

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

KEVIN TRUDEAU,

Defendant.

Case No. 03-C-3904

Hon. Robert W. Gettleman

**FEDERAL TRADE COMMISSION'S
MOTION FOR APPROVAL OF PARTIAL VICTIM REDRESS PLAN**

Plaintiff FTC moves the Court to approve its proposed partial victim redress plan so that funds from the receivership estate will begin reaching Trudeau's victims. As the accompanying Memorandum and supporting declarations establish, the proposed plan meets the highest standards for consumer redress. Consumer redress is a core area of FTC expertise, and the FTC asks the Court to approve its plan.

Dated: July 9, 2015

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CERTIFICATE OF SERVICE

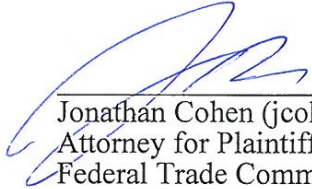
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**FEDERAL TRADE COMMISSION'S MEMORANDUM IN SUPPORT OF ITS MOTION
FOR APPROVAL OF PARTIAL VICTIM REDRESS PLAN**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. INTRODUCTION.	1
II. BACKGROUND.	2
A. Key Procedural History.....	2
B. The Receiver’s Findings and Collections..	3
C. The Partial Redress Plan.	5
1. Identifying Victims..	5
2. Phased Distribution.....	6
3. Consumer-Friendly Communications.....	7
III. LEGAL STANDARD.....	10
IV. ARGUMENT.....	10
V. CONCLUSION.....	11
CERTIFICATE OF SERVICE..	12

TABLE OF AUTHORITIES

Published Decisions

<i>FTC v. Trudeau</i> , 567 F. Supp.2d 1016 (N.D. Ill. 2007)	1
<i>FTC v. Trudeau</i> , 572 F. Supp.2d 919 (N.D. Ill. 2008)	1
<i>FTC v. Trudeau</i> , 579 F.3d 754 (7th Cir. 2009).....	<i>passim</i>
<i>FTC v. Trudeau</i> , 708 F. Supp.2d 711 (N.D. Ill. 2010)	2, 4
<i>FTC v. Trudeau</i> , 662 F.3d 947 (7th Cir. 2011).....	2
<i>Trudeau v. FTC</i> , 133 S. Ct. 426 (Oct. 9, 2012)	2
<i>United States v. City of Miami</i> , 195 F.3d 1292 (11th Cir. 1999).....	9
<i>United States v. Uddin</i> , 551 F.3d 176 (2nd Cir. 2009)	6

Docketed Cases

<i>FTC v. Direct Marketing Concepts, Inc.</i> , No. 07-11870 (D. Mass. Nov. 16, 2012)	5
<i>United States v. Trudeau</i> , No. 10 CR 866 (N.D. Ill.).....	3

Other Authorities

ANN. MANUAL COMPLEX LIT. (4th ed. 2004)	7
Owen Fiss, <i>Against Settlement</i> , 93 YALE L.J. 1073 (1984)	7
Todd B. Hillsee, Shannon R. Wheatman, & Gina M. Intrepido, <i>Do You Really Want Me To Know My Rights? The Ethics Behind Due Process in Class Action Notices</i> , 18 GEO. J. LEGAL ETHICS 1359 (2005)	7

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 impecunity, 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’ Accurant) 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 Deerborn 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.

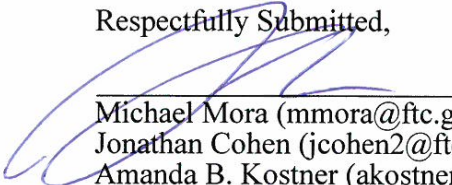
V. CONCLUSION

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

Dated: July 9, 2015

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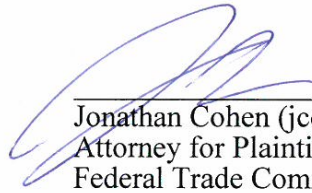
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

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

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

FTC EXHIBIT A

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

KEVIN TRUDEAU,

Defendant.

Case No. 03-C-3904

Hon. Robert W. Gettleman

DECLARATION OF JONATHAN COHEN
IN SUPPORT OF FEDERAL TRADE COMMISSION'S MOTION FOR APPROVAL OF
PARTIAL REDRESS PLAN

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

(1) I am co-counsel for Plaintiff Federal Trade Commission ("FTC") in the above-captioned action, and I have personal knowledge of the matters contained herein.

(2) **Attachment 1** hereto is a true and correct copy of a *Daily Finance* article by Mitch Lipka, dated December 3, 2009.

(3) **Attachment 2** hereto is a true and correct copy of a CBS2 Chicago article, *After Night in Jail, 'Penniless' TV Pitchman Remembered Swiss Account*, dated November 20, 2013.

(4) **Attachment 3** hereto is a true and correct copy of a financial statement Marc Lane prepared, identified as Exhibit 8 at Lane's 2008 deposition and Exhibit PPP at the 2008 contempt trial.

(5) **Attachment 4** hereto is a true and correct copy of a subpoena the Federal Trade Commission issued to ITV Global, Inc., dated July 20, 2010.

(6) **Attachment 5** hereto contains true and correct copies of both sides of a United States Postal Service Express Mail envelope addressed from Sayfarth Shaw to Michael Mora, a letter from Christopher Robinson at Sayfarth Shaw to Michael Mora and Edward Glennon, dated July 30, 2010, and a photocopy of a CD labelled "ITV Weightloss Consumers." The FTC has the original CD.

(7) **Attachment 6** hereto is a true and correct copy of document titled "Summary," marked as George Potts deposition Exhibit 30, and Bates-labeled ITV_KT 000001.

(8) **Attachment 7** hereto is a true and correct copy of excerpts of the deposition of George Potts, dated February 8, 2008.

(9) **Attachment 8** hereto is a true and correct copy of a model webpage where visitors to ftc.gov/TrudeauRefund will be directed.

(10) **Attachment 9** hereto is a true and correct copy of a model IVR script that victims who call the number on their letter will hear.



Jonathan Cohen

Executed on July 9, 2015 in Washington, D.C.

FTC PXA:1

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The unstoppable Kevin Trudeau: Infamous infomercial king is at it again

By [Mitch Lipka](#)

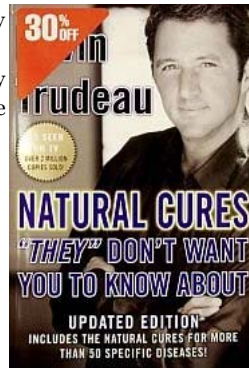
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0 1 0 0 0

Even if you don't know Kevin Trudeau by name, you'll likely recognize his face. You've probably seen him while channel surfing during a bout of insomnia; he's the perfectly coiffed guy who confidently explains to one or more women on his talk show style-infomercials about having the answers for all that worries you -- from illness to money.

Trudeau is a legendary figure in the world of infomercials, with a charismatic approach that has won him a legion of followers. Over the years, he's offered us advice on how to beat cancer, improve our memory, read faster, lose weight and straighten out our finances. Now he's onto the next life-altering topic. Trudeau is currently saturating the infomercial airwaves with 30-minute segments about his latest book: "Free Money 'They' Don't Want You to Know About."



Getty Images

Trudeau has sold millions of books that dole out his expansive range of advice. Yet, one thing his adoring fans might not realize is that the charming pitchman on the television is also a convicted felon who has been slammed with an extraordinary series of sanctions by the FTC for allegedly misleading consumers. Currently, there is a \$40 million-plus fine looming over Trudeau's head in an ongoing court battle with the Federal Trade Commission. A judge even gave him the distinction of being the only pitchman banned from doing infomercials. But that hasn't slowed Trudeau. In fact, you might have seen him last night on an infomercial.

"I have free rein. I can sell whatever I want because I'm protected by the First Amendment," Trudeau told *WalletPop*. "I can sell a book that says the moon is made of cheese, and it should be protected by the First Amendment."

He has yet to write the moon-cheese book, but if he did, he most certainly would sell a lot of them. His critics -- including the government of the United States -- have portrayed him as a huckster who gets millions of people to pay for worthless advice based on impossible claims. His followers, on the other hand, believe him wholeheartedly.

"He's just playing right into what everyone wants. He's a master of looking for weaknesses," said marketing expert Tom Antion. "Those are the same characteristics as a con man."

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PXA:1 at 1

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Trudeau was definitely playing a con's game in the late 1980s, leading to criminal charges in 1990 for larceny (posing as someone else to cash \$80,000 worth of worthless checks) and credit card fraud (for using a bunch of his customers' credit card numbers to ring up more than \$120,000 in charges). He went to federal prison for two years and was released in August 1993.

"If I did drugs it would be no problem. Because I bounced checks and couldn't cover them and applied for an Amex card with wrong information, I'm the devil incarnate," Trudeau said. "I made some really bad choices. I did wrong. I pled guilty. I didn't blame anyone but myself."

A few years after Trudeau was released from prison, he paid \$185,000 to settle allegations with eight states that he was running a pyramid scheme selling the multilevel marketing program Nutrition for Life.

The Federal Trade Commission, meanwhile, has been battling with Trudeau over his advertising claims for well over a decade. In 1998, the FTC and Trudeau negotiated a settlement over allegations his advertisements for "Hair Farming," "Mega Memory System," "Addiction Breaking System," "Action Reading," "Eden's Secret," and "Mega Reading" were deceptive. Trudeau and his colleagues paid \$1.1 million in a settlement. The key word here is "settlement." That allows Trudeau to accurately claim he didn't pay a fine (it's not a fine; it's a settlement) and that the charges were dropped.

Then, in 2004, he was banned from infomercials -- except for selling books -- and settled his case with FTC by agreeing to pay \$500,000 cash and by surrendering a "luxury vehicle" and a home in California.

A Master of Spin

Trudeau has managed to turn the constant allegations by the government into a marketing tool. The more trouble he's in, the more he looks like a hero speaking out against a vast government conspiracy intended to silence his powerful messages. His messages, he claims, are ones that the government doesn't want you to know. In fact, the phrase "They don't want you to know about" is incorporated into his most recent book titles.

"The government wants to stop the free flow of information. They think these people are too stupid to know they are being ripped off. It's insane," said Trudeau.

"It's a testament to his sales ability and naivete of the consumer. This is a person who time and time again has been targeted by different government agencies due to unsavory business practices and continues to sell product," said Scott Testa, a marketing professor at Cabrini College outside Philadelphia.

The FTC said in a statement that Trudeau "is free to hawk his books in infomercials, as long as he does not misrepresent the content of the book."

"The FTC alleged, and both a federal district court and the 9th Circuit Court of Appeals found, that Mr. Trudeau had made just such a misrepresentation about his book 'The Weight Loss Cure 'They' Don't Want You to Know About,'" the agency's statement said. A \$37 million judgment against Trudeau was vacated in August and sent back to a lower court to be heard again. Now, he faces an even stiffer fine. Yet, Trudeau professes not to care. "I'm never going to pay it," he said.

"The FTC has filed briefs in the district court asking for relief consistent with the court of appeals' finding, which if adopted should protect consumers from any further infomercial misrepresentations by Mr. Trudeau," the FTC statement said.

When asked if the agency has a particularly antagonistic relationship with Trudeau,

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PKA:1 at 2

the FTC replied: "The FTC's relationship with Mr. Trudeau is no more or less contentious than it is with any party that violates an order. When parties violate a federal court order obtained by the FTC, they can expect the Commission to act."

Policing the kinds of claims that Trudeau makes can be very difficult, said David Rudd, chairman of the Business Department at Lebanon Valley College in Annville, Pa.

"We have yet to develop an effective means of policing these schemes in an electronic world," Rudd said. "It would be hard to prove he was being fraudulent even if he has the reputation of knowing how to be fraudulent." he told *WalletPop* in an email.

Trudeau said he has important messages to tell and a lot of people counting on him to spread the word. Even though he said he doesn't need the money, he'll keep on cranking out the books, buying air time on TV to sell them and keep raking in the cash.

"I think the people overwhelmingly like what I do or nobody would be buying my stuff," he said.

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After Night In Jail, 'Penniless' TV Pitchman Remembered Swiss Account

November 20, 2013 6:27 AM

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Former infomercial pitchman and author Kevin Trudeau. (Photo by Bryan Haraway/International Pool Tour via Getty Images)

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CHICAGO (STMW) — He claimed he was “penniless and homeless.”

But an overnight stay in federal jail seems to have had a remarkable effect on discredited TV pitchman and convicted felon Kevin Trudeau's memory.

After just one evening locked up away from the comforts of his luxury Oak Brook home in September, the fraudster revealed he'd “just remembered” a secret Swiss bank account he'd previously failed to disclose, according to newly filed court papers.

Trudeau — who for six years has avoided paying a single cent of a \$38 million court fine for falsely advertising his weight loss book — wrote checks worth nearly \$75,000 from the hidden Swiss account on Aug. 23, more than two weeks after he'd been banned from moving any money by U.S. District Judge Robert



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 A van was used in what police are calling a “smash and grab” at a southwest suburban Best Buy early Sunday.
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 A 26-year-old man was shot in the back of the head early Saturday in a Gage Park neighborhood drive-by attack on the Southwest Side.
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 A 32-year-old man was shot and killed in a drive-by shooting early Saturday in the Back of the Yards neighborhood.
 93
- Police Release Surveillance Images Of Groping Suspect**
 Police say the 22-year-old victim told authorities she was riding a southbound Blue Line train around 6 p.m. June 15 in the 100 block of West Congress Parkway when a male offender touched her inappropriately.
 116
- VIDEO: President Obama Closes Clementa**

PXA:2 at 1

Gettleman, according to the filing by court-appointed receiver Blair Zanzig.

Most of the money went to a business owned by his longtime associate Lee Kenny, who the Federal Trade Commission has previously suggested is helping Trudeau hide his assets from the court overseas.

Trudeau allegedly first "remembered" that the account existed less than a month later on Sept. 20 — the same day he told Gettleman he was broke, and one day after Gettleman locked him up in an attempt to coerce him into coming clean.

The receiver says he didn't learn of the \$75,000 payments until the Swiss bank revealed them last week, just as Trudeau was being convicted of criminal contempt in a separate but related case. Millions of Trudeau's dollars remain unaccounted for.

Trudeau, 50, was twice this fall briefly locked up, then released by Gettleman, but is now being held in jail on the orders of U.S. District Judge Ronald Guzman, who has yet to sentence him for the contempt conviction.

(Source: Sun-Times Media Wire © Chicago Sun-Times 2013. All Rights Reserved. This material may not be published, broadcast, rewritten, or redistributed.)

Pinckney Eulogy With 'Amazing Grace'

President Barack Obama closed his stirring eulogy in South Carolina by leading the church in 'Amazing Grace.'

400

New 606 Trail Proves Popular; But Some Complain Of Crime, Rowdy Behavior

The new elevated 606 trail on the city's West Side has proved very popular with joggers and cyclists who have given it rave reviews, but it's also generated several complaints from residents about gang activity and drunken behavior.

226

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- Great Clips Save of the Game Contest** June 21, 2015
 For the entire month of July, we will choose four contestants for a series of Cubs Games, to participate in the 'Save of the Game' promotion. Each contestant will have the opportunity to win haircuts for a year and a grand prize of \$10,000! In order to win, the Cubs will need to strike out all three batters in the 9th inning (Strike out the side).
 []
- Redeye's Battle of the Burger** June 12, 2015
 Do you think you've got the best burger recipe in Chicago? Redeye's Battle of the Burger invites you to submit your recipe here for a chance to have your burger sampled live on air!
- Enter Now To Win Tickets To the Players Trust Golf Tournament** June 10, 2015
 The MLB All-Star game is in Cincinnati this year and CBS Local Sports wants to send you to the Major League Baseball Players Trust 3rd Annual All-Star Golf Tournament on Wednesday, July 15, 2015!

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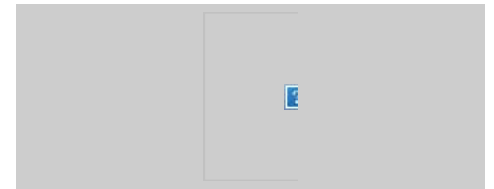
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EXHIBIT A: Consolidated Balance Sheet for Kevin Trudeau and Affiliated Entities (eliminating affiliated intercompany balances) as of December 31, 2007

ASSETS	Kevin Trudeau 1,6	Int'l Pool Tour Inc.4	Pool Licensing	Trudeau Mgmt Inc.4	KT Corp. 2,6	Direct Response 3,4,5	Consolidated Trucom LLC 2,3,4	KT Capital	Alliance Publishing 4,5	Alliance Real Est.	TruStar Productions 5	TSGM/Shop Amer. USA 3,4,5	Consolidated Balance
Cash	110,065	272,853	0	0	16,493	2,758	139,577	3,211	(203)	0	418,026	(25,859)	936,911
Accounts Receivable (See Note 4)	0	273,629	0	0	0	0	0	0	637,243	0	0	589	911,461
Inventory	0	210,391	0	0	0	0	0	0	0	0	0	0	210,391
Furniture/Equipment	0	0	0	0	114,412	0	0	0	0	347,001	0	0	461,413
Vehicles	50,000	0	0	0	0	133,000	0	174,565	0	0	0	0	357,565
Real Estate	500,000	0	0	0	0	0	0	0	0	0	0	0	2,000,000
Personal property	57,550	0	0	0	1,500,000	0	0	0	0	0	0	0	57,550
Other Assets	0	0	0	0	0	0	0	0	0	0	0	0	0
Prepaid Lease	0	0	0	0	0	0	0	32,723	0	0	0	0	32,723
Intellectual Property	19,814	0	22,005	0	1,635	0	0	0	11,105	0	0	0	54,559
Deposit	0	55,000	0	0	0	5,880	0	0	0	0	0	0	60,880
Due From Third Parties	43,500	0	0	0	0	0	0	0	15,000	0	0	0	58,500
Federal Income Tax Refund Claim	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	3,700	0	0	0	93,486	1,000	544	0	0	0	0	1,152,980	1,152,980
Total Assets	784,629	811,873	22,005	0	1,728,026	142,638	140,121	210,499	683,145	347,001	418,026	1,127,900	6,393,863
LIABILITIES & EQUITY													
Accounts Payable (see Note 5)	2,573,781	2,871,415	0	107,216	232,639	77,923	0	2,823	408,990	0	6,155	966,752	7,247,694
Federal Income Tax Payable - Prior Periods	0	0	0	0	0	0	0	0	1,163,751	0	0	325,055	1,508,806
State Income Tax Payable - Prior Periods	0	0	0	0	0	0	0	0	370,331	0	0	0	370,331
2007 Federal & State Accrued Income Tax	879,417	14,192	0	0	0	0	0	0	1,150,380	0	0	0	2,043,989
Mortgage	382,231	0	0	0	958,374	0	0	0	0	0	0	0	1,320,605
Lease Obligations	0	0	0	0	0	0	0	191,673	0	0	0	0	191,673
Notes Payable	0	3,230,000	0	0	0	0	0	0	0	0	0	86,171	3,316,171
Other Payable	0	0	0	0	0	0	0	0	0	0	0	35,628	35,628
Total Liabilities	3,815,429	6,115,607	0	107,216	1,191,013	77,923	0	194,496	3,113,452	0	6,155	1,413,606	16,034,897
NET EQUITY	(3,030,800)	(5,303,734)	22,005	(107,216)	535,013	64,715	140,121	16,003	(2,450,307)	347,001	411,871	(285,706)	(9,641,034)

Column Footnotes

1 Represents the assets and liabilities of Kevin Trudeau individually excluding entities he owns or in which he has a beneficial interest, which are reported separately.

