely that: “(1) the order sets forth an unambiguous command; (2) Trudeau violated that command;” and that “(3) Trudeau’s violation was significant, meaning that [he] did not substantially comply with the Order[.]” *FTC v. Trudeau*, 739 F.3d 754, 763 (7th Cir. 2009). The FTC has also satisfied the fourth element—that Trudeau has not “reasonably and diligently” complied with the Order to pay more than \$37 million, *see id.*—because Trudeau did essentially nothing (and paid absolutely nothing) for more than two years. Neither Trudeau’s requests to resume infomercials nor his “eleventh hour” \$54,000 tender reflect “reasonable and diligent” efforts to comply.

1. **Trudeau’s Requests To Resume Infomercials Are Not “Reasonable and Diligent” Efforts To Comply.**

Trudeau’s opposition reiterates the same ridiculous proposal that the Court recently dismissed. He suggests that he comply with the order through “a new infomercial and/or re-launch [of] past infomercials,” which would generate proceeds that the allegedly impoverished Trudeau could then pay. *See* Trudeau Mem. (ECF 477) (June 11, 2012) at 9. The Court rejected this proposal, writing that “[t]he 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-enter[ing] the infomercial business’ is preposterous in light of Trudeau’s duplicitous and contumacious history with this court and the thousands of consumers he has deceived.” Mem. Op. (ECF 494) (Aug. 17, 2012) at 1. Repeatedly proposing to re-enter the infomercial business is not a “reasonable and diligent” attempt to comply with the Court’s order.²

² Previously, in March, 2012, during an in-person meeting with the FTC, Winston & Strawn made the same proposal. *See* Opp. Ex. C ¶ 4. The FTC rejected it.

2. Trudeau's Token "Eleventh-Hour" Payments Are Not a "Reasonable and Diligent" Attempt To Comply.

On the last business day before his opposition to this motion was due, the FTC received a letter from Trudeau's corporate counsel (Marc Lane) enclosing a \$35,105 check. Lane asserts that Babenko-owned KTRN paid Trudeau \$100,000 "for an annual salary" that "had been accrued but, until now, had not been paid to him." Opp. Ex. A at 1. Lane also claims that the \$35,105 represents half of Trudeau's "net salary." *Id.* Lane includes no documentation or other support for either assertion. *See id.*

Lane's "eleventh hour" letter further claims that going forward Trudeau will pay half his "net salary" from his purported new employer, Sales Solutions International A.G. ("SSI"), as long as he remains employed there. Opp. Ex. A at 1. However, Trudeau conspicuously fails to disclose the connection between his wife, Natiliya Babenko ("Babenko") and SSI³—a connection that strongly suggests Trudeau controls SSI. Less than a week ago, Lane sent an additional \$18,846.41 check that purportedly reflects half of Trudeau's "net salary" (per usual, Lane offered no documentation, PX7:G).⁴ Trudeau can terminate these small SSI payments simply by changing jobs, as he has done multiple times over the past several years. A last-minute unenforceable promise from an untrustworthy party to pay an unknown amount over an unknown future period is not a "reasonable and diligent" effort to comply. *See Andrews v. Holloway*, No. 95-1047, 2010 U.S. Dist. LEXIS 75349, at *9 (D.N.J. July 26, 2010) (declining to release defendant who hid assets from confinement; "[O]nly his deeds, and not his promises, can

³ Trudeau controls Website Solutions USA ("WSU"). FTC Br. at 6-7. SSI was previously known as Website Solutions Switzerland GmbH ("WSS"). Opp. Ex. A. WSS is owned by APC Trading Ltd. ("APC"), a Belize IBC. PX7 ¶ 5; PX7:B at 15-16; PX7:C. Babenko is APC's sole director. *Id.* It is worth nothing that Belize IBCs (International Business Companies) are promoted as especially secure asset havens. *See, e.g.,* www.incorporatebelize.com/belize-ibc.php (Oct. 1, 2012) ("In terms of potential risk of information disclosure to foreign governments (including US!), Belize is arguably the most secure and confidential offshore jurisdiction.").

