

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI**

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**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**v.**

**RICHARD C. NEISWONGER, et al.,**

**Defendants.**

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**Case No. 4:96CV02225 SNL**

**Judge Limbaugh**

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S  
EX PARTE MOTION FOR AN ORDER TO SHOW CAUSE  
AND PLAINTIFF'S MOTION FOR A CIVIL CONTEMPT ORDER**

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## I. INTRODUCTION

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), a federal law enforcement agency, has obtained proof of serious and continuing violations of this Court’s Final Judgment and Order for Permanent Injunction and Other Equitable Relief (“Permanent Injunction” or “Order”), entered in this case on February 28, 1997. The FTC opened this case nearly ten years ago to stop defendant Richard C. Neiswonger (“Neiswonger”) and others from falsely promoting training and business opportunity programs (“programs”) to consumers nationwide, and to obtain other equitable relief, including monetary redress. In settlement of the case, defendant Neiswonger paid a sum for consumer redress, and promised not to use misrepresentations or to omit material facts in selling programs to consumers. This Court then entered a stipulated Permanent Injunction ordering Neiswonger to honor his promise. As detailed below, Neiswonger and his current cohorts have broken that promise. They are defrauding consumers in contempt of this Court.

After signing the Permanent Injunction in this case, defendant Neiswonger found another business partner in contempt defendant William Reed (“Reed”), formed another company, contempt defendant Asset Protection Group, Inc. (“APG”), and hatched another deceptive scheme involving a training and business opportunity. In this ongoing scheme, Neiswonger, Reed, and APG (collectively, “contempt defendants”) hold themselves out as professionals in hiding assets from “capricious federal judges and any government agency.” Citing explosive demand for their professional expertise in the field of “asset protection,” the contempt defendants are marketing a training and business opportunity referred to herein as the “APG program.” The contempt defendants represent that consumers who pay \$9,800 for the APG program, which includes training materials, a one-day training session, and a business affiliation with APG, will become

well-compensated “APG asset protection consultants.” Specifically, the contempt defendants assert that these APG consultants will make “very substantial profits” selling the firm’s “asset protection” services, chiefly the formation of Nevada and offshore companies for “**COMPLETE PROTECTION AGAINST ASSET SEIZURE BY THE IRS** or other government agencies.”

The contempt defendants entice consumers to purchase the APG program with false and misleading claims that APG consultants are likely to earn a substantial or “six-figure” income. Neiswonger and his cohorts assert, in writing, that new APG consultants “will make very substantial profits” and are likely to enjoy a substantial income, with a “6-figure income potential on less than [a] full-time schedule.” They maintain that “it takes only a couple of clients each week to produce a very substantial six-figure income,” and expressly state that “**getting just six or eight clients in an entire month’s time is a VERY reasonable, very achievable goal.**” The contempt defendants convey these claims to consumers through print advertisements, mailed promotional letters, and telephone calls. They also use paid “references” to reiterate those claims. As one APG “reference” told an FTC investigator posing as a prospective purchaser: “I’ve done at least \$100,000 every year. Last year, I grossed close to \$200,000. So, however much you want to work is as well as you’ll do. . . . I only really do part-time.”

In truth and fact, consumers who purchase the APG program are not likely to make a substantial income, a “six-figure” income, or “a very substantial six-figure income,” from selling APG’s “asset protection” services. Rather, APG consultants have suffered considerable losses or have not seen earnings even close to those touted. Nevada records further confirm that it is extraordinarily unlikely that consumers will earn a substantial or “six-figure” income as APG

consultants. As detailed below, and evidenced in the exhibits submitted with this filing,<sup>1</sup> the contempt defendants are making false and misleading income claims. These claims clearly violate the injunction against misrepresentations in Paragraph I of the Court's Permanent Injunction.

Contempt defendants Neiswonger, Reed, and APG are further violating the Permanent Injunction by failing to disclose material facts to consumers. First, the contempt defendants are paying "references" to promote their program to consumers—without disclosing to consumers how much they pay their references, as the Court's Permanent Injunction expressly requires. Second, they are withholding material facts from consumers concerning defendant Neiswonger's history of dishonest conduct, which has culminated in criminal convictions for wire fraud and money laundering, his civil forfeiture of \$750,000 to federal law enforcement authorities, numerous state orders against his prior business ventures to prohibit deceptive practices, and this Court's Permanent Injunction.<sup>2</sup> Purchasers who have discovered the facts for themselves affirm that they never would have purchased the APG program if they had known the material facts. The contempt defendants clearly have failed to disclose material facts to consumers in violation of Paragraph II of the Permanent Injunction.

