

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

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

**BRIEF IN SUPPORT OF *EX PARTE* MOTION FOR A WRIT *NE EXEAT*, AN ORDER  
COMPELLING TRUDEAU TO SURRENDER HIS PASSPORTS, AND AN ORDER TO  
SHOW CAUSE WHY DEFENDANT SHOULD NOT BE PRELIMINARILY ENJOINED  
FROM LEAVING THE UNITED STATES**

**[FILED UNDER SEAL]**

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## I. INTRODUCTION

Pursuant to the All Writs Act, 18 U.S.C. § 1651, and the Court's inherent power, the FTC moves the Court to issue a writ *ne exeat* and order Trudeau to surrender his passports until the Court resolves the pending contempt motion.<sup>1</sup> The Court has already found that the FTC has "establish[ed] a *prima facie* showing of contempt," Order (Dec. 6, 2012) (DE535) at 2, leaving only Trudeau's "inability to pay" defense at issue. To establish this defense, Trudeau has the burden to show "a complete inability to pay," and "clearly, plainly, and unmistakably that compliance is impossible." *In re Resource Tech.*, 624 F.3d 376, 387 (7th Cir. 2010). The negligible evidence Trudeau offered on May 21 comes nowhere close to satisfying his burden, whereas the FTC's substantial proof shows that Trudeau controls significant assets that he could use to comply with the Court's Order to pay. In fact, as the Court noted on May 21, the FTC's evidence "clearly prove[s]" that "Mr. Lane and Mr. Trudeau were engaged in a rather elaborate scheme to try to put his assets beyond the reach of the FTC[.]" PXA:1, Tr at 123:12-18.

This scheme involved hiding assets abroad and, indeed, Trudeau now resides in a luxuriously-appointed Zurich home. PXB:2 at 12:5-13:8.<sup>2</sup> Having recently established a Swiss residence, and given his demonstrated willingness to disregard the Court's orders, Trudeau is very unlikely to return to the Court's jurisdiction to face incarceration. Rather, with his business and personal affairs relocated to Switzerland, the hearing that resumes on June 26 is almost certainly the last time Trudeau will appear before the Court voluntarily. Because the Court cannot provide consumers complete relief unless it retains jurisdiction over Trudeau, a writ *ne exeat* is necessary.

Finally, *ex parte* relief is essential because Trudeau is unlikely to appear on June 26 (or for proceedings scheduled at another time) if he learns beforehand that the FTC has moved to

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<sup>1</sup> A writ *ne exeat* "forbids the person to whom it is addressed to leave the country, the state, or the jurisdiction of the court." Black's Law Dictionary 1031 (6th ed. 1990). This motion asks that the Court require Trudeau to remain within the country.

<sup>2</sup> For ease of reference, the FTC has attached both a CD of the news story (PXB:1) and a transcript. The citations refer to the transcript.

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

## II. BACKGROUND

### A. The Substantial Evidence That Trudeau Is Concealing Assets

Although the FTC has not completed its case, the Court observed that the evidence presented thus far demonstrates an “elaborate scheme . . . to put [Trudeau's] assets beyond the reach of the FTC[.]” PXA:1, Tr. at 123:12-18. By way of example only, this evidence includes communications from asset protection specialist Marc Lane<sup>4</sup> advising Trudeau how to keep his assets “protected” from the FTC:

- Lane advised Trudeau that International Pool Tour (“IPT”) “is subject to the claims for your creditors, including the FTC. For that reason, you should maintain only minimal cash (or other assets) in IPT or any company you own.” PXA:2 (FTCX 12:D)<sup>5</sup> (emphasis added). Lane continued: “It may make sense for me to assume a greater role in cash management,” in part “to maximize such asset-protection opportunities[.]” *Id.*
- Lane advised Trudeau “that Trustar Marketing, and not Trudeau Management, own the domain name registration and other intellectual property relating to the [KTRN] radio show,” because “[y]ou own Trudeau Management directly and, as such, all of its assets are subject to the FTC's claim.” PXA:3 (FTCX 12:G).
- Lane advised Trudeau to “stay away from Asia Trust Limited,” because, in other cases, Asia Trust Limited had “caved in” and “turned over . . . assets . . . to the FTC[.]” PXA:4 (FTCX 12:H).
- Lane advised Trudeau regarding “opening a bank account in a country which has been identified as not enforcing judgments, and particularly U.S. judgments[.]” PXA:5 at 685 (FTCX 20:J).

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

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

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



- Lane advised Trudeau that having the Global Information Network (“GIN”) fund the court-ordered \$2 million bond was “an excellent idea,” although “securing a bond and keeping it beyond the FTC’s reach will require careful planning.” PXA:6 (FTCX 12:K (emphasis added)).<sup>6</sup>

### **B. Trudeau’s Failed Effort To Satisfy His Burden**

Trudeau has not explained his communications with Lane or otherwise addressed the vast evidence that Trudeau controls GIN. Rather, his evidence consists almost exclusively of incomplete financial records. *See* PXA:8 (Df.’s exhibit list). By way of example only:

- Global Information Network FDN (“GIN FDN”). GIN FDN maintains a Liechtenstein bank account,<sup>7</sup> *see* PXA:9 at 42:11-20 (FTCX 10), from which Trudeau withdrew \$2 million to fund the court-ordered escrow, *see* PXA:10 (FTCX 3H), and from which he arranged to have his salary at Website Solutions Switzerland GmbH (“WSS”) paid, *see* PXA:11 (FTCX 11R). But the only information Trudeau offers regarding GIN FDN’s assets are 2010 account statements from an Ohio bank. PXA:12 (DX 4). Trudeau presented no evidence at all explaining the money coming from Liechtenstein. Additionally, Trudeau often wired Lane money from GIN FDN’s United Kingdom account at National Westminster Bank, *see* PXA:13 (FTCX 12EE) (“Payment Detail: Trudeau/GIN”), but Trudeau offered no evidence at all explaining the money coming from National Westminster.
- APC Trading Limited (“APC”). APC is a Belize entity that owns 100% of five other entities associated with GIN, is the sole member of GIN FDN’s management board, and is wholly owned by Trudeau’s wife (Nataliya Babenko). PXA:14-15 (FTCX 13J-K). Trudeau presented no evidence at all regarding APC.
- Sovereign Trust. Trudeau and Lane helped create this Cook Islands trust. *See* PXA:16 at 1-2 (FTCX 12H). APC is the sole beneficiary. PXA:15 (FTCX 13K). Trudeau presented no evidence at all regarding Sovereign Trust.
- N.T. Trading S.A. Sovereign Trust owns this Panama corporation. Trudeau presented no evidence at all regarding N.T. Trading.<sup>8</sup> *Id.*

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<sup>6</sup> Significantly, when the FTC called Trudeau to testify about his alleged inability to pay, he refused to answer 382 questions. *See* PXA:1; *see also id.* at Tr. 123:9-11 (May 21, 2013) (“I can tell you that I’ve seen enough in these documents to support any adverse inference that might be drawn from at least some of [Trudeau’s] testimony.”); *cf. United States v. Rylander*, 460 U.S. 752, 761 (1983) (affirming contempt finding and civil incarceration when contemnor failed to present an “inability to comply” defense because he elected to assert the Fifth Amendment rather than testify to support his defense). Trudeau’s silence entitles the FTC to adverse inferences that further support the FTC’s right to relief. *See, e.g., Cent. States, S.E. & S.W. Areas Pension Fund v. Wintz Props., Inc.*, 155 F.3d 868, 872 (7th Cir. 1998) (“[I]nvoicing the Fifth Amendment in a civil context invites an inference that the witness’ testimony would be adverse to his interests[.]”) (citing *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976)).

<sup>7</sup> A copy of Trudeau’s most recent exhibit list is attached. PXA:8. It catalogues the only evidence Trudeau offered.