⁴ The FTC has not cashed either check because it is unclear whether Trudeau has offered the \$53,951 contingent on accepting his proposal to reduce his infomercial escrow, discussed below (or whether cashing the checks means accepting the other unsupported and dubious representations that Lane's letter contains). *See* Opp. Ex. A.

result in purging his contempt.”); *SEC v. Solow*, 682 F. Supp. 2d 1312, 1335 (S.D. Fla. 2010) (ordering incarceration as a civil contempt sanction despite defendant’s promise to pay in the future; “There is a difference between making reasonable-sounding representations to the Court and actually making reasonable efforts.”).

Finally, Lane’s “eleventh hour” letter also seemingly proposes that the FTC accept \$1 million from the \$2 million escrow fund the Court’s order established to protect consumers should Trudeau’s deceptive practices continue.⁵ This offer, however, is contingent on the FTC agreeing “to reduce the bond [the required escrow] to \$1 million[.]” Opp. at 2 (citing Lane’s letter). A proposal to compensate the past victims of Trudeau’s deceptive infomercials by gutting the escrow fund the Court ordered to protect his future victims that actually reduces consumer protection is neither a “reasonable and diligent” effort to comply nor something that the FTC would ever accept.

In short, having failed to make a “reasonable and diligent” effort to comply, it is now Trudeau’s burden to demonstrate “categorically and in detail” his alleged complete inability to pay.

B. Trudeau Has Not Established His Complete Inability To Pay.

Based on unsworn and, in most cases, entirely unsupported representations in his brief, Trudeau contends that he “personally does not have sufficient assets to pay the judgment.” Opp. at 1. Trudeau’s complete lack of candor further taints his claim, and he falls far short of the heavy burden that a party asserting an “inability to pay” must satisfy.

⁵ Trudeau’s proposal (to reduce the escrow amount and apply \$1 million of the now-escrowed funds toward the judgment) is notably inconsistent with his position that, in a purportedly arms-length transaction, GIN lent Trudeau the \$2 million currently escrowed. *See* Opp. at 7 (asserting that the loan was “independently justified by [GIN’s] self-interest”). If Trudeau were to be believed (and he shouldn’t be), it would mean that supposedly independent GIN has now agreed, without consideration, to donate half the value of its loan toward the judgment against Trudeau. The only plausible way to interpret the facts is that Trudeau always controlled GIN and its \$2 million, but hid that control from the Court. In fact, the purported “loan” from GIN to Trudeau was really a payment from Trudeau to Trudeau.

Specifically, a party “defending on the ground of inability must establish: “(1) that they were unable to comply, explaining why categorically and in detail, (2) that their inability to comply was not self-induced, and (3) that they made in good faith all reasonable efforts to comply.” *Chi. Truck Drivers Union v. B’hood Labor Leasing*, 207 F.3d 500, 506 (8th Cir. 2000) (internal citations and quotations omitted). This burden—Trudeau’s burden—is a “difficult” one, *see Dystar Corp. v. Canto*, 1 F. Supp. 2d 48, 55 (D. Mass. 1997), which requires Trudeau to prove his inability to pay “clearly, plainly, and unmistakably.” *Huber v. Marine Midland Bank*, 51 F.3d 5, 10 (2d Cir. 1995). Conclusory statements, such as those in his opposition, do not satisfy Trudeau’s burden. *See id.* at 10; *cf. Box v. A & P Tea Co.*, 772 F.2d 1372, 1379 n.5 (7th Cir. 1985) (“[A]rguments in briefs are not evidence[.]”).⁶

Consistent with this stringent approach, “the inability-to-pay defense requires a showing of a ‘complete inability’ to pay[.]” *In re Res. Tech. Corp.*, 624 F.3d 376, 387 (7th Cir. 2010) (citation omitted) (emphasis added). Thus, Trudeau cannot establish this defense if he has not demonstrated that he has paid everything he can. *See, e.g., SEC v. Zubkis*, No. 97 Civ. 8086, 2003 U.S. Dist. LEXIS 16152, at *13 (S.D.N.Y. Sept. 11, 2003).⁷

Trudeau has not brought forth evidence establishing a complete inability to pay. First, the only actual evidence that Trudeau offers is a set of highly questionable personal tax returns so dubious that no reasonable person would trust that they accurately reflect Trudeau’s wealth.

