

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

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

Pursuant to the All Writs Act, 18 U.S.C. § 1651, and the Court's inherent power, the FTC moves the Court to issue a writ *ne exeat* and order Trudeau to surrender his passports until the Court resolves the pending contempt motion.¹ The Court has already found that the FTC has "establish[ed] a *prima facie* showing of contempt," Order (Dec. 6, 2012) (DE535) at 2, leaving only Trudeau's "inability to pay" defense at issue. To establish this defense, Trudeau has the burden to show "a complete inability to pay," and "clearly, plainly, and unmistakably that compliance is impossible." *In re Resource Tech.*, 624 F.3d 376, 387 (7th Cir. 2010). The negligible evidence Trudeau offered on May 21 comes nowhere close to satisfying his burden, whereas the FTC's substantial proof shows that Trudeau controls significant assets that he could use to comply with the Court's Order to pay. In fact, as the Court noted on May 21, the FTC's evidence "clearly prove[s]" that "Mr. Lane and MrcTw[(r.002 Tutto saw(gnifbeyo Tw[(1re 18 U.S.63TT2 1 Tf2

keep him within the Court's jurisdiction. Because providing notice would defeat the Court's ability to retain the power to enforce its orders, the FTC must move *ex parte*.³

II. BACKGROUND

A. The Substantial Evidence That Trudeau Is Concealing Assets

Although the FTC has not completed its case, the Court observed that the evidence presented thus far demonstrates an “elaborate scheme . . . to put [Trudeau's] assets beyond the reach of the FTC[.]” PXA:1, Tr. at 123:12-18. By way of example only, this evidence includes communications from asset protection specialist Marc Lane⁴ 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.” PXA:2 (FTCX 12:D)⁵ (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.” PXA:3 (FTCX 12:G).
- 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[.]” PXA:4 (FTCX 12:H).
- Lane advised Trudeau regarding “opening a bank account in a country which has been identified as not enforcing judgments, and particularly U.S. judgments[.]” PXA:5 at 685 (FTCX 20:J).

³ If the Court converts this motion into a “noticed TRO” and allows Trudeau an opportunity to respond orally on June 26 before the Court enters any order requiring him to remain within the United States, the FTC will be prepared to serve Trudeau with this filing in Court at that time, or otherwise in accordance with the Court's instructions. The FTC asks that the Court not order this filing disclosed earlier, however, because notifying Trudeau prior to his arrival on June 26 would defeat the purpose of this motion. Likewise, the FTC asks that the Court not serve Trudeau with any order until he appears in Court on June 26.

⁴ See PXA:7 (FTCX 12O) (composite exhibit including web page from Lane's website touting his firm's “asset protection planning” capabilities).

⁵ We abbreviate citations to the FTC's exhibits and attachments as “PX_:.” The subsequent parenthetical refers to the identification the parties gave to the document for the ongoing hearing (FTC Exhibit (“FTCX”)) or (Defendant's Exhibit (“DX”)).

- NBT Trading Limited. This Hong Kong corporation owns Website Solutions USA (“WSU”). *Id.* Trudeau presented no evidence at all regarding NBT Trading.
- Advantage Solutions Ltd. Trudeau presented no evidence at all regarding this Seychelles corporation. *Id.*
- Website Solutions Switzerland. Trudeau asked Lane to help create this Swiss company, PXA:19 (FTCX 12I), which employs Trudeau, PXA:20 at 12 (DX 25). 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.,⁹ PXA:21 (DX 9A-C), but no evidence explaining what physical assets it holds (and K.T. Corp. owns Trudeau’s Ojai, California house, PXA:22 at 5 (FTCX22)).¹⁰ Trudeau offers GIN USA’s P&L statement, which reflects \$14 million in “net income” (*i.e.*, net profit) since January 1, 2010, PXA:23 (DX 5A), but produces no evidence explaining where this money went.¹¹

Finally, none of Trudeau’s evidence explains his extraordinary spending. He relies solely on his preposterous “sworn” financial statement in which, among other things, he refuses to disclose asset transfers, PXA:20 at 8 (DX 25), he claims to hold only \$4500 at three banks with “address[es] unknown” to him, *id.* at 4, and he denies knowing anything about his wife, including her street address, whether she owns vehicles, or what other assets she has.