<sup>8</sup> Although Lane produced an organizational chart stating that N.T. Trading is “abandoned/not active,” PXA:15 (FTCX 13K), it executed a power of attorney in Trudeau’s

- NBT Trading Limited. This Hong Kong corporation owns Website Solutions USA (“WSU”). *Id.* Trudeau presented no evidence at all regarding NBT Trading.
- Advantage Solutions Ltd. Trudeau presented no evidence at all regarding this Seychelles corporation. *Id.*
- Website Solutions Switzerland. Trudeau asked Lane to help create this Swiss company, PXA:19 (FTCX 12I), which employs Trudeau, PXA:20 at 12 (DX 25). Trudeau presented no evidence at all regarding WSS.

The limited evidence that Trudeau provided regarding other entities is also woefully incomplete. For instance, Trudeau offered bank statements from Isle of Man entity K.T. Corp.,<sup>9</sup> PXA:21 (DX 9A-C), but no evidence explaining what physical assets it holds (and K.T. Corp. owns Trudeau’s Ojai, California house, PXA:22 at 5 (FTCX22)).<sup>10</sup> Trudeau offers GIN USA’s P&L statement, which reflects \$14 million in “net income” (*i.e.*, net profit) since January 1, 2010, PXA:23 (DX 5A), but produces no evidence explaining where this money went.<sup>11</sup>

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

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favor in 2008, PXA17 (FTCX\_47). In 2009, Lane warned Trudeau that this “would defeat the asset protection strategy,” and suggested that he (Lane) should have the power revoked. PXA:18 (FTCX 20:Q). Trudeau instructed Lane not to have the power revoked “yet.” *See id.*

<sup>9</sup> *See also* PXA:24 (FTCX 13L) (identifying KT Corp. as an Isle of Man entity).

<sup>10</sup> KMT Fiduciary Trust owns K.T. Corp., PXA:24 (FTCX 13L), and Lane’s asset protection-related communications refer to Trudeau as having “ultimate beneficial ownership” of KMT, PXA:25 (FTCX 12:E).

<sup>11</sup> KT Radio Network (“KTRN”) and WSU report net losses, but these “losses” are misleading because KTRN and WSU transferred millions to other companies affiliated with Trudeau, to his attorneys, to Babenko, and to Trudeau himself. They also paid to support Trudeau’s lifestyle. *See, e.g.*, PXA:26 at 3 (DX 10A) (KTRN statement showing, among other things, more than \$500,000 paid to rent the Oak Brook home); PXA:27 at 4 (DX 24A) (WSU statement showing, among other things, \$7.7 million transferred to GIN FDN, \$486,000 to Trudeau, \$1.4 million to Trudeau-Approved Products Inc. by way of a “loan,” *see* PXA:28 at 5 (DX 19A), and \$869,000 attributed to “Kevin Trudeau-Legal” ; the “due from” column reflects outgoing transfers, *see, e.g.*, [www.investopedia.com/terms/d/due-from-account.asp](http://www.investopedia.com/terms/d/due-from-account.asp)).

Trudeau even denies having any personal property other than \$2000 worth of clothing, *id.* at 6 – although he spent more than \$15,000 in one trip to a high-end men’s clothier in Zurich only months before he filed the “sworn” statement, PXA:34 (FTCX 90 at 103).

More broadly, Trudeau has not offered documents or testimony establishing that his millions in credit card expenses are all business expenses. *See* PXA:29 (FTCX 6A-J). Nor does any of Trudeau’s evidence explain what happened to the \$100,000 worth of gold bars he purchased in 2008 (which Trudeau’s “right hand man”<sup>12</sup> Neil Sant swapped for Scotia Bank gold bars in 2011). PXA:30 (FTCX 19). Furthermore, none of Trudeau’s evidence explains how he can afford a personal “Executive Project Manager.” *See* PXA:31 at 80:6-14 (FTCX11); PXA:32 (FTCX 11:Z); PXA:33 at 58:24-59:23 (FTCX14).<sup>13</sup> Finally, none of his evidence addresses how companies he controls – and companies he indisputably owns – have paid more than \$6.7 million in legal expenses since June 2, 2010.<sup>14</sup> PXA:35 (FTCX 18D-E).

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

Trudeau has long believed that hiding assets offshore will protect them from the FTC. In a 2007 email entitled “Asset Protection Planning,” Lane wrote: “I know that Kevin credits the offshore structure for the relatively favorable settlement to which the FTC previously agreed.” PXA:36 (FTCX 20Y). Apparently, Trudeau also believed that, to minimize the risk that the Court might impair his ability to travel abroad, he needed a second passport. Accordingly, in 2009, Trudeau engaged a law firm with a prominent immigration practice (Mintz Levin) to obtain an Italian passport. PXA:37. Trudeau accelerated the process after the Court’s 2010 Order to pay and apparently received an Italian passport at some point in 2011. *See* PXA:38 (FTCX 1N) (Nov. 20, 2011) (Rivers Casino incident report in which casino security notes that

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

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

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

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

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

In fact, as the litigation to recover money for consumers moved forward, Trudeau repeatedly instructed his associates to move assets and business operations offshore as much as possible. *See e.g.*, PXA:47 at 3 (FTCX 12Q) (“[Y]ou need to take the lead on getting the gin website on servers outside the USA. . . . [A]nyplace is better than usa[.]”); PXA:48 (FTCX 20S) (“GIN needs a Swiss bank account in Swiss francs[.]”); PXA:49 (FTCX 11Y) (Dec. 11, 2012) (“All GIN dues will go to GIN non USA accounts.”); PXA:50 (FTCX 11M) (“kt Australia account needs to be activated and debit card sent . . . asap”); *id.* (“gin MUST get money out of the usa and into banks overseas...never keep more money in the usa than needed...tap, ncinc, ktrn, nchi, wss, and every company NEEDS accounts OFF SHORE!!!!!!!!!!!!!!!”) (Trudeau’s ellipses).

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<sup>15</sup> The third party to this email exchange is European attorney Michael Van Roon. PXA:39 (FTCX 83). Van Roon works at “TransTax,” an entity that performs “asset protection” services. *See* [www.transtaxgroup.com/asset.html](http://www.transtaxgroup.com/asset.html) (viewed June 11, 2013). Trudeau wrote to Sant and Van Roon: “I also need a bank in your area or Zurich that I can establish a safe deposit box. I also need a place in Switzerland where I can buy gold.” PXA:39 (FTCX 83) (Apr. 24, 2012) (emphasis added).