⁶ Selectively quoting a Seventh Circuit opinion, Trudeau contends that his inability-to-pay defense “need only be supported by an ‘adequate factual basis[.]’” Opp. at 14 (quoting *In re Resource Tech.*, 624 F.3d 376, 387 (7th Cir. 2010)). However, the court also explained that “the inability-to-pay defense requires a showing of a complete inability to pay,” and the defendant has “the burden of establishing clearly, plainly, and unmistakably that compliance is impossible.” *Resource Tech.*, 624 F.3d at 387 (Seventh Circuit’s emphasis) (citations and internal quotations omitted).

⁷ If Trudeau had satisfied his substantial burden to produce evidence demonstrating a complete inability to pay (and he has come nowhere close), the FTC would then have an opportunity to challenge Trudeau’s evidence and introduce its own evidence. *See SEC v. Custable*, No. 94 C 3755, 1999 U.S. Dist. LEXIS 1776, at *8 (N.D. Ill. Feb. 11, 1999) (citation omitted).

Second, Trudeau fails to reconcile his lavish lifestyle with his asserted poverty. Third, Trudeau fails to refute his control over multiple corporations.

1. Trudeau's Tax Returns Are Not Credible.

Trudeau's tax returns are significant because they are the only evidence Trudeau offers that possibly could bear upon his asserted complete inability to pay. Trudeau's brief asserts that "[t]hese tax returns were prepared by Trudeau's accountant and their accuracy has never been questioned." Opp. at 16. However, they were not prepared "by Trudeau's accountant"—they were prepared by Trudeau's lawyer, Marc Lane, who is not an accountant. *See* PX7:F at 109:20-21 (examination of Lane); PX7:E (Lane's resume); Opp. Exs. D, F-H. The reason that "their accuracy has never been questioned" is that Trudeau did not disclose them until he attached them to his most recent brief. And there is every reason to question Trudeau's tax returns:

- More than \$6 million in federal and state tax liens have been filed against Trudeau, PX7:D, which very strongly suggests that Trudeau has understated his income to authorities previously.
- Trudeau hides wealth by creating the legal fiction that someone else nominally owns assets that he actually controls. The tax returns do not disclose assets, such as those disguised as Babenko's, or as the property of an offshore trust.
- Lane prepared the returns, *see* Opp. Exs. D, F-H, and the Court already concluded that an earlier "balance sheet" that Lane prepared to demonstrate Trudeau's asserted poverty was "not worth the paper it is written on." Mem. Op. (ECF 157) (Aug. 7, 2008) at 9.⁸

Given Trudeau's dishonest track record, Trudeau's extensive asset concealment efforts, the fact that Lane prepared the returns, and the fact that multiple state and federal tax liens have been filed against Trudeau, there is no reason to credit these returns.

Furthermore, even if one suspended disbelief and credited Trudeau's tax returns, Trudeau offers no theory (and there is none) as to how tax returns that do not disclose Trudeau's assets could establish that Trudeau has no assets.⁹ Trudeau almost certainly owns significant assets

⁸ In fact, Lane helped facilitate Trudeau's asset concealment efforts by arranging to form GIN and various other Trudeau-affiliated entities. *See* PX2:D at 1 (Babenko's "GIN Set Up" check to Lane); PX2:A.

⁹ Form 1040 shows the filer's taxable income and deductions, not assets the filer owns (or controls). *See* Opp. Exs. F-H. Trudeau also submits one 2010 corporate tax return for Trudeau-

directly in addition to those that he controls indirectly through corporate entities and his offshore trust. For instance, earlier this year, Trudeau stated that he invests in gold—and, in fact, Trudeau has shown guests a “container of gold bars” he stored in his Illinois home. PX8 ¶ 12. Although even a few standard-sized gold bars could be worth millions of dollars,¹⁰ assets like these do not appear on personal tax returns.

2. Trudeau Cannot Reconcile His Lifestyle With His Asserted Poverty.

Trudeau attempts to explain away his lavish lifestyle and luxury purchases as either “business expenses” or as Babenko’s property, but Trudeau does so exclusively through unsupported assertions in his brief. Trudeau’s unsupported denials wouldn’t satisfy his burden of proof even if they were credible—and they are not.

In particular, Trudeau contends that companies owned by his 27-year-old Ukrainian wife fund his lavish lifestyle, and there is nothing nefarious about this because she “is a successful businesswoman in her own right.” Opp. at 5. Although Trudeau installed Babenko as the nominal owner of various Trudeau-affiliated entities created after the June 2010 judgment, *see* Opp. at 5, according to GIN’s prior Director of Marketing, Babenko “had no role managing GIN or any other Trudeau-affiliated entity.” PX8 ¶ 8. Unsurprisingly given the facts, Trudeau fails to offer a credible declaration from Babenko, any corporate documents, or any other evidence that Babenko actually is a “successful businesswoman.”

Trudeau also chastises the FTC for pointing to his millions in credit card charges because, according to Trudeau, “[t]he FTC ignores the obvious business purpose of these expenses,” and the fact that they reflect expenses allegedly incurred while “traveling for business purposes.” Opp. at 9-10. But it is simply implausible that independent companies reimbursed \$2.8 million for “business expenses” between June 1, 2010 and August 31, 2012, PX6:A, while

owned International Pool Tour (“IPT”), which likewise does not disclose assets Trudeau owns (or controls). *See* Opp. Ex. D.

¹⁰Gold currently trades at roughly \$1,750 an ounce. *See, e.g.*, <http://money.cnn.com/data/commodities/> (Oct. 12, 2012).

at the same time (as Trudeau reported to the FTC) he was not employed by any entity during much of that period. PX4:B. *Cf. Womack v. United States*, 673 A.2d 603, 614 (D.C. 1996) (“Black robes are not supposed to eviscerate our common sense.”).

Significantly, prior to entry of the initial judgment in November 2008, Trudeau sometimes made credit card payments from his own bank account, but beginning in 2009, various Trudeau-affiliated companies made every dollar of nearly \$3 million in payments to American Express.¹¹ PX6:C-D. This change in practice highlights that Trudeau controls these companies; he does not simply work for them. Indeed, these credit card payments reflect Trudeau’s conscious effort to hide assets following the June 2010 judgment rather than genuine business expenses incurred by a mere employee.

Moreover, the nature of these expenses demonstrates that Trudeau controls the bank accounts used to pay his credit card bills. In addition to first-class flights and expensive hotels (the Ritz Carlton, the Four Seasons), Trudeau’s credit card statements show hundreds of thousands of dollars in more mundane but obviously personal charges including groceries (often Whole Foods but sometimes Trader Joe’s), PX6:E, J; gym memberships (L.A. Boxing Club), PX6:F-G, salons (Vidal Sassoon), PX6:H-I, and—one week after this Court ordered him to pay the \$37 million judgment—\$4,327.00 for draperies, PX6:E. These charges—paid by Trudeau-affiliated companies—are not “business expenses.”

Rather, it is patently obvious that Trudeau is using various entities that he controls to fund his posh lifestyle. To provide one final example, in a November 2011 compliance report submitted to the FTC, Trudeau stated—under oath—that he resided in the Ukraine. PX4:B. From 2010 through 2012, however, Trudeau actually lived at an expensive Oak Brook home located at 3108 White Oak Lane.¹² PX8 at ¶¶ 10-12. Babenko-owned Kevin Trudeau Radio

¹¹ Prior to the judgment (between August, 2007 and June, 2009), Trudeau charged approximately \$2.6 million. PX3:J. The FTC recently obtained Trudeau’s credit card records from June, 2009 through August, 2012, which show that Trudeau and his associates spent another \$2.8 million. PX6:A-B; *see also supra*, at 1 n.1.