Trudeau even denies having any personal property other than \$2000 worth of clothing, *id.* at 6 – 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, PXA:34 (FTCX 90 at 103).

More broadly, Trudeau has not offered documents or testimony establishing that his millions in credit card expenses are all business expenses. *See* PXA:29 (FTCX 6A-J). Nor does any of Trudeau’s evidence explain what happened to the \$100,000 worth of gold bars he purchased in 2008 (which Trudeau’s “right hand man”¹² Neil Sant swapped for Scotia Bank gold bars in 2011). PXA:30 (FTCX 19). Furthermore, none of Trudeau’s evidence explains how he can afford a personal “Executive Project Manager.” *See* PXA:31 at 80:6-14 (FTCX11); PXA:32 (FTCX 11:Z); PXA:33 at 58:24-59:23 (FTCX14).¹³ Finally, none of his evidence addresses how companies he controls – and companies he indisputably owns – have paid more than \$6.7 million in legal expenses since June 2, 2010.¹⁴ PXA:35 (FTCX 18D-E).

C. Trudeau Has Moved His Assets (and Himself) Offshore

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.” PXA:36 (FTCX 20Y). Apparently, Trudeau also believed that, to minimize the risk that the Court might impair his ability to travel abroad, he needed a second passport. Accordingly, in 2009, Trudeau engaged a law firm with a prominent immigration practice (Mintz Levin) to obtain an Italian passport. PXA:37. Trudeau accelerated the process after the Court’s 2010 Order to pay and apparently received an Italian passport at some point in 2011. *See* PXA:38 (FTCX 1N) (Nov. 20, 2011) (Rivers Casino incident report in which casino security notes that

¹² *See* PXA:40 (FTCX 11:C) (“Neil is my right hand man. Please chat with him as if he were me.”).

¹³ In at least one instance, Trudeau paid to fly his personal assistant (Brandy Burkhardt) from Zurich to Chicago. *See* PXA:46 at 9.

¹⁴ Both Lane and Winston & Strawn took money from International Pool Tour (“IPT”), PXA:35 (FTCX 18D-E), which Trudeau owns, PXA:20 at 14 (DX 25). Notably, the \$6.7 million tally is almost certainly low, because it covers only June 2010 through early March 2013. *See* PXA:35 (FTCX 18D-E).

Trudeau presented an Italian passport); PXA:39 (Apr. 24, 2012) (FTCX 83) (email from Trudeau to Sant; “Neil . . . can you send me a pdf of my Italian passport please...”).¹⁵

With two passports and assets overseas, Trudeau moved to Switzerland last summer (shortly after the FTC filed the pending contempt motion). *See* PXA:41 (Aug. 3, 2012) (letter from Lane announcing move); Contempt Mtn. (July 13, 2012) (DE481). Trudeau now lives in Zurich at an expensive residence apparently appointed with Swiss luxury goods. *See, e.g.*, PXB:2 at 12:5-13:8; PXA:42 (FTCX 11:T) (Sept. 9, 2012) (“[Babenko] bought lots of stuff in Zurich for the house here....need to expense that to [WSS].”) (Trudeau’s ellipses); PXA:43 at 4 (FTCX 89 at 21) (more than \$58,000 spent at a Zurich furniture store); PXA:44 at 4 (FTCX 89 at 26) (more than \$53,000 spent at another Zurich furniture store); PXA:45 at 4 (FTCX 90 at 124) (more than \$35,000 spent on floor coverings in Zurich).

In fact, 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. *See e.g.*, PXA:47 at 3 (FTCX 12Q) (“[Y]ou need to take the lead on getting the gin website on servers outside the USA. . . . [A]nyplace is better than usa[.]”); PXA:48 (FTCX 20S) (“GIN needs a Swiss bank account in Swiss francs[.]”); PXA:49 (FTCX 11Y) (Dec. 11, 2012) (“All GIN dues will go to GIN non USA accounts.”); PXA:50 (FTCX 11M) (“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).