### III. ARGUMENT

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

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

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

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

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

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

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<sup>17</sup> Courts in this District regularly grant the FTC *ex parte* relief when necessary to protect consumers. *See, e.g., FTC v. Construct Data Publishers*, No. 13 C 1999 (N.D. Ill. Mar. 15, 2013) (Tharp, J.); *FTC v. Fortune Hi-Tech Marketing, Inc.*, No. 13 C 578 (N.D. Ill. Jan. 24, 2013) (Darrah, J.); *FTC v. Freedom Companies Marketing, Inc.*, No. 12 C 5743 (N.D. Ill. July 23, 2012) (Shadur, J.); *FTC v. Apogee One Enters. LLC*, No. 12 C 588 (N.D. Ill. Jan. 30, 2012) (Kennelly, J.); *FTC v. Yellow Page Marketing B.V.*, No. 11 C 5035 (N.D. Ill. July 26, 2011) (Feinerman, J.); *FTC v. Nat’l Sales Group*, No. 11 C 1230 (N.D. Ill. Feb. 22, 2011) (Guzman, J.); *FTC v. Am. Tax Relief*, No. 10 C 6123 (N.D. Ill. Sept. 24, 2010) (Gottschall, J.); *FTC v. Central Coast Nutraceuticals, Inc.*, 10 C 4931 (N.D. Ill. Aug. 5, 2010) (Norgle, J.); *FTC v. Asia Pacific Telecom Inc.*, No. 10 C 3168 (N.D. Ill. May 25, 2010) (Hart, J.); *FTC v. API Trade, LLC*, No. 10 C 1543 (N.D. Ill. Mar. 10, 2010) (Guzman, J.); *FTC v. 2145183 Ontario Inc.*, No. 09 C 7423 (N.D. Ill. Nov. 30, 2009) (Grady, J.); *FTC v. 6555381 Canada Inc.*, No. 09 C 3158 (N.D. Ill. June 1, 2009) (Gettleman, J.); *FTC v. 6654916 Canada Inc.*, No. 09 C 3159 (N.D. Ill. May 27, 2009) (Darrah, J.); *FTC v. Integration Media Inc.*, No. 09 C 3160 (N.D. Ill. May 27, 2009) (Bucko, J.); *FTC v. Atkinson*, No. 08 C 5666 (N.D. Ill. Oct. 6, 2008) (Kendall, J.); *FTC v. Spear Sys., Inc.*, No. 07 C 5597 (N.D. Ill. Oct. 9, 2007) (Andersen, J.); *FTC v. Sili Neutraceuticals, LLC*, No. 07 C 4541 (N.D. Ill. Aug. 13, 2007) (Kennelly, J.); *FTC v. Select Personnel Mgmt., Inc.*, No. 07 C 0529 (N.D. Ill. Feb. 7, 2007) (Norgle, J.); *FTC v. 1522838 Ontario, Inc.*, No. 06 C 5378 (N.D. Ill. Oct. 4, 2006) (Gettleman, J.).

**A. A Writ *Ne Exeat* Should Issue, and Trudeau Should Be Required To Surrender His Passports.**

**1. There Is a Substantial Likelihood that the FTC Will Prevail on the Merits.**

Where, “as here, a preliminary injunction is issued merely for the purpose of preserving the status quo . . . it is not necessary that the trial court find the certainty of a wrong, a likelihood is sufficient.” *Bath Indus., Inc. v. Blot*, 427 F.2d 97, 111 (7th Cir. 1970). A “likelihood of success” exists “if the party seeking injunctive relief shows that it has a ‘better than negligible’ chance of succeeding on the merits.” *Meridian Mut. Ins. Co. v. Meridian Ins. Group, Inc.*, 128 F.3d 1111, 1115 (7th Cir. 1997); *see also Cooper v. Salazar*, 196 F.3d 809, 813 (7th Cir. 1999) (“Plaintiffs need only demonstrate a better than negligible chance of succeeding.”) (quotation omitted). As the Seventh Circuit explained, “[t]he threshold for this showing is low.” *Cooper*, 196 F.3d at 814 (citation omitted).

The FTC is almost certain to prevail on the merits. The Court already held that the FTC “establish[ed] a *prima facie* showing of contempt.” Order (Dec. 6, 2012) (DE535) at 2. Trudeau now has the burden to produce evidence showing “clearly, plainly and unmistakably” that “compliance is impossible.” *Resource Tech.*, 624 F.3d at 387. Furthermore, Trudeau’s evidence must demonstrate “categorically and in detail why” he cannot comply. Order (Dec. 6, 2012) (DE535) at 2. This includes demonstrating that any purported inability to pay was not self-induced because an “inability to comply” defense is unavailable to a defendant responsible for his own inability to comply. *See, e.g., United States v. Bryan*, 339 U.S. 323, 330-32 (1950) (noting that a party may be civilly incarcerated for failing to produce documents that he does not possess if “he is responsible for their unavailability”); *United States v. Seetapun*, 750 F.2d 601, 605 (7th Cir. 1984) (holding that District Court committed clear error when it declined to hold defendant in contempt; court failed to analyze facts in accordance with contempt authority governing “those responsible for their own inability to comply with enforcement orders”) (citing *Bryan*, 339 U.S. at 330-32) (citation omitted).<sup>18</sup>

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<sup>18</sup> *See also Chicago Truck Drivers Union v. Brotherhood Labor Leasing*, 207 F.3d 500,

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

In fact, notwithstanding Trudeau’s complete failure to satisfy his burden, the FTC offered extensive evidence that Trudeau controls assets he could have used to comply with the Court’s Order to pay. For instance, Trudeau controls the GIN-related entities,<sup>19</sup> and GIN USA reported more than \$14 million in net profit since January 1, 2010.<sup>20</sup> PXA:23 (DX 5A). Furthermore, the FTC has demonstrated that companies Trudeau owns or controls spent millions to fund Trudeau’s luxurious lifestyle and expensive legal bills. These legal bills included more than \$5 million to Lane, PXA:35 (FTCX 18D), who helped Trudeau implement an “elaborate scheme . . . to put [Trudeau’s] assets beyond the reach of the FTC[.]”<sup>21</sup> PXA:1, Tr. at 123:12-18. In short,

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506 (8th Cir. 2000) (“[A] mere assertion of ‘present inability’ is insufficient to avoid a civil contempt finding. Rather, alleged contemnors defending on the ground of inability must establish . . . that their inability to comply was not self-induced[.]”) (citation omitted); *In re Power Recovery Sys., Inc.*, 950 F.2d 798, 803 (1st Cir. 1991) (“Granted, a party may defend contempt and failure to comply on the grounds that compliance was impossible; self-induced inability, however, does not meet the test.”); *Pesaplastic, C.A. v. Cincinnati Milacron Co.*, 799 F.2d 1510, 1521-22 (11th Cir. 1986) (“In the present case, Tedruth and the Law Firm cannot raise the defense of impossibility because their own actions were responsible for their subsequent inability to comply.”); *United States v. Lay*, 779 F.2d 319, 320 (6th Cir. 1985) (upholding contempt finding where defendant induced his purported inability to pay by divesting himself of assets); *SEC v. Douglas*, No. 3:82cv29, 2012 WL 3587203, at \*8-\*9 (N.D. Ohio Aug. 20, 2012) (rejecting self-induced inability to pay as a defense; “divesting oneself of assets that would otherwise have been available to satisfy a disgorgement order has routinely been condemned by the courts”); *SEC v. Goldfarb*, No. C 11-00938, 2012 WL 2343668, at \*6 (N.D. Cal. June 20, 2012) (finding inability to pay self-induced; “Instead of paying down money owed on the final judgment, defendant Goldfarb chose to continue to support his luxurious lifestyle.”).

<sup>19</sup> Trudeau instructed Lane to create the GIN-related entities, *see, e.g.*, PXA:51 (FTCX 12D); PXA:19 (FTCX 12I); PXA:52 (FTCX 12L), Trudeau gave orders regarding their financial affairs, *see, e.g.*, PXA:11 (FTCX 11R), and Trudeau even asked Lane how he could retain control over GIN in the event he separated from his wife (Babenko), the GIN entities’ nominal owner, *see* PXA:53 (FTCX 12J).

<sup>20</sup> Trudeau has not explained where this money went.

<sup>21</sup> At this stage, the FTC has introduced only a portion of its evidence that Trudeau and



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

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

Failure to grant the requested relief would irreparably injure consumers because the Court has no means to compel Trudeau to comply with its orders if he leaves the Court’s jurisdiction. It is extremely unlikely that, at a future stage of these proceedings, Trudeau will submit to coercive incarceration voluntarily. First, ordering Trudeau to return from Zurich to “turn himself in” will not work given Trudeau’s demonstrated history of ignoring the Court’s orders:

- On January 12, 1998, the Court enjoined Trudeau from marketing various sham merchandise (“Eden’s Secret Nature Purifying Product,” the “Sable Hair Farming System,” “Kevin Trudeau’s Mega Memory System,” “Dr. Callahan’s Addiction Breaking System,” “Jeanie Eller’s Action Reading,” and “Howard Berg’s Mega Reading”), and further enjoined Trudeau from otherwise violating the FTC Act. *See* PXA:54 (FTCX 84), Stipulated Order, *FTC v. Trudeau*, No. 98-0168 (N.D. Ill.). Trudeau ignored this Order.
- On July 1, 2003, the Court enjoined Trudeau from selling “Coral Calcium,” a phony cancer cure. Order (July 1, 2003) (DE26) (entry of stipulated preliminary injunction). One year later, the Court found Trudeau in contempt because he continued to market Coral Calcium.<sup>22</sup> *See* Order (July 1, 2004) (DE55) at 2 (“Accordingly, the court finds that defendant Kevin Trudeau is in contempt of court[.]”); *see also* *FTC v. Trudeau*, 567 F. Supp.2d 1016, 1018 (N.D. Ill. 2007) (“Despite the prohibition in the 2003 stipulated permanent injunction against false claims concerning coral calcium, Mr. Trudeau continued to represent that this product cured cancer.”).
- On September 2, 2004, the Court again enjoined Trudeau from marketing Coral Calcium, largely prohibited Trudeau from airing infomercials, and (again) otherwise enjoined Trudeau from violating the FTC Act. Stipulated Final Order (DE55). Three years later, the Court held Trudeau in contempt a second time for lying about his Weight Loss Cures book. *See* *Trudeau*, 567 F. Supp.2d at 1023 (“Mr. Trudeau has violated this court’s order . . . and he has misled thousands of consumers. For these reasons, the court holds Mr. Trudeau in contempt.”).
- Following years of further litigation, the Court ordered Trudeau to repay consumers \$37.6 million. Order (June 2, 2010) (DE372). Suffice it to say, Trudeau has not complied, and the Court has found that the FTC has

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Lane conspired to hide Trudeau’s assets.

<sup>22</sup> Trudeau was also marketing “a product called ‘biotape,’ an adhesive pain relief product that supposedly eliminated pain from migraines, arthritis and sciatica.” *Trudeau*, 567 F. Supp.2d at 1018.

established a *prima facie* case that Trudeau is in contempt for a third time. *See* Order (Dec. 6, 2012) (DE535).

Given this contemptuous history, it is extremely implausible Trudeau will return from Zurich simply because the Court orders him to return. *Cf. First Tech Safety Sys., Inc. v. Depinet*, 11 F.3d 641, 651 (6th Cir. 1993) (noting that a “history of . . . violating court orders” supports *ex parte* relief).

Second, Trudeau has gone to extraordinary lengths to avoid complying with the Court’s Order to pay. In fact, as Trudeau stated in 2009 with respect to the \$37.6 million sanction: “I’m never going to pay it.” PXA:55 at 2. Rather than comply, Trudeau spent millions to litigate this case and obtain “asset protection” advice. *See, e.g.* PXA:35 (FTCX 18D-E) (\$6.7 million in legal expenses); PXA:2 at 2 (FTCX 12D) (advice from Lane regarding “asset protection”); PXA:25 (FTCX 12:E).<sup>23</sup> It makes little sense that Trudeau would go to great lengths to avoid paying, yet return from Zurich voluntarily and render himself subject to incarceration intended to coerce his compliance with the Order to pay.

Third, Trudeau’s increasing effort to move his assets and operations offshore illustrates the likelihood that he will not return to face a coercive sanction. *See, e.g.*, PXA:50 (FTCX 11M) (“gin MUST get money out of the usa and into banks overseas...never keep more money in the usa than needed...tap, ncinc, ktrn, nchi, wss, and every company NEEDS accounts OFF SHORE!!!!!!!!!!!!!!”). Such instructions are not the commands of someone who intends to submit to United States jurisdiction voluntarily.