¹² Perhaps making a “Freudian slip,” Trudeau’s counsel erroneously refer to the home at issue as located in “Westmont, Illinois.” *Opp.* at 10 (emphasis added). Westmont is Trudeau’s

Network (“KTRN”) rented the home, Opp. at 10, where various KTRN-employed domestic workers (including two personal chefs and a butler) served Trudeau, PX8 at ¶ 11.¹³ The costs of the Oak Brook home, the chefs, and the butler are Trudeau’s living expenses, not the “business expenses” of his radio network. Trudeau paid them through KTRN to hide his assets from the Court, the FTC, and ultimately from the more than 800,000 consumers he misled.

3. Trudeau Fails To Refute His Control Over Multiple Corporations and an Offshore Trust.

Trudeau argues that “[t]he FTC has provided no proof” that Trudeau controls GIN or the GIN-related entities, including KTRN and WSU. Opp. at 4. But Trudeau grossly misconceives his burden, which he can only satisfy “by ‘coming forward with evidence in support of’” his complete inability to pay. *In re Kademoglou*, 199 B.R. 35, 36 (N.D. Ill. 1996) (quoting *Rylander*, 460 U.S. at 761); *see also Custable*, 1999 U.S. Dist. LEXIS 1776, at *7 (“[T]he defendant must produce evidence of poverty or insolvency that prevent compliance.”) (citations omitted). However, Trudeau offers no such evidence. Rather, he asserts (erroneously) that the FTC “cites no valid evidence,” “offers no evidence,” or “has presented no evidence” that Trudeau controls the GIN-related entities. Opp. 4-6. In fact, a close reading of Trudeau’s argument discussing the GIN-related entities reveals that he never actually states that he does not control these entities. *See* Opp. 3-6.

headquarters: it is where GIN, WSU, KTRN, and various other Trudeau-affiliated entities all have their offices. PX2:A. The residence is actually about thirty minutes away, in Oak Brook (there is no 3108 White Oak Lane in Westmont).

¹³ Trudeau asserts, without supporting authority, that the residence at 3108 White Oak Lane “is not and never has been [his] residence.” Opp. at 10 (emphasis added). But in 2010, GIN’s Director of Marketing witnessed Trudeau’s personal belongings being moved into the White Oak Lane home. PX8 ¶ 10; *id.* (“Based on my observations, it was apparent that Trudeau resided at the [Oak Lane] home.”). Also without supporting authority, Trudeau claims that the White Oak Lane “property” “is rented by KTRN as a business facility” that allows Babenko-owned KTRN “a means of avoiding the costs of extended hotel stays and rental of additional corporate offices.” Opp. at 10. Although Trudeau’s brief uses business language to describe the White Oak Lane “property,” photos reveal that it is actually an expensive suburban residence. *See* PX9 (photo of 3108 White Oak Lane).

In any event, the FTC has provided significant evidence that Trudeau controls the GIN-related entities, including WSU and KTRN. FTC Br. at 7-9 (citing PX1:U-Z, PX2:A-C, and PX4:J). In addition, the FTC attaches a sworn declaration from GIN's prior Director of Marketing, who attests that "there is no question that Trudeau controls GIN." PX8 ¶ 7 (emphasis added). Furthermore, the fact that Babenko nominally owns the GIN-related entities is irrelevant to whether Trudeau controls them, which is the real issue.

Trudeau also suggests that these entities' assets cannot be used to redress consumers without improper "reverse-veil piercing." Opp. at 17-19. This is a textbook "straw man"—the FTC is not seeking "reverse-veil piercing," and whether the entities at issue are legally distinct is irrelevant to the fact that Trudeau has the ability to use their assets to pay. Likewise, Trudeau must show that any inability to pay was "not self-induced." *See Truck Drivers*, 207 F.3d at 506. Trudeau's restructuring of his business affairs so that he now controls assets through various companies is an entirely self-induced state of affairs. Either way, "veil piercing" is irrelevant to whether Trudeau has met his burden (and he hasn't).