¹⁵The third party to this email exchange

III. ARGUMENT

Under Seventh Circuit authority, it is beyond dispute that the Court “has the power to temporarily seize the passports of judgment-debtors who are subject to a production of assets order.” *Bank of Am., N.A. v. Vuluchamy*, 643 F.3d 185, 187 (7th Cir. 2011); *see also Herbstein v. Bruetman*, 241 F.3d 586, 588 (7th Cir. 2001) (affirming order revoking contemnor’s passport; “As for the merits of Bruetman’s appeal: it is to laugh.”); *United States v. Shaheen*, 445 F.2d 6, 9-10 (7th Cir. 1971) (“The power of a district court to issue a writ *ne exeat republica*, though seldom exercised, is not questioned.”).¹⁶

Because “a *Writ of Ne Exeat Republica* is a form of injunctive relief that restrains the defendant from leaving the jurisdiction in order to compel feascance to the sovereign,” courts use the standard for preliminary injunctive relief to determine whether the writ should issue. *United States v. Mathewson*, No. 92-1054, 1993 WL 113434, *1 (S.D. Fla. Feb. 25, 1993). “[T]he standards for issuance of a TRO are the same as those that govern applications for preliminary injunction.” *Nomanbhoy Family Ltd. P’Ship v. McDonald’s Corp.*, 579 F. Supp.2d 1071, 1091 (N.D. Ill. 2008); *see also Zurich Am. Ins. Co. v. Sup. Ct. for Cal., Cty. of L.A.*, 200 F. Supp.2d 929, 933 (N.D. Ill. 2002) (“The standards I must apply when determining whether a TRO is appropriate are analogous to the standards applicable when determining whether preliminary injunctive relief is appropriate.”) (citation omitted).

Accordingly, the writ should issue because (1) there is a substantial likelihood that the FTC will prevail in this action, (2) allowing Trudeau to leave the Court’s jurisdiction will injure consumers irreparably, (3) the significant injury to consumers outweighs any limited impact on Trudeau, and (4) the public interest strongly supports enabling the Court to maintain the authority necessary to enforce Congressionally-mandated consumer protection policy. *See, e.g.*,

¹⁶ *See also Shaheen*, 445 F.2d at 11 (reversing denial of motion to quash writ *ne exeat* where there was no evidence “that the taxpayer’s departure will frustrate the collection of the amount due” or that the taxpayer had transferred assets overseas); *SEC v. Global Inv. Brokers, Ltd.*, 43 SEC Docket 960, 1989 WL 991360 (N.D. Ill. Mar. 31, 1989) (SEC Lit. Rel. 12052) (reporting TRO for alleged securities law violations required surrender of passport); *SEC v. Shiu*, 39 SEC Docket 238, 1987 WL 756661 (N.D. Ill. Sept. 11, 1987) (same).

Bontrager v. Ind. Family & Social Servs. Admin., 697 F.3d 604, 607-08 (7th Cir. 2012) (identifying the preliminary injunction standard); *United States v. NCR Corp.*, 688 F.3d 833, 838 (7th Cir. 2012) (same).