Defendant Neiswonger has further violated the Court's Permanent Injunction by failing to report his affiliation with APG to the FTC, and by failing to provide the FTC with proof of a

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<sup>1</sup> The documentary exhibits submitted in support of this Motion have been submitted in separate, bound volumes as PX01 *et seq.*

<sup>2</sup> See PX03-PX03J; see also *infra* Section II.B.2. Contempt defendant Reed is, likewise, no stranger to deceptive business practices. Reed is a *former* Colorado attorney whose license to practice law was suspended by the Colorado Supreme Court for "engag[ing] in misrepresentations and dishonesty." PX04, *Colorado v. Reed*, 942 P.2d 1204, 1205 (Colo. 1997). Reed's law license has not been reinstated. PX04A, Suspended Colorado Attorney Information, William Reed (June 19, 2006).



current \$100,000 performance bond before promoting the APG program over the past two years, in violation of Paragraphs XI and V of the Permanent Injunction, respectively.

In light of the contempt defendants' acts, the Commission has returned to this Court to institute proceedings for appropriate civil contempt sanctions and remedies. The Commission respectfully requests: (1) an Order to Show Cause, directing defendant Neiswonger and two other persons or entities with notice of the Permanent Injunction acting in concert with him, contempt defendants Reed and APG, to show cause why they should not be held in civil contempt for violating this Court's Permanent Injunction; and (2) a final Civil Contempt Order holding all three contempt defendants in civil contempt for their violations of the Permanent Injunction.<sup>3</sup>

## II. BACKGROUND

This contempt action stems from the Commission's previous litigation against defendant Neiswonger, which culminated with the entry of a stipulated Permanent Injunction in early 1997. Before the Commission brought suit against Neiswonger, the defendant already had a long history of promoting business opportunities with deceptive claims. *See, e.g., United States v.*

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<sup>3</sup> The Commission has submitted two proposed Orders granting the relief requested above. The first proposed order, which the FTC requests that the Court enter immediately, is the proposed Show Cause Order. The second proposed order, which the FTC asks the Court to enter after appropriate contempt proceedings have taken place, is a proposed order holding the contempt defendants in civil contempt.

The Commission is simultaneously filing in this Court an *ex parte* Motion for a Temporary Restraining Order ("TRO") and Ancillary Equitable Relief, with *ex parte* Motions to Exceed Page Limits and to Temporarily Seal Filings. As set forth in the Motion to Seal, the Commission requests that its moving papers and any responsive orders or documents be held under temporary seal, to ensure that the contempt defendants do not receive notice of contempt proceedings before receiving service of an appropriate TRO. As detailed in the FTC's filings in support of its TRO motion, the contempt defendants have histories of dishonesty and concealment in the handling of assets and market their expertise in hiding assets from federal authorities. These facts give rise to a grave risk of asset dissipation and spoliation of evidence if the contempt defendants receive notice of contempt proceedings without being subject to the requested TRO.

*Van Dyke*, 605 F.2d 220 (6<sup>th</sup> Cir. 1979).<sup>4</sup> In the 1990s, numerous state agencies brought law enforcement actions against Neiswonger for deceptively promoting business training programs. These actions led to multiple cease-and-desist orders.<sup>5</sup> Unfortunately, these orders did not stop Neiswonger from hatching other deceptive schemes involving training and business opportunities.

#### A. The Underlying Case

In late 1996, defendant Neiswonger was selling business training programs with false income claims and phony references, prompting the Commission to file a complaint charging him and others with deceptive practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). PX01A, Compl., *FTC v. Neiswonger*, No. 4:96CV02225 SNL (Nov. 13, 1996).<sup>6</sup>

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<sup>4</sup> *Van Dyke*, 605 F.2d at 223, 228-29 (reporting Neiswonger's participation in scheme led by appellant convicted of mail fraud: "At one salesman training session conducted by Neiswonger, assisted by Appellant, the salesmen were told that some distributors earned as high as \$100,000.00 per year . . . whereas no such profits or sales figures existed in fact.").

<sup>5</sup> Neiswonger's previous programs included Leasehold Analysis, Inc. (commercial lease auditing training), Expense Reduction Analysts, Inc. (expense reduction training), Auditel International, Inc. (utility bill audit training), and Property Valuation Consultants, Inc. (property tax consultant training). PX03I, Financial Disclosure Statement of Richard C. Neiswonger at 2. Each of these firms has been subject to state regulatory enforcement proceedings for deceptive practices. PX03D, Consent to Voluntary Agreement, *In re Leasehold Analysis, Inc.*, (Iowa Comm. Dep't Ins. Div. Aug. 18, 1994); PX03E, Amended Assurance of Discontinuance, *In re Leasehold Analysis, Inc.*, No. 93-10092 (Mich. Att'y Gen. Dep't Mar. 10, 1994); PX03F, Amended Assurance of Discontinuance, *In re Expense Reduction Analysts, Inc.*, No. 93-10093 (Mich. Att'y Gen. Dep't Nov. 18, 1993); PX03G, Assurance of Discontinuance, *In re Auditel, Int'l*, No. 90-10119 (Mich. Att'y Gen. Dep't May 24, 1991); PX03H, Assurance of Voluntary Compliance, *In re Property Valuation Consultants, Inc.*, No. 90-AVC-900204 (Ill. Att'y Gen. Off. Dec. 19, 1990).

<sup>6</sup> Defendant Neiswonger's co-defendants were S&K Group, Inc. ("S&K"), located in St. Louis, Missouri, and Medical Recovery Service, Inc. ("MRS"), operating out of Joliet, Illinois and Las Vegas, Nevada, and three persons who owned and controlled those companies, Carl Kossmeyer, Mark Freeman, and Nancy Freeman. Defendant Neiswonger was a founding principal of both S&K and MRS, and he is the only previously-named defendant presently identified as a contempt defendant.

As alleged in the FTC's complaint, and later established in a criminal prosecution, Neiswonger was deceptively marketing business training programs for upwards of \$10,000 that purportedly equipped aspiring entrepreneurs to become well-paid business consultants in the areas of finance and expense reduction, among other topics. PX01A, Compl. at 6 ¶ 14; PX03, Neiswonger Plea Tr., *United States v. Neiswonger*, No. 4:98CR364 RWS at 27-32 (E.D. Mo. Sept. 3, 1998) (admitting deceptive practices in subsequent criminal proceeding). Neiswonger falsely claimed that consumers who purchased these programs were likely to earn six-figure incomes from fees generated using the programs, when actual purchasers did not earn anything close to such income. *Id.* Neiswonger also urged consumers to speak with "references" before purchasing the program, without disclosing that the references were actually paid "shills," lying about their experiences in exchange for remuneration. *Id.* The Commission's complaint challenged these and other deceptive practices. *See* PX01A, *passim*.

After the filing of the complaint, Neiswonger and his co-defendants stipulated to the entry of this Court's Permanent Injunction, which the Commission now seeks to enforce. PX01, Permanent Injunction, *FTC v. Neiswonger*, No. 4:96CV02225 SNL (E.D. Mo. Feb. 28, 1997).<sup>7</sup>

**B. Defendant Neiswonger's Subsequent Activities and Work with Contempt Defendants Reed and APG**

After Neiswonger signed the Court's Permanent Injunction and paid \$425,000 in redress

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<sup>7</sup> This Order is, by its terms, a "remedial" order addressing defendant Neiswonger's future conduct, both personally and with others, in connection with the promotion and sale of programs. *Id.* at 2 ¶ 5. As defined in the Court's Order, the term "program" includes training sessions, courses of instruction, class materials, support, affiliations, association, or combinations thereof. *Id.* at 3. The Order prohibits any material misrepresentations to prospective purchasers of programs, requires the affirmative disclosure of all material facts to prospective purchasers, and imposes certain performance bond and reporting requirements. *See infra* Section III.A-C.



to the Commission, the U.S. Department of Justice charged him with financial crimes relating to the programs that prompted the FTC's lawsuit. In September 1998, Neiswonger pled guilty to one count of wire fraud and two counts of money laundering, and U.S. District Judge Rodney W. Sippel sentenced him to eighteen months in federal prison. Judge Sippel also required Neiswonger to pay the additional sum of \$2,750,000 in restitution to consumer victims.<sup>8</sup>

Even as defendant Neiswonger prepared to go to prison for wire fraud and money laundering in the fall of 1998, he was readying a new venture that would return to the deceptive practices that have marked his professional career. On October 23, 1998, defendant Neiswonger and his business partner, contempt defendant Reed, formed the initial board of directors of contempt defendant APG, in Las Vegas, Nevada. PX02 at 1, APG Articles of Incorporation.

Defendant Neiswonger subsequently served out his prison term, but the Justice Department later brought a civil forfeiture action against him, charging that he failed to disclose approximately \$1.3 million in illicit proceeds to the authorities during plea negotiations in his criminal case. Neiswonger ultimately forfeited \$750,000 in settlement of the government's forfeiture action.<sup>9</sup> He has paid nearly \$4 million to the government in three separate actions involving dishonesty.

As discussed below, Neiswonger has joined his business partner, contempt defendant Reed, in promoting another training and business opportunity program. *See infra* Section II.C. Like Neiswonger, Reed has a history of dishonest conduct. Reed is a former Colorado attorney

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<sup>8</sup> PX03A, Judgment of Conviction, *United States v. Neiswonger*, No. 4:98CR0364-RWS (E.D. Mo. Dec. 1998).

<sup>9</sup> PX03B, Settlement Agreement, *United States v. \$1,350,238.60 U.S. Currency*, No. 4:00CV2018-CDP (E.D. Mo. July 3, 2001); PX03C, Order Adopting Settlement Agreement (E.D. Mo. July 11, 2001) (forfeiture).

whose license to practice law has been suspended by the Supreme Court of the State of Colorado for “engag[ing] in misrepresentations and dishonesty” in failing to disclose assets.<sup>10</sup>

Reed presently holds himself out as an expert in the “field” of “asset protection,” which involves hiding or moving assets out of the jurisdiction of the federal courts, to ensure that “assets are shielded from capricious federal judges and any government agency.”<sup>11</sup> Reed has written a book detailing his *modus operandi* for hiding assets. His book, titled “Bulletproof Asset Protection,” describes how readers can foil potential creditors, federal law enforcement agencies, and federal court judges and receivers in search of assets.<sup>12</sup>

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<sup>10</sup> PX04, *Colorado v. Reed*, 942 P.2d 1204, 1205 (Colo. 1997) (concluding that “[Reed] engaged in misrepresentations and dishonesty by transferring various purported ownership interests to lawyer employees of [his] firm who were not managers or operating directors, did not receive profits, and did not participate in the ownership of the firm.”); *see also id.* (noting that “a district judge ruled that the respondent actually received substantial sums of money from [his firm], and that the respondent and his firm failed to disclose this information wilfully and with the intent to defraud”). In suspending Reed’s license to practice law, the Colorado Supreme Court specifically cited his “dishonest and selfish motive” as “an aggravating factor for discipline purposes.” *Reed*, 942 P.2d at 1206. Reed’s law license has not been reinstated. PX04A, Suspended Colorado Attorney Information (2006).

<sup>11</sup> PX25, WILLIAM S. REED, BULLETPROOF ASSET PROTECTION 121 (2004); *see also id.* at 164 (“ONCE YOUR MONEY IS BEYOND THE REACH OF MY FRIEND THE FEDERAL JUDGE, YOUR ASSETS ARE SAFE.”) (statement of contempt defendant Reed) (capitalization in original).

<sup>12</sup> *See id.* Contempt defendant Reed’s advice includes the following statements:

If you are at risk from a potential lawsuit, a divorce, or a government agency, the first question will be, “Where are your assets?”

....

The second possible response to the question on the location of your assets goes like this: “I don’t have any assets.”

This is the response I prefer. Short, clean, and direct. Like a perfect murder, the questioner may have a dead body, but in no way is it connected to you.

(footnote continued on next page)

## C. The Contempt Defendants' Promotion and Sale of the APG Program

### 1. The APG Program

Defendant Neiswonger and contempt defendants Reed and APG are now together promoting a training and business opportunity program in the field of "asset protection," referred to herein as the "APG program." They claim that consumers who pay \$9,800 for this program are likely to earn a substantial income as APG "asset protection consultants." According to the contempt defendants, APG consultants "will make very substantial profits," "\$1,700 to \$6,400 per client," and are likely to earn a substantial or "six-figure" income, with a "6-figure income potential on less than [a] full-time schedule."<sup>13</sup>

APG consultants purportedly earn this "exceptional income," PX06 at 1, by selling APG's "asset protection" services to clients who want to hide their assets from potential litigants and creditors, law enforcement agencies, and federal judges.<sup>14</sup> APG's "asset protection" services involve the sale and use of Nevada corporations that employ APG's services as a resident agent.

