

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

| | | |
|---------------------------|---|--------------------------|
| FEDERAL TRADE COMMISSION, |) | |
| |) | |
| Plaintiff, |) | Case No. 03-C-3904 |
| |) | |
| v. |) | Hon. Robert W. Gettleman |
| |) | |
| KEVIN TRUDEAU, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

**PLAINTIFF'S POST-HEARING BRIEF 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**

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I. INTRODUCTION

Trudeau has come nowhere close to satisfying his burden to produce evidence establishing his purported inability to pay. In fact, a mountain of evidence definitively shows that Trudeau had, and has, money to meet his obligations, but instead chooses to spend it living lavishly and hiring high-priced attorneys to hide money from his victims. There is no real dispute that Trudeau has violated the Court's order to pay \$37.6 million or that he could pay vastly more than the token \$54,000 he volunteered. The only remaining question is whether there is any way to force Trudeau to redress his victims short of incarceration. The evidence is unequivocal – there is not.

If the Court incarcerates Trudeau, then consumers likely will recover whatever he is able to pay. If the Court declines, Trudeau's victims will not receive the compensation this Court ordered, and a decade of litigation will have been wasted. Notably, as part of his "asset protection" program, Trudeau moved most of his wealth offshore to Belize, Liechtenstein, Seychelles, Mauritius, and other offshore asset havens that, as a practical matter, are beyond the FTC's reach. If the FTC initiated traditional judgment collection techniques against what little remains domestically, Trudeau will move these assets and the "shell game" will continue. Civil incarceration represents consumers' only chance for redress.

II. TRUDEAU'S "INABILITY TO PAY" DEFENSE FAILS.

In 2010, the Court ordered Trudeau to compensate the victims of his second contempt in this matter.¹ Specifically, the Court wrote: "Trudeau is ordered 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 (June 2, 2010) (DE372) at 13-14 ("Order To Pay") (emphasis added). The Court already held that the FTC has

¹ The Court found Trudeau in contempt the first time in 2004, after he disregarded the Court's order that Trudeau stop selling "Coral Calcium," a phony cancer cure. *See* Order (July 1, 2004) (DE55) at 2 ("Accordingly, the court finds that defendant Kevin Trudeau is in contempt of court[.]"); *see also* *FTC v. Trudeau*, 567 F. Supp.2d 1016, 1018 (N.D. Ill. 2007) ("Despite the prohibition in the 2003 stipulated permanent injunction against false claims concerning coral calcium, Mr. Trudeau continued to represent that this product cured cancer.").

“establish[ed] a *prima facie* showing of contempt.”² Order (DE535) (Dec. 6, 2012) at 2. Only Trudeau’s fatuous “inability to pay” defense remains.

A. The Proponent of an “Inability To Pay” Defense Has an Exceptionally Difficult Burden.

Significantly, because the FTC has established a *prima facie* case, the burden “shifts to the defendant to demonstrate why he was unable to comply with the order.” *FTC v. Trudeau*, 567 F. Supp.2d 1016, 1020 (N.D. Ill. 2007); *see also SEC v. Custable*, No. 94 C 3755, 1999 WL 92260, *2 (N.D. Ill. Feb. 11, 1999) (*citing United States v. Rylander*, 460 U.S. 752, 757 (1983)). Only if the defendant satisfies the burden of production does the burden of persuasion shift back to the complainant, who then must prove that defendant actually has the ability to comply. *Id.* at *3 (citations omitted). To meet his burden, Trudeau must do more than simply assert an inability to pay.³ *See, e.g., In re Kademoglou*, 199 B.R. 35, 36 (N.D. Ill. 1996). Trudeau must credibly show a “complete inability” to pay by establishing “clearly, plainly, and unmistakably that compliance is impossible.” *In re Resource Tech. Corp.*, 624 F.3d 376, 387 (7th Cir. 2010) (*citing Marine Midland Bank*, 51 F.3d 5, 10 (2d Cir. 1995)) (emphasis added).

Furthermore, Trudeau’s evidence must demonstrate “categorically and in detail why” he cannot comply. Order (Dec. 6, 2012) (DE535) at 2. Notwithstanding Trudeau’s misplaced reliance on *Maggio v. Zeitz*, 333 U.S. 56 (1948),⁴ Trudeau’s burden to demonstrate

² A *prima facie* case exists because (1) the order sets forth an unambiguous command; (2) Trudeau violated that command; (3) his violation was significant, meaning he did not substantially comply with the order; and (4) he failed to take steps to reasonably and diligently comply with the order. *FTC v. Trudeau*, 579 F.3d 754, 763 (7th Cir. 2009). The Court rejected Trudeau’s arguments that his “eleventh hour” \$54,000 payment and his proposal to self-administer a “consumer remediation plan” were “reasonable and diligent” efforts to comply. *See* Order (DE535) (Dec. 6, 2012). These findings are law of the case. *See, e.g., Arizona v. California*, 460 U.S. 605, 618 n.8 (1983); *Moriarty v. Svec & Sons Funeral Home*, 429 F.3d 710, 722–23 (7th Cir. 2005).

³ Self-serving claims are particularly inadequate where, as here, the Court has found that the contemnor lacks any credibility. *See, e.g., Maggio v. Zeitz*, 333 U.S. 56, 76 (1948)) (noting that an alleged contemnor cannot rest on his “own denials which the court finds incredible in context”).

⁴ In his opening statement, Trudeau’s counsel asserted that, in *Maggio*, “the Supreme Court held as follows, quote, ‘The sole question is whether the bankrupt [alleged contemnor] is presently able to comply with the turn-over order previously made and accordingly whether he is