Furthermore, FRCP 65(b) allows for *ex parte* relief. The FTC proceeds *ex parte* because noticing this motion would make it extremely likely that Trudeau will flee to Switzerland, and consumers will not obtain relief unless the Court retains the power to enforce its orders – which, in this case, means retaining jurisdiction over Trudeau.¹⁷ In fact, *ex parte* relief is particularly appropriate “when it is the sole method of preserving a state of affairs in which the court can provide effective final relief.” *In re Vuitton et Fils S.A.*, 606 F.2d 1, 4 (2d Cir. 1979); *see also Riley v. Gooch*, No. 09–1019, 2009 WL 3401013, *1-*2 (D. Or. Oct. 21, 2009) (issuing *ex parte* “temporary restraining order *ne exeat*” to prevent a child’s “concealment or removal from the District” during the pendency of a child custody dispute). Accordingly, pursuant to FRCP 65(b)(1), the FTC requests a brief *ex parte* hearing today, and further asks (also pursuant to FRCP 65(b)(1)) that the Court not require it to serve Trudeau prior to the June 26 hearing in this matter (at which the Court ordered Trudeau to appear, Order (May 22, 2013) (DE675)). Advance service would “defeat the very purpose for the TRO.” *Cenergy Corp. v. Bryson Oil & Gas P.L.C.*, 657 F. Supp. 867, 870 (D. Nev. 1987).

¹⁷ Courts in this District regularly grant the FTC *ex parte* relief when necessary to protect consumers. *See, e.g., FTC v. Construct Data Publishers*

Despite his burden, Trudeau offers no evidence at all with respect to many entities at the heart of this litigation – including, among others, GIN FDN or WSS (Website Solutions’ Swiss affiliate). The evidence Trudeau provides with respect to other entities is grossly incomplete, and he introduced no evidence at all that would explain how someone who supposedly controls no assets could spend millions on lawyers and an extravagant lifestyle. Furthermore, Trudeau’s limited and incomplete evidence comes nowhere close to proving that any present inability to comply (if it exists) is not entirely of his own design.

the likelihood that the FTC will prevail is “better than negligible,” *see, e.g., Zurich Am.*, 200 F. Supp.2d at 934 (citation omitted), and, in fact, is almost certain.

2. Irreparable Injury To Consumers Is Likely if Trudeau Is Allowed To Leave the Court’s Jurisdiction.

Failure to grant the requested relief would irreparably injure consumers because the Court has no means to compel Trudeau to comply with its orders if he leaves the Court’s jurisdiction.

It is extremely unlikely that, at a future stage of these proceedings, Trudeau will submit to coercive incarceration voluntarily. First, ordering Trudeau to return from Zurich to “turn himself in” will not work given Trudeau’s demonstrated history of ignoring the Court’s orders:

- On January 12, 1998, the Court enjoined Trudeau from marketing various sham merchandise (“Eden’s Secret Nature Purifying Product,” the “Sable Hair Farming System,” “Kevin Trudeau’s Mega Memory System,” “Dr. Callahan’s Addiction Breaking System,” “Jeanie Eller’s Action Reading,” and “Howard Berg’s Mega Reading”), and further enjoined Trudeau from otherwise violating the FTC Act. *See* PXA:54 (FTCX 84), Stipulated Order, *FTC v. Trudeau*, No. 98-0168 (N.D. Ill.). Trudeau ignored this Order.
- On July 1, 2003, the Court enjoined Trudeau from selling “Coral Calcium,” a phony cancer cure. Order (July 1, 2003) (DE26) (entry of stipulated preliminary injunction). One year later, the Court found Trudeau in contempt because he continued to market Coral Calcium.²² *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.”).
- On September 2, 2004, the Court again enjoined Trudeau from marketing Coral Calcium, largely prohibited Trudeau from airing infomercials, and (again) otherwise enjoined Trudeau from violating the FTC Act. Stipulated Final Order (DE55). Three years later, the Court held Trudeau in contempt a second time for lying about his Weight Loss Cures book. *See* *Trudeau*, 567 F.

established a *prima facie* case that Trudeau is in contempt for1

Fifth, Trudeau invested time, effort, and expense to obtain an Italian passport. PXA:37-39. It is unlikely that anyone would need a second passport unless he fears losing the first one (and fears the consequences of being unable to travel internationally).