Finally, Trudeau argues that he does not control Natural Cures because an offshore trust owns Natural Cures, and Trudeau is not the beneficiary. Opp. at 5. Trudeau denies that he is currently the beneficiary because the trust contains a so-called "duress clause," which is an "asset protection" device "intended to frustrate the operation of domestic courts." *Affordable Media*, 179 F.3d at 1232. Specifically, the trust documents purport to remove Trudeau as the beneficiary in the event of a judgment against him greater than \$5000. PX4:G at 44. *Affordable Media* analyzed at length a similar offshore trust "duress clause" and found that it did not insulate the defendants from contempt because they had not established that they did not retain control over the trust. 179 F.3d at 1241 ("While it is possible that a rational person would send millions of dollars overseas and retain absolutely no control over the assets, we share the district court's skepticism."). Like the *Affordable Media* defendants, Trudeau has failed to demonstrate that he does not have access to these funds. Indeed, as the settlor, Trudeau has the power to name a new Trustee at any time, and for any reason, PX4:G at 22, and the Trustee has the power

to name (or re-name) Trudeau as the beneficiary, *id.* at 13. Thus, Trudeau's denials that he is currently the named beneficiary are irrelevant.

C. Trudeau's Complete Failure To Disclose Credible Financial Information in His Opposition Demonstrates the Necessity of Immediate Incarceration To Coerce His Compliance.

Trudeau's opposition once again demonstrates that he will not pay or disclose credible financial information voluntarily, and that incarceration is necessary to coerce his full compliance.¹⁴ Trudeau calls incarceration "extraordinary," but civil confinement is a very reasonable response to Trudeau's wholesale refusal to pay or produce credible financial information voluntarily. Indeed, Trudeau utterly fails to rebut the overwhelming evidence that he is hiding assets.

First, at the time of the initial judgment, Trudeau married Babenko, PX1:C, and then shifted his business endeavors to his wife's ownership. *See* PX2:A. Second, also following the initial judgment, Trudeau ceased using his personal bank account to pay his substantial credit card bills and instead, various Trudeau-affiliated entities paid those bills. PX6:C-D. In fact, following the initial judgment, Trudeau ceased using his personal bank account almost entirely. PX3:G-H. Third, Trudeau has increasingly shifted his activities offshore. He controls an offshore trust, *supra* at 10, he recently began working for a Swiss company affiliated with Babenko, *supra* at 3 and n.3, and he recently moved to Zurich, *Opp.* at 10 n.6; PX7:A (Lane letter reporting Trudeau's change in address and employment). Fourth, Trudeau engages in common money-laundering techniques, including using casinos to hide assets. *FTC Br.* at 11-12.¹⁵ Trudeau also employs complex, otherwise inexplicable inter-company transfers to make

¹⁴ Trudeau asserts that he "has answered all discovery requests fully and fairly." *Opp.* at 1. After the FTC pursued post-judgment discovery from Trudeau in 2008 and 2009, and following a motion to compel, ECF 245 (Apr. 6, 2009), Trudeau eventually produced various types of information including a sworn financial statement in which he reports having almost no assets and no business or financial interests in any entity other than those associated with defunct IPT. PX3:C. Given Trudeau's duplicitous history and the information he produced, the FTC concluded that continuing to attempt to obtain financial information directly from Trudeau no longer served any purpose.

¹⁵ The stories Trudeau concocted to explain his gambling are incredible. Trudeau describes his casino activities as "research" related to a book about baccarat and horse racing.

asset tracing as difficult as possible.¹⁶ FTC Br. at 9-10. Fifth, Trudeau uses sophisticated “asset-protection” devices designed to defeat the jurisdiction of American courts, including an offshore trust with a “duress clause,” PX4:G at 44, and a Belize IBC, *see supra* at 3 n.3.