“categorically and in detail” why he cannot comply means that he must show that any purported “present” 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”); *United States v. Seetapun*, 750 F.2d 601, 605 (7th Cir. 1984) (holding that court committed clear error when it declined to hold defendant in contempt; court failed to analyze facts in accordance with contempt authority governing “those responsible for their own inability to comply with enforcement orders”) (citing *Bryan*, 339 U.S. at 330-32) (citation omitted).⁵ In short, an “inability to comply” defense is

disobeying the order,’ end of quote. And I want to emphasize the word ‘presently.’” PXA:1 at 23:6-11. This is not *Maggio*’s holding. *See generally Chadwick v. Janecka*, 12 F.3d 597, 609-12 (3rd Cir. 2002) (analyzing *Maggio* at length). In reality, counsel’s “quote” from *Maggio* is an internal quotation of a 1928 Third Circuit opinion that appears in one of “two lengthy footnotes” surveying “the relevant lower court authorities.” *Chadwick*, 12 F.3d at 610 n.12 (citing *Maggio*, 333 at 73-34 nn. 6 & 7). *Maggio* actually concerns not whether an alleged contemnor has a valid defense to contempt, but how long a court can continue to incarcerate someone it has already found in contempt. *See Maggio*, 333 U.S. at 76. To be precise, *Maggio* holds that, “[s]ince it is impossible to succeed in coercing that which is beyond a person’s power to perform, continued incarceration for civil contempt ‘depends upon the ability of the contemnor to comply with the court’s order.’” *In re Grand Jury Investigation*, 600 F.2d 420, 423 (3d Cir. 1979) (quoting *Maggio*, 333 U.S. at 76) (emphasis added). Therefore, under *Maggio*, if (hypothetically) Trudeau proved that he could not presently pay anything beyond the \$54,000 token payment he made already—and he has come nowhere close to proving this—then Trudeau still would not have established a defense to contempt (but the Court could not incarcerate him to coerce him to comply, or if a full, accurate accounting during Trudeau’s incarceration proves that he cannot pay anything further, then the Court could not continue to keep him incarcerated). “This understanding of *Maggio* . . . is correct.” *Chadwick*, 312 F.3d at 612 n.13.

⁵ *See also 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); *In re Power Recovery Sys., Inc.*, 950 F.2d 798, 803 (1st Cir. 1991) (“Granted, a party may defend contempt and failure to comply on the grounds that compliance was impossible; self-induced inability, however, does not meet the test.”); *Pesaplastic, 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 their subsequent inability to comply.”); *United States v. Lay*, 779 F.2d 319, 320 (6th Cir. 1985) (upholding contempt finding where defendant induced his purported inability to pay by divesting himself of assets); *SEC v. Douglas*, No. 3:82cv29, 2012 WL 3587203, at *8-*9 (N.D. Ohio Aug. 20, 2012) (rejecting self-induced inability to pay as a defense; “divesting oneself of assets that would otherwise have been available to satisfy a disgorgement order has routinely been condemned by the courts”); *SEC v. Goldfarb*, No. C 11-00938, 2012 WL 2343668, *6 (N.D. Cal. June 20, 2012) (finding inability to pay self-induced; “Instead of paying down money owed on the final judgment, defendant Goldfarb chose to continue to support his luxurious lifestyle.”).

unavailable to a defendant responsible for his own inability to comply. *See, e.g., Bryan*, 339 U.S. at 330-32; *Seetapun*, 750 F.2d at 605.

Finally, Trudeau must show that he has made in good faith “all reasonable efforts” to comply. *Chicago Truck Drivers*, 207 F.3d at 506; *In re Power Recovery Sys., Inc.*, 950 F.2d 798, 803 (1st Cir. 1991); *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999) (quotation omitted). Moreover, the “all reasonable efforts” standard is strictly construed. Even a showing of diligent and substantial efforts, without a showing of all reasonable efforts, is insufficient to rebut a *prima facie* showing of contempt. *Custable*, 1999 WL 92260 at *2. Suffice it to say, the burden facing someone attempting to assert an “inability to pay” contempt defense is a “difficult” one. *Dystar Corp. v. Canto*, 1 F. Supp. 2d 48, 55 (D. Mass. 1997); *see also Custable*, 1999 WL 92260 at *2 (alleged contemnor failed to meet his burden of showing “categorically and in detail” why he could not comply).

B. Trudeau Has Not Established an Inability To Pay.

For many reasons, the case Trudeau presented is grossly insufficient. In particular: (1) Trudeau offered no evidence demonstrating that he does not control numerous entities through various nominees; (2) he cannot satisfy his burden through incomplete financial records drawn from a self-selected subset of the entities he controls; (3) Trudeau does not explain where missing corporate and personal assets have gone; and (4) his previously-undisclosed, post-hearing “expert report” is inadmissible and, in any event, does not prove inability to pay.

1. Trudeau Offered No Evidence Demonstrating That He Does Not Control Numerous Entities Through Various Nominees.

Trudeau did not produce a single piece of evidence rebutting the facts establishing that he controls entities through his wife.⁶ For instance, although Babenko nominally owns the various

⁶ Trudeau has attempted to portray Babenko as a “successful businesswomen,” *see Contempt Opp. (DE508)* (Sept. 25, 2012) at 5, but there is no evidence supporting this claim. Babenko refused to testify regarding her education and business experience, asserting that answering such questions might incriminate her. *See Proposed Finding of Fact (“FOF”) II.A.5.a.iv.* Lane testified that everything he knew about Babenko’s purported business expertise came from Trudeau, and Lane admitted that some of Trudeau’s claims about her education “might have been somewhat exaggerated.” *Id.* In fact, Trudeau married Babenko in 2008,

entities affiliated with the Global Information Network (“GIN”),⁷ FOF II.A.2, Lane testified that Trudeau controlled them, at least “in a layman’s sense,”⁸ FOF II.B.1.a. Trudeau himself asserted that answering dozens of questions related to his control over the GIN entities would incriminate him, FOF II.B.1.d, which gives rise to the inference that Trudeau controls them.⁹ Likewise, both Babenko and Trudeau associate Suneil Sant asserted the Fifth Amendment rather than answer questions regarding Trudeau’s control, *id.*, which also gives rise to the inference that Trudeau controls the GIN-related entities.¹⁰

shortly before the Court first ordered Trudeau to compensate his victims. FOF II.A.1. Babenko also “took the Fifth” when asked about how she met Trudeau. FOF II.A.1.