Sixth, Trudeau has good reason to suspect that he might lose his first (U.S.) passport. In 2010, after Trudeau arranged to bombard the Court with email, the Court ordered him to “remain[] in the Northern District of Illinois and surrender[] his passport” until the email issue could be resolved. Order (Feb. 11, 2010) (DE291) (emphasis added). The Court took this logical measure to secure its jurisdiction over Trudeau – and this was before the evidence showed that Trudeau had moved assets abroad, had established a Zurich home, and had obtained a second passport. In the current circumstance, Tr

(S.D. Fla. Jan. 9, 2009) (DE22) (directing Clerk of Court to maintain custody of defendant's passport); PXA:56, Orr, *SEC v. Pension Fund of Am. L.C.*, No. 05-20863 (S.D. Fla. Apr. 4, 2005) (DE24) (*ex parte* order that defendants are “not to leave the United States” and are “to surrender to the Clerk of the Court all passports they hold”); PXA:57, Order, *SEC v. Resource Dev. Int'l, LLC*, 3:02-cxv-0605, ¶ 9 (N.D. Tex. Mar. 25, 2002) (“It is necessary to order the surrender of passports to ensure that the specified defendants [do] not flee the jurisdiction of the court.”). Because the potential harm to consumers is substantial whereas the harm to Trudeau (if any) is slight, the “balance of harms” strongly favors the FTC.

4.

438–39 (1974)); *Carroll v. President of Princess Anne*, 393 U.S. 175, 180 (1968)). Proceeding *ex parte* is appropriate when “giving notice itself may defeat the very purpose for the TRO.” *Cenergy Corp.*, 657 F. Supp. at 870; *see also Am. Can. Co. v. Mansukhani*, 742 F.2d 314, 322 (7th Cir. 1984) (noting the “very narrow band of cases in which *ex parte* orders are proper because notice to the defendant would render fruitless the further prosecution of the action”) (citing *Vuitton*, 606 F.2d at 5). Trudeau has established a very comfortable home overseas and gone to great lengths to avoid complying with the Order to pay. Given his actions – including his demonstrated disregard for the Court’s orders – he will not return to attend any proceeding at which the Court is likely to incarcerate him (or be present within the Court’s jurisdiction at a time when the Court could order him incarcerated).²⁵ Likewise, Trudeau will not attend a proceeding (voluntarily) at which the Court may prevent his flight to Switzerland. Thus, because Trudeau is unlikely to appear if he learns that the FTC has moved to prevent him from traveling outside the Court’s jurisdiction, *ex parte* relief is necessary.²⁶

IV. CONCLUSION

The Court must protect its ability to enforce its orders and implement Congressionally-mandated consumer protection policy. Accordingly, pursuant to the All Writs Act, 18 U.S.C. § 1651, and the Court’s inherent power, the FTC asks the Court to issue a writ *ne exeat* and order Trudeau to surrender his passports until the Court resolves the pending contempt motion.

²⁵ Significantly, Trudeau asserted the Fifth Amendment in response to questions regarding his assets overseas and his instructions to associates to move operations abroad. Presumably, he will continue to refuse to testify about these facts. Thus, if Trudeau were to testify in support of the dubious proposition that he will return to the Court’s jurisdiction to be incarcerated, the FTC could not cross-examine him effectively. For this reason, Trudeau should not be permitted to offer such testimony. *See, e.g., United States v. Plescia*, 48 F.3d 1452, 1464 (7th Cir. 1995) (“The District Court may refuse to permit a witness to testify when that witness’ right against self-incrimination precludes effective cross-examination.”) (citing *United States v. Herrera-Medina*, 853 F.2d 564, 567–68 (7th Cir.1988)); *cf. United States v. Folami*, 236 F.3d 860, 863 (7th Cir. 2001) (“Defendants, of course, have a Fifth Amendment right not to testify in their cases, but they must live with the consequences of their decisions.”).

²⁶ As noted above, if the Court converts this motion into a “noticed TRO” pursuant to FRCP 65(b) and affords Trudeau the opportunity to respond orally on June 26 before the Court enters any order, the FTC asks that the Court not order the FTC to serve Trudeau before he appears. Advance notice would defeat the purpose of this motion. Additionally, the FTC asks that the Court not serve Trudeau with any order until he appears in Court on June 26.

Dated: June 24, 2013

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