All of these activities, and Trudeau’s failure to meaningfully address them in his opposition, underscore that only incarceration will coerce Trudeau’s full compliance with the Court’s order to pay.¹⁷

Opp. at 12. The only basis offered to support this theory is a letter from Lane that itself contains nothing but unsupported assertions. *See* Opp. Ex. E. Additionally, Lane’s letter details only “research” that he says Trudeau will do in the future. *See id.* (“The [unnamed] company that will publish the book plans to provide funds for Mr. Trudeau to test his gambling theories . . . Mr. Trudeau will use these funds to gamble . . .”). The casino incidents the FTC recounted began four months before Lane sent the letter claiming that Trudeau was about to begin gambling “research.” FTC Br. at 10-11. Additionally, according to his brief, Trudeau refused to “provide his social security number to casino officials” when cashing out more than \$10,000 in chips “because he did not own the funds. The funds belonged to his corporate employer.” Opp. at 13 n.8. Trudeau offers no support for this claim and, in fact, only eight days later, on November 28, 2011, Trudeau submitted a sworn compliance report to the FTC representing, under penalty of perjury, that he “is not currently employed by any entity.” PX4:B. Furthermore, according to the casino’s detailed incident report, Trudeau did not claim that the funds belonged to his “corporate employer”; rather, Trudeau informed casino officials that he did not need to provide a social security number because “he was an Italian resident[.]” PX1:N. As one casino official concluded, “[i]t is my contention that Mr. Trudeau was purposefully trying to evade CTR reporting that would include his SS#.” *Id.*

¹⁶ For instance, the \$2 million used to fund the escrow account came indirectly from GIN’s international affiliate (GIN FDN). *See* Opp. at 7. The escrow agent, however, received those funds from GIN USA, which had received the funds from WSU earlier on the same day. PX3:H. Thus, the \$2 million traveled from GIN FDN to WSU to GIN USA to escrow, rather than directly from GIN FDN to escrow. This is known as “layering,” and is designed to conceal the funds’ origin.

¹⁷ Trudeau unsuccessfully attempts to dismiss the extensive authority related to civil confinement as a mechanism to force a party to comply with a court order. *See* Opp. at 19-20. For example, Trudeau suggests that *United States v. Lippett*, 180 F.3d 873 (7th Cir. 1999), is distinguishable because the trial court incarcerated the defendant “for failing to pay a \$56,000 criminal fine,” Opp. at 20 (Trudeau’s emphasis), but the Seventh Circuit held that the incarceration at issue still qualified as “a civil sanction,” *Lippett*, 180 F.3d at 879 (emphasis added). In *Nasco v. Calcasieu Television & Radio, Inc.*, 583 F. Supp. 115 (W.D. La. 1984), the court imposed a fine rather than confinement because the court believed a fine would “be sufficient to bring about compliance with the injunction in question.” *Id.* at 122. But here fining Trudeau for violating an order to pay money will do nothing but add to his \$37 million obligation.

III. CONCLUSION

Notwithstanding the complexity of Trudeau's web of offshore trusts, foreign entities, and other asset protection devices, this motion is extremely straightforward. Trudeau is in contempt of this Court's Order to pay \$37 million and has not produced any evidence demonstrating his alleged complete inability to pay. Therefore, incarceration is the only way to coerce his full compliance with this Court's order.

Dated: October 15, 2012

Respectfully Submitted,

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

/s/ Michael P. Mora
Michael Mora (mmora@ftc.gov)
Jonathan Cohen (jcohen2@ftc.gov)
Federal Trade Commission
600 Pennsylvania Ave., N.W. M-8102B
Washington, DC 20580
Phone: 202-326-3373; -2551
Fax: 202-326-2558

CERTIFICATE OF SERVICE

I, Michael P. Mora, hereby certify that on October 15, 2012, 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. Crowell
kcrowell@winston.com

/s/ Michael P. Mora
Michael Mora (mmora@ftc.gov)
Attorney for Plaintiff
Federal Trade Commission