2 Excludes subsidiaries reported separately.

3 The ITV Global Note Receivable dated June 16, 2006 with a balance of \$117,485,000 payable to Direct Response (\$28,884,000), Trucom LLC (\$39,173,000), Tru Star Global Media/ Shop America (\$49,428,000) has been omitted from the presentation at the request of management because it is seriously delinquent.

4 The following Accounts Receivables due from ITV Global and its affiliates have been omitted from the presentation at the request of management because they are seriously delinquent:
Natural Cures, Inc. - \$3,405,876 to Int'l Pool Tour; \$36,213 to Trudeau Management; \$356,293 to Alliance Publishing Group; \$4,095,911 to Shop America (USA)
ITV Global, Inc. - \$2,967,528 to Alliance Publishing; \$23,677 to Int'l Pool Tour
Custom Fulfillment Services - \$281,202 to Direct Response.

ITV Ventures - \$58,331 to Int'l Pool Tour
Trustar Marketing - \$35,000 to Trucom; \$2,025 to Alliance Publishing; \$8,734 to Shop America (USA)
The Whistle Blower - \$20,500 to Trucom

5 The Accounts Payables due to ITV Global and its affiliates have been omitted from the presentation at the request of management because they may not be paid given ITV's serious delinquency on the receivables as noted above in footnote 4:

Shop America (USA) - \$4,082,767 to Natural Cures; \$1,193 to Custom Fulfillment
Trustar Productions - \$1,600,000 to Natural Cures
Alliance Publishing Group - \$5,887 to ITV Global; \$18,490 to Custom Fulfillment; \$857,175 to Natural Cures
KT Corporation Limited - \$300,000 to Natural Cures
Direct Response - \$27,159 to Natural Cures

6 A judgment was entered in the Circuit Court of Cook County, Illinois on June 5, 1996 against Greg Cantoni, et.al. in favor of Kevin Trudeau in the amount of \$10,000,000. It has been omitted as no funds have been collected to date.

EXHIBIT

Lane 8
7-11-08 kb

FTC PXA:4

Issued by the
United States District Court
District of Massachusetts

Federal Trade Commission

SUBPOENA IN A CIVIL CASE

V.

CASE NUMBER: 03 C 3904

Kevin Trudeau

Case pending in the United States District
Court for the Northern District of Illinois

TO: ITV Direct, Inc., c/o Christopher Robertson, Esq.
Seyfarth Shaw LLP, World Trade Center East, Two Seaport Lane, Suite 300
Boston, MA 02210-2028

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Attached

PLACE Federal Trade Commission 600 Pennsylvania Ave. N.W. Washington, DC 20580 Attn: Ronald Lewis	DATE AND TIME August 3, 2010
-----------------------------------------------------------------------------------------------------------------	---------------------------------

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) Attorney for Plaintiff <i>Michael Mora</i>	DATE July 20, 2010
-------------------------------------------------------------------------------------------------------------------------------------	-----------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Michael Mora, 600 Pennsylvania Ave., NW, Mailstop M-8102B, Washington, DC 20580 (202) 326-3373

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

1 If Action is pending in district other than district of issuance, state district under case number.

PXA:4 at 1

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

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RULE 45, Federal Rules of Civil Procedure, PART C & D:
(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;
(ii) requires a person who is not a party or an officer of a party to place more than 100 miles from the place where that person

resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SCHEDULE FOR PRODUCTION OF DOCUMENTS

DEFINITIONS

1. “**And**” and “**or**” shall be construed either disjunctively or conjunctively, so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information and/or documents that might otherwise be construed to be outside its scope.
2. “**Direct Response Sale**” means a sale that resulted from the purchaser’s telephone call to telephone numbers that were provided in any **Weight Loss Cure Infomercial** for the **Weight Loss Cure Book**.
3. “**Document**” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.
4. “**Each**” and “**any**” include “**all**,” so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information and/or documents that might otherwise be construed to be outside its scope.
5. “**Identify**” means including the following information: name, address, and telephone number for each individual and/or entity.
6. “**Include(s)**” and “**including**” mean “without limitation,” or “including but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any Specification.
7. “**Infomercial**” means any written or verbal statement, illustration or depiction that is 120 seconds or longer in duration that is designed to effect a sale or create interest in the purchase of goods or services, which appears in radio, television (including network and cable television), Internet, or video news release.
8. “**Or**” includes “**and**,” and “**and**” includes “**or**,” so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information or **documents** that might otherwise be construed to be outside its scope.

9. **“Person” or “Persons”** means all natural persons, corporations, partnerships or other business associations, and all other legal entities, **including** all members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.
10. **“Referring to” or “relating to”** means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.
11. **“Subpoena”** means this subpoena, including the Schedule for Production of Documents.
12. **“Weight Loss Cure Infomercial”** shall mean any infomercial(s) promoting the **Weight Loss Cure Book** that was owned by, or that was disseminated by, at the direction of, on behalf of, or for the benefit of, **ITV Global, Inc.** or **Direct Marketing Concepts, Inc.**
13. **“You” or “Your”** refers to **Direct Marketing Concepts, Inc., ITV Direct, Inc., ITV Global, Inc., Donald Barrett, Robert Maihos**, or the agents or employees of such individuals or entities.
14. **“Weight Loss Cure Book”** means “The Weight Loss Cure ‘They’ Don’t Want You to Know About” by Kevin Trudeau.
15. The use of the singular includes the plural, and the plural includes the singular.
16. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
17. The spelling of a name shall be construed to include all similar variants thereof.

INSTRUCTIONS

1. Unless otherwise specified, response to the Document Specifications may be time-limited to **December 2006** through **November 2007**.
2. A complete copy of each document should be submitted even if only a portion of the document is within the terms of the Specification. The document shall not be edited, cut, or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables or other attachments.
3. All information submitted shall be clearly and precisely identified as to the Specification(s) or sub-Specification(s) to which it is responsive. Each page submitted should be marked with a unique "Bates" document tracking number.
4. Documents covered by these Specifications are those which are in your possession or under your actual or constructive custody or control, or any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand, including attorneys, accountants, directors, officers, employees or other representatives, whether or not such documents were received from or disseminated to any other person or entity.
5. Documents that may be responsive to more than one Specification need not be submitted more than once; however, your response should indicate, for each document submitted, each Specification to which the document is responsive. If any document responsive to a Specification has been previously supplied to the Commission, you may comply with the Specification by identifying the document(s) previously provided and the date of submission; identification shall be by Bates number if the document(s) were so numbered when submitted, or by author and subject matter if not so numbered.
6. All objections to this Schedule for Production of Documents and Things, or to any individual Specification, must be raised in the initial response or are otherwise waived.
7. If any requested material is withheld based on a claim of privilege, submit together with such claim a schedule of the items withheld which states individually for each document withheld: (a) the type, title, specific subject matter, and date of the item; (b) the names, addresses, positions, and organizations of all authors and recipients of the item; and (c) the specific grounds for claiming that the item is privileged. If only part of a

responsive document is privileged, all non-privileged portions of the document must be submitted.

8. Submission of Electronic Data:

A. The following guidelines refer to any documents that you choose to provide in electronic form. You must confirm with the FTC that the proposed electronic data formats and media types will be acceptable to the government.

1. Magnetic and other electronic media types accepted:

- a. CD-R CD-ROMs formatted to ISO 9660 specifications;
- b. DVD-ROM for Windows-compatible personal computers; and
- c. IDE and EIDE hard disk drives up to 300GB per drive, formatted in Microsoft Windows-compatible, uncompressed data.

Note: Other types of tape media used for archival, backup or other purposes such as 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes, DLT or other types of media accepted only with prior approval.

2. File and record formats:

- a. E-mail: The FTC accepts MS Outlook PST files, MS Outlook MSG files. Any other electronic submission of email accepted only with prior approval;
- b. Scanned Documents: Image submissions accepted with the understanding that unreadable images will be resubmitted in original, hard copy format in a timely manner. Scanned documents must adhere to the following specifications:

(1) All images must be multi-page, 300 DPI - Group IV TIFF files named for the beginning bates number.

(2) If the full text of the document is available, that should be provided as well. The text should be provided in one file for the entire document or email, named the same as the first TIFF file of the document with a *.TXT extension.

Note: Single-page, 300 DPI - Group IV TIFF files may be submitted with prior approval if accompanied by an acceptable load file such as a Summation or Concordance image load file which denotes the appropriate information to allow the loading of the images into a document management system with all document breaks (document delimitation) preserved. OCR accompanying single-page TIFF

submissions should be located in the same folder and named the same as the corresponding TIFF page it was extracted from, with a *.TXT extension.

c. Other PC files: The FTC accepts word processing documents in ASCII text, WordPerfect version 10 or earlier, or Microsoft Word 2002 version or earlier. Spreadsheets should be in MS Excel 2002 (*.xls) version or earlier. Database files should be in MS Access 2002 or earlier. PowerPoint presentations may be submitted in MS PowerPoint 2002 or earlier. Other proprietary formats for PC files should not be submitted without prior approval. Files may be submitted using the compressed ZIP format to reduce size and ease portability. Adobe Acrobat PDF (*.pdf) may be submitted where the normal business practice storage method is PDF.

Note: Database files may also be submitted with prior approval as delimited ASCII text files, with field names as the first record, or as fixed-length flat files with appropriate record layout. For ASCII text files, field-level documentation should also be provided and care taken so that delimiters and quote characters do not appear in the data. The FTC may require a sample of the data to be sent for testing.

3. Security

a. All submissions of electronic data to the FTC must be free of computer viruses. In addition, any passwords protecting documents or files must be removed or provided to the FTC.

b. Magnetic media shall be carefully packed to avoid damage and must be clearly marked on the outside of the shipping container: "MAGNETIC MEDIA – DO NOT X-RAY, MAY BE OPENED FOR POSTAL INSPECTION."

9. In lieu of producing responsive documents at the office of the FTC, respondent may deliver documents to the FTC via overnight delivery (but not regular U.S. mail).

DOCUMENT SPECIFICATIONS


Customer Lists and Refunds

1. Documents sufficient to identify each person who purchased the Weight Loss Cure Book via a direct response sale on or after December 1, 2006 through November 2007, including such customer's name, date of purchase, address, telephone numbers, dollar amounts paid, quantity of items purchased, and description of items purchased.
2. Documents sufficient to identify each person who received a refund relating to their purchase of the Weight Loss Cure Book via a direct response sale that took place on or after December 1, 2006 through November 2007, including such customer's name, date of refund, address, telephone numbers, quantity of items purchased, description of items purchased, and amount of refund.

Dated: July 20, 2010

Respectfully submitted,

David A. O'Toole (dotoole@ftc.gov)
Federal Trade Commission
55 W. Monroe St., Suite 1825
Chicago, IL 60603
phone: 312-960-5601
fax: 312-960-5600


Michael P. Mora (mmora@ftc.gov)
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Mailstop 8102B
Washington, DC 20580
phone: 202-326-3373
fax: 202-326-2559

CERTIFICATE OF SERVICE

I, Michael Mora, an attorney, hereby certify that on July 20, 2010, I caused to be served true copies of the Subpoena for Documents to Direct Marketing Concepts, Inc., ITV Direct, Inc., ITV Global, Inc., Donald Barrett, and Robert Maihos, by Overnight Mail to:

Kimball R. Anderson (kanderson@winston.com)
Winston & Strawn
35 West Wacker Drive
Chicago, IL 60611

A handwritten signature in dark ink, appearing to read "Michael Mora", is written over a horizontal line.

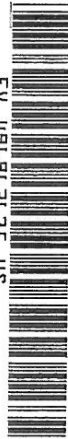
Michael Mora
Attorney for Plaintiff
Federal Trade Commission

FTC PXA:5



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Federal Agency Acct. No. or Postal Service Acct. No.		Federal Agency Acct. No. or Postal Service Acct. No.	
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Delivery Attempt	Time	Employee Signature	
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Delivery	Time	Employee Signature	
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<p><input type="checkbox"/> WAVEN OF SIGNATURE Postmark Only. Additional merchandise insurance is void if signature of addressee is requested. (When delivery is to be made without obtaining signature of addressee, the carrier must obtain signature of addressee or use of a return receipt and authorize that delivery employee's signature constitutes that of addressee.)</p> <p>NO DELIVERY <input type="checkbox"/> Weighed <input type="checkbox"/> Holding <input type="checkbox"/> Signature</p>			

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(617) 946-4800
fax (617) 946-4801
www.seyfarth.com

July 30, 2010

VIA OVERNIGHT MAIL

Edward B. Glennon, Esq.
Federal Trade Commission
Division of Advertising Practices
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Michael Mora, Esq.
Federal Trade Commission
Division of Advertising Practices
600 Pennsylvania Avenue, N.W., Mail Stop M-8102B
Washington, DC 20580

Re: *FTC v. Direct Marketing Concepts, et al.*, Case No. 07-11870-GAO
FTC v. Kevin Trudeau, 03 C 3904 (N.D. Ill.)

Dear Ed and Michael:

We write concerning the document request and subpoena issued in each of the above-referenced cases seeking customer data in connection with the Weight Loss infomercial. Enclosed is a CD containing the requested data. There are two files on the CD, one reflecting purchasers and the other identifying those customers that received refunds.

Very truly yours,

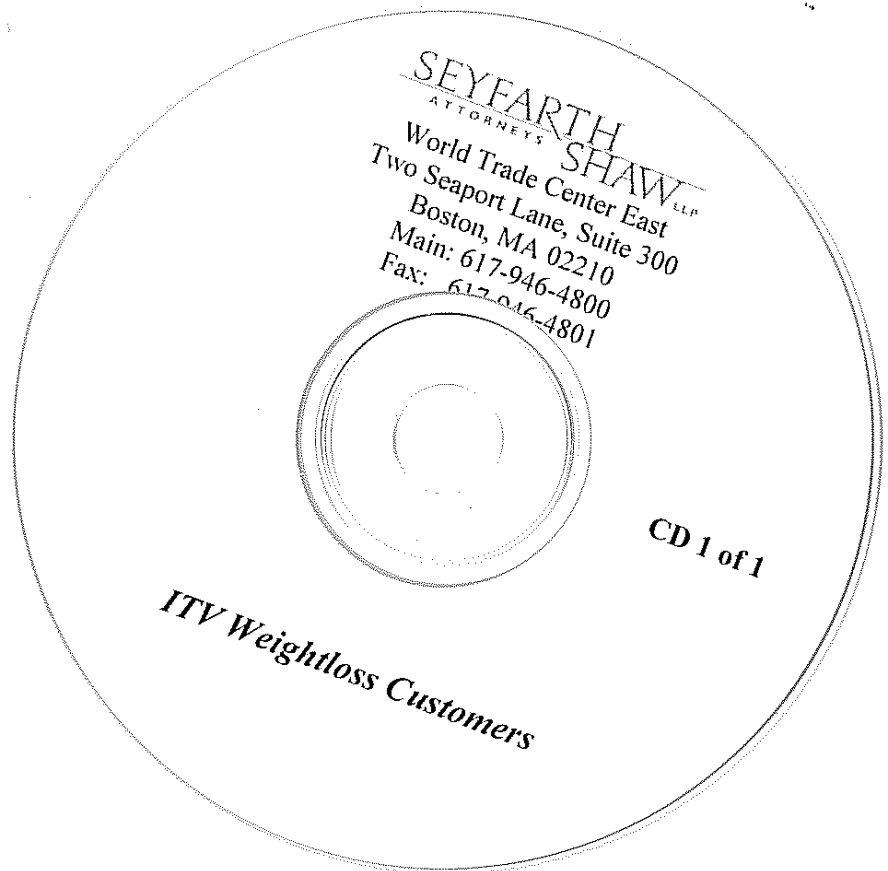
SEYFARTH SHAW LLP

A handwritten signature in black ink, appearing to read "Chris Robertson", written over the firm name.

Christopher F. Robertson

cc: Peter S. Brooks, Esq.





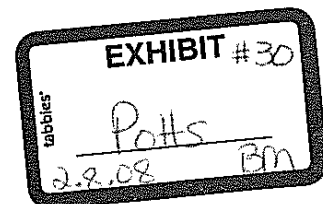
FTC PXA:6

Summary**CONFIDENTIAL****Sales**

		Data	
year	month	Sum of count	Sum of total rev
2006	12	459	\$ 21,563
2007	1	14,519	\$ 730,286
	2	128,044	\$ 6,540,139
	3	157,813	\$ 7,932,718
	4	72,550	\$ 3,786,676
	5	33,239	\$ 1,686,562
	6	29,310	\$ 1,348,426
	7	128,507	\$ 4,985,467
	8	144,388	\$ 5,579,510
	9	92,389	\$ 3,557,571
	10	50,887	\$ 1,903,332
	11	26,406	\$ 976,828
Grand Total		878,511	\$ 39,049,079

Returns

		Data	
year	month	Sum of count	Sum of total revenue
2007	1	3	\$ (110)
	2	1,904	\$ (52,794)
	3	7,679	\$ (242,404)
	4	10,342	\$ (284,007)
	5	8,571	\$ (243,176)
	6	6,473	\$ (204,613)
	7	7,529	\$ (185,052)
	8	6,758	\$ (100,438)
	9	5,079	\$ (76,274)
	10	2,206	\$ (37,151)
	11	636	\$ (6,899)
Grand Total		57,180	\$ (1,432,918)

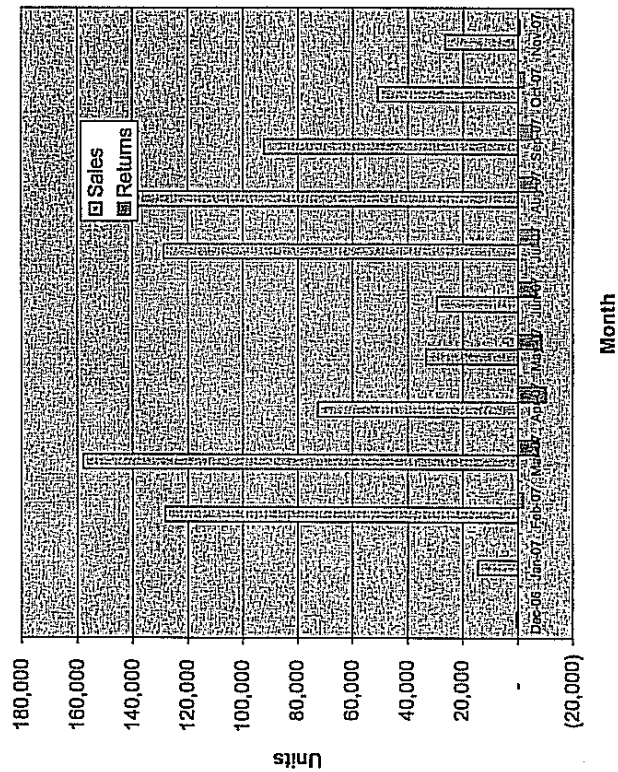


CONFIDENTIAL

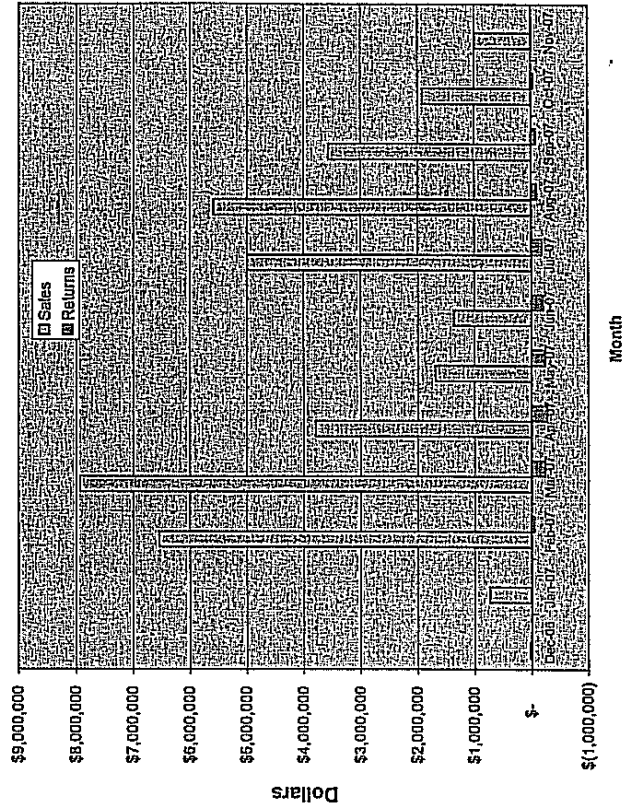
Summary by Units and Dollars

month	Units		Returns	Cumulative Return %	Dollars		Returns	Cumulative Return %
	Sales	Units			Sales	Dollars		
Dec-06	459			0.0%	21,563	\$		0.0%
Jan-07	14,519	(3)	(3)	0.0%	730,288	\$	(110)	0.0%
Feb-07	128,044	(1,904)	(1,904)	-1.3%	9,540,139	\$	(52,794)	-0.7%
Mar-07	157,813	(7,679)	(7,679)	-3.2%	7,932,718	\$	(242,404)	-1.9%
Apr-07	72,550	(10,342)	(10,342)	-5.3%	3,766,676	\$	(284,007)	-3.0%
May-07	33,239	(8,571)	(8,571)	-7.0%	1,886,562	\$	(243,176)	-4.0%
Jun-07	29,310	(6,473)	(6,473)	-8.0%	1,348,428	\$	(204,613)	-4.7%
Jul-07	128,507	(7,529)	(7,529)	-7.5%	4,985,487	\$	(185,052)	-4.5%
Aug-07	144,388	(6,758)	(6,758)	-6.9%	5,579,510	\$	(100,436)	-4.0%
Sep-07	92,389	(5,079)	(5,079)	-6.8%	3,557,571	\$	(76,274)	-3.8%
Oct-07	50,887	(2,206)	(2,206)	-6.6%	1,903,332	\$	(37,151)	-3.7%
Nov-07	26,406	(636)	(636)	-6.5%	976,828	\$	(6,899)	-3.7%
	878,511	(57,180)	(57,180)	-6.5%	39,049,079	\$	(1,432,918)	-3.7%

Weight Loss - Units

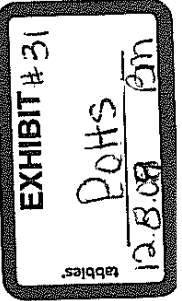


Weight Loss - Dollars



ITV_KT 000002

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Summary**CONFIDENTIAL****Sales**

		Data	
year	month	Sum of count	Sum of total rev
2006	12	459	\$ 21,563
2007	1	14,519	\$ 730,286
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	3	157,813	\$ 7,932,718
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	9	5,079	\$ (76,274)
	10	2,206	\$ (37,151)
	11	636	\$ (6,899)
Grand Total		57,180	\$ (1,432,918)

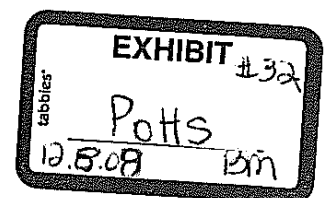
ITV_KT 000001

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Sales & Revenues

year	month	day	count	total rev
2006	12	14	4	180.55
2006	12	16	39	2033.35
2006	12	18	173	7637.47
2006	12	19	53	2366.9
2006	12	20	9	443.9
2006	12	21	7	351.37
2006	12	22	4	179.55
2006	12	23	108	5337.23
2006	12	24	20	994.1
2006	12	26	14	668.2
2006	12	27	9	485.3
2006	12	28	5	234.4
2006	12	29	6	274.3
2006	12	30	4	205.35
2006	12	31	4	171.42
2007	1	1	1	39.9
2007	1	3	2	114.7
2007	1	4	2	134.7
2007	1	5	2	85.75
2007	1	8	136	6749.14
2007	1	9	88	4619.39
2007	1	10	9	472.94
2007	1	11	61	3524.85
2007	1	12	24	1123.95
2007	1	13	141	7229.82
2007	1	14	384	19953.98
2007	1	15	197	9742.9
2007	1	16	82	4122.58
2007	1	17	3	159.5
2007	1	18	277	14965.84
2007	1	19	74	3528.72
2007	1	20	628	32269.4
2007	1	21	1137	57542.11
2007	1	22	596	30023.75
2007	1	23	359	17012.27
2007	1	24	908	45353.19
2007	1	25	1214	60026.29
2007	1	26	588	29547.94
2007	1	27	649	32519.56
2007	1	28	2038	104626.323
2007	1	29	1205	62652.39
2007	1	30	435	18342.73
2007	1	31	3279	163801.51
2007	2	1	1965	98561.01
2007	2	2	2165	108672.78
2007	2	3	2820	147652.64
2007	2	4	1032	54987.94
2007	2	5	7980	424156.21

CONFIDENTIAL



ITV_KT 000003

PXA:6 at 5

2007	2	6	2680	141774.17
2007	2	7	2678	140827.72
2007	2	8	3421	180127.07
2007	2	9	2528	130981.07
2007	2	10	477	26033.05
2007	2	11	5239	279283.83
2007	2	12	10810	560197.662
2007	2	13	3801	177021.46
2007	2	14	4613	231952.52
2007	2	15	4309	205641.16
2007	2	16	4462	217596.67
2007	2	17	20	1071.11
2007	2	18	9	345.45
2007	2	19	19943	1084625.73
2007	2	20	5371	252290.05
2007	2	21	4505	205337.46
2007	2	22	4145	189086.96
2007	2	23	4127	193253.913
2007	2	24	3098	162259
2007	2	25	2300	109698.22
2007	2	26	7540	366421.7
2007	2	27	11467	628578.293
2007	2	28	4539	221704.6
2007	3	1	5298	251214.48
2007	3	2	5028	241935.61
2007	3	3	3799	205315.75
2007	3	4	8445	465898.33
2007	3	5	9603	502429.65
2007	3	6	4845	238358.37
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CONFIDENTIAL

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CONFIDENTIAL

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CONFIDENTIAL

ITV_KT 000013

PXA:6 at 15

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6.51%	-3.67%			

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FTC PXA:7

In the Matter of:

FTC v. Kevin Trudeau

February 8, 2008

George Potts

Condensed Transcript with Word Index



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I N D E X		
1	WITNESS	PAGE
2	GEORGE POTTS	
3	Examination by Ms. Kapin	4
4		
5		
6	E X H I B I T S	
7	NO. DESCRIPTION	PAGE
8	(Plaintiff)	
9	22 Subpoena (27PP)	13
10	23 Vendor QuickReport (1P)	41
11	24 Amendments to the Stock and Asset	
12	Purchase Agreement (16PP)	47
13	25 Mutual Release and Settlement (1P) . .	50
14	26 Book Sales Agreement (4PP)	57
15	27 Security Agreement (4PP)	71
16	28 Promissory Note (7PP)	71
17	29 Mercury Media/Client Profitability	
18	Report (33PP)	100
19	30 Summary of Sales and Returns (1P) . .	131
20	31 Summary by Units and Dollars (2PP) . .	142
21	32 Sales & Revenues (12PP)	142
22	*Reporter's Note:	
23	(Exhibit 22 marked on page 12 was withdrawn	
24	and remarked on page 13.)	
25		

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24
25

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4
5 FEDERAL TRADE COMMISSION, :
6 Plaintiff, :
7 vs. : C.A. No. 03-C-3904
8 KEVIN TRUDEAU, :
9 Defendant. :
10
11
12 C O N F I D E N T I A L
13
14
15
16 DEPOSITION of GEORGE POTTS, taken on behalf
17 of the Plaintiff, pursuant to the applicable
18 provisions of the Massachusetts Rules of Civil
19 Procedure, before Barbara M. Montijo, a
20 Registered Professional Reporter and Notary
21 Public within and for the Commonwealth of
22 Massachusetts, at the offices of Seyfarth Shaw,
23 LLP, Two Seaport Lane, Boston, Massachusetts,
24 on February 8, 2008, commencing at 8:30 a.m.
25

1 (DEPOSITION COMMENCED AT 8:45 A.M.)
2 GEORGE POTTS,
3 the deponent, having been satisfactorily
4 identified and duly sworn by the Notary Public,
5 deposes and testifies as follows:
6 EXAMINATION BY MS. KAPIN
7 Q. We're here in the case of FTC v. Kevin Trudeau,
8 Case Number 03-C-3904 in the United States
9 District Court for the Northern District of
10 Illinois. My name is Laureen Kapin, and I'm
11 here representing the Federal Trade Commission
12 in this action. And I'll let the other folks in
13 the room introduce themselves.
14 MS. PRABHU: I'm Sandhya Prabhu, also
15 with the Federal Trade Commission.
16 MR. ROBERTSON: Christopher Robertson
17 with Seyfarth Shaw for the witness. Dan?
18 MR. HURTADO: And on the telephone,
19 Daniel Hurtado, H-U-R-T-A-D-O, Jenner & Block in
20 Chicago, and I represent Kevin Trudeau.
21 MS. KAPIN: And Dan, while you have
22 the floor, if you can just address the
23 protective order that we anticipate will be
24 entered in this case.
25 MR. HURTADO: Yes, thank you. On

1 the time that this transaction actually
2 occurred.

3 THE WITNESS: Are we supposed to have
4 the same document?

5 MR. ROBERTSON: Yes.

6 **Q. Do you not have the same document? Is that the**
7 **right subpoena?**

8 A. That's the original, I think.

9 MR. ROBERTSON: This is the one we
10 want, the one with 16 topics.

11 MS. KAPIN: Right. Which one is this?

12 THE WITNESS: That's the original.

13 MS. KAPIN: Okay, so let's recycle the
14 sticker.

15 (EXHIBIT 22 WITHDRAWN FOR
16 IDENTIFICATION ON PAGE 12)
17 (EXHIBIT 22 REMARKED FOR IDENTIFICATION)

18 MR. ROBERTSON: So, with regard to
19 Topic 8, we do believe Mr. Potts will be able to
20 testify about that. I think that was primarily
21 it. I think everything else we're prepared to
22 have him testify to. So, let's just see how we
23 do.

24 MS. KAPIN: That's fine. I will tell
25 you I do have quite a number of questions on

1 A. Professional Employer Organization. Are you
2 familiar with how those work?

3 **Q. No, I'm not.**

4 A. I'm not that familiar with it either. All I
5 know is I get paid by Direct Marketing Concepts,
6 and we have a contract with ITV Global to
7 perform services for that company.

8 **Q. What services do you perform for -- it says, "IT**
9 **Corporate" on your card; is that the --**

10 A. That's the web.

11 **Q. -- website?**

12 A. Yes. That's the e-mail address. I don't know
13 how the IT guys do that stuff.

14 **Q. So, what are your responsibilities for ITV**
15 **Global?**

16 A. Weekly profit and loss statements, forecasting,
17 finding -- you know, keeping on top of the sales
18 and seeing if the sales are disappearing. I
19 have also worked on projects of -- you know,
20 cash flow, and those types of things, just
21 making sure that the company has the money to
22 pay its bills; and that they know where they're
23 going to get their revenue from.

24 **Q. When you say "sales," sales from what?**

25 A. Well, the way that the infomercial business

1 that. That's just as a heads up, but we'll just
2 take it as it comes.

3 MR. ROBERTSON: Okay.

4 **Q. Great. So, I'm actually going to be starting**
5 **with that.**

6 A. Get that out of the way and we'll be able to
7 move through everything else.

8 **Q. Right, exactly. Let me just ask you a couple of**
9 **questions, Mr. Potts, just to give me some**
10 **groundwork about your position in the company.**

11 A. Okay.

12 **Q. I'm looking at your card and it states that**
13 **you're the Director of Financial Planning and**
14 **Analysis.**

15 A. Yes.

16 **Q. And that's for ITV Global?**

17 A. Actually, I work for Direct Marketing Concepts
18 and I do work for ITV Global.

19 **Q. Can you explain to me the relationship between**
20 **Direct Marketing Concepts and ITV Global?**

21 A. Direct Marketing Concepts is -- I guess the
22 only way I can think to describe it, to make it
23 simple, is to say it's like a PEO for ITV
24 Global.

25 **Q. PEO?**

1 works is that they create infomercials, then put
2 the infomercials on the television, and then
3 people call up and order products from outside
4 vendors, and then they receive those products in
5 the mail.

6 **Q. How long have you been with ITV Global?**

7 A. I started --

8 MR. ROBERTSON: Speak up a little.

9 A. Oh, I started last year. I can't remember the
10 exact date. Maybe April of last year. I don't
11 know my exact hire date. March, April.

12 **Q. And before that, where were you employed?**

13 A. I was working at Countrywide Bank.

14 **Q. What was your position there?**

15 A. I was a Financial Services Executive.

16 **Q. And what does that mean?**

17 A. Exactly. What I did was I worked at a branch,
18 or actually a financial center, because they
19 don't have branches. What we did is we worked
20 with people on bank products and investment
21 products. I was a registered rep for
22 Countrywide Investment Services as well.

23 **Q. When you say "a registered rep," you mean you --**

24 A. I was a dual employee. So, I did -- I don't
25 know if you're familiar with the banking and

1 been the day before the court's order was issued
2 through current, that's ITV 814 through 828.
3 Can you tell by looking at this document when
4 ITV Global directed that The Weight Loss Cure
5 infomercials cease?

6 MR. ROBERTSON: Objection.

7 A. I don't know, I really don't.

8 MR. ROBERTSON: I just think it's
9 inconsistent with his prior testimony, that the
10 direction wouldn't be anywhere reflected than
11 what's in this document.

12 MS. KAPIN: Fair enough.

13 **Q. Let me ask you this: This document reflects air**
14 **dates from December 1st through as recently as**
15 **January 21st -- not as recently as January**
16 **21st. As recently as December 31st, 2007,**
17 **do you know whether that reflects actual**
18 **airings of The Weight Loss Cure infomercial?**

19 (ATTORNEY ROBERTSON AND WITNESS CONFER)

20 A. I don't know, you know, if it was swapped out or
21 if it's an actual air infomercial, but, I mean,
22 it's very small amounts of money, too.

23 **Q. Yeah, there's 37 -- for example, 37.65 on**
24 **KT 828. Do you know what that would be for?**

25 (ATTORNEY ROBERTSON AND WITNESS CONFER)

1 A. Yeah. I mean, it also could be a cancellation
2 charge, too. That they charged, you know,
3 because you didn't run it and you said you were
4 going to. I would go to --

5 **Q. How would you find that out?**

6 A. You'd either go to Mercury and ask them, or find
7 out from Mercury what CMGS mean and ask them
8 what that means.

9 **Q. And CMGS?**

10 A. That's the station code for \$37.65.

11 **Q. Okay, I see what you're talking about. This is**
12 **KT 828, there's a 12/17 national entry, there's**
13 **also a 12/31/2007 national entry. Are those**
14 **some of the things you're referring to, the**
15 **12/24 national CMGS entry?**

16 A. That's right.

17 **Q. That actually enhances my understanding. Thank**
18 **you. So, it's fair to say then based on this**
19 **document that the last media buy, you know, of**
20 **size, is this entry of 11/29/2007 of \$1,675?**

21 A. You know, again, that could have been paid --
22 that could have been paid for a week or two in
23 advance. I don't know when the decision was to
24 run that show, but it could have been one of
25 those things that was paid for in advance and

1 Mercury couldn't get the station to pull it.

2 MS. KAPIN: Let's go off the record
3 for a minute.

4 (OFF THE RECORD)

5 MS. KAPIN: Back on the record. Mark
6 this as the next exhibit.

7 (EXHIBIT 30 MARKED FOR IDENTIFICATION)

8 MS. KAPIN: For the record, what I've
9 handed to the witness is FTC 30, which is Bates
10 stamped ITV_KT 1, and it is a summary of sales
11 and returns.

12 **Q. Have you seen this document before?**

13 A. (Witness perusing document.) Yup.

14 **Q. What is it?**

15 A. It's the number of orders and revenues
16 associated with the sales of The Weight Loss
17 Cure book, and then the returns associated with
18 those sales.

19 **Q. Can you for the record give us the totals, the**
20 **grand totals reflected for these categories?**

21 A. Yes. The grand totals of the units is 878,511
22 and the total revenues is \$39,049,000.79. And
23 on the returns it's --

24 **Q. I'm staying there for a minute.**

25 A. Yes.

1 **Q. For units, what does that refer to?**

2 A. What I asked the IT department to do was to pull
3 the number of units of The Weight Loss Cure book
4 that was sold in relationship to the infomercial.

5 **Q. So, you personally directed that this**
6 **information be captured in this report?**

7 A. Yeah. I didn't write the actual code, but I
8 asked the IT department to pull the code; and
9 then I compared it to what our profit and loss
10 statements were for the units sold. I didn't
11 get an exact number because they're different
12 time periods, but the first three or four months
13 were very close.

14 **Q. What system does ITV Global have that captures**
15 **the information from which you generated this**
16 **report?**

17 A. This came from a system called Freedom, which is
18 made by -- I don't know, but we've customized it
19 a lot, too. It's an order entry system.

20 **Q. What categories of information does your order**
21 **entry system capture?**

22 A. What it does is it gets data feeds from the
23 companies that take our sales calls, takes
24 those, and then captures -- and then puts those
25 orders into the credit card processing, and then

1 reports on the dollars that were captured on the
 2 orders that were processed.
 3 **Q. Okay. Drawing your attention to the 39**
 4 **million-and-some-odd figure?**
 5 A. Yes.
 6 **Q. When you say "dollars that were captured" --**
 7 **and here I'm just talking about The Weight Loss**
 8 **Cure book, which is what this document reflects.**
 9 **Other than the book itself, what other dollars**
 10 **would be captured?**
 11 A. What I asked the IT department was actually to
 12 put just the revenue that was associated with
 13 the sale of the book, so that would be the sales
 14 price of the book. And then, you know, in doing
 15 some analysis, I figured they also had in here
 16 the shipping and handling that's associated with
 17 the book.
 18 **Q. Other than the sales price of the book and**
 19 **shipping and handling for the book, this 39**
 20 **million-and-some-odd-cents figure, does that**
 21 **reflect any other dollars that were taken in by**
 22 **ITV in connection with the sale of The Weight**
 23 **Loss Cure book?**
 24 A. From what I understand, based on what was
 25 represented to me, it does not.

134

1 **Q. If a purchaser of The Weight Loss Cure book also**
 2 **decided to buy the Natural Cures newsletter at**
 3 **the same time that the customer purchased The**
 4 **Weight Loss Cure book, would ITV track that**
 5 **information in connection with The Weight Loss**
 6 **Cure book?**
 7 A. We've tried to do it, but it's actually -- the
 8 way the systems are, they have a difficult time
 9 generating that information.
 10 **Q. Why is that?**
 11 A. Because it wasn't part of the original spec that
 12 went into creating the system. The original
 13 system, I think, just was focused on making sure
 14 that the orders were accurate as opposed to the
 15 reporting was accurate.
 16 **Q. Does ITV Global maintain information on -- let**
 17 **me lay some foundation. Regarding The Weight**
 18 **Loss Cure book, does ITV --**
 19 A. Are you talking about the book or the campaign?
 20 **Q. Right now I'm just talking -- well, I'm talking**
 21 **about the campaign. Thank you. When a customer**
 22 **wishing to purchase The Weight Loss Cure book**
 23 **phoned in, besides The Weight Loss Cure book, do**
 24 **you know what other items customers might have**
 25 **been offered in connection --**

1 A. Yes.
 2 **Q. -- you know, during that phone call?**
 3 A. Let me kind of help you clarify what you're
 4 trying to say.
 5 **Q. Thank you. I always accept such offers.**
 6 A. There's two parts. One is what happens when the
 7 customer's on the phone and what they agree to,
 8 and then what happens down the road. The
 9 records that we have for what's offered when the
 10 customer's on the phone are very accurate. The
 11 reporting ability of the things that happened
 12 afterwards are accurate on a total corporate
 13 basis, but not on a specific campaign basis.
 14 THE WITNESS: Does that make sense?
 15 MR. ROBERTSON: Yes.
 16 **Q. When a customer's on the phone, besides -- for**
 17 **this campaign for The Weight Loss Cure book, do**
 18 **you know, besides the book, besides The Weight**
 19 **Loss Cure book, were the customers offered**
 20 **anything else besides The Weight Loss Cure book?**
 21 A. Yes.
 22 (ATTORNEY ROBERTSON AND WITNESS CONFER)
 23 A. Yes.
 24 **Q. What else were customers offered?**
 25 A. The other Kevin Trudeau books that were

136

1 mentioned in the infomercial as well as the
 2 newsletters that were mentioned in the
 3 infomercial.
 4 **Q. Were there any other items -- and I'll call them**
 5 **upsells. Were there any other items or upsells**
 6 **being offered to customers during the course of**
 7 **these phone calls --**
 8 A. Yes.
 9 **Q. -- or in response to The Weight Loss Cure**
 10 **infomercial?**
 11 A. Yes. The vendors that we used to take these
 12 calls also have a contract with -- I don't know
 13 what they call them, but it's a club, where
 14 they're offered the ability to join the club or
 15 something, but I don't know -- we don't actually
 16 -- we're not involved with that, that's Live Ops
 17 and West that have those arrangements.
 18 **Q. Does ITV Global --**
 19 A. We get a benefit from that. They reduce their
 20 fee, or they -- well, I don't know if they
 21 reduce their fee, but they give us a percentage
 22 of that.
 23 **Q. So, if someone agrees to join the buying club,**
 24 **then that's revenue that is also generated to**
 25 **ITV Global?**

FTC PXA:8



FEDERAL TRADE COMMISSION

PROTECTING AMERICA'S CONSUMERS

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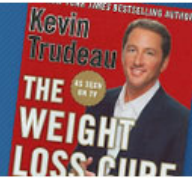
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[Trudeau, Kevin](#)
[Trudeau, Kevin, et al.](#)

REFUNDS FOR THE WEIGHT LOSS CURE BY KEVIN TRUDEAU



July 2015

PRODUCTS: The Weight Loss Cure "They" Don't Want You To Know About

FTC SENDS REFUNDS TO PEOPLE WHO BOUGHT KEVIN TRUDEAU'S BOOK

The Federal Trade Commission sued Kevin Trudeau for making false claims in infomercials about his book **The Weight Loss Cure "They" Don't Want You To Know About**. The Court ruled that Mr. Trudeau broke the law and ordered him to repay people who bought the book through an infomercial.

If you received a check, please cash or deposit it by [Month DD, YYYY].

If you have any questions about the case, please call 1-844-828-4437.

CONSUMER INFORMATION

- [Consumer Blog Post](#)
- [Frequently Asked Questions About Refunds in the Kevin Trudeau Case](#)
- [Weighing the Claims in Diet Ads](#)

BUSINESS INFORMATION

- [Business Blog Post](#)
- [Voluntary Guidelines for Providers of Weight Loss Products or Services](#)
- [Advertising FAQ's: A Guide for Small Business](#)

RELATED NEWS

- [Judge Orders Kevin Trudeau to Pay More Than \\$37 Million for False Claims About Weight-Loss Book](#)
- [Kevin Trudeau Banned from Infomercials For Three Years, Ordered to Pay More Than \\$5 Million for False Claims About Weight-Loss Book](#)
- [Federal Court Finds Kevin Trudeau in Civil Contempt](#)
- [FTC: Marketer Kevin Trudeau Violated Prior Court Order](#)
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PXA:8

FTC PXA:9

TRUDEAU IVR

Greeting

You've reached the consumer refund line for the Federal Trade Commission's lawsuit against Kevin Trudeau.

Case Status

The FTC sued Kevin Trudeau for making false claims in infomercials selling his book, *The Weight Loss Cure "They" Don't Want You To Know About*. The infomercials ran between December 2006 and November 2007. A federal court ruled that the infomercials broke the law and ordered Kevin Trudeau to repay some consumers who bought the book. If you received a check, it's important that you cash or deposit the check by [date certain].

FAQ Intro

Here are answers to seven questions consumers have asked. To skip a question, press the pound key. To repeat any answer, press one.

FAQ 1

Why did I get this check?

This check is a partial refund of what you paid for Kevin Trudeau's book. A federal Court ordered this refund. Please deposit or cash your check by [date certain].

FAQ 2

What did the Court decide?

The Court ruled that Kevin Trudeau's television infomercials selling the *Weight Loss Cures* book were false advertising. Because the infomercials broke the law, the Court ordered Kevin Trudeau to refund many people who bought the book. This check is only a partial refund of what you paid. Please deposit or cash your check by [date certain].

FAQ 3

Why didn't I get all my money back?

The check you got does not cover the entire amount you paid. However, it's the most we can give you now. The Court held Kevin Trudeau in contempt for refusing to explain where his money is. If we're able to locate more of the money Kevin Trudeau owes or if money remains available for refunds, we may send another check to people who cashed the first one.

FAQ 4

Do I have to return the book?

No. You do not need to return the book. And you may deposit or cash the check even if you don't have the book anymore. Please cash your check by [date certain].

FAQ 5

Someone contacted me about a refund and asked me to pay money, or asked me for my Social Security number, bank or credit card information, or for other personal information. Is it a scam?

Probably. The FTC never requires you to pay anything to cash a refund check. If someone contacts you about a refund and asks for money, your Social Security number, or your bank or credit card information, it's probably a scam. Please report this to the Federal Trade Commission at ftc.gov slash complaint.

FAQ 6

The person named on the check is deceased. What should I do?

If the person on the check is deceased and you can't cash it, we will reissue the check to you. Please mail the check back to the address printed on the top left hand corner of the check, along with a copy of the death certificate and documentation showing you represent the estate. Then we'll reissue the check.

FAQ 7

Where can I find more information about this case?

Visit the FTC's website at www.ftc.gov slash TrudeauRefund. If you have questions about your check, please press zero and we'll transfer you to a customer service agent.

FTC EXHIBIT B

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

KEVIN TRUDEAU,

Defendant.

Case No. 03-C-3904

Hon. Robert W. Gettleman

DECLARATION OF JESSICA SKRETCH
IN SUPPORT OF FEDERAL TRADE COMMISSION'S MOTION FOR APPROVAL OF
PARTIAL REDRESS PLAN

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

(1) I am a Federal Trade Commission usability expert with substantial experience developing effective consumer communications. I have personal knowledge of the matters contained herein.

(2) I hold a bachelor's degree in art studio (graphic design concentration) from the University of Maryland. Additionally, I am a Certified Usability Analyst ("CUA"). The CUA certification is a credential reflecting mastery of the principles of user-centered design. Human Factors International ("HFI"), a consulting firm that specializes in user-centered design, issues the CUA certification. Furthermore, I also hold a User Experience Certification ("UX"), which is another credential reflecting knowledge and skills in user-centered design. Nielsen Norman Group, which is another consulting firm specializing in user-centered design, issues the UX certification.

(3) I have worked for the FTC since 2008. Previously, I worked as a Senior Designer at Trinet Internet Solutions (originally Silas Partners) from 2004 – 2008.

(4) With respect to the above-captioned matter, I helped design and draft a letter to victims explaining their redress check, as well as the envelope that will contain the letter. My objective was to maximize the likelihood that each victim will open the envelope and understand why he or she has received a check, while minimizing any risk of consumer confusion. Images of the front of the envelope, the back of the envelope, and the envelope's insert are Attachments 1-3 hereto.

(5) To accomplish this objective, I relied on my experience as well as several authorities including: (i) *The Federal Plain Language Guidelines*, which are a comprehensive summary of best practices that includes explanations, examples, and detailed source information;

(ii) plainlanguage.gov, which is a cross-agency website that emphasizes the importance of plain language; and (iii) the Federal Judicial Center's guidelines on class action notices.¹

(6) In this context, the consumer experience begins with the envelope. Often, mailed correspondence is thrown out without review because consumers understand it to be "junk mail," solicitations, or otherwise unimportant. Accordingly, the envelope is significant because, no matter how effective its contents are at communicating the desired message, it will not reach consumers who do not open the envelope.

(7) The proposed envelope design contains at least six features that likely to engage recipients and help them distinguish it from mass marketing. First, the envelope prominently displays the FTC's official seal. Second, it contains clear text indicating that a refund is enclosed. Third, the envelope has a window that allows 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 or other postage format more 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 back of the envelope contains additional text, which the Federal Judicial Center recommends. The language on the back ("Court-Ordered Refund Check" in a clear, red font) is an additional way to increase the likelihood that consumers open the envelope and receive the intended message.

(8) The insert inside the envelope will engage the reader and maximize comprehension. Its design, layout, and content help achieve these objectives. 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.

(9) The layout also reflects design elements that help engage the reader and maximize comprehension: (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.

(10) The insert also contains two important additional features likely to enhance readability and comprehension. First, the insert uses an image of the product itself (in this case, the book cover) as a visual cue to help readers recall and comprehend the subject matter. Second, the insert contains both a prominent FTC seal and the signature of individual identified as an FTC official. These elements help establish credibility and provide context.

(11) The proposed envelope and insert easily satisfy standards governing consumer-friendly communication.


Jessica Skretch

Executed on July 9, 2015 in Washington, D.C.

¹ Although this matter does not involve a class-action notice, some of the same principles apply.

FTC PXB:1



**FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS**

Office of the Redress Administrator
P.O. Box 2008
Chanhassen, MN 55317-2008



Refunds for people who bought *The Weight Loss Cure* book:

PAY to
the order of
JANE CONSUMER
123 TRUDEAU REFUND WAY
TRUTH-IN-ADVERTISING, VA 54321

PXB:1

FTC PXB:2

Court-Ordered Refund Check
Please cash by Month, DD, YYYY

PXB:1

FTC PXB:3



**FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS**

Office of the Redress Administrator

P.O. Box 2008

Chanhassen, MN 55317-2008

Refunds for people who bought The Weight Loss Cure book:



JANE CONSUMER
123 TRUDEAU REFUND WAY
TRUTH-IN-ADVERTISING, VA 54321

ABC1234567890

PAY to
the order of

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

COURT-ORDERED REFUND

June 24, 2015

Dear Jane Consumer:

We're writing because you bought *The Weight Loss Cure*, a book by Kevin Trudeau. The Federal Trade Commission sued Mr. Trudeau for false advertising. The Court ruled that ads for his book violated the law.

The Court has ordered Mr. Trudeau to give money back to people who bought the book through an infomercial.

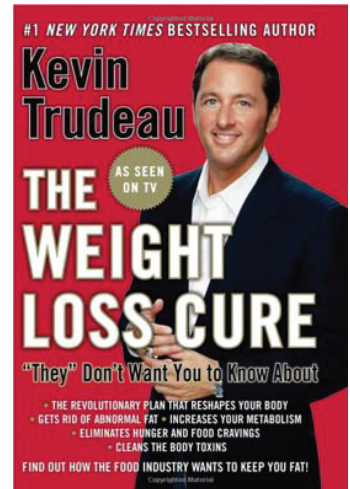
- **The attached check is part of your share.** The check doesn't refund the full amount you paid, but if you cash or deposit it, you may get more money later.
- Please cash or deposit this check by [Month DD, YYYY]. After that, your bank may not accept the check or may charge you a fee.

The FTC **never** requires you to pay anything to cash a refund check. If someone contacts you about a refund and asks you for money, or asks for your Social Security number, bank or credit card information, it's probably a scam.

For more information, visit ftc.gov/TrudeauRefund or call the FTC at (844) 828-4437.

Sincerely,

James Kohm
Associate Director, United States Federal Trade Commission
Bureau of Consumer Protection, Division of Enforcement



FTC v. Kevin Trudeau Qualified Settlement Fund
OFFICE OF THE REDRESS ADMINISTRATOR
P.O. BOX 2008
CHANHASSEN, MN 55317-2008



CHECK NUMBER
5001

DATE OF CHECK
June 25, 2015

PAY EXACTLY: ONE AND XX / 100 DOLLARS

\$1.00

Claim #1111111
ABC1234567890



VOID AFTER 60 DAYS

PAY to
the order of

JANE CONSUMER
123 TRUDEAU REFUND WAY
TRUTH-IN-ADVERTISING, VA 54321

AUTHORIZED SIGNATURE

FTC EXHIBIT C

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

FEDERAL TRADE COMMISSION,

Plaintiff,

V.

KEVIN TRUDEAU,

Defendant.

Case No. 03-C-3904

Hon. Robert W. Gettleman

**DECLARATION OF RICHARD SIMMONS
IN SUPPORT OF FEDERAL TRADE COMMISSION’S MOTION FOR APPROVAL OF
PARTIAL REDRESS PLAN**

b. In 2012, Analytics was awarded a ten-year contract by the Department of Justice to administer and provide expert advice regarding notice and claims processing to support their asset forfeiture/remission program. In our most recent performance appraisal by the Department of Justice, in May 2015, Analytics attained an “exceptional” rating in all areas of the contract.

c. In 2013, Analytics was awarded an eight-year contract by the Securities and Exchange Commission to administer and provide expert advice regarding notice and claims processing to support their investor settlements.

(4) I joined Analytics in 1990, and have twenty-five years of experience in designing and implementing consumer redress programs, class action settlements, and legal notice campaigns. The settlements I have managed range in size from fewer than 100 class members to more than 40 million known class members. As has always been my practice, I personally performed or oversaw Analytics’ consulting services in each of the cases indicated on my CV, which is Exhibit 2 hereto. Additionally, my biography is Exhibit 3 hereto.

(5) I have presented to panels of judges and lawyers on issues regarding class notice, claims processing, and disbursement. In 2005, I was a panelist for a series of seminars moderated by Professor Francis McGovern of the Duke University Law School concerning “*Distribution of Securities Litigation Settlements -- Improving the Process.*”

(6) In 2011, I was a panelist at the Federal Judicial Center’s workshop/meeting regarding class action notice and settlement administration.

(7) In 2014, I was interviewed by the Consumer Financial Protection Bureau regarding notice and claims administration in class action litigation as part of their study on arbitration and consumer class litigation waivers.

(8) I have co-authored and presented CLE programs and whitepapers regarding class notice and class action claims administration. My speaking engagements regarding notice include: *Class Action Administration: Information Security*, presented by Richard Simmons, Harris Martin Data Breach Conference in San Diego (2015) *Class Action Administration: Data and Technology*, presented by Richard Simmons, Harris Martin Target Data Breach Conference in San Diego (2014); *Developments in Legal Notice*, accredited CLE Program, presented by Richard Simmons and Christian Clapp at Shook Hardy & Bacon, LLP in Kansas City (2013), presented by Richard Simmons and Christian Clapp at Halunen & Associates in Minneapolis (2013), and presented by Richard Simmons and Christian Clapp at Susman Godfrey in Dallas (2014) and, *Class Actions 101: Best Practices and Potential Pitfalls in Providing Class Notice*, CLE Program, presented by Brian Christensen, Gina Intrepido, and Richard Simmons, to the Kansas Bar Association (March 2009).

(9) In addition to my class action consulting work, I have taught a college course in antitrust economics, have been a guest lecturer at the University of Minnesota Law School on issues of statistical and economic analysis, was a charter member of the American Academy of Economic and Financial Experts, and am a former referee for the Journal of Legal Economics (reviewing and critiquing peer reviewed articles on the application of economic and statistical analysis to legal issues).

Summary

(10) At the FTC's request, I prepared this distribution plan regarding the return of funds to consumers who purchased *The Weight Loss Cure "They" Don't Want You To Know About* from the infomercial call center managed by ITV Direct on behalf of the Defendant. This distribution plan is based upon the following:

- a. 878,511 copies of the book sold via this sales channel in 2006 and 2007;
- b. Refunds were previously provided to the purchasers of 57,180 books;
- c. The identities of the consumers who have not yet received a refund are identified in data produced by ITV Direct in 2010;
- d. The addresses contained in the data produced by ITV Direct reflect where a consumer received the book in 2006 or 2007; and
- e. No additional data regarding consumers is available from either ITV Direct or Kevin Trudeau.

(11) Based upon the above information, in order to efficiently and cost effectively distribute funds to affected consumers, distribution, the distribution plan envisions:

- a. Consolidating available data regarding consumers into a single database;
- b. Standardizing mailing addresses to conform to U.S. Postal Service standards;
- c. Updating addresses in the database using both the National Change of Address database as well as commercially available advanced address / skip tracing research databases; and
- d. Distributing funds to directly to consumers.

(12) Based upon my experience, this distribution plan is consistent with distribution plans implemented in other class action settlements, FTC consumer redress programs, Department of Justice asset forfeiture and remission programs, and SEC Fair Funds programs. It is also consistent with the procedures outlined in the Federal Judicial Center's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010).

Distribution Plan

(13) Analytics will receive a Microsoft Access database from the FTC containing data regarding consumers who purchased *The Weight Loss Cure "They" Don't Want You To Know About* from the infomercial call center managed by ITV Direct on behalf of the Defendant. It is our understanding that each entry in the database will be assigned a unique Redress Administration Office ("RAO") identifier. Additionally, it is our understanding that this database will include two tables: (a) a table of data (including names, addresses, and phone numbers) for consumers who purchased *The Weight Loss Cure "They" Don't Want You To Know About* in 2006 and 2007; (b) a table of data (including names, addresses, and phone numbers) for consumers who received refunds originally. I am informed that the tables contain many duplicate entries, and Analytics will consolidate these duplicates. Analytics will also

identify and remove already-refunded customers from the list, so that no customer who received a refund already will receive another.

(14) Based upon census data,² it is likely that only 37% of these consumers still reside at their 2006/2007 mailing address. Consequently, significant efforts must be made to update the consumer database prior to distribution.

(15) Of the consumers who moved from their 2006/2007 address, it is likely that 47% did so during the period for which the United States Post Office maintains change of address records. Presented from the opposite perspective, for the consumers who moved, updates from the National Change of Address³ database will not be available for over half of the consumers.

(16) Therefore, due to the age of the consumer list, we recommend a three-stage process prior to distribution:

a. Stage One: the consumer addresses contained in the FTC data will be standardized.

b. Stage Two: the standardized data will be updated with the National Change of Address database.

c. Stage Three: the data will then be further updated using commercially available “skip trace” databases (such as LexisNexis’ Accurant or other commercially available sources) prior to the distribution of funds.

(17) This three-stage process will ensure the widest distribution of funds, lower expenses, and speed the delivery of funds to victims. It represents a reasonable, cost-effective approach in the context of this case.

(18) To explain in greater detail, the original unedited source data will be imported into Analytics’ database system. When imported, a “Source ID” record is appended to each record. Analytics’ database systems were configured to prevent editing of the source data once it has been loaded. This process establishes a standardized reference dataset of the initial existing consumer information supplied by the FTC. Recognizing the need for the FTC to audit changes to the initial data file if necessary, the source identification number can be used to track all subsequent data – however modified – to the original data provided by the FTC.

(19) After the source data has been loaded into the database system, the data will be imported into Analytics’ claims administration system. At this time, the format of the data will be standardized to facilitate future processing. At the time each record is brought into the redress administration system, a unique claim/reference number is assigned. This reference number is utilized throughout the claims administration process to provide a unique key by which all events affecting a particular consumer can be identified and tracked.

² On average, more than 11% of households relocate in any given year. *United States Census Bureau, General Mobility, by Race and Hispanic Origin, Region, Sex, Age, Relationship to Householder, Educational Attainment, Marital Status, Nativity, Tenure, and Poverty Status: 2013 to 2014*, <http://www.census.gov/hhes/migration/data/cps/cps2014.html> (June 5, 2015).

³ The National Change of Address Database “is a secure dataset of approximately 160 million permanent change-of-address (COA) records consisting of the names and addresses of individuals, families and businesses who have filed a change-of-address with the USPS” over the last four years. <https://ribbs.usps.gov/index.cfm?page=ncoalink> (July 7, 2015).

(20) After the initial source data is imported into the Redress Administration System, consumers' addresses will be standardized to United States Postal Services' ("USPS") addressing formats. The standardization process also involves verifying that addresses exist, correcting mistakes, and adding the ZIP +4 suffix. This will be done using software certified for this purpose by the USPS ("CASS-Certified"). This software standardizes mailing addresses, verifies Zip codes, and appends Zip +4 codes. Records that are ZIP +4 coded are then sent through Delivery Point Validation ("DPV") to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses, and reports exactly what is wrong with incorrect addresses.⁴ This standardization is required to perform an effective USPS National Change of Address ("NCOA") database update.

(21) Once standardized, the addresses will be updated using the USPS NCOA database. The USPS requires this update for large mailings, thereby ensuring that if the USPS has an updated address based upon the original mailing address, the updated address is used. This will update a substantial portion of the data.

(22) After completing the NCOA update, addresses for consumers will be updated using a commercial advanced address/skip tracing research database. The effectiveness of advanced these searches depends on the quality of the initial data – full names and valid prior home addresses all increase the likelihood of a successful address update. However, the process of standardizing the data, updating the data through NCOA, and then using a commercial "skip tracing" database will render the address information as current as is reasonably practical.

(23) Once standardized and updated, duplicate records will be consolidated based upon name (and variations of names) and address. Throughout this whole process, a complete audit trail will be maintained to track every change and reconcile all changes back to the original source data.

Payment Eligibility and Disbursement Account

(24) Analytics will calculate each consumer's check amount as the FTC directs. In order to disburse the redress fund, Analytics will compile and submit a list of payees and payment amounts to the Federal Trade Commission for approval.

(25) Upon FTC approval, Analytics will establish a Qualified Settlement Fund Distribution Account (the "Distribution Account") in the name of the redress matter and bearing the Taxpayer Identification Number associated with the redress matter.

(26) Upon receipt and review of the payee list, the FTC will provide authorization to disburse the redress funds, and cause the transfer of funds to the Distribution Account. Analytics will then use its best efforts to mail redress checks within fourteen (14) business days of the transfer of the funds into the Distribution Account (the "Distribution Date"). All efforts will be coordinated to minimize the time between the receipt of the funds and the transmittal process.

(27) All checks will be issued by Analytics from the Distribution Account, and all checks will bear a stale date sixty (60) days from the Distribution Date.

⁴ For example, "219 South Dearborn Street, Chicago, IL 60604" would be standardized to "219 S Dearborn St., Chicago, IL 60604-1701."

(28) Presented checks will be subject to positive pay controls before they are honored. The positive pay system provides protection against fraud arising from counterfeit or amount-altered checks. The positive pay system will require the party accepting the check to confirm that all checks presented for payment match the identifiers and amounts on the payee list prior to payment of the presented obligation.

(29) All payments will be accompanied by a letter from the FTC. Among other things, the FTC's letter will state that the checks become void after sixty days, explain that the check is a court-ordered refund, and provide a toll-free telephone number and web address where victims can obtain additional information.

(30) The FTC will operate the webpage related to the redress proposal. With respect to the toll-free number, Analytics will operate an Interactive Voice Response ("IVR") system that will be available twenty-four hours a day, seven days a week. The IVR will provide callers with information in accordance with the FTC's instructions. Additionally, the IVR system will offer callers the opportunity to speak to a live representative during business hours, or to leave a message for a live representative during non-business hours. Live representatives will answer victims' questions in accordance with parameters the FTC sets.

First Distribution

(31) Analytics will research and reconcile all returned items due to non-delivery by the USPS, insufficient addresses, or any other deficiencies.

(32) Unless the original check is returned to Analytics, any consumer contacting Analytics to request reissuance of a check will be required to wait until the initial sixty (60) day window for presentment has passed.

(33) If any reissued Disbursement checks remain un-cashed one hundred twenty days after the Distribution Date, Analytics will void all such Disbursement checks with the Bank and such shares of the redress fund will be deemed forfeited. However, consumers receiving reissued checks more than one hundred and fifty days after the Distribution Date will have sixty (60) days from the date checks are reissued to cash their checks.

(34) After the check cashing period has passed, and as many checks as possible have been cashed by Consumers, any outstanding checks will be voided at the Bank, and a final account reconciliation report for the initial distribution showing the name, address and check amount of all checks issued, and their disposition, cashed, or void, will be prepared.

Second Distribution

(35) If sufficient funds remain in the Disbursement Account so that it is feasible to conduct a distribution of these funds to the victims who cashed their initial distribution checks, Analytics will conduct a second check distribution. Remaining funds, less administration expenses, will be allocated equally among the consumers who cashed their initial distribution checks using a process consistent with the initial distribution of funds.

(36) After the check cashing period has passed for the second distribution has passed, and as many checks as possible have been cashed by consumers, any outstanding checks will be voided at the Bank, and an account reconciliation report for the second distribution showing the name, address and check amount of all checks issued, and their disposition, cashed, or void, will be prepared.

(37) Analytics will hold residual funds in an interest-bearing account until Analytics receives additional funds from the FTC sufficient to conduct subsequent distributions in accordance with the plan outlined above, or until Analytics receives further instructions from the FTC.

(38) Based upon my experience, the above distribution plan (including a phased distribution process) is reasonable and consistent with distribution plans implemented in other class action settlements, FTC consumer redress programs, Department of Justice asset forfeiture and remission programs, SEC Fair Funds programs, and the Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (2010).

Estimated Fees, Expenses and Recovery

(39) Based upon currently available information, and assuming (a) an initial distribution to 821,331 victims, (b) 2% of the checks issued being returned by the USPS with address corrections, (b) 5% of victims calling a toll-free support line, (c) 50% of those individuals requesting to speak to an agent, and (d) 64% of the initial distribution checks being cashed, followed by a second distribution, Analytics' estimated fees and expenses would be \$2,371,000, or approximately \$2.89 per victim. These estimated fees include all services necessary to support the distributions, including data analysis, address research, check printing, postage, toll free telephone support, and check reissuance.

(40) Based on my experience and expertise, the estimated expense of \$2.89 per victim is: (a) based upon Analytics' contract with the Federal Trade Commission (which was subject to a competitive bidding process); and, (b) reasonable and generally consistent with distributions in other cases involving similar circumstances.

(41) The ultimate recovery per victim who receives and cashes refund checks is difficult to predict because it could vary based on multiple factors including the number of such victims there are, and whether more funds become available for redress. However, using the assumptions above, it is reasonable to estimate that a victim who receives and cashes the first two refund checks will receive approximately \$11.00.


Richard Simmons

Executed on July 7, 2015 in Chanhassen, Minnesota.

FTC PXC:1



CAPABILITIES STATEMENT

Overview

Analytics provides comprehensive class action and mass tort consulting and settlement administration services. With experience dating back to the first MDL litigation in 1974, Analytics is the oldest class action consulting practice in the United States — and we continue to pioneer developments in landmark consumer, mass tort/personal injury, and securities litigation settlements.

Analytics' engagements cover a full range of class action and mass tort litigation, including antitrust, building products, consumer fraud, racial and sexual discrimination, insurance, privacy, securities, and truth-in-lending litigation settlements. We have administered settlements ranging in size from fewer than 100 to more than 180 million class members, including one of the largest mailed-notice campaigns in history. Clients include law firms, *Fortune* 500 companies, and agencies of the United States federal government.

Since 1998, Analytics has been retained by the Federal Trade Commission to provide expert consulting and administration services regarding the notice and disbursements in their settlements (which have included securities litigation). Recently, we were awarded another 5-year contract with the FTC, as well as multi-year contracts with both the Securities and Exchange Commission and the Department of Justice to consult on and administer their settlements.

Class Action Administration

Analytics' program and claims management practice provides:

- PMP-certified project management team
- FISMA-Moderate "accredited" infrastructure and applications that includes:
 - Call Centers
 - Claims Resolution
 - Application and Data Hosting
 - Mail Processing
 - Treasury Management and Distribution Services
- Experience providing expert testimony and consulting services regarding legal and operational issues as they relate to the management of claims facilities and communications programs.

Because of the nature of our engagements, all of these services are available in a FISMA-accredited model on a standby basis, ready for immediate deployment to begin servicing client engagements.

Analytics' internal consulting controls and information security practices meet or exceed today's exacting industry standards. Analytics has received system accreditation under the Federal Information Security Management Act (FISMA) and undergoes an annual review of our data



security and information technology controls designed to demonstrate our substantial level of data and system security.

Security, Privacy and High Availability

For nearly four decades, our clients have trusted Analytics to protect the confidentiality of their data. Analytics has a full-time staff devoted to overseeing all administrative processes, from employment and personnel practices to building and information security.

Our high security standards offer:

- **Effective internal controls:** Analytics is accredited under the Federal Information Security and Management Act (“FISMA”) and undergoes an annual SSAE16/SOC audits to demonstrate the effectiveness of our internal controls.
- **Global privacy protection:** As litigation becomes increasingly global, our data privacy protections and practices also comply with U.S. Department of Commerce “Safe Harbor” Privacy Principles to provide added assurance to our clients that their data is protected around the world.
- **Detailed Federal Reporting:** Analytics has adopted the more stringent Federal information security standards. Our comprehensive Federal System Test and Evaluation Report provides greater detail than a standard SSAE16/SOC report

Extensive Resources and World-Class Technology

Analytics’ consulting services are based on a tested technology infrastructure that securely collects, manages, and distributes data. Our primary operations center in Minneapolis was built for processing large amounts of data and documents. Consequently, we are able to efficiently and cost-effectively manage matters of any size. We have:

- Applications hosted in secure Tier III data centers;
- Imaging and scanning facilities with a capacity of more than 200,000 pages/day
- Call-center capacity suitable for class sizes of up to 20 million class members (in a direct-mail capacity); and
- Inbound mail-processing center engineered for volumes that accompany class sizes of up to 20 million class members.

FTC PXC:2

RICHARD W. SIMMONS

EDUCATION

St. Olaf College
Northfield, Minnesota, 1986-1990
Bachelor of Arts in Economics with Concentration in Quantitative Methods

University of Minnesota
St. Paul, Minnesota, 1994-2000
A.B.D: Completion of all graduate study and preliminary exams. Dissertation suspended due to management of class action and mass tort consulting practice

Fields: Microeconomics
 Econometrics
 Consumption and Household Economics
 Industrial Organization: Prices and Markets
 Natural Resource and Energy Economics

New York University
New York City, New York, 2012
Media Planning, Buying, and Analysis

Other Training

GfK MRI: *Media Planning - MRI Methodology 101*

PROFESSIONAL EXPERIENCE

President
Analytics
18675 Lake Drive East
Chanhassen, MN 55331

Date: October 2013 to Present (President)
 May 2008 to October 2013 (Managing Director, Analytics/BMC Group)
 January 2002 to May 2008 (President)
 May 1997 to December 2002 (Vice President)
 May 1996 to May 1997 (Principal)
 June 1990 to May 1996 (Associate)

Instructor, Department of Economics
Industrial Organization/Antitrust Economics
St. Olaf College, Northfield, MN
Date: June 1998 to December 1998

ARTICLES AND MONOGRAPHS

Richard W. Simmons and Richard C. Hoyt, "Economic Damage Analysis in Rule 10b-5 Securities Litigation" *Journal of Legal Economics*, March 1993.

Richard W. Simmons and Richard C. Hoyt, "Calibration of Damage Models in Rule 10b-5 Securities Litigation" May 1995 Working Paper.

Richard W. Simmons, "Optimal Regulation of Polluting Oligopolists," February 1998 Working Paper.

Richard W. Simmons, "Is Your Claims Administrator Out of Control? What You Need to Know to About Protecting Class Member Data, Your Firm, And Your Reputation." August 2011 Monograph

CONTINUING LEGAL EDUCATION PRESENTATIONS

Developments in Class Action Notice and Claims Administration, 2010 – 2013
Data Privacy and Class Action/Mass Tort Settlements, 2011

PROFESSIONAL AFFILIATIONS

Panelist, Federal Judicial Center Workshop on Class Action Settlements, 2011
Panelist, Frances McGovern/Duke University, Distribution of Securities Litigation Settlements -- Improving the Process", 2005
Charter Member, American Academy of Economic and Financial Experts
Former Referee, Journal of Legal Economics



Partial List of Legal Notification and Settlement Administration Experience

Antitrust

All Star Carts and Vehicles, Inc., et al. v. BFI Canada Income Fund, et al.
08-CV-1816 (E.D. NY)

In Re: Aftermarket Filters Antitrust Litigation
No. 1:08-cv-4883, MDL No. 1957 (N.D. Ill.)

In Re: Aluminum Phosphide Antitrust Litigation
Case No. 93-cv-2452 (D. Kan.)

In Re: Beef Antitrust Litigation
MDL No. 248 (N.D. Tex.)

In Re: Bromine Antitrust Litigation
MDL No. 1310 (S.D. Ind.)

In Re: Industrial Silicon Antitrust Litigation
Case No. 95-cv-2104 (W.D. Pa.)

In Re: Workers Compensation Insurance Antitrust Litigation
Case No. 4:85-cv-1166 (D. Minn.)

Red Eagle Resources Corporation, Inc., et al. v. Baker Hughes Inc., et al.
Case No. 91-cv-627 (S.D. Tex.)

Rob'n I, Inc., et al. v. Uniform Code Counsel, Inc.
Case No. 03-cv-203796-1 (Spokane County, Wash.)

Sarah F. Hall d/b/a Travel Specialist, et al. v. United Airlines, Inc., et al.
Case No. 7:00-cv-123-BR(1) (E.D. S.C.)

Business

American Golf Schools, LLC, et al. v. EFS National Bank, et al.
Case No. 00-cv-005208 (D. Tenn.)

AVR, Inc. and Amidon Graphics v. Churchill Truck Lines
Case No. 4:96-cv-401 (D. Minn.)

Do Right's Plant Growers, et al. v. RSM EquiCo, Inc., et al.
Case No. 06-CC-00137 (Orange County, Cal.)

F.T.C. v. Ameritel Payphone Distributors
Case No. 00-cv-514 (S.D. Fla.)

F.T.C. v. Datacom Marketing, Inc.
Case No. 06-cv-2574 (N.D. Ill.)

F.T.C. v. Davison & Associates, Inc.
Case No. 97-cv-01278 (W.D. Pa.)

F.T.C. v. Fidelity ATM, Inc.
Case No. 06-cv-81101 (S.D. Fla.)



Partial List of Legal Notification and Settlement Administration Experience

Business

F.T.C. v. Financial Resources Unlimited, Inc.
Case No. 03-cv-8864 (N.D. Ill.)

F.T.C. v. First American Payment Processing Inc.
Case No. 04-cv-0074 (D. Ariz.)

F.T.C. v. Group C Marketing, Inc.
Case No. 06-cv-6019 (C.D. Cal.)

F.T.C. v. Jordan Ashley, Inc.
Case No. 09-cv-23507 (S.D. Fla.)

F.T.C. v. Medical Billers Network, Inc.
Case No. 05-cv-2014 (S.D. N.Y.)

F.T.C. v. Minuteman Press Int'l
Case No. 93-cv-2496 (E.D. N.Y.)

F.T.C. v. Netfran Development Corp
Case No. 05-cv-22223 (S.D. Fla.)

F.T.C. v. USA Beverages, Inc
Case No. 05-cv-61682 (S.D. Fla.)

Garcia, et al. v. Allergan, Inc.
11-CV-9811 (C.D. CA)

Law Offices of Henry E. Gare, P.A., et al. v. Healthport Technologies, LL
No. 16-2011-CA-010202 (Duval County, FL)

Physicians of Winter Haven LLC v. STERIS Corp.
Case No. 1:10-cv-00264 (N.D. Ohio)

Sue Ramirez et al. v. Smart Professional Photocopy Corporation
No. 01-L-385 (Peoria County, IL)

Todd Tompkins, Doug Daug and Timothy Nelson v. BASF Corporation, e
Case No. 96-cv-59 (D. N.D.)

United States of America v. \$1,802,651.56 in Funds Seized from E-Bulli
Case No. 09-cv-01731 (C.D. Cal.)

Waxler Transportation Company, Inc. v. Trinity Marine Products, Inc., e
Case No. 08-cv-01363 (E.D. La.)

Civil Rights

Bentley v. Sheriff of Essex County
Case No. 11-01907 (Essex County, MA)

Cazenave, et al. v. Sheriff Charles C. Foti, Jr., et al.
Case No. 00-cv-1246 (E.D. La.)



Partial List of Legal Notification and Settlement Administration Experience

Civil Rights

Garcia, et al v. Metro Gang Strike Force, et al.

Case No. 09-cv-01996 (D. Minn.)

Gregory Garvey, Sr., et al. v. Frederick B. MacDonald & Forbes Byron

3:07-cv-30049 (S.D. Mass.)

McCain, et al. v. Bloomberg, et al.

Case No. 41023/83 (New York)

Nancy Zamarron, et al. v. City of Siloam Springs, et al.

Case No. 08-cv-5166 (W.D. Ark.)

Nathan Tyler, et al. v. Suffolk County, et al.

Case No. 1:06-cv-11354 (S.D. Mass.)

Nilsen v. York County

Case No. 02-cv-212 (D. Me.)

Richard S. Souza et al. v. Sheriff Thomas M. Hodgson

2002-0870 BRCV (Superior Ct., Mass.)

Travis Brecher, et al. v. St. Croix County, Wisconsin, et al.

Case No. 02-cv-0450-C (W.D. Wisc.)

Consumer

Andrew J. Hudak, et al. v. United Companies Lending Corporation

Case No. 334659 (Cuyahoga County, Ohio)

Angela Doss, et al. v. Glenn Daniels Corporation

Case No. 02-cv-0787 (E.D. Ill.)

Angell v. Skechers Canada

8562-12 (Montreal, Quebec)

Anthony Talalai, et al. v. Cooper Tire & Rubber Company

Case No. L-008830-00-MT (Middlesex County, NJ)

Arnett v. Bank of America, N.A.

No. 3:11-CV-01372-SI (D. OR)

Ballard, et al. v. A A Check Cashiers, Inc., et al.

Case No. 01-cv-351 (Washington County, Ark.)

Belinda Peterson, et al. v. H & R Block Tax Services, Inc.

Case No. 95-CH-2389 (Cook County, Ill.)

Boland v. Consolidated Multiple Listing Service, Inc.

Case No. 3:19-cv-01335-SB (D. SC)

Carideo et al. v. Dell, Inc.

Case No. 06-cv-1772 (W.D. Wash.)



Partial List of Legal Notification and Settlement Administration Experience

Consumer

Carnegie v. Household International, Inc.
No. 98-C-2178 (N.D. Ill.)

Clair Loewy v. Live Nation Worldwide Inc.
Case No. 11-cv-04872 (N.D. Ill.)

Clements, et al. v. JPMorgan Chase Bank, N.A., et al.
No. 3:12-cv-02179-JCS (N.D. CA)

Covey, et al. v. American Safety Council, Inc.
2010-CA-009781-0 (Orange County, FL)

Cummins, et al. v. H&R Block, et al.
Case No. 03-C-134 (Kanawha County, W.V.)

David and Laurie Seeger, et al. v. Global Fitness Holdings, LLC
No. 09-CI-3094, (Boone Circuit Court, Boone County, Ky.)

Don C. Lundell, et al. v. Dell, Inc.
Case No. 05-cv-03970 (N.D. Cal.)

Duffy v. Security Pacific Automotive Financial Services Corp., et al.
Case No. 3:93-cv-00729 (S.D. Cal.)

Edward Hawley, et al. v. American Pioneer Title Insurance Company
No. CA CE 03-016234 (Broward County, Fla.)

Evans, et al. v. Linden Research, Inc., et al.
Case No. 4:11-cv-1078-DMR (N.D. CA)

F.T.C. and The People of the State of New York v. UrbanQ
Case No. 03-cv-33147 (E.D. N.Y.)

F.T.C. v. 1st Beneficial Credit Services LLC
Case No. 02-cv-1591 (N.D. Ohio)

F.T.C. v. 9094-5114 Quebec, Inc.
Case No. 03-cv-7486 (N.D. Ill.)

F.T.C. v. Ace Group, Inc.
Case No. 08-cv-61686 (S.D. Fla.)

F.T.C. v. Affordable Media LLC
Case No. 98-cv-669 (D. Nev.)

F.T.C. v. AmeraPress, Inc.
Case No. 98-cv-0143 (N.D. Tex.)

F.T.C. v. American Bartending Institute, Inc., et al.
Case No. 05-cv-5261 (C.D. Cal.)



Partial List of Legal Notification and Settlement Administration Experience

Consumer

F.T.C. v. American International Travel Services Inc.

Case No. 99-cv-6943 (S.D. Fla.)

F.T.C. v. Bigsmart.com, L.L.C., et al.

Case No. 01-cv-466 (D. Ariz.)

F.T.C. v. Call Center Express Corp.

Case No. 04-cv-22289 (S.D. Fla.)

F.T.C. v. Capital Acquisitions and Management Corp.

Case No. 04-cv-50147 (N.D. Ill.)

F.T.C. v. Capital City Mortgage Corp.

Case No. 98-cv-00237 (D. D.C.)

F.T.C. v. Certified Merchant Services, Ltd., et al.

Case No. 4:02-cv-44 (E.D. Tex.)

F.T.C. v. Check Inforcement

Case No. 03-cv-2115 (D. N.J.)

F.T.C. v. Chierico et al.

Case No. 96-cv-1754 (S.D. Fla.)

F.T.C. v. Clickformail.com, Inc.

Case No. 03-cv-3033 (N.D. Ill.)

F.T.C. v. Consumer Credit Services

Case No. 96-cv-1990 (S.D. N.Y.)

F.T.C. v. Consumer Direct Enterprises, LLC.

Case No. 07-cv-479 (D. Nev.)

F.T.C. v. Debt Management Foundation Services, Inc.

Case No. 04-cv-1674 (M.D. Fla.)

F.T.C. v. Digital Enterprises, Inc.

Case No. 06-cv-4923 (C.D. Cal.)

F.T.C. v. Dillon Sherif

Case No. 02-cv-00294 (W.D. Wash.)

F.T.C. v. Discovery Rental, Inc., et al.

Case No: 6:00-cv-1057 (M.D. of Fla.)

F.T.C. v. EdebitPay, LLC.

Case No. 07-cv-4880 (C.D. Cal.)

F.T.C. v. Electronic Financial Group, Inc.

Case No. 03-cv-211 (W.D. Tex.)



Partial List of Legal Notification and Settlement Administration Experience

Consumer

F.T.C. v. Eureka Solutions

Case No. 97-cv-1280 (W.D. Pa.)

F.T.C. v. Federal Data Services, Inc., et al.

Case No. 00-cv-6462 (S.D. Fla.)

F.T.C. v. Financial Advisors & Associates, Inc.

Case No. 08-cv-00907 (M.D. Fla.)

F.T.C. v. First Alliance Mortgage Co.

Case No. 00-cv-964 (C.D. Cal.)

F.T.C. v. First Capital Consumer Membership Services Inc., et al.

Case No. 1:00-cv-00905 (W.D. N.Y.)

F.T.C. v. First Capital Consumers Group, et al.

Case No. 02-cv-7456 (N.D. Ill.)

F.T.C. v. Franklin Credit Services, Inc.

Case No. 98-cv-7375 (S.D. Fla.)

F.T.C. v. Global Web Solutions, Inc., d/b/a USA Immigration Services, et

Case No. 03-cv-023031 (D. D.C.)

F.T.C. v. Granite Mortgage, LLC

Case No. 99-cv-289 (E.D. Ky.)

F.T.C. v. ICR Services, Inc.

Case No. 03-cv-5532 (N.D. Ill.)

F.T.C. v. iMall, Inc. et al.

Case No. 99-cv-03650 (C.D. Cal.)

F.T.C. v. Ira Smolev, et al.

Case No. 01-cv-8922 (S.D. Fla.)

F.T.C. v. Jeffrey L. Landers

Case No. 00-cv-1582 (N.D. Ga.)

F.T.C. v. Jewelway International, Inc.

Case No. 97-cv-383 (D. Ariz.)

F.T.C. v. Komaco International, Inc., et al.

Case No. 02-cv-04566 (C.D. Cal.)

F.T.C. v. LAP Financial Services, Inc.

Case No. 3:99-cv-496 (W.D. Ky.)

F.T.C. v. Marketing & Vending, Inc. Concepts, L.L.C., et al.

Case No. 00-cv-1131 (S.D. N.Y.)



Partial List of Legal Notification and Settlement Administration Experience

Consumer

F.T.C. v. Mercantile Mortgage

Case No. 02-cv-5078 (N.D. Ill.)

F.T.C. v. Meridian Capital Management

Case No. 96-cv-63 (D. Nev.)

F.T.C. v. NAGG Secured Investments

Case No. 00-cv-02080 (W.D. Wash.)

F.T.C. v. National Consumer Council, Inc., et al.

Case No. 04-cv-0474 (C.D. Cal.)

F.T.C. v. National Credit Management Group

Case No. 98-cv-936 (D. N.J.)

F.T.C. v. National Supply & Data Distribution Services

Case No. 99-cv-128-28 (C.D. Cal.)

F.T.C. v. Nationwide Information Services, Inc.

Case No. 00-cv-06505 (C.D. Cal.)

F.T.C. v. NBTY, Inc.

No. 05-4793 (E.D. NY)

F.T.C. v. Pace Corporation

Case No. 94-cv-3625 (N.D. Ill.)

F.T.C. v. Paradise Palms Vacation Club

Case No. 81-1160D (W.D. Wash.)

F.T.C. v. Patrick Cella, et al.

Case No. 03-cv-3202 (C.D. Cal.)

F.T.C. v. Platinum Universal, LLC

Case No. 03-cv-61987 (S. D. Fla.)

F.T.C. v. Raymond Urso

Case No. 97-cv-2680 (S.D. Fla.)

F.T.C. v. Robert S. Dolgin

Case No. 97-cv-0833 (N.D. Cal.)

F.T.C. v. Southern Maintenance Supplies

Case No. 99-cv-0975 (N.D. Ill.)

F.T.C. v. Star Publishing Group, Inc.

Case No. 00-cv-023D (D. Wy.)

F.T.C. v. Stuffingforcash.com Corp.

Case No. 02-cv-5022 (N.D. Ill.)



Partial List of Legal Notification and Settlement Administration Experience

Consumer

F.T.C. v. Target Vending Systems, L.L.C., et al.
Case No. 00-cv-0955 (S.D. N.Y.)

F.T.C. v. The College Advantage, Inc.
Case No. 03-cv-179 (E.D. Tex.)

F.T.C. v. The Crescent Publishing Group, Inc., et al.
Case No. 00-cv-6315 (S.D. N.Y.)

F.T.C. v. The Tungsten Group, Inc.
Case No. 01-cv-773 (E.D. Va.)

F.T.C. v. Think Achievement Corp.
Case No. 2:98-cv-12 (N.D. Ind.)

F.T.C. v. Think All Publishing
Case No. 07-cv-11 (E.D. Tex.)

F.T.C. v. Trustsoft, Inc.
Case No. 05-cv-1905 (S.D. Tex.)

F.T.C. v. Unicyber Gilboard, Inc.
Case No. 04-cv-1569 (C.D. Cal.)

F.T.C. v. US Grant Resources, LLC.
Case No. 04-cv-0596 (E.D. La.)

F.T.C. v. Verity International, Ltd., et al.
Case No. 00-cv-7422-LAK (S.D. N.Y.)

F.T.C. v. Wellquest International, Inc.
Case No. 2:03-cv-05002 (C.D. Cal.)

F.T.C. v. Wolf Group
Case No. 94-cv-8119 (S.D. Fla.)

Fernando N. Lopez and Mallory Lopez, et al. v. City Of Weston
Case No. 99-8958 CACE 07 (FL 17th Jud Dist)

Fiori, et al. v. Dell Inc., et al.
Case No. 09-cv-01518 (N.D. Cal.)

FMS, Inc. v. Dell, Inc. et al.,
Case No. 03-2-23781-7SEA (King County, Wash.)

Galatis, et al. v. Psak, Graziano Piasecki & Whitelaw, et al.
No. L-005900-04 (Middlesex County, NJ)

Garcia v. Allergan
11-cv-9811 (C.D. Cal.)



Partial List of Legal Notification and Settlement Administration Experience

Consumer

Grabowski v. Skechers U.S.A., Inc.

No. 3:12-cv-00204 (W.D. Ky.)

Greg Benney, et al. v. Sprint International Communications Corp. et al.

Case No. 02-cv-1422 (Wyandotte County, KS)

Griffin v. Dell Canada Inc

Case No. 07-cv-325223D2 (Ontario, Superior Court of Justice)

Harris, et al. v. Roto-Rooter Services Company

Case No. 00-L-525 (Madison County, IL)

Harrison, et al. v. Pacific Bay Properties

No. BC285320 (Los Angeles County, CA)

Henderson, et al. v. Volvo Cars of North America, LLC, et al.

09-04146 (D. NJ)

In Re: Bancomer Transfer Services Mexico Money Transfer Litigation

BC238061, BC239611 (Los Angeles County, CA)

In Re: Certaineed Fiber Cement Siding Litigation

MDL 2270 (E.D. PA)

In Re: H&R Block Express IRA Marketing Litigation

Case No. 06-md-01786 (W.D. Mo.)

In Re: High Carbon Concrete Litigation

Case No. 97-cv-20657 (D. Minn.)

In Re: High Sulfur Content Gasoline Products Liability Litigation

MDL No. 1632 (E.D. La.)

In Re: Ria Telecommunications and Afex Mexico Money Transfer Litigation

Case No. 99-cv-0759 (San Louis Obispo, Cal.)

In Re: Salmonella Litigation

Case No. 94-cv-016304 (D. Minn.)

Janet Figueroa, et al. v. Fidelity National Title Insurance Company

Case No. 04-cv-0898 (Miami Dade County, Fla.)

Jerome H. Schlink v. Edina Realty Title

Case No. 02-cv-18380 (D. Minn.)

Joel E. Zawikowski, et al. v. Beneficial National Bank, et al.

Case No. 98-cv-2178 (N.D. Ill.)

John Babb, et al. v. Wilsonart International, Inc.

Case No. CT-001818-04 (Memphis, Tenn.)



Partial List of Legal Notification and Settlement Administration Experience

Consumer

Kenneth Toner, et al. v. Cadet Manufacturing Company
Case No. 98-2-10876-2SEA (King County, Wash.)

Kiefer, et al. v. Ceridian Corporation, et al.
Case No. 3:95-cv-818 (D. Minn.)

Kobylanski et al. v. Motorola Mobility, Inc. et al.
No. 13-CV-1181 (W.D. PA)

Long et al v. Americredit Financial Services, Inc.
0:2011-02752 (Hennepin County, MN)

Louis Thula, et al. v. Lawyers Title Insurance Corporation
Case No. 0405324-11 (Broward County, Fla.)

Lynn Henderson, et al. v. Volvo Cars of North America, LLC, et al.
No. 2:09-cv-04146-CCC-JAD (D. N.J.)

Lynnette Lijewski, et al. v. Regional Transit Board, et al.
Case No. 4:93-cv-1108 (D. Minn.)

Mark Laughman, et al. v. Wells Fargo Leasing Corp. et al.
Case No. 96-cv-0925 (N.D. Ill.)

Mark Parisot et al v. US Title Guaranty Company
Case No. 0822-cc-09381 (St. Louis Circuit Court, Mo.)

Mark R. Lund v. Universal Title Company
Case No. 05-cv-00411 (D. Minn.)

Melissa Castille Dodge, et al. v. Phillips College of New Orleans, Inc., et
Case No. 95-cv-2302 (E.D. La.)

Michael Drogin, et al. v. General Electric Capital Auto Financial Services
Case No. 95-cv-112141 (S.D. N.Y.)

Michael Sutton v. DCH Auto Group, et al.
(Essex County, NJ)

Michael T. Pierce et al. v. General Electric Capital Auto Lease
CV 93-0529101 S

Mitchem, et al v. Illinois Collection Service, Inc.
Case No. 09-cv-7274 (N.D. Ill.)

Northcoast Financial Services v. Marcia Webster
2004 CVF 18651 (Cuyahoga County, OH)

Oubre v. Louisiana Citizens Fair Plan
No. 625-567 (Jefferson Parish, LA)



Partial List of Legal Notification and Settlement Administration Experience

Consumer

Patricia Faircloth, et al. v. Certified Finance, Inc., et al.
Case No. 99-cv-3097 (E.D. La.)

Pistilli v. Life Time Fitness, Inc.
Case No. 07-cv-2300 (D. Minn.)

Rawlis Leslie, et al. v. The St. Joe Paper Company
Case No. 03-368CA (Gulf County, Fla.)

Regayla Loveless, et al. v. National Cash, Inc, et al.
Case No. 2001-cv-892-2 (Benton County, Ark.)

Ricci, et al., v. Ameriquest Mortgage Co.
Case No. 27-cv-05-2546 (D. Minn.)

Ronnie Haese, et al. v. H&R Block, et al.
Case No. 96-cv-423 (Kleberg County, Tex.)

Sandra Arnt, et al. v. Bank of America, N.A.
No. 27-cv-12-12279 (Hennepin County, MN)

Sara Khaliki, et al. v. Helzberg Diamond Shops, Inc.
4:11-cv-00010 (W.D. Mo.)

Shepherd, et al. v. Volvo Finance North America, Inc., et al.
Case No. 1:93-cv-971 (D. Ga.)

Skusenas v. Linebarger, Goggan, Blair & Sampson, LLC.
Case No. 1:10-cv-8119 (N.D. Ill.)

Smith v. NRT Settlement Services of Missouri, LLC
Case No. 06-cv-004039 (St. Louis County, MO)

Terrell Ervin v. Nokia Inc. et al.
Case No. 01-L-150 (St. Clair County, Ill.)

Theresa Boschee v. Burnet Title, Inc.
Case No. 03-cv-016986 (D. Minn.)

Thomas Losgar, et al. v. Freehold Chevrolet, Inc., et al.
Case No. L-3145-02 (Monmouth County, NJ)

Tom Lundberg, et al. v. Sprint Corporation, et al.
Case No. 02-cv-4551 (Wyandotte County, Kan.)

Truc-way, Inc., et al. v. General Electric Credit Auto Leasing
Case No. 92-CH-08962 (Cook County, Ill.)

Trudy Latman, et al. vs. Costa Cruise Lines, N.V., et al
Case No. 96-cv-8076 (Dade County, Fla.)



Partial List of Legal Notification and Settlement Administration Experience

Consumer

U.S. v. \$1,802,651.56 in Funds Seized from e-Bullion, et al. ("Goldinger"
No. CV 09-1731 (C.D. Cal.)

U.S. v. \$1,802,651.56 in Funds Seized from e-Bullion, et al. ("Kum Vent"
No. CV 09-1731 (C.D. Cal.)

U.S. v. David Merrick
6:10-cr-109-Orl-35DAB

U.S. v. Sixty-Four 68.5 lbs (Approx.) Silver Bars, et al.
(E.D. FL)

United States of America v. Alfredo Susi, et al.
3:07-cr-119 (W.D. NY)

United States of America v. Elite Designs, Inc.
Case No. 05-cv-058 (D. R.I.)

Vicente Arriaga, et al. v. Columbia Mortgage & Funding Corp, et al.
Case No. 01-cv-2509 (N.D. Ill.)

William R. Richardson, et al., v. Credit Depot Corporation of Ohio, et al.
Case No. 315343 (Cuyahoga County, Ohio)

Employment

Adam P. Kelly, et al v. Bank of America, N.A., et al.
No. 10-CV-5332 (E.D. IL)

Alequin, et al. v. Darden Restaurants, Inc. et al.
Case No.: 12-61742-CIV (S.D. FL)

Alice Williams, et a. v. H&R Block Enterprises
RG 08366506, (County of Alameda, CA)

Alma Anguiano v. First United Bank and Trust Co.
Case No. CIV-12-1096 (D. OK)

Andrew R. Rondonanski, et al. v. Midwest Division, Inc.
No. 11-cv-00887 (W.D. MO)

Balandran, et al. v. Labor Ready, et al.
BC 278551 (Los Angeles County, Cal.)

Ballard, et al., v. Fogo de Chao, LLC
Case No. 09-cv-7621 (D. Minn.)

Beasley, et al. v. GC Services LP
Case No. 09-cv-01748 (E.D. Mo.)

Berry v. Farmers Bank & Trust, N.A.
Case No. 13-02020



Partial List of Legal Notification and Settlement Administration Experience

Employment

Berte v. WIS Holdings Corporation
07-cv-1932 (S.D. CA)

Bishop et al. v. AT&T Corp.
Case No. 08-cv-00468 (W.D. Pa.)

Bobbie Jarrett v. GGNCS Holdings, LLC
Case No.: 12-CV-4105-BP (W.D. MO)

Chandler Glover and Dean Albrecht, et al., v. John E. Potter
EEOC No. 320-A2-8011X; Agency No. CC-801-0015-99

Claudine Wilfong, et al. v. Rent-A-Center, Inc.
Case No. 00-cv-680 (S.D. Ill.)

Creed, et al. v. Benco Dental Supply Co.
3:12-CV-1571 (E.D. PA)

Doe, et al. v. Cin-Lan, Inc, et al.
Case No. 4:08-cv-12719 (E.D. Mich.)

DuBeau et al v. Sterling Savings Bank et al.
No. 12-cv-1602 (D. OR)

DuBeau, et al. v. Sterling Savings Bank, et al.
1:12-cv-01602-CL (D. OR)

Equal Employment Opportunity Commission (EEOC) v. Star Tribune Co
Case No. 08-cv-5297(D. Minn.)

Equal Employment Opportunity Commission v Faribault Foods, Inc.
Case No. 07-cv-3976 (D. Minn.)

Fisher, et al. v. Michigan Bell Telephone Company
Case No. 09-cv-10802 (E.D. Mich.)

Frank, Peasley, Waters, and Wilhelm, v Gold'n Plump Poultry, Inc.
Case No. 04-cv-1018 (D. Minn.)

Geelan, et al. v. The Mark Travel Coporation
Case No. 03-cv-6322 (D. Minn.)

Gipson, et al. v. Southwestern Bell Telephone Company
Case No. 08-cv-2017 (D. Kan.)

Gregory Hernandez v. The Children's Place
No. CGC 04-4300989 (San Francisco, CA)

Helen Bernstein, et al. v. M.G. Waldbaum
Case No. 08-cv-0363 (D. Minn.)



Partial List of Legal Notification and Settlement Administration Experience

Employment

Holt v. Living Social

1:2012cv00745 (D. DC)

Jimmy West v. PSS World Medical, Inc.

Case No. 4:13-cv-00574 (E.D. Mo)

John Alba, et al. v. Papa John's USA, Inc.

Case No. 05-cv-7487 (W.D. Cal.)

Johnson, et al v. General Mills, Inc.

Case No. 10-cv-1104 (W.D. Mo.)

Kelly Marie Camp, et al. v. The Progressive Corporation, et al.

Case No. 01-cv-2680 (E.D. La.)

Kelly, et al v. Bank of America, N.A. et al.

No. 10-5332 (ND IL)

Lang, et al v DirecTV, Inc., et al.

No. 10-1085 (E.D. La)

Lynn Lietz, et al. v. Illinois Bell Telephone Company, et al.

No. 1:11-cv-0108 (N.D. Ill.)

Michelle Jackson, et al. v. Jamba Juice Company

Case No. 8:02-cv-00381 (C.D. Cal.)

Pamela Adams, et al., v. MedPlans Partners, Inc

Case No. 3:07-cv-259 (W.D. Ky.)

Phillip Busler, et al. v. Enersys Energy Products Inc., et al.

Case No. 09-cv-0159 (W.D. Mo.)

Rocher, et al. v. Sav-on Drugs, et al.

Case No. BC 227551 (Los Angeles County, Cal.)

Russell, et al. v. Illinois Bell Telephone Company

Case No. 08-cv-1871 (N.D. Ill.)

Sequoia Moss-Clark, et al. v. New Way Services, Inc., et al.

Case No. C12-1391 (Contra Costa County, CA)

Smallwood, et al. v. Illinois Bell Telephone Company,

Case No. 09-cv-4072 (N.D. Ill.)

Smith v. Family Video

No. 11-cv-01773 (N.D. Ill.)

Smith v. Pizza Hut, Inc.

No. 09--cv-01632-CMA-BNB (D. Colo.)



Partial List of Legal Notification and Settlement Administration Experience

Employment

Teeter v. NCR Corporation

Case No. 08-cv-00297 (C.D. Cal.)

Thomas Cramer et al. v. Bank of America, N.A. et al.

Case No. 12-08681 (N.D. IL)

Thomas Dege, et al., v. Hutchinson Technology, Inc.

Case No. 06-cv-3754 (D. Minn.)

Wilkinson, et al. v. NCR Corporation

Case No. 1:08-cv-5578 (N.D. Ill.)

William Perrin, et al. v. Papa John's International

No. 4:09-CV-01335 (E.D. Mo.)

Williams, et al. v. Dollar Financial Group, et al.

Case No. RG03099375 (Alameda County, Cal.)

Williams, et al. v. H&R Block Enterprises, Inc.

No. RG 08366506 (Alameda County, CA)

Wittemann, et al. v. Wisconsin Bell, Inc.

Case No. 09-cv-440 (W.D. Wisc.)

Wlotkowski, et al. v. Michigan Bell

Case No. 09-cv-11898 (E.D. Mich.)

Environmental

Bernice Samples, et al. v. Conoco, Inc., et al.

Case No. 01-0631-CA-01 (Escambia Country, Fla.)

Billieson, et al. v. City of New Orleans, et al.

No. 94-19231 (Orleans Parish, LA)

City of Greenville, et al., v. Syngenta Crop Protection, Inc., and Syngent

No. 3:10-cv-00188-JPG-PMF (S. D. Ill.)

In Re: Duluth Superior Chemical Spill Litigation

Case No. 92-cv-503 (W.D. Wis.)

McGruder, et al. v. DPC Enterprises

No. CV2003-022677 (Maricopa County, AZ)

Mehl v. Canadian Pacific Railway, Limited

Case No. 02-cv-009 (D. N.D.)

Michelle Marshall, et al. v. Air Liquide -- Big Three, Inc. et al.

No. 2005-08706 (Orleans Parish, LA)

Perrine, et al. v. E.I. Dupont De Nemours and Company, et al.

01-0631-CA-01 (Harrison C., WV)



Partial List of Legal Notification and Settlement Administration Experience

ERISA

In Re: Broadwing Inc ERISA Litigation

Case No. 02-cv-00857 (S.D. Ohio)

In Re: Xcel Energy, Inc. ERISA Litigation

Case No. 03-cv-2218 (D. Minn.)

Pat Beesley, et al v. International Paper Co. et al.

Case No. 06-703-DRH (S.D. IL)

Quince Rankin v. Charles C. Conway (Kmart ERISA Litigation)

Case No. 02-cv-71045 (E.D. Mich.)

FACTA

Albright v. Metrolink

No. 4:11-CV-01691AGF (E.D. MO)

Ebert, et al. v. Warner's Stellian

No. 11-cv-02325 JRT/ SER (D. Minn)

Fouks, et al. v. Red Wing Hotel Corporation

Case No. 12-cv-02160 (D. MN)

Jones v. Dickinson

No. 11 CV 02472 (D. MO)

Linda Todd, et al. v. Medieval Times

Case No. 1:10-cv-00120 (D. N.J.)

Masters v. Lowe's Home Centers, Inc.

Case No. 3:09-cv--255 (S.D. Ill.)

Seppanen et al. v. Krist Oil Company

Case No. 2:09-cv-195 (W.D. Mich.)

Waldman v. Hess Corporation

Case No. 07-cv-2221 (D. N.J.)

Insurance

Ann Castello v. Allianz Life Insurance Company

Case No. 03-cv-20405 (D. Minn.)

Boyd Demmer, et al. v. Illinois Farmers Insurance Company

Case No. MC 00-017872 (Hennepin County, Minn.)

Chultem v. Ticor Title Insur. Co., et al.

Case No. 2006-CH-09488 (Circuit Court of Cook County, Ill.)

Colella v. Chicago Title Insur. Co., et al.

Case No. 2006-CH-09489 (Circuit Court of Cook County, Ill.)

Deborah Hillgamy, et al. v. Reliastar Life Insurance Company, et al.

No. 11-cv-729 (W.D. WI)



Partial List of Legal Notification and Settlement Administration Experience

Insurance

Doan v. State Farm

108CV129264 (Santa Clara Co, CA)

Dorothea Pavlov v. Continental Casualty Company

Case No. 07-cv-2580 (N.D. Ohio)

Frank Rose, et al. v. United Equitable Insurance Company, et al.

Case No. 00-cv-02248 (Cass County, ND)

Froeber v. Liberty Mutual Fire Insurance Company

Case No. 00C15234 (Marion County, OR)

Garrison, et al., v. Auto-Owners Insurance Company

Case No. 02-cv-324076 (Cole County, Mo.)

Harold Hanson, et al. v. Acceleration Life Insurance Company, et al.

Case No. 3:97-cv-152 (D. N.D.)

Hofstetter, et al. v. Chase Home Finance, LLC., et al.

Case No. 10-cv-1313 (N.D. Cal.)

In Re: Lutheran Brotherhood Variable Insurance Products Co. Sales Pra

Case No. 99-md-1309 (D. Minn.)

Irene Milkman, et al. v. American Travellers Life Insurance Company, et

No. 03775 (Philadelphia Court of Common Pleas, Pa.)

Jacobs v. State Farm General Insurance Company

No. CJ-96-406 (Sequoyah County, Okla.)

James M. Wallace, III, et al. v. American Agrisurance, Inc., et al.

Case No. 99-cv-669 (E.D. Ark.)

James Ralston, et al. v. Chrysler Credit Corporation, et al.

Case No. 90-cv-3433 (Lucas County, Ohio)

Michael T. McNellis, et al. v. Pioneer Life Insurance Company, et al.

CV 990759 (County of San Luis Obispo, Cal.)

Morris v. Liberty Mutual Fire Insurance Company

CJ-03-714 (Pottawatomie County, OK)

Paul Curtis, et al v. Northern Life Insurance Company

Case No. 01-2-18578 (King County, Wash.)

Ralph Shaffer v. Continental Casualty Company and CNA Financial Corp

Case No. 06-cv-2253 (C.D. Cal.)

Raymond Arent, et al. v. State Farm Mutual Insurance Company

Case No. 00-mc-16521 (D. Minn.)



Partial List of Legal Notification and Settlement Administration Experience

Insurance

Roy Whitworth, et al. v. Nationwide Mutual Insurance Company, et al.
Case No. 00CVH-08-6980 (Franklin County, Ohio)

Sonia Gonzalez, et al. v. Rooms to Go, Inc., et al.
Case No. 97-cv-3146 (S.D. Fla.)

Tow Distributing, Inc., et al. v. BCBSM, Inc., d/b/a Blue Cross and Blue S
Case No. 02-cv-9317 (D. Minn.)

Legal Notice

Cazenave, et al. v. Sheriff Charles C. Foti, Jr., et al.
Case No. 00-cv-1246 (E.D. La.)

City of Greenville, et al., v. Syngenta Crop Protection, Inc., and Syngent
No. 3:10-cv-00188-JPG-PMF (S. D. Ill.)

Evans, et al. v. Linden Research, Inc., et al.
Case No. 4:11-cv-1078-DMR (N.D. CA)

F.T.C. v. NBTY, Inc.
No. 05-4793 (E.D. NY)

In Re: Aftermarket Filters Antitrust Litigation
No. 1:08-cv-4883, MDL No. 1957 (N.D. Ill.)

In Re: Certaineed Fiber Cement Siding Litigation
MDL 2270 (E.D. PA)

In Re: Google Referrer Header Privacy Litigation
No. 10-04809 (N.D. CA)

In Re: Salmonella Litigation
Case No. 94-cv-016304 (D. Minn.)

Kobylanski et al. v. Motorola Mobility, Inc. et al.
No. 13-CV-1181 (W.D. PA)

Mary Plubell, et al. v. Merck and Co., Inc.
Case No. 04-cv-235817 (Jackson County, MO)

McGruder, et al. v. DPC Enterprises
No. CV2003-022677 (Maricopa County, AZ)

Mehl v. Canadian Pacific Railway, Limited
Case No. 02-cv-009 (D. N.D.)

Michelle Marshall, et al. v. Air Liquide -- Big Three, Inc. et al.
No. 2005-08706 (Orleans Parish, LA)

Skold, et al. v Intel Corporation, et al.
Case No. 1-05-cv-039231 (County of Santa Clara, CA)



Partial List of Legal Notification and Settlement Administration Experience

Medical/Drug

F.T.C. v. CHK Trading Corp.

Case No. 04-cv-8686 (S.D. N.Y.)

F.T.C. v. Christopher Enterprises, Inc.

Case No. 2:01-cv-0505 (D. Utah)

F.T.C. v. Conversion Marketing, Inc.

Case No. 04-cv-1264 (C.D. Cal.)

F.T.C. v. Enforma Natural Products, Inc.

Case No. 00-cv-04376 (C.D. Cal.)

F.T.C. v. Goen Technologies

FTC File No. 042 3127

F.T.C. v. Great American Products

Case No. 05-cv-00170 (N.D. Fla.)

F.T.C. v. Kevin Trudeau, et al.

Case No. 03-cv-3904 (N.D. Ill.)

F.T.C. v. Latin Hut, Inc.

Case No. 04-cv-0830 (S.D. Cal.)

F.T.C. v. QT, Inc.

Case No. 03-cv-3578 (N.D. Ill.)

F.T.C. v. Seasilver USA, Inc.

Case No. 03-cv-0676 (D. Nev.)

F.T.C. v. Smart Inventions, Inc.

Case No. 04-cv-4431 (C.D. Cal.)

F.T.C. v. Sunny Health Nutrition Technology & Products, Inc.

Case No. 06-cv-2193 (M.D. Fla.)

F.T.C. v. United Fitness of America, LLC

Case No. 02-cv-0648 (D. Nev.)

In Re: Guidant Corp Implantable Defibrillators Products Liability Litigati

Case No. 05-cv-1708 (D. Minn.)

Karen Wright, et al. v. Milan Jeckle

Case No. 98-2-07410-2 (Spokane County, Wash.)

Mary Plubell, et al. v. Merck and Co., Inc.

Case No. 04-cv-235817 (Jackson County, MO)

Privacy/Data Breach

Anderson, et al. v. United Retail Group, Inc., et al.

Case No. 37-cv-89685 (San Diego County, Cal.)



Partial List of Legal Notification and Settlement Administration Experience

Privacy/Data Breach

F.T.C. v. CEO Group, Inc.

Case No. 06-cv-60602 (S.D. Fla.)

F.T.C. v. Choicepoint

Case No. 06-cv-0198 (N.D. Ga.)

In Re: U.S. Bank National Association Litigation

Case No. 99-cv-891 (D. Minn.)

Michael Stoner, et al. v. CBA Information Services

Case No. 04-cv-519 (E.D. Pa.)

St. Clair, et al. v MRB, et al.

Case No. 12-cv-1572 (D. MN)

Sterling et al. v. Strategic Forecasting, Inc. et al.

No. 2:12-cv-00297-DRH-ARL (E.D. N.Y.)

Securities

Alan Freberg, et al. v. Merrill Corporation, et al.

Case No. 99-cv-010063 (D. Minn.)

Anderson v. Investors Diversified Services

Case No. 4:79-cv-266 (D. Minn.)

Charter Township Of Clinton v. OSI Restaurants

Case No. 06-CA-010348 (Hillsborough County, Fla.)

Christopher Carmona, et al. v. Henry I. Bryant, et al. (Albertson's Securi

Case No. 06-cv-01251 (Ada County, Idaho)

Daryl L. Cooper, et al. v. Miller Johnson Steichen Kinnard, Inc.

Case No. 02-cv-1236 (D. Minn.)

Dutton v. Harris Stratex Networks, Inc. et al

08-cv-00755-LPS (D. DE)

Edith Gottlieb v. Xcel Energy, Inc., et al.

Case No. 02-cv-2931 (D. Minn.)

Family Medicine Specialists, et al. v. Abatix Corp., et al.

Case No. 3:04-cv-872B (N.D. Tex.)

Fisk, et al. v. H&R Block Inc., et al.

1216-CV20418 (Jackson County. MO)

Friedman, et al. v. Penson Worldwide, Inc.

11-cv-02098 (N.D. TX)

In Re: American Adjustable Rate Term Trust Securities Litigation

Case No. 4:95-cv-666 and 4:95-cv-667 (D. Minn.)



Partial List of Legal Notification and Settlement Administration Experience

Securities

In Re: Ancor Communications, Inc Securities Litigation
Case No. 97-cv-1696 (D. Minn.)

In Re: Asia Pulp & Paper Securities Litigation
Case No. 01-cv-7351 (S.D. N.Y.)

In Re: Bayer AG Securites
Case No. 03-cv-1546 (S.D. N.Y.)

In Re: Bio-One Securities Litigation
Case No. 05-cv-1859 (M.D. Fla.)

In Re: Bioplasty Securities Litigation
Case No. 4:91-cv-689 (D. Minn.)

In Re: Citi-Equity Group, Inc. Securities Litigation
Case No. 94-cv-012194 (D. Minn.)

In Re: Citi-Equity Group, Inc., Limited Partnerships Securities Litigation
MDL No. 1082 (C.D. Cal.)

In Re: Control Data Corporation Securities Litigation
Case No. 3:85-cv-1341 (D. Minn.)

In Re: Cray Research Securities Litigation
Case No. 3:89-cv-508 (D. Minn.)

In Re: Cybex International Securities Litigation
No. 653794/2012 (County of New York, NY)

In Re: E.W. Blanch Holdings, Inc. Securities Litigation
Case No. 01-cv-258 (D. Minn.)

In Re: Encore Computer Corporation Shareholder Litigation
Case No. 16044 (New Castle County, Del.)

In Re: EVCI Career Colleges Holding Corp Securities Litigation
Case No. 05-cv-10240 (S.D. N.Y.)

In Re: Flight Transportation
MDL No. 517 (D. Minn.)

In Re: Frontier Oil Corporation
Case No. 2011-11451 (Harris County, Tex.)

In Re: Hennepin County 1986 Recycling Bond Litigation
Cas No. 92-cv-22272 (D. Minn.)

In Re: McCleodUSA Incorporated Securities Litigation
Case No. 02-cv-0001 (N.D. Iowa)



Partial List of Legal Notification and Settlement Administration Experience

Securities

In Re: McKesson HBOC, Inc. Securities Litigation

Case No. 99-cv-20743 (N.D. Cal.)

In Re: Merrill Lynch & Co., Inc. Securities Derivative and ERISA Litigation

07-cv-9633 (S.D. NY)

In Re: Merrill Lynch Research Reports Securities Litigation

Case No. 02-md-1484 (S.D. N.Y.)

In Re: Micro Component Technology, Inc. Securities Litigation

Case No. 4:94-cv-346 (D. Minn.)

In Re: National City Corp. Securities, Derivative and Erisa Litig.

MDL No. 2003 (N.D. Ohio)

In Re: New Century

No. 07-CV-0931 (C.D. Cal.)

In Re: Novastar Financial, Inc. Securities Litigation

Case No. 04-cv-0330 (W.D. Mo.)

In Re: OCA, Inc. Securities and Derivative Litigation

Case No. 05-cv-2165 (E.D. La.)

In Re: Raytheon Company Securities Litigation

Case No. 99-cv-12142 (D. Mass.)

In Re: Reliance Group Holdings, Inc. Securities Litigation

Case No. 00-cv-4653 (S.D. N.Y.)

In Re: Retek Inc Securities Litigation

Case No. 02-cv-4209 (D. Minn.)

In Re: Salomon Analyst Metromedia Litigation

Case No. 02-cv-7966 (S.D. N.Y.)

In Re: Scimed Life Systems, Inc. Shareholders Litigation

Case No. 94-mc-17640 (D. Minn.)

In Re: Sourcecorp Securities Litigation

Case No. 04-cv-02351 (N.D. Tex.)

In Re: SS&C Technologies, Inc. Shareholders Litigation

Case No. 05-cv-1525 (D. Del.)

In Re: Taxable Municipal Bond Securities Litigation

MDL 863 (E.D. La.)

In Re: Tellium Inc Securities Litigation

Case No. 02-cv-5878 (D. N.J.)



Partial List of Legal Notification and Settlement Administration Experience

Securities

In Re: The Sportsman's Guide, Inc. Litigation
Case No. 06-cv-7903 (D. Minn.)

In Re: Tonka Corporation Securities Litigation
Case No. 4:90-cv-002 (D. Minn.)

In Re: Tonka II Securities Litigation
Case No. 3:90-cv-318 (D. Minn.)

In Re: Tricord Systems, Inc. Securities Litigation
Case No. 3:94-cv-746 (D. Minn.)

In Re: VistaCare, Inc. Securities Litigation
Case No. 04-cv-1661 (D. Ariz.)

In Re: Williams Securities Litigation
Case No. 02-cv-72(N.D. Okla.)

In Re: Xcel Energy, Inc. Securities Litigation
Case No. 02-cv-2677 (D. Minn.)

In Re: Xcelera.Com Securities Litigation
Case No. 00-cv-11649 (D. Mass.)

In Re: Xybernaut Corp. Securities MDL Litigation
Case No. 05-mdl-1705 (E.D. Va.)

Ivy Shipp, et al. v. Nationsbank Corp.
19,002 (TX 12th Jud Dist)

Karl E. Brogen and Paul R. Havig, et al. v. Carl Pohlard, et al.
Case No. 3:93-cv-714 (D. Minn.)

Lewis H. Biben, et al. v. Harold E. Card, et al.
Case No. 84-cv-0884 (W.D. Mo.)

Lori Miller, et al. v. Titan Value Equities Group Inc., et al.
Case No. 94-mc-106432 (D. Minn.)

Makor Issues & Rights, Ltd., et al. v. Tellabs, Inc., et al.
02-C-4356 (N.D. IL)

Montoya, et al. v. Mamma.com, Inc., et al.
Case No. 1:05-cv-02313 (S.D. N.Y.)

Resendes, et al.; Maher, et al.; Hawkins, et al.; Schooley, et al. v. Thorp,
Case No. 84-cv-03457, 84-cv-11251, 85-cv-6074, 86-cv-1916L (D. Minn.)

Richard Donal Rink, et al. v. College Retirement Equities Fund
No. 07-CI-10761, (Jefferson County, KY)



Partial List of Legal Notification and Settlement Administration Experience

Securities

Robert Trimble, et al. v. Holmes Harbor Sewer District, et al.
Case No. 01-2-00751-8 (Island County, Wash.)

SEC v Al-Raya Investment Company, et. al.
No. 109-CV-6533

Superior Partners, et al. v. Rajesh K. Soin, et al.
Case No. 08-cv-0872 (Montgomery County, Ohio)

Svenningsen, et al. v. Piper Jaffray & Hopwood, et al.
Case No. 3:85-cv-921 (D. Minn.)

Three Bridges Investment Group, et al. v. Honeywell, et al.
Case No. 88-cv-22302 (D. Minn.)

United States of America v. Zev Saltsman
Case No. 04-cv-641 (E.D. N.Y.)

William Steiner, et al. v. Honeywell, Inc. et al.
Case No. 4:88-cv-1102 (D. Minn.)

Test Score

David Andino, et al. v. The Psychological Corporation, et al.
Case No. A457725 (Clark County, Nev.)

Frankie Kurvers, et al. v. National Computer Systems
No. MC00-11010 (Hennepin County, Minn)

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Richard W. Simmons

BIOGRAPHY

Richard W. Simmons is the President of Analytics Consulting LLC¹. Mr. Simmons joined Analytics in 1990, and has more than 24 years of experience developing and implementing class action communications and settlement programs.

Mr. Simmons' first legal notice consulting engagement was the *Schwan's Salmonella Litigation* settlement (*In Re: Salmonella Litigation*, Case No. 94-cv-016304 (D. Minn.)). Since then, he has:

- Developed and implemented notice campaigns ranging in size up to 45 million known class members (and 180 million unknown class members);
- Testified regarding legal notice in building products, civil rights, consumer products, environmental pollution, privacy, and securities litigation settlements;
- Managed claims processes for settlement funds ranging up to \$1 billion in value.

In addition to his class action consulting work, Mr. Simmons has taught a college course in antitrust economics, was a guest lecturer at the University of Minnesota Law School on issues of statistical and economic analysis, was a charter member of the American Academy of Economic and Financial Experts, and was a former referee for the Journal of Legal Economics (reviewing and critiquing peer reviewed articles on the application of economic and statistical analysis to legal issues). Mr. Simmons is a published author on the subject of damage analysis in Rule 10b-5 securities litigation.

Mr. Simmons graduated from St. Olaf College with a B.A. in Economics, pursued a PhD. in Applied Economics (with a concentration on consumer/behavioral economics) at the University of Minnesota², and has received formal media planning training from New York University.

Mr. Simmons' primary areas of research are the utilization of technology in class action notice campaigns and the application of data analytics to issues of ascertainability.

¹ In October 2013, Analytics Consulting LLC acquired Analytics Incorporated (d/b/a BMC Group Class Action Services ("BMC Group")). I was formerly the President/Managing Director of BMC Group. References to Analytics herein include the prior legal entities.

² Mr. Simmons suspended work on his dissertation to acquire and manage Analytics.



APPLICATION OF TECHNOLOGY TO CLASS ACTION SETTLEMENTS

Mr. Simmons has been a visionary in the application of the Internet to class action notice campaigns and the management of settlements:

- In 1995, Mr. Simmons was the first in the nation to support class action settlements with an online presence, that included the ability to check online, the status of their claims.
- In 2000, Mr. Simmons invented online claims submission in class action litigation, filing a patent application governing “*Method and system for assembling databases in multiple-party proceedings*” US20010034731 A1.
- In 2002, Mr. Simmons established an online clearinghouse for class action settlements that provided the public with information regarding class action settlements and provided them with the ability to register for notification of new settlements. This clearinghouse received national press attention as a resource for class action settlements.
- From 2003 through 2013, Analytics’ incremental changes in Internet support included class member verification of eligibility, locator services that identified retail outlets that sold contaminated products, secure document repositories, and multi-language support.
- In 2014, Mr. Simmons was the first to utilize and testify regarding product based targeting in an online legal notice campaign
- In 2014, Analytics, under Mr. Simmons’ leadership, released the first class action settlement support site developed under e-commerce best practices.

SPEAKER/EXPERT PANELIST/PRESENTER

Mr. Simmons has presented to panels of judges and lawyers on issues regarding class notice, claims processing, and disbursement:

- Mr. Simmons served as a panelist for the Francis McGovern Conferences on “Distribution of Securities Litigation Settlements: Improving the Process”, at which regulators, judges, custodians, academics, practitioners and claims administrators participated.
- In 2011, Mr. Simmons was a panelist at the Federal Judicial Center’s workshop/meetings regarding class action notice and settlement administration.
- In 2014, Mr. Simmons was invited to be interviewed by the Consumer Financial Protection Bureau as an expert on notice and claims administration in class action litigation as part of their study on arbitration and consumer class litigation waivers

Mr. Simmons’ speaking engagements regarding class notice include:

- *Class Action Administration: Data and Technology*, presented by Richard Simmons, Harris Martin Target Data Breach Conference in San Diego (2014);
- *Developments in Legal Notice*, accredited CLE Program, presented by Richard Simmons and Christian Clapp at at Susman Godfrey in Dallas (2014)



- *Developments in Legal Notice*, accredited CLE Program, presented by Richard Simmons and Christian Clapp at Shook Hardy & Bacon, LLP in Kansas City (2013),
- *Developments in Legal Notice*, accredited CLE Program, presented by Richard Simmons and Christian Clapp at Halunen & Associates in Minneapolis (2013),
- *Class Actions 101: Best Practices and Potential Pitfalls in Providing Class Notice*, CLE Program, presented by Brian Christensen, Gina Intrepido, and Richard Simmons, to the Kansas Bar Association (March 2009).

JUDICIAL COMMENTS AND LEGAL NOTICE CASES

In evaluating the adequacy and effectiveness of Mr. Simmons' notice campaigns, courts have repeatedly recognized Mr. Simmons' work. The following excerpts provide recent examples of such judicial approval in matters where the primary issue was the provision of class notice.

Judge Edward J. Davila, *In re: Google Referrer Header Privacy Litigation* (March 31, 2015), 10-04809 (N.D. CA):

On the issue of appropriate notice, the court previously recognized the uniqueness of the class asserted in this case, since it could potentially cover most internet users in the United States. On that ground, the court approved the proposed notice plan involving four media channels: (1) internet-based notice using paid banner ads targeted at potential class members (in English and in Spanish on Spanish-language websites); (2) notice via "earned media" or, in other words, through articles in the press; (3) a website decided solely to the settlement (in English and Spanish versions); and (4) a toll-free telephone number where class members can obtain additional information and request a class notice. In addition, the court approved the content and appearance of the class notice and related forms as consistent with Rule 23(c)(2)(B).

The court again finds that the notice plan and class notices are consistent with Rule 23, and that the plan has been fully and properly implemented by the parties and the class administrator.

Judge Terrence F. McVerry, *Kobylanski, et al. v. Motorola Mobility, Inc., et al.* (October 9, 2014), 13-01181 (W.D. PA):

The Court finds that the distribution of the Notice to Class Members Re: Pendency of Class Action, as provided for in the Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable under the circumstances to all Persons within the definition of the Class and fully met the requirements of due process under the United States Constitution.



Judge Marco Roldan, **Mary Plubell v. Merck & Co** (March 15, 2013), 04CV235817-01 (Jackson County, MO):

Under the circumstances, the notice this Settlement provided to Class Members in accordance with the Notice Order was the best notice practicable the proceedings and matters set forth therein, including the proposed Settlement, to all Persons entitled to such notice, and said notice fully satisfied the requirements due process and Missouri law.

Judge James P. Kleinberg, **Janet Skold, et al. v. Intel Corporation, et al.** (March 14, 2013) 05-CV-039231 (County of Santa Clara, CA):

The Court finds that Plaintiff's proposed Notice plan has a reasonable chance of reaching a substantial percentage of class members.

Judge Thomas N. O'Neill, Jr., **In Re: CertainTeed Fiber Cement Siding Litigation** (March 20, 2014), MDL Docket No. 2270 (E.D. PA):

Settlement class members were provided with notice of the settlement in the manner and form set forth in the settlement agreement... Notice was also provided to pertinent state and federal officials... The notice plan was reasonably calculated to give actual notice to settlement class members of their right to receive benefits from the settlement or to be excluded from the settlement or object to the settlement. The notice plan met the requirements of Rule 23 and due process.

Judge Robert G. Gettleman, **In Re Aftermarket Filters Antitrust Litigation** (October 25, 2012), MDL Docket No. 1957 (N.D. IL):

Due and adequate notice of the Settlement was provided to the Class... The manner of giving notice provided in this case fully satisfies the requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled thereto. A full and fair opportunity was provided to the members of the Class to be heard regarding the Settlements

Judge J. Phil Gilbert, **Greenville IL, et al. v. Syngenta Crop Protection, Inc. et al.** (October 23, 2012), 10-00188 (S.D. IL):

The Notice provided to the Class fully complied with Rule 23, was the best notice practicable, satisfied all constitutional due process requirements, and provides the Court with jurisdiction over the Class Members. Eisen v. Carlisle and Jacquelin, 417 U.S. 156, 177-78 (1974); Phillips Petroleum v. Shutts, 472 U.S. 797 (1985).