⁷ The seven entities affiliated with GIN include Global Information Network FDN (“GIN FDN”), GIN USA, KT Radio Network (“KTRN”), Website Solutions USA (“WSU”), Website Solutions Switzerland (“WSS”), NBT Trading (“NBT”), and APC Trading (“APC”), which ultimately owns the other six entities. FOF II.A.2. Technically, GIN FDN is a Nevis “Multiform Foundation” with no formal owner, but APC serves as the sole member of its “management board.” FOF II.A.2.b. Lane “intentionally recommended this structure for protection of the organization’s assets.” *Id.*

⁸ This is consistent with massive evidence regarding Trudeau’s control. Among other things, the FTC offered emails in which Trudeau instructed Lane to create GIN. FOF II.A.2. In another email, an attorney working for Lane described GIN as part of Trudeau’s “vision.” FOF II.B.2.a.i.1. Lane even testified that, with respect to various GIN-related entities, Trudeau was “front and center in the picture,” FOF II.B.1.b., that he “direct[ed] who would be running these corporations,” *id.*, and that he decided who their owners would be, *id.*, that he accepted Trudeau’s representation that he was authorized to receive the legal advice that Lane provided to various GIN-related entities, *id.*, and that he “understood all along that [Trudeau] really speaks for [these] entities,” FOF II.B.1.c. Furthermore, according to Lane, their bookkeeping “infrastructure” for the GIN-related entities was “generally under Mr. Trudeau’s direction,” and he communicated with Trudeau regarding GIN’s bank accounts. *Id.* Trudeau also was able to “access . . . cash” they held. *Id.* Remarkably, Lane advised Trudeau regarding how he could protect his intellectual property rights associated with GIN “in the event of a separation from Natasha,” but he never consulted with Babenko (whom Lane also represented) regarding how such a separation would affect her intellectual property rights associated with GIN. *Id.* This reflects Lane’s understanding that the GIN-related entities belonged to Trudeau even though Babenko nominally owned them. FOF II.B.1.

⁹ See, e.g., *Cent. States, S.E. & S.W. Areas Pension Fund v. Wintz Props., Inc.*, 155 F.3d 868, 872 (7th Cir. 1998) (“[I]nvoking the Fifth Amendment in a civil context invites an inference that the witness’ testimony would be adverse to his interests[.]”) (citing *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976)). Significantly, the inferences the FTC asks the Court to draw from the many Fifth Amendment assertions in this case are all inferences that other evidence strongly supports. For instance, as discussed above, there is overwhelming evidence that Trudeau controls the entities at issue (including, among many things, Lane’s testimony and Trudeau’s communications with Lane).

¹⁰ Both Trudeau’s wife and Suneil Sant, Trudeau’s “right hand man,” FOF II.A.5.b.iii.1, invoked the Fifth Amendment repeatedly during their depositions (Babenko’s deposition is

Babenko also refused to answer questions regarding Trudeau's control over three additional entities she nominally owns (which, again, gives rise to an inference).¹¹ FOF II.B.1.e.iv.1. The FTC offered additional compelling evidence that Trudeau controls Sovereign Trust, N.T. Trading S.A.,¹² and Advantage Solutions.¹³ FOF II.A.4.c; FOF II.B.2.d. Trudeau offered no contrary evidence.

Finally, Lane admitted that Trudeau controls KMT Fiduciary Trust ("KMT"), FOF II.A.4.a.iii.1, although Trudeau's parents and brother are its nominal beneficiaries. Lane characterized KMT as "an indispensable component of Trudeau's current asset protection plan," FOF II.A.4.a.iii.2, and Lane's asset protection-related emails refer to Trudeau as having "ultimate beneficial ownership" of KMT, *id.* Significantly, because Trudeau controls KMT, he also controls the numerous companies it owns directly or indirectly (Alliance Publishing, Direct Response Associates, K.T. Corporation, Natural Cures, Natural Cures Holdings, TRUCOM,

admissible under FRCP 32(a)(4)(B) and Sant's by consent). "Most of the courts that have imputed adverse Fifth Amendment inferences from one party to another have done so where there is a close family or business relationship between the person who exercised the Fifth Amendment right and the individual against whom an adverse inference is drawn." *State Farm Mut. Auto. Ins. Co. v. Abrams*, No. 96 C 6365, 2000 WL 574466 at *6 (N.D. Ill. May 11, 2000) (emphasis added). Babenko is the nominee owner of many companies Trudeau controls, *see supra* at 5-6, and receives a generous salary, FOF II.A.5.a.ii. Sant worked for Trudeau for seventeen years and companies Trudeau controls pay Sant's legal fees. FOF II.A.5.b.i. In fact, Trudeau stated that Sant was his "right hand man," and that others should "chat with [Sant] as if he were me." FOF II.A.5.b.iii.1. Accordingly, the adverse inferences drawn from Babenko's testimony, and Sant's testimony, are admissible against Trudeau.

¹¹ 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. FOF II.B.2.d.ii. Trudeau also "took the Fifth" with respect to Sovereign Trust. *Id.*

¹² Although Lane produced an organizational chart stating that N.T. Trading is "abandoned/not active," N.T. Trading executed a power of attorney in Trudeau's favor in 2008. FOF II.A.4.c.ii. In 2009, Lane warned Trudeau that this "would defeat the asset protection strategy," and suggested that he (Lane) should have the power revoked. *Id.* Trudeau instructed Lane not to have the power revoked "yet." *Id.*

¹³ Notably, Babenko executed an essentially unlimited general power of attorney on Lane's behalf, which, as a practical matter, meant that Lane could receive directions from Trudeau and then direct the operations of any entity Babenko owned, without either Lane or Trudeau needing Babenko's signature or approval. FOF II.A.5.a.vi.

Trudeau Approved Products, TruStar Marketing, TruStar Productions, and several others). FOF II.A.4.a.iii.3.

2. Trudeau Cannot Satisfy His Burden Through Incomplete Financial Records Drawn From a Self-Selected Subset of the Entities He Controls.

The small set of exhibits Trudeau introduced consists almost exclusively of incomplete financial records that do not include offshore entities that Trudeau controls through Babenko's nominal ownership. By way of example only:

- Global Information Network FDN ("GIN FDN"). GIN FDN maintains a Liechtenstein bank account from which Trudeau withdrew \$2 million to fund the court-ordered escrow, and from which he arranged to have his salary at Website Solutions Switzerland GmbH ("WSS") paid. FOF II.B.1.e.i.6. But the only information Trudeau offered regarding GIN FDN's assets are 2010 account statements from an Ohio bank. FOF V.D. Trudeau presented no evidence at all explaining the money coming from Liechtenstein. Additionally, Trudeau often wired Lane money from GIN FDN's United Kingdom account at National Westminster Bank, FOF II.B.1.e.i.8 ("Payment Detail: Trudeau/GIN"), but Trudeau offered no evidence at all explaining the money coming from National Westminster.
- APC Trading Limited ("APC"). APC is a Belize entity that directly or indirectly owns 100% of six other entities associated with GIN, is the sole member of GIN FDN's management board, and is wholly owned by Babenko. FOF II.A.2.d. Trudeau presented no evidence at all regarding APC.
- Sovereign Trust. Trudeau and Lane helped create this Cook Islands trust. FOF II.A.4.c.1. APC is the sole beneficiary. *Id.* Trudeau presented no evidence at all regarding Sovereign Trust.
- N.T. Trading S.A. Sovereign Trust owns this Panama corporation. Trudeau presented no evidence at all regarding N.T. Trading. FOF II.A.4.c.ii.
- NBT Trading Limited. This Hong Kong corporation owns Website Solutions USA ("WSU"). FOF II.A.2.g. Trudeau presented no evidence at all regarding NBT Trading.
- Advantage Solutions Ltd. Trudeau presented no evidence at all regarding this Seychelles corporation. FOF II.A.4.c.iii.
- Website Solutions Switzerland. Trudeau asked Lane to help create this Swiss company, which employs Trudeau. FOF II.A.2.f. Trudeau presented no evidence at all regarding WSS.

The limited evidence that Trudeau provided regarding other entities is also woefully incomplete. For instance, Trudeau offered bank statements from Isle of Man entity K.T.

Corp.,¹⁴ but no evidence explaining what physical assets it holds (and K.T. Corp. owns Trudeau's Ojai, California house, FOF II.B.1.e.ii.1.A). In short, Trudeau's extremely incomplete financial records do not establish "clearly, plainly and unmistakably" that he does not control assets that he could use to comply with the Order To Pay. *See Resource Tech.*, 624 F.3d at 387.

3. Trudeau Does Not Explain Where Significant Corporate and Personal Assets Have Gone.

Trudeau failed to meet his burden for yet another reason: he did not even attempt to explain what happened to specific corporate and personal assets that he can use to comply with the Order To Pay. Again, by way of example only, GIN USA's P&L statement reflects \$14 million in "net income" (*i.e.*, net profit) since January 1, 2010, FOF V.A, but Trudeau does not explain where this money went.¹⁵ The WSU P&L statement reflects \$486,000 in transfers to Trudeau (and \$523,000 to Babenko), FOF V.B, but Trudeau likewise does not explain where this money went. Trudeau also fails to explain dozens of substantial intercompany transfers, *see, e.g.*, FTCX 12-CC-2, some of which Lane documented through promissory notes (for instance, more than \$1 million transferred from GIN FDN to KTRN in 2012, *see* FOF V.C), and some of which appear on the P&L statements of GIN USA, KTRN, and WSU as "Due From" entries:

- GIN USA transferred more than \$7.5 million to Trudeau-controlled entities not associated with GIN, including approximately \$1 million to International Pool Tour ("IPT") (which Trudeau owns, FOF II.A.4.b.i), \$1.3 million to Trudeau Approved Products (ultimately owned by KMT, *see supra* at 6), and \$5.2 million to Natural Cures (also ultimately owned by KMT, *see id.*). FOF V.C.¹⁶

¹⁴ *See also* II.A.4.a.v (identifying KT Corp. as an Isle of Man entity).

¹⁵ KT Radio Network ("KTRN") and WSU report net losses, but these "losses" are misleading because KTRN and WSU transferred millions to other companies affiliated with Trudeau, to his attorneys, to Babenko, and to Trudeau himself. They also paid to support Trudeau's lifestyle. *See, e.g.*, FOF II.B.1.e.i.2 (KTRN statement showing, among other things, more than \$500,000 paid to rent the Oak Brook home); FOF V.C (WSU statement showing, among other things, \$7.7 million transferred to GIN FDN, \$486,000 to Trudeau, \$1.4 million to Trudeau-Approved Products Inc. by way of a "loan," *see* DX 19A, and \$869,000 attributed to "Kevin Trudeau-Legal"; the "due from" column reflects outgoing transfers, *see, e.g.*, www.investopedia.com/terms/d/due-from-account.asp).

¹⁶ The "due from" items on GIN USA's P&L statement also include \$2 million due from

- KTRN transferred \$4.9 million to Natural Cures and more than \$900,000 to IPT. *Id.*
- WSU transferred \$1.4 million to Trudeau Approved Products and more than \$600,000 to Natural Cures. *Id.*

It is possible, and perhaps even likely, that some of these accounting entities represent the same money moved multiple times (thereby obfuscating its origins), but that in no way lessens Trudeau's burden to explain where this money is now – a burden he entirely failed to meet.¹⁷

Notably, Trudeau also failed to explain what happened to the \$100,000 worth of gold bars he purchased in 2008 (which Neil Sant swapped for Scotia Bank gold bars in 2011). FOF II.A.5.b.iii.2. Additionally, between November 2011 and January 2012, Babenko and Trudeau purchased \$285,500 in casino chips (\$200,000 by Babenko and \$85,500 by Trudeau), and cashed out \$282,375 (\$124,000 by Babenko and \$158,375 by Trudeau). FOF III.E. None of Trudeau's evidence explains what happened to his money went. In fact, when asked about both the gold bars and his casino activities, Trudeau refused to respond because the answers could incriminate him.¹⁸ FOF II.A.5.b.iii.2.

Trudeau himself. FOF II.B.1.e.i.6. This reflects GIN USA's \$2 million "loan" to Trudeau, which he used to fund the Court-ordered escrow account. *Id.* The evidence shows that GIN USA received this \$2 million from WSU, which itself received the money from GIN FDN. *Id.*

¹⁷ There are also many unanswered questions about Natural Cures and its immediate parent, Natural Cures Holdings (both ultimately owned by KMT). In 2009, attorneys at Lane's firm noted that Natural Cures was "revenue generating," and had the "potential to be sold or taken public through an initial public offering." FOF V.G. Also in 2009, Lane wrote that Natural Cures "has one of the highest earnings of any of the companies in the group" of firms owned by Trudeau or KMT. *Id.* Trudeau introduced an April 2013 Natural Cures "weekly cashflow summary," which shows \$20.3 million in accounts receivable against only \$15.7 million in "bills due." *Id.* At least \$10 million of the "bills due" are amounts owed to GIN-related entities, and the exhibit provides no information regarding the receivables. *Id.* Natural Cures Holdings ("NCH") made \$557,171 in payments to the Lane firm after June 2, 2010, but Trudeau offers only two pieces of evidence regarding NCH: a Westlaw printout stating basic, non-financial information about the company, and a bank account statement showing that the company closed an account in 2011. FOF V.H. However, it continued to make payments to Lane's firm in 2012, *id.*, which illustrates that the financial information Trudeau provided regarding NCH's accounts is incomplete.

¹⁸ This entitles the FTC to an inference that Trudeau possesses these assets and could use them to comply with the Order To Pay. *See supra* at 5 n.9.

Finally, the extremely limited personal financial information that Trudeau did offer is useless. First, Trudeau submitted dubious tax returns that purportedly show his poverty. FOF III.B.8. These returns are neither credible nor consistent with Trudeau's lifestyle. Initially, at least \$6 million in federal and state tax liens have been filed against Trudeau, *id.*, strongly suggesting that he previously understated his income to authorities. Furthermore, Lane prepared the returns, 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. (Aug. 7, 2008) (DE157) at 9. Most important, Trudeau has a penchant for hiding wealth by creating nominal ownership in another's name. The tax returns do not disclose such assets, including those disguised as Babenko's, or as the property of an offshore trust.

Second, Trudeau relies on his preposterous "sworn" financial statement in which, among other things, he refuses to disclose asset transfers, he claims to hold only \$4,500 at three banks with "address[es] unknown" to him, and he denies knowing anything about his wife, including her street address, whether she owns vehicles, or what other assets she has. FOF IV.J. Trudeau even denies having any personal property other than \$2,000 worth of clothing – although he spent more than \$15,000 in one trip to a high-end men's clothier in Zurich only months before he filed the "sworn" statement. *Id.*

Simply put, Trudeau's limited and incomplete evidence is not credible and, even if it were, it fails to explain why he could not use his significant corporate and personal assets to comply with the Order To Pay. Trudeau has not explained where his corporate and personal assets went, and when asked, he claimed that responding would incriminate him. As such, Trudeau has utterly failed to prove "clearly, plainly, and unmistakably" that he could not have paid more than his token \$54,000 payment. *See Resource Tech. Corp.*, 624 F.3d at 387.

4. Trudeau's Post-Hearing "Expert Report" Is Inadmissible and, in Any Event, Does Not Prove Inability To Pay.

After the evidentiary hearing concluded, and without leave of Court, Trudeau filed a previously undisclosed "expert" opinion regarding the current financial condition of certain

domestic entities he owns or controls. Fundamentally, this document is inadmissible under FRCP 26 and FRE 701-05 because: the evidentiary hearing had concluded already; Trudeau never disclosed his purported expert pre-trial; the FTC did not have an opportunity to take expert discovery; the Court never qualified the author as an expert; and the document is an inadmissible report, not opinion testimony.

Notwithstanding its blatant inadmissibility, the opinion does not help Trudeau. First, the purported accountant (Mary O'Connor) only reviewed information related to Trudeau's domestic entities. PXA:2 at 1 n.1 ("We also sought accounting information from Global Information Network Foundation (GINF), a Nevis Foundation. Management of GINF declined our request."). Second, Ms. O'Connor based her opinions largely "upon the representations of [Michael] Dow," *id.* at 2, who serves as WSU's CFO, FOF III.L. Ms. O'Connor did nothing to verify any of the data Dow provided:

We assumed that the financial data upon which this opinion is truthful and we have accepted its integrity without further verification. This data and information is considered to be a management representation upon which we have relied to form our conclusions. This opinion should not be construed as an audit of the books and records of the subject companies[.]

PXA:1 at 2.¹⁹ Finally, Ms. O'Connor discusses the amounts "due to and from Mr. and Mrs. Trudeau," and states that "[t]he net amount due from them is \$3,650,723." *Id.* at 4. This number is almost certainly wrong (and much too low),²⁰ but even if one suspended disbelief and credited the number, the fact that Trudeau and Babenko have received (net) \$3.6 million from a subset of Trudeau's companies is not evidence supporting Trudeau's position that his \$54,000 token payment was all that he could pay.

¹⁹ According to Ms. O'Connor, Natural Cures "was sold at the end of 2012," although Dow "was unable to provide any information related to the purchase or the buyer." PXA:2 at 4. Trudeau does not explain how, if the company "was sold at the end of 2012," he managed to provide (incomplete) financial information regarding Natural Cures, including a "weekly cash flow summary" dated April 2013. See FOF V.F.

²⁰ The \$3.6 million number simply summarizes the selected information that Dow provided Ms. O'Connor. Without an audit, there is no way to know whether any of the information is accurate. And, again, the information Dow provided covers only certain domestic entities despite the fact that Trudeau repeatedly urged his subordinates to move assets overseas. FOF III.D.

C. Under *Rylander*, Trudeau Cannot Satisfy His Burden by Refusing To Testify Because His Testimony Would Incriminate Him.

At trial, Trudeau did not call any witnesses or testify on his own behalf. Instead, he refused to testify on the grounds that his testimony in response to 382 different questions would incriminate him. Trudeau cannot meet his burden with such a showing. *Rylander*, 460 U.S. at 758-62 (assertion of Fifth Amendment privilege in contempt proceeding is no substitute for proving inability to comply with court order); *see also Maggio*, 333 U.S. at 76 (“Of course, if he offers no evidence as to his inability to comply with the turnover order, or stands mute, he does not meet the issue.”). For this reason as well, Trudeau failed to meet his burden.

III. The FTC Presented Compelling Evidence That Trudeau Controls Significant Assets, Has Dissipated Millions, and Has Hidden Assets.

Notwithstanding Trudeau’s complete failure to satisfy his burden, the FTC offered extensive evidence that: (1) Trudeau controlled significant assets (both directly and through various entities) after the Court’s Order To Pay, and continues to do so; (2) Trudeau dissipated at least \$12 million since the Order To Pay, meaning that any supposed “poverty” is self-created; and (3) Trudeau is fundamentally dishonest and, indeed, engaged in a calculated “asset protection” effort designed to hide assets from the FTC.

A. Trudeau Controlled Assets After the Court’s Order To Pay, and He Continues to Control Assets.

Given GIN USA’s \$14 million in net profit, the money Trudeau siphoned from his various companies, his continued lavish spending, his gold bars, and his casino activities, Trudeau plainly has an ability to pay vastly more than his \$54,000 token payment. *See supra* at 8-10; *infra* at 13. Trudeau also refused to answer dozens of questions related to both assets he has controlled since the Court’s Order To Pay and assets he currently controls because the answers might incriminate him. This entitles the FTC to an inference that Trudeau controlled assets after the Order To Pay and continues to control assets. *See supra* at 5 n.9.

