

**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**

TABLE OF CONTENTS

TABLE OF AUTHORITIESiv.....

I. INTRODUCTION1.....

II. TRUDEAU’S “INABILITY TO PAY” DEFENSE FAILS.1

IV.	INCARCERATION IS THE ONLYWAY TO COERCE TRUDEAU TO COMPLY WITH THE COURT'S ORDER TO PAY	15
A	The Court's Order To Pay is Enforceable Through Execution or Contempt	15
B.	Executing Against Assets Trudeau Controls is Not a Feasible Means of Compensating His Victims	18
C.	Immediate Coercive Incarceration Is the Only Means of Compensating Trudeau's Victims.....	19
V.	RELIEF	1.....2

TABLE OF AUTHORITIES

Published Cases

Aetna Casualty Co. v. Markarian 114 F.3d 346 (1st Cir. 1997) 16-17

Arizona v. California 460 U.S. 605 (1983)..... 2

Baxter v. Palmigiano 425 U.S. 308 (1976)..... 5

Central States Fund v. Wintz Properties, Inc. 155 F.3d 868 (7th Cir. 1998) 5, 16

CFTC v. Wellington Precious Metals 950 F.2d 1525 (11th Cir. 1992) 16

Chadwick v. Janecek 412 F.3d 597 (3rd Cir. 2002) 3

Chicago Truck Drivers Union v. Brotherhood Labor Lease 207 F.3d 500 (8th Cir. 2000).... 3-4

Dystar Corp. v. Cantor 1 F. Supp. 2d 48 (D. Mass. 1997) 4

FTC v. Affordable Media, LLC 179 F.3d 1228 (9th Cir. 1999) 4, 20

FTC v. National Business Consultants, Inc. 376 F.3d 317 (5th Cir. 2004) 17

FTC v. Trudeau 567 F. Supp.2d 1016 (N.D. Ill. 2007) 1-2

FTC v. Trudeau 572 F.Supp.2d 919 (N.D. Ill. 2008) 15, 20

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

FTC v. Trudeau 708 F. Supp.2d 711 (N.D. Ill. 2010) 15

Gary W. v. Louisiana 622 F.2d 804 (5th Cir. 1980) 16

Grand Jury Investigation 600 F.2d 420 (3d Cir. 1979) 3

Huber v. Marine Midland Bank 151 F.3d 5 (2d Cir. 1995) 2, 16

In re Kademoglou 199 B.R. 35 (N.D. Ill. 1996) 2

In re Lawrence 279 F.3d 1294 (11th Cir. 2002) 20

In re Resource Tech. Corp. 624 F.3d 376 (7th Cir. 2010)..... 2, 8, 10, 16

In re Power Recovery Systems, Inc. 950 F.2d 798 (1st Cir. 1991) 3-4

Jones v. Lincoln Electric Corp. 188 F.3d 709 (7th Cir. 1999) 15

Maggio v. Zeitz 333 U.S. 56 (1948)..... 2-3, 12

McComb v. Jacksonville Paper Co. 336 U.S. 187 (1949) 16-17

Moriarty v. Svec & Sons Funeral Home, 429 F.3d 710 (7th Cir. 2005)..... 2

Robbins v. Labar Transportation Corp., 599 F. Supp. 705 (N.D. Ill. 1984) 17

SEC v. Custable, No. 94 C 3755, 1999 WL 92260 (N.D. Ill. Feb. 11, 1984)..... 2, 4, 19

Shillitani v. United States, 384 U.S. 364 (1966) 15

State Farm Mutual Automobile Insurance Co. v. Abrams, No. 96 C 6365,
2000 WL 57466 (N.D. Ill. May 11, 2000) (1966) 6

Trustees of the Chicago Truck Drivers Local Union v. SEC v .

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 will likely 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 his 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 Weightloss 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 facieshowing of contempt.” 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.” *Trudeau*, 567 F. Supp.2d 1016, 1020 (N.D. Ill. 2007). See also *SEC v. Custard*, No. 94 C 3755, 1999 WL 92260, *2 (N.D. Ill. Feb. 11, 1999) (quoting *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 the defendant actually has the ability to comply. 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

“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. Janecek*, 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 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*

unavailable to a defendant responsible for his own inability to comply. See, e.g. Bryan, 339 U.S. at 330-32;

Babenko also refused to answer questions regarding Trudeau's control over three additional entities she nominally owns (which, again, gives rise to an inference¹¹) FOF II.B.1.e.iv.1. The FTC offered additional competent evidence that Trudeau controls Sovereign Trust, N.T. Trading S.A.¹², and Advantage Solution¹³. FOF II.A.4.c; FOF II.B.2.d. Trudeau offered no contrary evidence.

Finally, Lane admitted that Trudeau cont

Trudeau Approved Products, TruSM Marketing, TruStar Production, 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

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

f KTRN transferred \$4.9 million to Natural Cures and more than \$900,000 to IPT. Id.

f WSU transferred \$1.4 million to Trudeau Approved Products and more than \$600,000 to Natural Cures.

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

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, strongly suggesting that he previously underreported 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 "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 Blake'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 menswear clothier in Zurich only months before he filed the "sworn" statement.

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

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, \$2 million paid to fund the escrow account so that Trudeau could resume broadcasting infomercials²¹ at 8 n.16, and \$3.28 million in Diner’s Club and American Express payments, FOF IV.B.1. 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); gym memberships (L.A. Boxing Club); salons (Vidal Sassoon); and—one week after this Court ordered him to pay the \$37 million judgment—\$4,327.00 for draperies.

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); (more than \$53,000 spent at another Zurich furniture store); (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 at 5 nn. 9-10. As discussed above 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 for the charges Trudeau incurred after the Order To Pay, 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 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:

- f* 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.
- f* Lane advised Trudeau “that Trustar Media, 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.
- f* Lane advised Trudeau to “stay away from Asia Trust Limited,” because, in other cases, Asia Trust Limited had “caved and “turned over . . . assets . . . to the FTC[.]” FOF III.B.4.
- f* Lane advised Trudeau regarding “openi

This really isn't a judgment. This is ~~an~~ contempt order. This is an order to pay. So when you talk about citations and ~~the~~ rest of it, wage deductions and all that, it doesn't really apply ~~to~~ ~~he~~. This is an order to ~~pay~~ ~~pa~~ And that's the order that

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.27.

Under FRCP 69(a)(1), the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001, 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.*, 676 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*

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:

- f* 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," FOF II.B.2.a.ii.
- f* APC is organized in Belize. FOF II.A.2.d. Trudeau controls APC, but Babenko nominally owns it. Id.; FOF II.B.2.a.
- f* WSS is organized in Switzerland. FOF II.A.2.f. Trudeau controls WSS, but APC owns it. Id.; FOF II.B.2.a.vi.
- f* 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.
- f* Sovereign Trust is organized in the Cook Islands. FOF II.A.4.c.i. Trudeau controls Sovereign Trust, although APC is the sole beneficiary. FOF II.B.2.d.
- f* 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.
- f* 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.
- f* 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 not assets. Although this claim is dubious, if the FTC were to attempt to execute against, for instance, the International Pool Tour ("IPT"), the effort would

²⁹ In fact, given Trudeau's efforts 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

even refused to provide his own asserted explicit 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 Nevada foundation. Management of GINF declined our request.") (emphasis added). Furthermore, unless Trudeau is incarcerated, he will move any assets an accounting reveals, and consumers are 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 Dennis 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 Andersons' assets . . . to the FTC"). The FTC has presented correspondence regarding 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);

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

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: