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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 Oakland Division

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 DAVE GLASSEL, individually and  
18 as an officer of AMERICAN CEDAR  
19 TECHNOLOGIES, INC., and INSECT  
20 CONTROL SOLUTIONS, INC.,

21 Contempt Defendant.

Case No. 4:12-CV-4631-PJH

Date/Time: February 21, 2018, at 9 a.m.

**PLAINTIFF'S NOTICE OF MOTION,  
MOTION, AND MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF ITS MOTION FOR  
CIVIL CONTEMPT ORDER AGAINST  
DEFENDANT DAVE GLASSEL**

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**NOTICE OF MOTION**

1  
2 Please take notice that on Wednesday, February 21, 2018, at 9:00 a.m., or as soon  
3 thereafter as counsel may be heard in the U.S. District Court, Courtroom 3, 1301 Clay Street,  
4 Oakland, California, 94612, Plaintiff Federal Trade Commission (“Commission” or “FTC”) will  
5 and does hereby respectfully move this Court for an order holding contempt defendant Dave  
6 Glassel, individually and as an officer of American Cedar Technologies, Inc., and Insect Control  
7 Solutions, Inc., in civil contempt for violating the Stipulated Order for Permanent Injunction and  
8 Monetary Judgment as to Defendant Dave Glassel (“Permanent Injunction” or “Order”) entered  
9 on July 18, 2013 [DE 73], issuing appropriate compensatory and injunctive relief for his Order  
10 violations. This motion is based on this Notice of Motion; Motion; Memorandum of Points and  
11 Authorities; all pleadings and papers filed in this action; oral argument of counsel; and any other  
12 matter properly considered.

**RELIEF SOUGHT BY PLAINTIFF FTC**

13  
14  
15 The Commission requests that the Court enter a decision finding defendant Dave Glassel  
16 in civil contempt for violating this Court’s Order and enter the proposed order imposing  
17 monetary and injunctive relief.

**MEMORANDUM OF POINTS & AUTHORITIES****I. INTRODUCTION**

18  
19  
20  
21 Contempt defendant Dave Glassel (“Glassel”) is violating this Court’s Permanent  
22 Injunction by marketing oil-based pesticides with unsubstantiated claims that they are effective  
23 in stopping bed bug infestations. Glassel claims his pesticides “Best Ever” and “d-Mize” “**Get**  
24 **Rid of Bed Bugs,**” implying scientific support. However, the very scientists named in his ads  
25 repudiate his bed bug eradication claims. Glassel also continues to retain a customer list that the  
26 Court previously ordered him to discard, and has failed to retain advertisements as previously  
27 ordered. Accordingly, the FTC asks that the Court order him to: (1) disgorge the proceeds of  
28 his contumacy; (2) discard the old customer list; (3) retain future advertisements; and (4)

1 permanently stop marketing pesticides with claims that they kill bed bugs, complying with  
2 related injunctive relief.<sup>1</sup>

## 3 **II. STATEMENT OF FACTS**

### 4 **A. The Underlying Case**

5 In 2012, the FTC sued Glassel and firms he founded for violating the FTC Act, 15 U.S.C.  
6 § 45(a), by making false and unsubstantiated claims that a pesticide called “Best Yet!”  
7 effectively treated and prevented bed bug and head lice infestations.<sup>2</sup> The FTC challenged  
8 Glassel’s false claims that “Best Yet!” “get[s] rid of bed bugs,” PX2 at 7, and had been  
9 “[s]cientifically tested and proven” by Rutgers University, among other institutions, to be  
10 effective in stopping bed bug infestations. *Id.* at 6-7, 10-12. To resolve the charges, in 2013,  
11 Glassel stipulated to a Permanent Injunction requiring that he, *inter alia*: (1) possess competent  
12 and reliable scientific evidence before making any efficacy claim in ads for any pesticide; (2)  
13 discard customer information obtained in prior sales of “Best Yet!”; and (3) maintain certain  
14 records, including a copy of each advertisement or marketing material. PX1 at 3 § I, 6 § V, 10 §  
15 X(E).<sup>3</sup> Glassel acknowledged receiving the Order via ECF. PX3, Glassel Aff’d (July 23, 2013).

### 16 **B. Contempt Defendant’s Violative Business Practices**

17 After stipulating to the Permanent Injunction and promising not to make unsubstantiated  
18 claims that his products are effectively stopping bed bug infestations, Glassel continued to sell  
19 the same cedar oil-based insecticide, which he had since re-named “Best Ever,” claiming that it  
20  
21

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22  
23 <sup>1</sup> Concurrent with the filing of its Civil Contempt Motion, Plaintiff FTC is filing a Motion to  
24 Modify the Permanent Injunction, addressing the requested permanent injunctive relief.

25 <sup>2</sup> PX2, Compl., Case No. 4:12-CV-4631-PJH, at 10-13 (filed Sept. 5, 2012) [DE 1].

26 <sup>3</sup> Concurrent with this filing, the FTC also is filing a stipulated proposed Modified Order  
27 executed by Glassel’s co-defendant Chemical Free Solutions (“CFS”) and its counsel to address  
28 admitted violations of CFS’ 2013 Order (Stip. Order for Perm. Inj. & Monetary J. as to Def.  
Chemical Free Solutions, Case No. 4:12-CV-4631-PJH (entered July 18, 2013) [DE 72]). The  
new proposed Modified Order against CFS provides for the disgorgement of the proceeds of  
CFS’ contumacy and a ban on marketing pesticide products with claims that its products kill bed  
bugs, with related injunctive relief. The FTC’s efforts to negotiate a similar settlement with  
Glassel were unsuccessful, necessitating the filing of this motion.

1 can “achieve total elimination” of bed bugs, “especially when dealing with heavy infestations.”<sup>4</sup>  
 2 About one year later, he began manufacturing and selling a “d-Mize” line of neem oil-based  
 3 insecticides, again employing bed bug eradication claims.<sup>5</sup> As discussed below, Glassel’s bed  
 4 bug eradication claims for both products are unsubstantiated by competent and reliable scientific  
 5 evidence. Moreover, he has retained a customer list he agreed to discard promptly over four  
 6 years ago, and does not retain copies of his advertisements.

7 **1. Glassel Markets His Products as Effective in Stopping Bed Bug**  
 8 **Infestations.**

9 Glassel’s website “[killbugsnaturally.com](http://killbugsnaturally.com)” trumpets that “Best Ever” and “d-Mize” are  
 10 effective in stopping bed bug infestations. Citing Dr. Susan Jones, Ohio State “entomologist and  
 11 bed bug expert,” PX4C at 3, PX4D at 3, PX4E at 3, and Dr. Changlu Wang, a Rutgers University  
 12 entomologist, PX4C at 4, PX4D at 4, PX4E at 4, Glassel summarizes how his products work.  
 13 PX4C at 5, PX4D at 5, PX4E at 5-6 (bold in original, italics added):

14 **How to Get Rid of Bed Bugs Naturally, Instantly and Wisely.**

15 Your next step is to begin planning a bed bug funeral at your place  
 16 utilizing the all natural, non-toxic, bed bug killers, Best Ever and d-Mize III.  
 17 Both Best Ever and d-Mize III, may be effectively applied via trigger sprayer . . .  
 18 or dispensed via the Tri-Jet ULV Fogger Machine. We strongly recommend  
 19 utilizing this fumigation device, this is a professional grade tool that will *advance*  
 20 *your cause to get rid of bed bugs effectively and economically.*

21 . . . . Today we offer homeowners a powerful one-two punch combination

22 <sup>4</sup> PX7, Glassel Dep. at 62:1-4 (confirming Best Ever and Best Yet are “the same thing”), 99:17-  
 23 19 (same); *see* PX4G, “Kill Bugs Naturally – American Cedar Technologies’ Bed Bug  
 24 Protocol,” <http://www.killbugsnaturally.com/bed-bugs-protocol> at 4 (copied May 12, 2017);  
 25 PX4H, “Kill Bugs Naturally – American Cedar Technologies’ Bed Bug Protocol,” <http://www.killbugsnaturally.com/bed-bugs-protocol> at 4 (copied Nov. 20, 2017). Glassel chiefly advertises  
 26 his products via the [killbugsnaturally.com](http://killbugsnaturally.com) website as sole owner, director, officer, and manager  
 27 of two closely-held firms that operate out of his garage. PX4, Dave Glassel’s Compliance  
 28 Report, at 2-3 (July 13, 2014); *e.g.*, PX7, Glassel Dep. at 14:7-25.

29 <sup>5</sup> *E.g.*, PX7, Glassel Dep. at 69:13-16; 163:25-164:10. For example, Glassel advertises that his  
 30 products “**Get Rid of Bed Bugs.**” PX4C, “Kill Bugs Naturally - Natural DIY Bed Bug Prevent-  
 31 ion and Control,” <http://www.killbugsnaturally.com/get-rid-of-bed-bugs-nymphs-and-eggs> at 5,  
 32 6 (copied May 12, 2017); PX4D, “Kill Bugs Naturally - Natural DIY Bed Bug Prevention and  
 33 Control,” <http://www.killbugsnaturally.com/get-rid-of-bed-bugs-nymphs-and-eggs> at 5, 6  
 34 (copied Nov. 20, 2017); PX4E, “Kill Bugs Naturally - Natural DIY Bed Bug Prevention and  
 35 Control,” [https://www.web.archive.org/web/20151128015259/http://www.killbugsnaturally-](https://www.web.archive.org/web/20151128015259/http://www.killbugsnaturally.com/get-rid-of...)  
 36 [com/get-rid-of...](https://www.web.archive.org/web/20151128015259/http://www.killbugsnaturally.com/get-rid-of...) at 5, 6 (archive dated Nov. 28, 2015, copied Dec. 6, 2017).

1 in our DIY bed bug control kits. Starting with- Best Ever for fast kill off. Then  
 2 finishing with d-Mize III, for indirect and lasting natural bed bug prevention and  
 control. . . .

3 Armed with the right protocol, the right products and the correct  
 4 applicators *you will have everything you need to get rid of bed bugs, nymphs and*  
*eggs* from your sacred living space without expensive, toxic and often  
 5 disappointing results from your local pest control operator. . . .

6 Underscoring these eradication claims, Glassel poses the question, “**How Much Product Will I**  
 7 **Need to Get Rid of Bed Bugs?**” and touts an apartment kit – a gallon of Best Ever and a half-  
 8 gallon of d-Mize III, with applicators, for \$199 – and a larger home kit, including 3 gallons of  
 9 Best Ever and 1 gallon of d-Mize III, plus applicators, for \$599.95. *E.g.*, PX4C at 6; PX7,  
 10 Glassel Dep. at 70:6-10. He sells Best Ever with a fogger, asserting: “It’s easy to keep your  
 11 home and living space pest free and pesticide free, especially when using any of our green  
 12 fumigants including Best Ever, d-Mize I, d-Mize II, or d-Mize III.”<sup>6</sup>

13 Glassel conveys that Best Ever and d-Mize are crucial tools to stop bed bug infestations.  
 14 While he describes a bed bug treatment protocol that involves laundering bed sheets, he  
 15 emphasizes that his pesticides provide the needed punch for bed bug eradication:

16 Overview-

17 All Natural Double Biopesticide Treatment

18 We recommend a two step, double biological (Plant-based) product  
 agenda starting with a spray treatment . . . .

19 After initial spray treatment, continue with a complete structure molecular  
 20 crowding fumigation treatment using Best Ever including attic space with The  
 ACT Tri-Jet ULV Fogger Machine. . . . *In bed bug cases that have been detected*  
*early on, this may be all that is required to achieve eradication.*

21 Once the initial spray-fumigation step using Best Ever has been  
 22 completed, we recommend a second biological strike utilizing d-Mize III . . . .

23 . . . .

24 Important Note

. . . .

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25 <sup>6</sup> PX4I, “Kill Bugs Naturally - Deluxe Indoor/Outdoor Pest Control Kit,” [http://www.killbugs-](http://www.killbugs-naturally.com/diy-pest-control-kits/non-toxic-indoor-pest-control-kit-delux)  
 26 [naturally.com/diy-pest-control-kits/non-toxic-indoor-pest-control-kit-delux](http://www.killbugs-naturally.com/diy-pest-control-kits/non-toxic-indoor-pest-control-kit-delux) (recorded Nov. 20,  
 27 2017) at 4; PX4J, “Kill Bugs Naturally - Deluxe Indoor/Outdoor Pest Control Kit,” [https://web-](https://web.archive.org/...0160526114440/http://www.killbugsnaturally.com:80/diy-pest-control-kits/non-toxic-indoor-pest-control-kit-delux)  
 28 [archive.org/...0160526114440/http://www.killbugsnaturally.com:80/diy-pest-control-kits/non-](https://web.archive.org/...0160526114440/http://www.killbugsnaturally.com:80/diy-pest-control-kits/non-toxic-indoor-pest-control-kit-delux)  
 toxic-indoor-pest-control-kit-delux (archive dated May 26, 2016, recorded Sept. 20, 2017) at 4.  
 Glassel sells a five-gallon container of d-Mize III for \$275. PX7, Glassel Dep. at 69:13-22.



1            Depending on the severity of the situation, please note it is not uncommon  
 2            to have to **treat twice to achieve total elimination, especially when dealing**  
 3            **with heavy infestations.** . . . <sup>7</sup>

4            Glassel expressly touts his products' power "*to achieve eradication*" of bed bugs, including  
 5            "total elimination" of "heavy infestations." *Id.* He emphasizes that the oils in his products stop  
 6            bed bug infestations, asserting, for example, that the cedar oil in Best Ever "is a highly effective  
 7            non-toxic treatment that will *leave your . . . place insect free.*"<sup>8</sup> He repeats this claim for the  
 8            neem tree oil in d-Mize products "for the control of bed bugs": "D-Mize III is our heavy-duty,  
 9            non-toxic spray for exterminator use only. . . . *Perfect for heavy infestations . . . .* d-Mize III for  
 10            extra heavy populations, when an egg killing residual is a critical factor."<sup>9</sup> These express  
 11            eradication and elimination claims plainly assert Glassel's products stop bed bug infestations.

## 12            2.            Glassel's Claims are Not Substantiated.

13            Glassel lacks competent and reliable scientific evidence substantiating claims that his  
 14            cedar oil-based Best Ever<sup>10</sup> and his neem oil-based d-Mize<sup>11</sup> pesticides are effective in stopping  
 15            bed bug infestations. In fact, the very entomologists cited in Glassel's ads testify that he lacks  
 16            such substantiation. PX5, Dr. Susan Jones Decl.; PX6, Dr. Changlu Wang Decl.

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17  
18  
19  
20 <sup>7</sup> PX4G at 4 (italic emphasis in original, bold emphasis added); PX4H at 4 (same).

21 <sup>8</sup> PX4K, "Kill Bugs Naturally – When You Need a Green Solution," <https://web.archive.org/20140326110427/http://www.killbugsnaturally.com:80/terpene-based> (recorded Sept. 20, 2017) at 2 (emphasis added).

22 <sup>9</sup> PX4M, "Kill Bugs Naturally – dMize III," <https://web.archive.org/20140326110427/http://www.killbugsnaturally.com:80/terpene-based> (archive dated Mar. 26, 2014, recorded Sept. 20, 2017) at 3 (emphasis added); *see* PX4L, "Kill Bugs Naturally – dMize III," <http://www.killbugsnaturally.com/cold-pressed-neem-oil-products/d-mize-iii> (recorded Nov. 20, 2017) at 4.

23 <sup>10</sup> Best Ever consists of 10% cedar oil and a liquid carrier. PX4Q, Best Ever Product Label;  
 24 PX7, Glassel Dep. at 16:3-6; PX5 at ¶ 74. According to Glassel, its insecticidal ingredient is  
 25 cedar oil. *Id.* at 54:25-55:7; 123:3-12.

26 <sup>11</sup> Glassel touts neem oil as an active insecticidal ingredient in advertisements for the "d-Mize"  
 27 line of pesticides. PX7, Glassel Dep. at 59:12-22; PX4M at 3 (describing "active load of 20%  
 28 cold pressed neem oil" as "effective and lasting treatment" "[p]erfect for heavy infestations");  
 PX4L at 3 ("effective and lasting treatment," "[p]erfect for heavy insect infestations"); PX4R,  
 d-Mize Product Labels.

1                                   **a.       Competent and Reliable Scientific Evidence**

2               The stipulated Order requires Glassel to back up any efficacy claim with “competent and  
3 reliable scientific evidence that is sufficient in quality and quantity based on standards generally  
4 accepted in the relevant scientific fields, when considered in light of the entire body of relevant  
5 and reliable scientific evidence, to substantiate that the representation is true.” PX1 at 3-4 § I.  
6 According to the Order, this evidence consists of “tests, analyses, research, or studies that have  
7 been conducted and evaluated in an objective manner by qualified persons and . . . generally  
8 accepted in the profession to yield accurate and reliable results.” *Id.*

9               Dr. Susan Jones, Professor of Entomology at Ohio State University, an expert in bed bug  
10 infestations and treatments, PX5 at ¶¶ 2-12, who is also lauded on Glassel’s website, PX4C at 3,  
11 PX4D at 3, PX4E at 3, evaluated all material produced by Glassel to support his claims. PX5 at  
12 ¶¶ 14-18. Dr. Jones explains that to evaluate a product’s efficacy at killing insects,  
13 entomologists<sup>12</sup> generally require appropriately analyzed results of scientifically designed,  
14 clearly documented, controlled, and reproducible scientific experiments. These experiments  
15 should apply the actual product as set forth on the label, on an appropriate sample population,  
16 and collect data on appropriate endpoints over an appropriate period of time. *Id.* at ¶ 33.

17               Moreover, in order to support claims that a product is effective at stopping a bed bug  
18 infestation, the studies must also establish the product’s residual efficacy. *Id.* As Dr. Jones  
19 notes, bed bugs are nocturnal and excellent at hiding in narrow cracks and crevices anywhere  
20 from floor to ceiling; approximately 80% of bed bugs in an infestation will remain hidden,  
21 emerging only to feed every 5-7 days. *Id.* at ¶¶ 23-25. Due to bed bug behavior and biology, it

22 \_\_\_\_\_  
23 <sup>12</sup> Dr. Jones explains (PX5 at ¶ 32):

24               Entomology is the scientific study of insects and is a branch of zoology that  
25 focuses on a wide variety of insect-related aspects such as biology, ecology, and  
26 management strategies for insect pests. Such scientific studies require  
27 considerable background research and inquiry, and given the tremendous diversity  
28 of insects, many entomologists specialize in a single group of insects or certain  
species. Given the variability in response that can occur when different insect  
species are exposed to different substances, entomology is the field that one looks  
to when determining efficacy (effectiveness) of insecticides, i.e., substances that  
are used for killing insects.

1 is difficult to locate and kill the bugs with a direct spray, and many bed bugs in the infested area  
2 may not venture out of their hiding spots and come into direct contact with the immediate wet  
3 spray. *Id.* at ¶¶ 33-53. Therefore, pesticides used to stop bed bug infestations must have two to  
4 three weeks of sufficient residual efficacy, meaning after the product has dried it will continue to  
5 kill all bed bugs that later touch the dried residue. *Id.* at ¶¶ 47-49. Dr. Jones explains that the  
6 residual efficacy should be at least 90% due to bed bugs' rapid life cycle and egg laying  
7 capacity; bed bug infestations often originate from a few bugs or even a single mated female and  
8 populations can double in size every 13 days. *Id.* at ¶¶ 28-30, 47. Dr. Jones concluded that none  
9 of Glassel's proffered substantiation meets these standards for the reasons set forth below.<sup>13</sup>

10 **b. Claims that Best Ever is Effective in Stopping Bed Bug**  
11 **Infestations Are Not Substantiated.**

12 Glassel does not have a scientific study establishing the truth of his eradication claims  
13 for Best Ever. To substantiate his claims, Glassel relies on: (1) a scientist who contradicts his  
14 claims and concludes Best Ever has *insufficient* residual efficacy to stop a bed bug infestation;  
15 (2) unpublished studies showing Best Ever repels the bed bugs it is advertised to kill, leaving  
16 them alive; and (3) unpublished studies that did not test the product's residual effect. As  
17 discussed below, his materials do not substantiate his eradication claims.

18 First, Glassel relies on scientists who contradict his eradication claims, and instead testify  
19 that his product has an insufficient killing effect. For example, on Glassel's website, he cites Dr.  
20 Changlu Wang, a Rutgers University entomologist, PX4C at 4, PX4D at 4, PX4E at 4, who  
21 tested Best Ever when it was called "Best Yet!" PX6 at 2 ¶¶ 5-7. Dr. Wang's unpublished, non-  
22 peer-reviewed tests are preliminary studies, and not competent and reliable scientific evidence of  
23 product efficacy; however, it is clear that his preliminary studies do not support eradication  
24 claims for Best Ever.

25 Indeed, Dr. Wang averred that his tests "do not prove that [Best Yet] will stop or prevent

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26  
27 <sup>13</sup> Furthermore, Dr. Jones performed a literature review and could not find any competent and  
28 reliable scientific evidence to support Glassel's eradication claims for Best Ever or d-Mize. *Id.*  
at ¶¶ 54-57.

1 a bed bug infestation in a consumer’s home or apartment.” PX6 at 2 ¶ 7. Although Dr. Wang  
2 found Best Yet could kill bed bugs and eggs when directly and “thoroughly saturated” with the  
3 spray, PX6 at 2 ¶ 6, he “was not impressed with the product’s efficacy as a dry residue.” *Id.* at 3  
4 ¶ 10. He concluded that “a substantial number of bed bugs would survive to continue an  
5 infestation.” *Id.* at 3 ¶ 10.<sup>14</sup>

6 As Dr. Jones explains, directly spraying the visible portion of a bed bug infestation with a  
7 wet insecticide is insufficient to stop an infestation because bed bugs are nocturnal, with 80%  
8 hiding in narrow cracks and crevices at any given time for up to a week when they venture out to  
9 feed; thus, many will not come into contact with wet sprays. PX5 at ¶¶ 22-25, 48-49; *see* PX6 at  
10 2 ¶ 7. Due to their rapid reproduction cycle, sufficient residual killing effect is necessary – the  
11 dried insecticide must kill nearly all bed bugs on contact. PX5 at ¶¶ 27-30, 47; PX6 at 2 ¶ 7. As  
12 Dr. Wang’s tests amply demonstrate, Glassel’s cedar oil-based product has not been  
13 scientifically shown to have such a residual killing effect and eliminate infestations.<sup>15</sup>

14 Second, Glassel relies on studies showing Best Ever repels bed bugs, which undermine  
15 his eradication claims, rather than substantiate them. PX5 at ¶¶ 66, 72. For example, Dr.  
16 Wang’s previously described study found that Glassel’s product had “repellency properties,”  
17 PX6 at 3 ¶ 11. These findings of repellency were also found in unpublished research on  
18 “Biomode-Bioform,” which Glassel has indicated was the same product as Best Ever. PX5 at ¶  
19 72; PX7 at 58:10-25. Dr. Jones explains that this repellency actually *frustrates* the advertised  
20 outcome – bed bug eradication – because it keeps the bed bugs from touching any potentially  
21 lethal dried residue. PX5 at ¶ 50.

---

22  
23 <sup>14</sup> Dr. Wang also concluded that “[b]ecause bed bugs in the field can avoid remaining on a  
24 treated area,” Glassel’s product “would be even less effective under field conditions.” *Id.* He  
further observed that additional testing of the product would not be worthwhile. *Id.* at 4 ¶ 15.

25 <sup>15</sup> Dr. Wang’s studies cast further doubt on Glassel’s eradication claims. For example, while  
26 Glassel touts the effectiveness of his product when used with a fogger to “advance your cause to  
27 get rid of bed bugs effectively and economically,” PX4C at 5, PX4D at 5, PX4E at 5, Dr. Wang  
noted that his tests used a direct spray bottle, not a fogger. PX6 at 6 ¶ 20. He cautioned that “a  
28 fogger delivers much less material to the bed bugs than a spray.” Additionally, Dr. Wang found  
that “[c]edar oil alone does not kill bed bugs . . . listing cedar oil as the active ingredient[] is  
misleading because cedar oil is ineffective against bed bugs.” PX6 at 4 ¶ 14. Dr. Wang’s tests  
indicate that Glassel lacks a basic scientific understanding of how his own product operates.

1 Third, Glassel relies on unpublished, non-peer-reviewed studies that did not test the  
 2 residual effect of his product, and thus cannot substantiate claims of “total elimination” and  
 3 “eradication.” PX5 at ¶¶ 59-61, 64-72. For example, he relies on unpublished research on Best  
 4 Yet from 2009 and unpublished research performed on “Biomode-Bioform”<sup>16</sup> that did not test  
 5 the residual killing effect of the product. *Id.* As previously noted, an insecticide must have a  
 6 sufficient residual effect to stop a bed bug infestation. PX5 at ¶¶ 48-49. These studies simply  
 7 did not examine this topic, and thus cannot substantiate eradication claims. PX5 at ¶¶ 69-72.

8 **c. Claims that d-Mize Products Are Effective in Stopping**  
 9 **Bed Bug Infestations Are Not Substantiated.**

10 Glassel also lacks competent and reliable scientific evidence substantiating his claims  
 11 that his d-Mize line of pesticides are effective at stopping bed bug infestations. To substantiate  
 12 his claims, Glassel relies on: (1) an unscientific report apparently unpublished in any scientific  
 13 journal and (2) reports of tests on other pesticides whose ingredients and composition differ from  
 14 the d-Mize line of products. As discussed below, his materials do not substantiate his claims.

15 First, Glassel relies on a Somaliland Ministry of Livestock report that purports to recount  
 16 testing of d-Mize II against 20 pests, including bed bugs. Dr. Jones notes this document  
 17 “provides no details regarding test conditions such as what constituted experimental controls,  
 18 how a standardized amount of product was applied, the insect stage and numbers tested, the  
 19 number of replicates, what constituted ‘termination’ of the insect, and so forth,” omissions that  
 20 preclude deeming it as a report of a scientific experiment. PX5 at ¶ 63. Further, Dr. Jones’  
 21 independent scientific literature search disclosed no published research based on this report. *Id.*  
 22 at ¶ 62. Nor does the report appear to be published, peer reviewed, or available in the largest  
 23 online library of peer-reviewed, African-published journals. *Id.* As Dr. Jones explains, this  
 24 document does not meet the standards of a scientific report. *Id.* at ¶ 63. Therefore, it does not  
 25 constitute competent and reliable scientific evidence that d-Mize is effective at stopping a bed  
 26

---

27 <sup>16</sup> As noted above, Glassel admits that Biomode-Bioform was the same solution as Best Ever.  
 28 PX7 at 58:10-25.

1 bug infestation. *Id.*

2 Second, Glassel relies on inapposite reports of tests on other pesticides whose ingredients  
3 and composition differ from the d-Mize line of products. As Dr. Jones explains, entomologists  
4 require research studies to test the end-use formulated product, because different formulations  
5 of the same active ingredient can have different results. PX5 at ¶¶ 41-46. Moreover, this  
6 variability likely increases when the active ingredient, like neem oil, is derived from plants.<sup>17</sup>  
7 *Id.* at ¶¶ 4-47. Notably, Glassel cites a slide prepared by Dr. Jones for a 2013 conference  
8 regarding Cirkil, a product containing neem oil that is not the same formulation as d-Mize. As  
9 Dr. Jones explains, these slides actually discuss the neem oil product's *lack* of residual efficacy  
10 against a bed bug infestation, reported in a study that Dr. Jones led. In this study, a vacant home  
11 was repeatedly sprayed with gallons of Cirkil in a 4-week period, yet bed bugs continued to  
12 survive, even after repeatedly contacting dry residues of the neem oil product, and being  
13 simultaneously starved. PX5 at ¶ 90. Glassel's reliance on Dr. Jones' work is obviously  
14 misplaced; as an entomologist with professional experience performing scientific tests on neem  
15 oil, Dr. Jones is well-qualified to point out her own work does not show that d-Mize is effective  
16 at stopping a bed bug infestation. *Id.* Glassel also relies on another document summarizing  
17 additional research on Cirkil when used as a fumigant in a bag. This unpublished document,  
18 reviewing a different product, does not back up Glassel's d-Mize eradication claims. *Id.* at ¶ 91.

19 **3. Glassel Retains Information the Order Required Him to Discard.**

20 Glassel retained and produced to the FTC a customer list containing detailed contact  
21 information for many consumers billed for "Best Yet!" between 2008 and 2011, well before the  
22 entry of the Order in 2013. PX4O, Lewis Decl. at 2-5; PX4S, Customer List (redacted to remove  
23 personal identifiers). The Court's Order required Glassel to dispose of customer information that  
24 he obtained in selling "Best Yet!" before the 2013 Order. PX1 at 6 § V. However, in responding  
25 to FTC requests for information four years later in May 2017, Glassel submitted this list with an  
26 accompanying statement indicating as follows: "I still retain an Excel Spread Sheet of customer  
27

28 <sup>17</sup> The active ingredient in Best Ever – cedar oil – is also derived from plants. PX5 at ¶ 74.

1 purchases between 2009 and 2011. . . . I have highlighted the individual customers that  
2 purchased Best Yet for use against bed bugs with a kit, a fogger or in bulk. Please find the  
3 document, **Partial Customer Data Base Best Yet For Bed Bugs**, in the Additional Document  
4 Folder.” PX4P at 5 (Glassel Dep. Ex. 24); PX7, Glassel Dep. at 138:21-139:14 (confirming text  
5 of exhibit 24 is truthful and accurate to best of deponent’s knowledge); *see* PX4O at 4. Glassel’s  
6 submission of this customer list shows that he retains it in violation of the Order.

#### 7 **4. Glassel Failed to Retain Advertisements as Ordered.**

8 At a recent deposition, Glassel testified that he has not retained copies of his ads,  
9 including website ads and occasional emailed newsletters. PX7, Glassel Dep. at 94:25-96:7.  
10 The Court’s Order required Glassel to retain a copy of each advertisement or other marketing  
11 material for 5 years after its creation. PX1 at 10 § X(E). He concedes, however, that he does not  
12 maintain any copies of his website, either electronic or in printed form. PX7, Glassel Dep. at  
13 95:24-96:7. When asked how he keeps track of any changes to his advertising he stated, “Well, I  
14 mean technically, you don’t. You go into the website and you make the changes and then you hit  
15 save and it wipes out the other one and puts whatever you, you know, have modified in. So, I  
16 don’t have any way of saving what was there before . . . .” *Id.* at 95:3-7. Thus, Glassel admits  
17 not retaining his advertisements, a further violation of the Order.

### 18 **III. ARGUMENT**

19 A civil contempt order is warranted where there is clear and convincing evidence that a  
20 contemnor violated a specific and definite court order. *FTC v. Affordable Media, LLC*, 179 F.3d  
21 1228, 1239 (9th Cir. 1999). As discussed below, Glassel clearly and convincingly violated  
22 specific, definite provisions of the Permanent Injunction binding upon him by making bed bug  
23 eradication claims not backed by competent and reliable scientific evidence, retaining “Best  
24 Yet!” customer lists that predate the Order, and failing to maintain records of his prior  
25 advertising. As discussed further below, Glassel’s persistent violations will not desist without  
26 coercive sanctions, and compensatory sanctions are also necessary to remedy his deceptive sales  
27 of pesticides with unsubstantiated eradication claims. Accordingly, Glassel should be held in  
28 civil contempt and subject to coercive and compensatory contempt sanctions.



1           **A.     Glassel is Bound by the Court’s Permanent Injunction.**

2           Injunctions bind parties with notice of an order, as well as any person or entity with  
3 notice of the order that acts in “active concert or participation” with a party to violate the order.  
4 Fed. R. Civ. P. 65(d)(2)(A)-(B). Glassel is a party to the Permanent Injunction, stipulated to its  
5 entry, and acknowledged receiving service of it. PX1 at 13; PX3. The Order is binding on him.

6           **B.     Glassel Has Repeatedly Violated the Permanent Injunction.**

7           Glassel has violated and continues to violate three clear and unambiguous provisions of  
8 the stipulated Order. First, he is violating Section I by making unsubstantiated claims that Best  
9 Ever and the d-Mize line of pesticides are effective in stopping bed bug infestations. Second, he  
10 is violating the clear directive of the Order to dispose of customer lists previously compiled in  
11 selling pesticides. Third, he is violating the requirement that he retain his advertisements.<sup>18</sup>

12                   **1.   Glassel’s Unsubstantiated Claims that “Best Ever” and “d-Mize” are**  
13                   **Effective in Stopping Bed Bug Infestations Violate Order § I.**

14           Glassel has violated and continues to violate Section I of the Court’s Order. Section I  
15 enjoins him from “advertising, marketing, promoting or offering for sale . . . any pesticide, . . .  
16 expressly or by implication . . . [with] any representation . . . that such product by itself is  
17 effective in stopping bed bug infestations,” PX1 § I, I(A), or with any representation “about the  
18 performance or efficacy of such product[s],” *id.* § I(D), “unless the representation is non-  
19 misleading, and, at the time [it] . . . is made, [Glassel] possesses and relies upon competent and  
20 reliable scientific evidence.” PX1 § I.<sup>19</sup> Clear and convincing evidence demonstrates that  
21 Glassel has made efficacy claims expressly or by implication without the requisite scientific  
22 evidence to support such claims, and thus is violating Section I of the Order.