Fourth, Trudeau has established a luxurious Zurich domicile, *see* PXB:2 at 12:5-13:8, which he furnished at considerable expense, *see, e.g.*, PXA:43-45 (FTCX 89-90) (credit card records showing more than \$146,000 spent on furniture and floor coverings in Zurich in fall 2012). This is consistent with an intent to remain abroad indefinitely.

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<sup>23</sup> These are examples only. There are dozens of communications between Lane and Trudeau regarding “asset protection.”

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

Sixth, Trudeau has good reason to suspect that he might lose his first (U.S.) passport. In 2010, after Trudeau arranged to bombard the Court with email, the Court ordered him to “remain[] in the Northern District of Illinois and surrender[] his passport” until the email issue could be resolved. Order (Feb. 11, 2010) (DE291) (emphasis added). The Court took this logical measure to secure its jurisdiction over Trudeau – and this was before the evidence showed that Trudeau had moved assets abroad, had established a Zurich home, and had obtained a second passport. In the current circumstance, Trudeau is extremely likely to return to Zurich rather than face coercive sanctions, and if Trudeau flees the Court’s jurisdiction, irreparable injury to consumers is unavoidable.<sup>24</sup>

**3. The Likely Significant Harm To Consumers Outweighs Any Possible Harm To Trudeau.**

The potential harm to consumers is more than \$37 million and affects more than 800,000 people. In contrast, the potential harm to Trudeau from requiring him to remain in the United States is negligible. Trudeau’s wife resides in New York, PXA:33 at 71:18-21 (FTCX 14), K.T. Corporation owns a home in California, PXA:22 at 5 (FTCX22), and Trudeau admits to owning or controlling many U.S.-based businesses, PXA:20 at 12-14 (DX 25). Additionally, the FTC deferred this motion as long as possible to minimize the time during which any international travel restriction would last. Moreover, in analogous situations involving securities law violations, courts regularly prohibit defendants from traveling abroad until their cases are resolved. *See, e.g.,* PXA:58, Order, *SEC v. Creative Capital Consortium, LLC*, 9:08-cv-81565

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<sup>24</sup> Although the probability that Trudeau will return from Zurich to be incarcerated is extremely remote, the proof that he presents a “flight risk” need not be absolutely indisputable because the injury to consumers need not “be certain to occur before a court may grant relief.” *Mich. v. United States Army Corps of Eng’rs*, 667 F.3d 765, 789 (7th Cir. 2011) (citing *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953), and *United States v. Or. State Med. Soc’y*, 343 U.S. 326, 333 (1952)).

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

**4. Keeping Trudeau Within the Court's Jurisdiction Serves the Public Interest.**

Finally, the Court must evaluate "the public interest," which means considering "the effect that granting or denying the injunction will have on nonparties." *Erickson v. Trinity Theatre, Inc.*, 13 F.3d 1061, 1067-68 (7th Cir. 1994) (citations omitted). The more than 800,000 consumers that Trudeau injured are "nonparties" with a \$37 million interest in this litigation. Furthermore, the Seventh Circuit has advised that, "when weighing the interests of private parties and the public interest," the Court should try to "minimize the costs of being mistaken." *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 902 (7th Cir. 2001) (quotation omitted) (emphasis added). This useful rubric makes the need for relief clear. If the Court grants the relief mistakenly, the only "cost" is that Trudeau will be unable to travel internationally until the Court resolves this matter, so he will have to remain in the United States (with his wife, home, and many businesses). If the Court denies the relief mistakenly, the "cost" is that the Court will have no means to enforce its orders, Congressionally-mandated consumer protection policy will be unfulfilled, and 800,000 consumers will remain victims.

**B. An Ex Parte Filing Is Necessary To Protect Consumers' Ability To Obtain Relief.**

Under FRCP 65(b), the "court may properly issue *ex parte* orders of brief duration and limited scope to preserve the status quo pending a hearing." *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 321 (7th Cir. 1984) (citing *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423,

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

#### IV. CONCLUSION

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

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

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

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