B. Trudeau Dissipated At Least \$12 million Since the Order To Pay, Meaning That Any Supposed “Poverty” Is Self-Created.

Trudeau spent at least \$12 million since the Court’s June 2, 2010 Order To Pay and March of this year: \$5.05 million paid to Lane’s firm, FOF IV.E.1, \$1.73 million paid to Winston & Strawn, *id.*, \$2 million paid to fund the escrow account so that Trudeau could resume broadcasting infomercials, *see supra* at 8 n.16, and \$3.28 million in Diner’s Club and American Express payments, FOF IV.B.1.²¹ In addition to first-class flights and expensive hotels (the Ritz Carlton, the Four Seasons), *id.*, 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), *id.*; gym memberships (L.A. Boxing Club), *id.* salons (Vidal Sassoon), *id.*, and—one week after this Court ordered him to pay the \$37 million judgment—\$4,327.00 for draperies, *id.*

The credit card charges also include tens of thousands of dollars Trudeau spent to appoint his new Swiss residence with luxury goods. FOF IV.D (more than \$58,000 spent at a Zurich furniture store); *id.* (more than \$53,000 spent at another Zurich furniture store); *id.* (more than \$35,000 spent on floor coverings in Zurich). When asked about charges for things ranging from groceries to internet dating, both Trudeau and Babenko invoked their Fifth Amendment privilege against self-incrimination. FOF IV.B.4. These invocations entitle the FTC to an inference that Trudeau could have used those funds to comply with the Order To Pay. *Supra* at 5 nn. 9-10. As discussed above, *supra* at 2-3 and n.5, an “inability to comply” defense is unavailable to someone who is responsible for his own inability to comply, *see, e.g., Bryan*, 339 U.S. at 330-32; *Seetapun*, 750 F.2d at 605. Accordingly, because Trudeau has dissipated at least \$12 million since the Court ordered him to compensate his victims, his “inability to pay” contempt defense fails.

²¹ WSU paid a substantial portion of the credit card charges that Trudeau incurred after the Order To Pay. FOF IV.B.4. Additionally, both Trudeau and Babenko “took the Fifth” when asked whether companies Babenko owned paid all of the charges Trudeau incurred after the Order To Pay, *id.*, entitling the FTC to an inference that the money used to pay Trudeau’s credit card bills could have been used to comply with the Court’s Order To Pay. *See supra* at 5 nn. 9-10.

C. Trudeau is Dishonest and Engaged in a Calculated “Asset Protection” Effort Designed To Hide Assets From the FTC.

The FTC introduced communications from asset protection specialist Marc Lane²² advising Trudeau how to keep his assets “protected” from the FTC:

- Lane advised Trudeau that International Pool Tour (“IPT”) “is subject to the claims for your creditors, including the FTC. For that reason, you should maintain only minimal cash (or other assets) in IPT or any company you own.” FOF III.B.2 (emphasis added). Lane continued: “It may make sense for me to assume a greater role in cash management,” in part “to maximize such asset-protection opportunities[.]” *Id.*
- Lane advised Trudeau “that Trustar Marketing, and not Trudeau Management, own the domain name registration and other intellectual property relating to the [KTRN] radio show,” because “[y]ou own Trudeau Management directly and, as such, all of its assets are subject to the FTC’s claim.” FOF III.B.3.
- Lane advised Trudeau to “stay away from Asia Trust Limited,” because, in other cases, Asia Trust Limited had “caved in” and “turned over . . . assets . . . to the FTC[.]” FOF III.B.4.
- Lane advised Trudeau regarding “opening a bank account in a country which has been identified as not enforcing judgments, and particularly U.S. judgments[.]” FOF III.B.5.
- Lane advised Trudeau that having the Global Information Network (“GIN”) fund the court-ordered \$2 million bond was “an excellent idea,” although “securing a bond and keeping it beyond the FTC’s reach will require careful planning.” FOF III.B.7 (emphasis added).

These emails show that, with Lane’s help, Trudeau engaged in an elaborate scheme to hide his assets from the FTC (and, ultimately, his victims).

Moving assets offshore is key part of Trudeau’s plan. In fact, Trudeau has long believed that hiding assets offshore will protect them from the FTC. In a 2007 email entitled “Asset Protection Planning,” Lane wrote: “I know that Kevin credits the offshore structure for the relatively favorable settlement to which the FTC previously agreed.” FOF II.B.6. As the litigation to recover money for consumers moved forward, Trudeau repeatedly instructed his associates to move assets and business operations offshore as much as possible. FOF II.D (“[Y]ou need to take the lead on getting the gin website on servers outside the USA. . . .

²² See FOF III.B (composite exhibit including web page from Lane’s website touting his firm’s “asset protection planning” capabilities).

[A]nyplace is better than usa[.]”); *id.* (“GIN needs a Swiss bank account in Swiss francs[.]”); *id.* (Dec. 11, 2012) (“All GIN dues will go to GIN non USA accounts.”); *id.* (“kt Australia account needs to be activated and debit card sent . . . asap”); *id.* (“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!!!!!!!!!!!!!!”) (Trudeau’s ellipses).

The fact that Trudeau has stashed money offshore to subsidize his lavish lifestyle will not surprise the Court, which noted five years ago that “Trudeau is a very creative person who is likely to maintain the lifestyle to which he has become accustomed.” *FTC v. Trudeau*, 572 F.Supp.2d 919, 925 (N.D. Ill. 2008). Indeed, Trudeau’s efforts to hide assets are consistent with his conduct for the past fifteen years: Trudeau is not someone who can be trusted. *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.”). His efforts to hide money are merely another illustration of his underhanded tactics and deceitful maneuvers. Most importantly here, no one would go such great lengths to “protect” assets that he doesn’t have. Accordingly, the Trudeau-Lane “asset protection” planning gives rise to a powerful inference that Trudeau has assets to protect.

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

A. The Court’s Order To Pay Is Enforceable Through Execution or Contempt.

This Court has the inherent power to enforce its Order To Pay the \$37.6 million contempt sanction 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).²³ As the Court explained on June 27, its Order To Pay “has a different character” than a routine money judgment:

²³ The Seventh Circuit and other circuits have repeatedly held that analogous orders to

This really isn't a judgment. This is a contempt order. This is an order to pay. So when you talk about citations and all the rest of it, wage deductions and all that, it doesn't really apply here. This is an order to pay. And that's the order that has been violated, because [Trudeau] hasn't paid, and that's the order that the FTC is seeking to enforce by a coercive remedy.

So I think we've lost sight of that. We're looking at this as some sort of judgment creditor, because that's the way we usually look at obligations that are court ordered. But it has a different character. And there is actually law that we've dug up recently that addresses the difference, and that probably explains why there hasn't been a citation or wage deduction or anything else in this case.

PXA:1, Tr. 165:15-166:3.

Consistent with this analysis, FRCP 69(a)(1) provides that “[a] money judgment is enforced by a writ of execution, unless the court directs otherwise.” (Emphasis added). This “otherwise clause”²⁴ allows courts to enforce judgments through other means (such as contempt) when “well-established principles so warrant.”²⁵ *Aetna Cas. v. Markarian*, 114 F.3d 346, 349 (1st Cir. 1997). Those principles include “action[s] to pay an obligation imposed by statute in order to enforce the public policies embodied in the statutory scheme.” *Id.* at 349 n.4 (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193-95 (1949)).²⁶ Here, the FTC is seeking 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*, 155 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*, 950 F.2d 1525, 1529-30 (11th Cir. 1992) (securities fraud disgorgement order enforceable by contempt).

²⁴ A few decisions refer to the “unless the court directs otherwise” as the “unless clause,” rather than the “otherwise clause.” In 2007, the Advisory Committee split Rule 69(a) into subsections (a)(1) and (1)(2), but the operative language, including the “otherwise clause,” remained the same.

²⁵ Other circumstances when “established principles so warrant” include when a judgment is against a state that refuses to appropriate funds through normal state law processes, *see, e.g., Gary W. v. Louisiana*, 622 F.2d 804, 806 (5th Cir. 1980), or when a statute authorizes the government to pursue another enforcement mechanism, *see, e.g., 26 U.S.C. 7402(a)* (allowing the government to enforce tax obligations through writs of *ne exeat*).

²⁶ *See also Trustees of the Chi. Truck Drivers Pension Fund v. Cent. Transport, Inc.*, No. 86 C 6224, 1990 WL 253616, at *1 (N.D. Ill. Dec. 17, 1990) (noting that, when the order is in the form of an injunction to “enforce[e] an important public policy,” Rule 69(a) allows enforcement through contempt); *Robbins v. Labar Transp. Corp.*, 599 F. Supp. 705, 708 (N.D. Ill. 1984) (explaining that if the judgment were only one for routine “money damages, plaintiffs would not be entitled to seek to enforce the judgment through invocation of the court’s contempt powers under Rule 69(a),” but further explaining that contempt was appropriate because the

enforce an order based on a serious violation of the nation’s most comprehensive consumer protection law, the FTC Act. When – as here – a court issues an order to pay that furthers “public policies embodied in [a] statutory scheme,” the order to pay necessarily directs that enforcement alternatives include contempt. *See Markarian*, 114 F.3d at 349 n.4.²⁷

Under FRCP 69(a)(1), the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001, *et seq.*, also presents an alternative means pursuant to which the FTC theoretically could execute against Trudeau’s assets. Specifically, FRCP 69(a)(1) provides that the procedure for enforcing a money judgment is governed by the law of the state where the court is located, “but a federal statute governs to the extent it applies.” The FDCPA is such a federal statute because it “provides the exclusive civil procedures for the United States to . . . recover a judgment on a debt,” 28 U.S.C. § 3001(a)(1), including federal agencies such as the FTC, *see e.g., FTC v. Nat’l Business Consultants, Inc.*, 376 F.3d 317, 320 (5th Cir. 2004).²⁸ Most important, the FDCPA does not “supersede or modify . . . the authority of a court . . . to exercise the power of contempt under any Federal law.” 28 U.S.C. § 3003(c)(8)(C) (emphasis added). Accordingly, the FDCPA explicitly does not lessen or alter the Court’s contempt power.

judgment at issue implicated “national labor policies”) (citing *Jacksonville Paper*, 336 U.S. at 194-95); *Goddard Sys., Inc. v. Tyson*, No. 07-5372, 2009 U.S. Dist. LEXIS 57811, at *4 (E.D. Pa. July 8, 2008) (“Rule 69 provides that ‘a money judgment is enforced by a writ of execution, unless the court directs otherwise....’ While we agree that the ordinary procedure is to proceed by writ of execution, we find that contempt is appropriate in this case.”) (enforcement of consent decree requiring payment) (court’s emphasis) (citations and alterations omitted) (mag. op.); *Motorola Credit Corp. v. Nokia Corp.*, 288 F. Supp. 2d 558, 561 (S.D.N.Y. 2003) (explaining that “Rule 69(a) does, however, include two qualifications to its dependence on the vagaries of state law,” one of which is the “otherwise clause,” which includes situations in which use of “the court’s contempt powers” is appropriate).

²⁷ In fact, appellate courts have twice reversed District Courts that have erroneously required an agency enforcing an order to use execution. *See Usery v. Fisher*, 565 F.2d 137, 140 (10th Cir. 1977) (“[W]e conclude the trial court erred in holding that the Secretary should resort to execution or garnishment, and [in] denying the petition for contempt because the Secretary failed to do so.”); *Hodgson v. Hotard*, 436 F.2d 1110, 1113 (5th Cir. 1971) (“The District Court’s refusal to hold Hotard in contempt rests on the erroneous assumption that a judgment entered pursuant to section 17 of the Fair Labor Standards Act is merely a money judgment, which under Florida law is enforceable only by levy or execution against Hotard’s property. The fallacy implicit in this assumption is its premise that no public right is involved.”).

²⁸ The FDCPA also “preempt[s] State law to the extent such law is inconsistent.” 28 U.S.C. § 3003(d).

B. Execution Against Assets Trudeau Controls Is Not a Feasible Means of Compensating His Victims.

Trudeau has carefully dispersed his assets among multiple entities, almost none of which he owns directly, and most of which he strategically placed overseas in asset protection havens.²⁹

For instance:

- Trudeau controls GIN FDN, which is organized in Nevis. FOF II.A.2.b. APC is the sole member of GIN FDN’s “management board.” *Id.*; FOF II.B.2.a.ii.
- APC is organized in Belize. FOF II.A.2.d. Trudeau controls APC, but Babenko nominally owns it. *Id.*; FOF II.B.2.a.
- WSS is organized in Switzerland. FOF II.A.2.f. Trudeau controls WSS, but APC owns it. *Id.*; FOF II.B.2.a.vi.
- NBT is organized in Hong Kong. FOF II.A.2.g. Trudeau controls NBT, but APC owns it. *Id.*; FOF II.B.2.a.vii.
- Sovereign Trust is organized in the Cook Islands. FOF II.A.4.c.i. Trudeau controls Sovereign Trust, although APC is the sole beneficiary. *Id.*; FOF II.B.2.d.
- N.T. Trading is organized in Panama. FOF II.A.4.c.ii. Trudeau controls N.T. Trading, although Sovereign Trust owns it. *Id.*; FOF II.B.2.d.
- KMT Fiduciary Trust is organized in Mauritius. FOF II.A.4.a.iii. Although Trudeau controls KMT, Trudeau’s parents and brother are nominal beneficiaries. FOF II.B.2.b.
- Advantage Solutions is organized in Seychelles. FOF II.A.4.c.iii. Trudeau controls Advantage Solutions, although Babenko nominally owns it. FOF II.B.2.d.

Despite evidence that Trudeau controls each of these offshore entities, *see supra* at 4-6, the FTC has no practical way to execute against their assets.

Trudeau does control various domestic entities, but repeatedly has instructed his associates to move cash offshore as quickly as possible. FOF III.D. In fact, Trudeau now contends that his domestic entities have no assets. Although this claim is dubious, if the FTC were to attempt to execute against, for instance, International Pool Tour (“IPT”), the effort would

²⁹ In fact, given Trudeau’s effort to hide assets, it is very likely that neither the FTC nor the Court has a complete picture of the companies Trudeau controls or the assets they hold.

not lead to any meaningful compensation for Trudeau's victims. Rather, Trudeau would aggressively litigate the execution attempt. The FTC would prevail, but by that time, Trudeau will have moved offshore any other asset that he still holds domestically. Even if the Court froze IPT's assets at the outset, the FTC only would obtain whatever recoverable assets IPT happened to hold at that time (and again, Trudeau urges that none of his domestic entities have any assets). Everything of significant value already is offshore, effectively outside the FTC's reach. Accordingly, traditional collections techniques are not a plausible means to defeat Trudeau's sophisticated asset protection planning. The only way to recover assets is to coerce Trudeau to provide them to the FTC.

C. Immediate Coercive Incarceration Is the Only Means of Compensating Trudeau's Victims.

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 in bringing about the result desired.'" *Custable*, 1999 WL 92260 at *2 (quoting *United Mine Workers*, 330 U.S. at 303-04). Here, the harm is significant: a total lack of recovery for Trudeau's 800,000 victims, and the open flaunting of the Court's authority. More important, no sanction other than coercive incarceration will "bring[] about the result desired."

As discussed above, any alternative that requires the FTC to use normal judgment collection processes is tantamount to permitting Trudeau to keep his ill-gotten monies.³⁰ Ordering Trudeau to cooperate with independent accountants is equally useless. Trudeau has demonstrated repeatedly that court orders without real sanctions are meaningless to him. His grossly inadequate "sworn" financial statement underscores that he will not provide accurate financial information even when the Court orders him to do so.³¹ In fact, as noted above, he

³⁰ It is self-evident that 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.

³¹ The fact that Trudeau will not comply with the Court's orders unless he is forced to do so is something the Court has recognized previously. *See FTC v. Trudeau*, 572 F. Supp.2d 919, 925 (N.D. Ill. 2008) ("Based upon the sorry history that Trudeau has had with the FTC and this court, the court has little confidence that he will faithfully and diligently comply with the 2004

even refused to provide his own asserted expert with access to GIN FDN's financial records. *See* PXA:2, Opinion of M. O'Connor at 1 n.1 (“We also sought accounting information from Global Information Network Foundation (GINF), a Nevis foundation. Management of GINF declined our request.”) (emphasis added). Furthermore, unless Trudeau is incarcerated, he will move any assets an accounting reveals, and consumers will be no closer to receiving compensation.

Notably, the absence of feasible alternatives explains why courts have incarcerated contemnors in very similar cases. *See, e.g., FTC v. Affordable Media*, 179 F.3d 1228, 1241-42 (9th Cir. 1999) (incarcerating contemnors Denyse and Michael Anderson until they repatriated offshore assets); *see also* FOF III.B.4 (email from Lane warning Trudeau to avoid a particular offshore trust company that “turned over the Andersons’ assets . . . to the FTC”). The FTC has presented correspondence detailing Trudeau’s “asset protection planning,” evidence demonstrating that Trudeau controls assets through his wife’s nominal ownership, emails from Trudeau ordering subordinates to move assets offshore, and Trudeau’s “credit[ing] the offshore structure for the relatively favorable settlement to which the FTC previously agreed [in 2004].” FOF III.B.6. In these circumstances — entirely of Trudeau’s own making — there is no alternative to incarceration. *See, e.g., Affordable Media*, 179 F.3d 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); *In re Lawrence*, 279 F.3d 1294, 1300 (11th Cir. 2002) (ordering contemnor who created an offshore trust incarcerated; contemnor had created an asset protection trust “in an obvious attempt to shelter his funds from an expected adverse arbitration award”).

Injunction unless forced to do so.”) (emphasis added).

V. **RELIEF**

Trudeau is a triple contemnor who will not comply with the Court's order that he compensate his victims unless the Court forces him. Accordingly, the FTC asks the Court to incarcerate Trudeau immediately 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 that he controls. With respect to the accounting, the FTC further asks that the Court order the FTC to nominate an appropriately qualified independent accounting firm, that Trudeau pay to engage that firm, and that Trudeau, as well as all the companies he controls, cooperate fully with the firm (including any requests for information it makes).³²

Dated: July 15, 2013

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³² Upon entry of an appropriate order, the FTC will be prepared to nominate promptly an appropriately qualified independent accounting firm, so that the accounting can commence as soon as Trudeau begins cooperating with the accountants.

CERTIFICATE OF SERVICE

I, Jonathan Cohen, hereby certify that on July 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:

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