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23  
24 <sup>18</sup> The Court’s Order is clear and definite. It describes the required and prohibited conduct in  
25 detail, defining its terms. The Order was the product of stipulations by the parties represented by  
26 counsel, and Glassel cannot attack it as unclear now. *See, e.g., FTC v. EDebitPay, LLC*, 695  
F.3d 938, 944 (9th Cir. 2012) (“because [the defendants] stipulated to the entry of the Final  
Order, they cannot collaterally attack the Final Order in contempt proceedings”).

27 <sup>19</sup> As noted earlier, as defined in the Order, such “competent and reliable scientific evidence”  
28 must be “sufficient in quality and quantity based on standards generally accepted in the relevant  
scientific fields, when considered in light of the entire body of relevant and reliable scientific  
evidence, to substantiate that the representation is true.” PX1 § I.



1 As detailed above, Glassel is marketing oil-based pesticides for sale with strong efficacy  
 2 claims, advertising that his products are effective in stopping bed bug infestations. He touts that  
 3 Best Ever and d-Mize can “**Get Rid of Bed Bugs**,” PX4C at 5, 6, PX4D at 5, 6, PX4E at 5, 6  
 4 (emphasis in original), that “[i]n bed bug cases that have been detected early on, [an initial spray  
 5 and fogging] *may be all that is required to achieve eradication*,” PX4G at 4, PX4H at 4  
 6 (emphasis in original), and that “it is not uncommon to have to treat twice to achieve total  
 7 elimination, especially when dealing with heavy infestations.” *Id.*

8 Glassel lacks competent and reliable scientific evidence to substantiate these eradication  
 9 claims. In fact, expert scientists whom he relies upon on in his ads attest these claims are  
 10 unsubstantiated. Dr. Jones, whom he has cited for years as a “bed bug expert,” PX4C at 3,  
 11 PX4D at 3, PX4E at 3, now has reviewed all of the materials on which Glassel purports to rely,  
 12 and has further performed a literature search, and explains that no competent and reliable  
 13 scientific evidence supports his eradication claims. PX5 at ¶ 93. For Best Ever, Glassel notably  
 14 relies on the work of Dr. Wang, who stated: “[M]y research does *not* prove that the product will  
 15 stop or prevent a bed bug infestation.” PX6 at 5 ¶ 19 (emphasis added). Glassel also relies on  
 16 studies showing that Best Ever is a repellent, which does not support the advertised “eradication”  
 17 or “total elimination,” and actually interferes with killing bed bugs. PX5 at ¶¶ 50, 66, 72. As to  
 18 the d-Mize line of pesticides, Glassel relies on an unscientific testimonial, PX5 at ¶¶ 62-63, and  
 19 inapposite studies of a different formulated product that also contains neem oil. *Id.* at ¶¶ 89-91.  
 20 Glassel lacks well-designed, well-conducted scientific tests substantiating his eradication claims.  
 21 PX5 at ¶ 93. His unsubstantiated claims therefore flout the Order.

## 22 2. Glassel’s Retention of Customer Information Violates Order § V.

23 Glassel also continues to ignore Order Section V, which enjoins him from “failing to  
 24 dispose of . . . customer information in all forms in [his] possession, custody, or control within  
 25 30 days after entry of th[e] Order.” PX1 at 6 § V(B). Four years later, in May 2017, he  
 26 produced a list of Best Yet billings, with detailed customer contact information, dating back to  
 27 2008, well before the Order issued. *See supra* p.10. Thus, Glassel has “fail[ed] to dispose of”  
 28 customer information the Court ordered him to discard, in blatant violation of Order Section V.

1                   **3.       Glassel’s Failure to Retain Advertisements Violates Order § X.**

2                   Finally, Glassel ignores Order Section X, which requires that he maintain “[a] copy of  
3 each advertisement or marketing material” and “retain such record for 5 years.” PX1 at 10  
4 § X(E). He admits that he has not created “any way of saving” prior advertisements either in  
5 electronic or other form. PX7, Glassel Dep. at 94:25-96:7. Glassel has failed to retain copies of  
6 his advertisements, in flagrant violation of the Court’s Order.

7                   **C.       Civil Contempt Sanctions Should Issue for Glassel’s Violations.**

8                   **1.       Compensatory Relief**

9                   The Court has broad authority to impose sanctions for violations of its orders, including  
10 requiring compensation for losses sustained as a result of the failure to comply with the order.  
11 *United States v. United Mine Workers*, 330 U.S. 258, 303-04, 67 S. Ct. 677, 701 (1947); *Ahearn*  
12 *ex rel. NLRB v. Int’l Longshore & Warehouse Union*, 721 F.3d 1122, 1131 (9th Cir. 2013).  
13 Once a plaintiff has established the elements of contempt by clear and convincing evidence, it  
14 need only prove damages by a preponderance of the evidence.<sup>20</sup>

15                  Consumers injured by a defendant’s conduct are entitled to full remedial relief. *McComb*  
16 *v. Jacksonville Paper Co.*, 336 U.S. 187, 193, 69 S. Ct. 497, 500 (1949). In an FTC contempt  
17 action, consumer loss is an appropriate measure of compensatory sanctions. *FTC v. EDebitPay,*  
18 *LLC*, 695 F.3d 938, 945 (9th Cir. 2012). The FTC need only “show that its calculations  
19 reasonably approximated the amount of customers’ net losses, and then the burden shifts to the  
20 defendants to show that those figures were inaccurate.” *FTC v. Febre*, 128 F.3d 530, 534-36  
21 (7th Cir. 1997); *see FTC v. Commerce Planet, Inc.*, 815 F.3d 593, 603-04 (9th Cir. 2016)  
22 (adopting *Febre* “two-step burden-shifting framework”).

23                  As Glassel has widely disseminated unsubstantiated bed bug eradication claims for Best  
24 Ever and d-Mize pesticides, all consumers who purchase those products are presumed by law to

25 \_\_\_\_\_  
26  
27 <sup>20</sup> *FTC v. Kuykendall*, 371 F.3d 745, 751 (10th Cir. 2004); *McGregor v. Chierico*, 206 F.3d  
28 1378, 1387 (11th Cir. 2000); *In re General Motors Corp.*, 110 F.3d 1003, 1018 (4th Cir. 1997);  
*see also Ahearn*, 721 F.3d at 1129 n.3 (“Every circuit to have considered this issue has adopted a  
preponderance standard.”).

1 have relied on his claims. *See, e.g., FTC v. BlueHippo Funding, LLC*, 762 F.3d 238, 244 (2d Cir.  
 2 2014) (citing *FTC v. Figgie Int'l*, 994 F.2d 595, 605-06 (9th Cir. 1993) for applying presumption  
 3 in FTC Section 19 action, and applying the presumption in FTC contempt action); *FTC v.*  
 4 *Kuykendall*, 371 F.3d 745, 765-66 (10th Cir. 2004) (same); *McGregor v. Chierico*, 206 F.3d  
 5 1378, 1388-89 (11th Cir. 2000) (same); *FTC v. Gill*, 183 F. Supp. 2d 1171, 1186 (C.D. Cal.  
 6 2001) (same). Hence, the Court has clear authority to enter an order providing for compensatory  
 7 relief to consumers in the amount of at least \$121,236.02, which constitutes Glassel's reported  
 8 total sales of Best Ever as of May 2017. PX4P at 2. Despite multiple requests, Glassel has failed  
 9 to produce reports of total sales of the d-Mize pesticides or updated sales of Best Ever. PX4 at  
 10 13-14 ¶¶ 30-36.<sup>21</sup>

11 The FTC has presented a reasonable approximation of customers' net losses. Thus, the  
 12 burden now shifts to Glassel to show that the FTC's calculation overstates his illicit gains.  
 13 *Commerce Planet, Inc.*, 815 F.3d at 604. Significantly, "[a]ny risk of uncertainty at this second  
 14 step falls on the wrongdoer whose illegal conduct created the uncertainty." *Id.* (citation and  
 15 internal quotation marks omitted).

## 16 2. Coercive Sanctions

17 Because Glassel is still violating the Order, the Court may also impose sanctions to  
 18 coerce his compliance. *United Mine Workers*, 330 U.S. at 303-04, 67 S. Ct. at 701. Such  
 19 sanctions include imprisonment or fines. In choosing a sanction, the Court must consider the  
 20 "character and magnitude" of the harm posed by the violations and the "probable effectiveness"  
 21 of proposed sanctions in achieving compliance. 330 U.S. at 304, 67 S. Ct. at 701.

22 Glassel may benefit from retaining a pre-Order customer list that he pledged to discard  
 23 under the Order. Additionally, his failure to retain copies of advertisements raises the prospect  
 24 that he may continue to engage in advertising violative of the Court's Order. Given Glassel's  
 25

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26 <sup>21</sup> Glassel has not provided the FTC with a more precise calculation of how much money he took  
 27 from consumers purchasing his products to combat bed bugs. Whereas he continues to sell Best  
 28 Ever and d-Mize products with violative eradication claims, his sales revenue may be greater  
 than what he has reported to date, and may be the subject of further proof.

1 disobedience in these regards, the Court should order him to pay a civil contempt fine of \$250  
 2 per day until he certifies truthfully in a filing, sworn under penalty of perjury, that he has finally  
 3 disposed of the customer list he agreed to discard in 2013 and is finally retaining copies of his  
 4 advertisements as ordered.

5 Even more troublingly, Glassel has repeatedly disobeyed the core conduct provision in  
 6 the Permanent Injunction requiring him to ground his efficacy claims in competent and reliable  
 7 scientific evidence. His disobedience of this directive is the subject of the FTC's accompanying  
 8 Motion to Modify the Permanent Injunction, which seeks an amended Order requiring him to  
 9 permanently abstain from marketing pesticides with claims that they kill bed bugs.

10 **D. The Court May Hold Glassel in Civil Contempt Based on the Written Record**  
 11 **If He Fails to Raise a Genuine Issue for Hearing.**

12 The FTC requests that the Court conduct contempt proceedings to address Glassel's order  
 13 violations, including argument and a hearing if the Court deems them necessary. However, if the  
 14 Court finds upon reviewing the parties' submissions that there are no material disputes of fact  
 15 that require a hearing, it may dispense with holding a hearing before sanctioning the defendant.  
 16 *See United States v. Ayres*, 166 F.3d 991, 995-96 (9th Cir. 1999).

17 **IV. CONCLUSION**

18 For the foregoing reasons, the FTC requests that the Court find Glassel in contempt of the  
 19 2013 Order and order appropriate sanctions to redress consumers and compel his compliance.

21 Date: January 9, 2018

Respectfully submitted,

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 FEDERAL TRADE COMMISSION

**CERTIFICATE OF SERVICE**

1  
2 I certify pursuant to 28 U.S.C. § 1746 that on January 9, 2018, I caused a paper copy of  
3 this document and its exhibits to be served manually via express courier mail to contempt  
4 defendant Dave Glassel, a non-participant in the Court’s electronic filing system, at the mailing  
5 address that he has provided to the FTC, 2119 Old Ox Rd., Spring, TX 77386. I also emailed the  
6 contempt defendant an electronic copy of this document and its exhibits at the email addresses  
7 that he has provided to the FTC, [cedarman65@yahoo.com](mailto:cedarman65@yahoo.com).  
8

9  
10 Respectfully submitted,

11  
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