

**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.)	
)	
)	

**FEDERAL TRADE COMMISSION’S MEMORANDUM IN SUPPORT OF ITS MOTION
FOR APPROVAL OF PARTIAL VICTIM REDRESS PLAN**

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I. INTRODUCTION

Beginning in late 2006, career contemnor Kevin Trudeau blasted the airwaves more than 32,000 times with an infomercial selling his *Weight Loss Cures* book. According to Trudeau, the book revealed an easy weight-loss program that dieters could follow at home and that, once completed, would allow them to eat whatever they want without regaining weight. More than 820,000 consumers bought *Weight Loss Cures*, only to learn that the diet involved a 500-calorie-a-day diet, off-label injections of a fertility drug rumored to cause weight loss, frequent colonics, and extraordinary, lifelong restrictions on what food the dieter could eat.¹ Nearly eight years ago, based on his grossly deceptive marketing of *Weight Loss Cures*, this Court found Trudeau in contempt and ordered that he refund his victims.

Instead, Trudeau embarked on a campaign of massive resistance. He proclaimed that he would “never” comply, *see* PXA:1 at 2 (“I’m never going to pay”), he exhausted his legal options, implemented illegal ones (such as offshore “asset protection”), and ultimately declared himself “penniless” and unable to comply, PXA:2 at 1. Thanks to the Court-appointed Receiver’s efforts, however, the estate of “penniless” Trudeau is worth at least \$8 million (with tens of millions still unaccounted for). The FTC proposes to begin redress with this \$8 million.

As outlined below, the FTC’s plan to begin refunding victims meets the highest standards for consumer redress. Specifically, the plan involves: (1) reasonable efforts to locate consumers; (2) phased distribution designed to maximize the recovery of consumers whom the FTC can locate; and (3) engaging, consumer-friendly communications using plain language to explain the process. Consumer communications and redress are core areas of FTC expertise, and this motion attaches supporting declarations from the FTC’s proposed redress administrator as well as an FTC consumer communication expert. Because the plan is a reasonable way to begin redress, we ask the Court to approve it.

¹ Unless otherwise noted, key facts regarding *Weight Loss Cures* are drawn from this Court’s original decision. *See FTC v. Trudeau*, 567 F. Supp.2d 1016, 1017-20 (N.D. Ill. 2007).

II. BACKGROUND

A. Key Procedural History

Trudeau's sordid history with consumers and courts began in the 1990s. *See FTC v. Trudeau*, 579 F.3d 754, 757 (7th Cir. 2009). This case, however, began in 2003, when Trudeau began selling "Coral Calcium" (which supposedly cured cancer) and "Biotape," which allegedly alleviated severe pain. *See id.* After the Court held Trudeau violated its order enjoining him from claiming that Coral Calcium cured cancer (First Contempt),² the Court banned him from all infomercials except those marketing books, and further provided that "the infomercial for any such book . . . must not misrepresent the content of the book."³ As noted above, the Court found that infomercials selling *Weight Loss Cures* violated this restraint (Second Contempt), *see Trudeau*, 567 F. Supp.2d 1016 (N.D. Ill. 2007), and further ordered that he refund his victims. The litigation continued through two appeals and various related proceedings, but Trudeau exhausted his (legal) means to avoid the Court's redress order by 2012.⁴

However, Trudeau's illegal attempts to avoid the Court's order began years earlier, with a calculated effort to move his substantial wealth out of his name and out of the country. Indeed, by 2012, Trudeau had paid nothing to his victims, but continued to live lavishly⁵ (and operate a pyramid scheme, the Global Information Network ("GIN")). In 2013, the Court found Trudeau in contempt of its order to repay *Weight Loss Cures* victims (Third Contempt),⁶ and placed Trudeau's assets into a receivership.⁷ Later in 2013, the Court found Trudeau in contempt of the

² *See* Preliminary Injunction Order (DE26) (July 1, 2003); Order (DE55) (June 29, 2004).

³ Order (DE56) (Sept. 2, 2004).

⁴ *See FTC v. Trudeau*, 579 F.2d 754 (7th Cir. 2009); *FTC v. Trudeau*, 708 F.Supp.2d 711 (N.D. Ill. 2010); *FTC v. Trudeau*, 662 F.3d 947 (7th Cir. 2011); *Trudeau v. FTC*, 133 S. Ct. 426 (Oct. 9, 2012) (denying *certiorari*).

⁵ The Court predicted this might happen. *See FTC v. Trudeau*, 572 F. Supp. 2d 919, 925 (N.D. Ill. 2008) ("Trudeau is a very creative person who is likely to maintain the lifestyle to which he has become accustomed.").

⁶ Order (July 26, 2013) (DE729).

⁷ Order (Aug. 7, 2013) (DE742).

receivership order (Fourth Contempt) for multiple reasons, including his refusal to cooperate with the Receiver and his purchase of luxury goods with funds from an offshore account.⁸ Trudeau remained recalcitrant, however, and the Court again found him in contempt (Fifth Contempt) for hiding assets and continued noncooperation.⁹ The Court further ordered coercive incarceration until Trudeau purged his contempt.

Subsequently, a jury convicted Trudeau of criminal contempt for marketing *Weight Loss Cures* in violation of the Court's 2004 order.¹⁰ In 2014, Trudeau received a ten-year sentence, and this Court suspended his civil incarceration until his release from criminal custody. However, the Court ordered that, upon his release from criminal custody, Trudeau must "report to this Court to determine whether coercive incarceration shall be reimposed."¹¹

B. The Receiver's Findings and Collections

The Receiver began a forensic accounting and attempted to locate and collect Trudeau's assets.¹² The Receiver faced numerous obstacles, including Trudeau's refusal to cooperate, the "significant and suspicious" destruction of critical accounting records, other missing documents, and the noncooperation of Trudeau associates with detailed knowledge of his financial affairs (including Lee Kenny and Neil Sant).¹³ Nevertheless, the Receiver ascertained that Trudeau generated more than **half a billion** in revenue since 1999.¹⁴ Furthermore, although his

⁸ Order (Sept. 18, 2013) (DE751).

⁹ Amended Order (Oct. 17, 2013) (DE773).

¹⁰ See *United States v. Trudeau*, No. 10 CR 866 (N.D. Ill.).

¹¹ *Id.* Significantly, at this point in the future, coercive incarceration will have the greatest power to persuade Trudeau to disclose truthful information about his assets. Previously, Trudeau knew he was years away from release even if he cooperated. In the future, however, purging his contempt will lead to his immediate release, thereby incentivizing him to comply.

¹² See Receiver's Report ("Report") (June 30, 2015) (DE890).

¹³ *Id.* at 4, 6. From 2011-2013, Trudeau transferred approximately **\$4 million** to Kenny, a longtime associate, United Kingdom resident, and Trudeau's nominee as GIN's "Executive Director." See *id.* at 26, 31. Kenny apparently provided no material services in consideration for this hefty sum, most of which likely awaits Trudeau upon his release.

¹⁴ *Id.* at 3. Significantly, Trudeau's total revenue is more than **\$567 million**. At times,

substantial expenses reduce this remarkable tally, at least **\$30 million** is missing (including \$17 million paid to Trudeau and \$13.6 million held or generated offshore).¹⁵ Equally significant, Natural Cures reported \$51.6 million in revenue, but its pre-2009 accounting records were destroyed, and the Receiver could not locate banking records.¹⁶ As the Receiver explains, prior to 2009, Trudeau kept significant assets in his own name.¹⁷ This presumably changed because, in late 2008, the Court suggested it would base the *Weight Loss Cures* contempt sanction on consumer loss,¹⁸ *i.e.*, \$37.6 million, rather than the smaller sums Trudeau suggested. Thus, accounting records covering the critical period when Trudeau likely first saw the handwriting on the wall for an entity with \$51.6 million in revenue were destroyed.¹⁹

The Receiver collected more than \$8 million of Trudeau's assets. Notably, although Trudeau's estate grew in 2014 and 2015 through royalties and other sources, more than \$6 million of the \$8 million existed as of August 2013.²⁰ This means the Court's finding that Trudeau was hiding assets was correct beyond any possible doubt.²¹ Put differently, when

the Receiver's Report references "at least \$515 million," *see* Report at 3, but this sum excludes revenue from Trudeau entities other than the seven that generated the most income, *see id.* at 6.

¹⁵ Report at 4.

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 41.

¹⁸ *Trudeau*, 708 F. Supp.2d at 715 ("[T]he Court first notified the parties of its intent to base the sanction on consumer loss . . . [on] October 30, 2008[.]")

¹⁹ Only Trudeau knows how much of this \$51.6 million he received, or where it is.

²⁰ This total includes the \$2 million in escrow along with approximately \$1.5 million in a GIN credit card reserve account, \$1.4 million in a GIN FDN event account, \$488,000 in two other GIN accounts, \$422,000 in a Website Solutions account, \$150,000 in a Trudeau Approved Products account, \$150,000 in a Natural Cures account, \$121,000 spread across miscellaneous smaller accounts, and \$82,000 in Trudeau's William Hill online gambling account that led to further litigation in 2013. *See* Receiver's Report; Receiver's Status Report (July 7, 2014) (DE864); Receiver's Status Report (Jan. 1, 2014) (DE815-1); Ex. 1 to Receiver's Motion to Approve Interim Fees (Nov. 15, 2013) (DE790-1).

²¹ The Court expressed suspicions about Trudeau's supposed poverty long before. When Trudeau's attorney and asset protector Marc Lane presented a balance sheet in 2008 to support Trudeau's claimed impecuniness, the Court found Lane's balance sheet "not worth the paper it is written on." *Trudeau*, 572 F. Supp.2d at 925. Comparing the balance sheet (*see* PXA:3) with the Receiver's Report shows that the Court was correct. The FTC provided a copy of the

Trudeau stood before the Court and claimed to be “virtually penniless,” he was lying. Only two questions remain: (1) when he will turn over the tens of millions that remain missing and owed to his victims, and (2) how to distribute the approximately \$8 million that the Receiver located without Trudeau’s cooperation.

C. The Partial Redress Plan

1. Identifying Victims

As the Court may recall, an entity known as ITV Global (“ITV”) fulfilled Trudeau’s *Weight Loss Cures* infomercial sales.²² In 2010, the FTC received purchasers’ names and addresses from ITV.²³ PXA:4-5. Excluding consumers who received refunds, there were 821,331 purchasers.²⁴ The FTC proposes to engage redress administrator Analytics Consulting,

Receiver’s Report to the IARDC.

²² In 2009, the Seventh Circuit sarcastically described ITV Global as “an entity allegedly not-at-all affiliated with Trudeau.” *Trudeau*, 579 F.3d at 758.

²³ Originally, in 2008, the FTC introduced Exhibit 20, which was summary information from Direct Marketing Concepts (“DMC”). PXA:6. DMC managed ITV’s sales. PXA:6 at 15:14-16:5. Exhibit 20 included the two operative numbers: 878,511 total sales, and 57,180 returns. *See* PXA:7 at 1. DMC’s Director of Financial Planning, George Potts, testified that Exhibit 20 (Exhibit 30 in Potts’ deposition, Bates No. IV_KT 1) contained “the number of orders and revenues associated with the sales of the *The Weight Loss Cure* book, and then the returns associated with those sales.” PXA:7 at 131:14-18. Subsequently, in 2010, the FTC subpoenaed ITV seeking (1) the names and addresses of each person who purchased *Weight Loss Cures* via direct response sale (infomercial) from December 2006 through November 2007, and (2) the names and addresses of each such person who received a refund. PXA:4 at 8. ITV’s counsel produced a CD labelled “ITV WeightLoss Customers” (which the FTC retained). PXA:5 at 4; *id.* ¶6. Counsel described the CD as containing “consumer data in connection with the *Weight Loss* infomercial. . . . There are two files on the CD, one reflecting purchasers and the other identifying those customers that received refunds.” PXA:5 at 3. Trudeau apparently has these records as well. *See* DE477 (June 11, 2012) at 6 (“we have those records”). While preparing to begin redress, the FTC uploaded the files into a Microsoft Access database. The database contains approximately 1.1 million entries, possibly because there are many duplicates (instances in which the same name appears twice along with slightly different addresses, such as one with “avenue” and another with “ave.”). Analytics will de-duplicate the data.

²⁴ 821,331 represents original purchasers (878,511) minus refunded purchasers (57,180). *See* PXA:6. Notably, ITV Global ceased operations and apparently dissolved after separate litigation with the FTC relating to its involvement with *Weight Loss Cures*. *See* Stipulated Final Judgment, No. 07-11870, *FTC v. Direct Marketing Concepts, Inc. et al.* (DE62) (D. Mass. Nov. 16, 2012). As such, it is improbable that any further information exists regarding *Weight Loss Cures* purchasers beyond what the FTC obtained in 2010.

LLC (“the Administrator”),²⁵ which will standardize and update the ITV data. PXC ¶¶10-11. First, the Administrator will standardize address information (for instance, using consistent abbreviations for postal terms like “boulevard” and “apartment”). *Id.* ¶20. The standardization process also verifies addresses, corrects mistakes, and adds the ZIP +4 suffix.²⁶ *Id.*

Second, the Administrator will run the standardized address list through the Postal Service’s National Change of Address database (“NCOA”). *Id.* ¶16. Although NCOA only reaches back four years, using NCOA should reliably update a substantial portion of the data. *Id.* ¶¶16, 21. Third, the Administrator will run the standardized, NCOA-updated address information through a commercial “skip tracing” database (such as LexisNexis’ Accurint) to render the data as current as is reasonably practical.²⁷ *Id.* ¶¶16, 22.

2. Phased Distribution

Once the Administrator completes this process, it will begin a phased distribution designed to maximize the recovery of consumers whom it can locate. Explained briefly, every victim on the processed list will receive a *pro rata* check. *Id.* ¶¶ 31-38. If there are sufficient funds for a second distribution, every victim who cashed his or her first check will receive a second one, and the cycle will repeat until every victim the FTC can locate has received a full refund.²⁸ *See id.* ¶37. If, as is likely, there are currently insufficient funds to finish the process at

²⁵ The FTC has effected redress with Analytics in many prior cases. Analytics also has extensive experience in SEC matters and class action settlement administration. PXC ¶¶3-4.

²⁶ For example, “219 South Dearborn Street, Chicago, Illinois 60604” would be standardized to “219 S Dearborn St., Chicago, IL 60604-1701.” PXC ¶20 n.4.

²⁷ Other more costly options exist, including running the data through a second “skip tracing” database, or (with Court approval) using credit information to verify addresses. However, the relatively marginal benefit of such additional measures in this context does not justify the costs (and concomitant reduction in the initial payments victims receive).

²⁸ Depending when victims purchased their books and from which version of the infomercial, victims paid different amounts. Because there is no information regarding the exact amount each victim paid, the FTC proposes to determine the amount of a “full refund” by dividing Trudeau’s obligation (\$37,616,161 plus interest) by the number of victims (821,331). This is a reasonable and equitable approach under the circumstances. *See, e.g., Trudeau*, 579 F.3d at 773 (remedy need only be based on a “reasonable approximation of losses”); *see also*

this time, the Administrator will retain the balance in an interest-bearing account until the funds can be combined with additional money sufficient to resume redress.²⁹ *See Id.*

3. Consumer-Friendly Communications

Consumer-friendly communications are critical because victims who do not understand the process are unlikely to obtain the benefit of the compensation to which the Court's order entitles them. This problem is particularly great where (as here) the passage of time means that most victims will not remember the infomercials, or even the product. Accordingly, communications associated with the redress should be engaging and clear, while minimizing the risk that victims are confused or mistake their redress check for junk mail.³⁰

United States v. Uddin, 551 F.3d 176, 180 (2d Cir. 2009) (averages used to support reasonable loss amount estimates in the criminal sentencing context; "A district court may make a reasonable estimate by extrapolating the average amount of loss from known data and applying that average to transactions where the exact amount of loss is unknown.") (quotation omitted). Among other considerations, when (in 2012) Trudeau proposed to self-administer the redress, he proposed repaying certain "authorized" victims "the average cost of the *Weight Loss Cures* book." DE477 (June 11, 2012) at 6-7. Furthermore, the likelihood that any victim will receive (in the near term) anything close to what he or she paid is exceptionally remote. Finally, requiring that the redress process absolutely prevent the theoretical possibility that some victim might someday receive a *de minimis* excess refund is a requirement that could never be met. Accordingly, imposing such requirement would frustrate the remedial purpose of the Court's Order To Pay.

²⁹ On information and belief, Lane helped prepare Trudeau's taxes for many years, and Trudeau likely has substantial unpaid tax liability (indeed, the Court may recall Trudeau's tax attorneys' requests related to a pending IRS examination, *see* DE798 (Nov. 20, 2013)). The FTC currently takes no position with respect to the ramifications, if any, that Trudeau's possible tax liability may have for these proceedings. Should the IRS assert a claim against money the Administrator still holds after multiple distributions, the FTC will address the issue at that time. Notably, in addition to assets Trudeau eventually discloses, any remaining balance also can be combined with royalties Trudeau earns in the future. Trudeau's estate collected more than \$132,000 in various royalties thus far, and when the undistributed balance is sufficient, the FTC will begin another distribution.

³⁰ Very few (if any) published decisions address in any detail how litigants should communicate with the public. Unfortunately, this issue often arises in the class action settlement context, where both parties have strong incentives to obtain court approval whether or not the notice to absent class members will actually work. *See, e.g.*, ANN. MANUAL COMPLEX LIT. § 21.61 (4th ed. 2004) ("The settling parties frequently make a joint presentation of the benefits of the settlement without significant information about any drawbacks."); Owen Fiss, *Against Settlement*, 93 YALE L.J. 1073, 1081 (1984) (arguing that, when class action litigants settle, "[t]he contending parties have struck a bargain, and have every interest in defending the settlement and in convincing the judge that it is in accord with the law"). Furthermore, the

To accomplish these goals, FTC experts on consumer communications designed an envelope and an insert containing both the check itself and a short explanatory letter. PXB:1-3.³¹ In this context, the consumer experience begins with the envelope. PXB ¶6. The envelope is significant because, no matter how effective its contents are at communicating the desired message, it will not reach victims who do not open the envelope. *Id.*; *see also* Hilsee *et al.*, 18 GEO. J. LEGAL ETHICS at 1380 (“The envelope design is just as critical as that of the notice inside the envelope.”). The proposed design contains at least six features that will engage recipients and help them distinguish it from mass marketing. *Id.* ¶7. First, the envelope prominently displays the FTC’s official seal. Second, it contains clear text indicating a refund is enclosed. Third, the envelope has a window allowing the recipient to see the check inside, including the recipient’s name on the “payee” line. Fourth, the envelope will have a genuine first-class stamp, rather than using a bulk-mail permit commonly associated with junk mail. Fifth, there is substantial use of color, including a color FTC seal, color text, and contrast between the portion of the check appearing through the envelope window (blue) and the envelope itself (white). Sixth, the envelope’s back contains additional text, which the Federal Judicial Center recommends.³² *Id.*

The explanatory letter similarly uses design, layout, and content to engage the reader and maximize comprehension:

“notice myth” often prevails (the “myth” equates a consumer receiving a notice with the consumer opening and comprehending it). In fact, a consumer communication that achieves its objective—one the consumer actually comprehends—is almost always one that applies plain language and user-friendly design principles. *See generally* Todd B. Hillsee, Shannon R. Wheatman, & Gina M. Intrepido, *Do You Really Want Me To Know My Rights? The Ethics Behind Due Process in Class Action Notices*, 18 GEO. J. LEGAL ETHICS 1359, 1367 (2005).

³¹ The Chambers copy includes physical samples of PXB:1-3. The FTC has also sent the physical samples to Trudeau’s counsel.

³² *See* fjc.gov (sample; “Securities class action: language for envelope”).

- The language used reflects several important principles: (i) no legal jargon; (ii) no surplus words; (iii) use of active voice with strong verbs; (iv) short sentences and paragraphs; and (v) personal pronouns. *Id.* ¶8.
- The layout reflects features likely to enhance readability: (i) use of headings; (ii) covering only one topic per paragraph; (iii) using bullets for key points; (iv) no use of all capital letters or underlining entire sentences to achieve emphasis; and (v) adequate white space. *Id.* ¶9.
- The letter also contains two important additional features likely to enhance comprehension. First, the insert uses an image of the product itself (in this case, the book cover). This provides consumers with a visual cue to help them recall and comprehend the subject matter. Second, the insert contains both a prominent FTC seal and the signature of an individual identified as an FTC official. These elements help establish credibility and provide context.³³ *Id.* ¶10.

Finally, the proposed partial redress plan contemplates two additional measures to further ensure effective communication. First, the FTC will post information about the redress process on its website. PXA:8. Second, the Administrator will operate a telephone Interactive Voice Response (“IVR”) system that will provide information in accordance with FTC instructions and offer callers the opportunity to speak to a live representative.³⁴ PXA:9.

The total cost of the process outlined above is approximately \$2.89 per victim (covering two near-term distributions). PXC ¶39. The ultimate recovery per victim who receives and cashes refund checks is difficult to predict because it will vary based on multiple factors, including the number of victims located, and whether Trudeau eventually turns over hidden funds. *See id.* ¶41. However, it is reasonable to estimate that a victim who receives and cashes refund checks in two near-term distributions would recover approximately \$11 total. *Id.*

³³ Explanatory letters accompanying subsequent distributions will employ the same clear language principles as the first letter, and use a similar layout and design, but the text will clarify that this is a subsequent distribution the recipient may cash even though he or she previously received one or more distributions.

³⁴ A proposed IVR script and redress webpage are attached to provide the Court with context, but the FTC is not requesting the Court’s approval of the content of its website or the substance of communications who call the FTC (or its agent). The FTC always reserves the right to alter its consumer communications as appropriate; however, any changes will be consistent with the agency’s consumer protection mission.

III. LEGAL STANDARD

The Court has “broad discretion to fashion contempt remedies[.]” *Trudeau*, 579 F.3d at 771 (quotation omitted); *see also United States v. City of Miami*, 195 F.3d 1292, 1298 (11th Cir. 1999) (“District courts enjoy wide discretion to fashion an equitable remedy for civil contempt that is appropriate to the circumstances.”) (quotation omitted).

IV. ARGUMENT

Each component of the FTC’s proposed partial redress plan represents a reasonable exercise of the Court’s inherent equitable authority to fashion an appropriate process to implement the contempt remedy. First, the Administrator will make a significant effort to locate victims, but without undue expense. PXC ¶¶16-17. The proposed process of standardizing and updating the address list is a reasonable, cost-effective approach in the context of this case. *Id.* Second, the proposed phased distribution process is both practical and typical in FTC redress plans. *Id.* Indeed, employing phased distribution is critical here, where the passage of time makes it likely that some victims cannot be located despite reasonable efforts. Through phased distribution, those victims who can be located will receive greater compensation.

Third, the consumer communications use plain language as well as engaging design and layout. As noted above, an FTC expert helped design these communications. PXB ¶4. The proposed envelope itself includes color, clear text, and other features designed to engage consumers (first-class stamp, text on the rear, and the “payee” line visible through the envelope’s window). The proposed letter also contains design and layout concepts that enhance comprehension, such as a heading, bullets, plain language, and adequate white space. Perhaps most important, the letter includes an image of the product itself, which will help readers recall and comprehend the subject matter. Both the envelope and letter “easily satisfy standards governing consumer-friendly communication.” PXB ¶11. In short, the FTC’s proposed plan to

begin refunding victims reflects the agency's substantial expertise and represents a sensible approach in the context of this case.

V. CONCLUSION

For the foregoing reasons, the FTC asks the Court to approve the partial redress plan.

Dated: July 9, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2015, 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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