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*Id.* (BULLETPROOF ASSET PROTECTION 47-48) (statement of contempt defendant Reed).

<sup>13</sup> PX06 at 1, APG "Special Free Report" ("6-figure income potential on less than [a] full-time schedule") (statement of defendant Neiswonger); PX42C at 1, APG "Second Notice" Letter (same); PX42D at 1, APG "Third and Final Notice" Letter (same); *see infra* Section III.A (citing similar claims).

<sup>14</sup> PX06 at 3, APG "Special Free Report" Letter (stating that APG can "'bulletproof' assets against . . . lawsuits, against family disputes, even against IRS attacks") (statement of defendant Neiswonger); PX15 at 41, APG "Ultimate Asset Protection" Promotional Material (stating, with respect to contempt defendant Reed: "He knows every trick in the book to hide money and protect assets. Now, for the first time ever, he reveals all of his strategies to help make you 'bulletproof' from lawsuits, judgments and government agencies . . ."); PX36B at 17, APG "Dear Entrepreneur" Promotional Letter (touting "complete protection against asset seizure by . . . any U.S. government agency") (statement of contempt defendant Reed); PX25, BULLETPROOF ASSET PROTECTION 161 ("Once your money is beyond the reach of my friend the federal judge, your assets are safe.") (statement of contempt defendant Reed).

PX06 at 8, 10, 24. APG also sells services for the formation and maintenance of offshore international business companies (“IBCs”).<sup>15</sup>

APG promises that consumers who purchase the APG program and work as consultants will receive a portion of the fees paid by clients who purchase APG’s corporations and corporate services—\$1,700 for each Nevada corporation and \$3,000 for each offshore corporation they sell. PX06 at 11. In addition, consultants are supposed to earn \$450 and \$600, respectively, for the annual renewal of these corporations. *Id.* The contempt defendants represent that, with these payments, APG consultants “will . . . be making very substantial profits,” *id.*, and are likely to make a substantial or six-figure income. *See infra* Section III.A.

## 2. The Promotion and Sale of the APG Program

The contempt defendants market the APG program throughout the nation through various means, including, but not limited to, print advertisements in *Investor’s Daily*, *USA Today*, and other publications, as well as mailed promotional letters and interstate phone calls between APG agents and prospective purchasers. PX40A at 2, APG Print Ad, *Entrepreneur*, PX13, APG Print Ad, *BusinessWeek*; PX06, PX10, PX15 (mailed promotional materials); PX35 at ¶2, PX36 at ¶2,

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<sup>15</sup> The contempt defendants promote Nevada corporations for “complete anonymity” of ownership, and set up offshore corporations for “COMPLETE PROTECTION AGAINST ASSET SEIZURE BY THE IRS or other government agencies.” PX06 at 9 (statement of defendant Neiswonger) (emphasis in original); *see also* PX25, BULLETPROOF ASSET PROTECTION 161 (“An offshore corporation is the first and perhaps the only structure you’ll ever need. . . . Currently, we are using Bahamian IBCs to open corporate brokerage accounts in the Cayman Islands.”) (statement of contempt defendant Reed).

The Internal Revenue Service ranks IBCs as one of the most common abusive tax schemes because IBCs may be used to transfer unreported income offshore to tax haven jurisdictions. *See* United States Internal Revenue Service, What are Some of the Most Common Abusive Tax Schemes?, available at <http://www.irs.gov/compliance/enforcement/article/0,,id=105822,00.html> (2006) (submitted with this filing as PX-LEGAL-10).



PX38 at ¶2, PX40 at ¶2, PX42 at ¶2 (consumer declarations). APG initially solicits consumers with print ads that hold out the promise of substantial earnings in a “lucrative business,” and invite consumers to call for more information. PX13; PX40A (touting “exceptional income . . . from your own business” in which “financial rewards are tremendous”). Consumers who call the advertised phone number hear a recorded message, leave their mailing information, and soon receive an introductory package, including a video describing the benefits of Nevada and offshore corporations in general, and a “Special Free Report,” signed by Neiswonger and containing statements from Neiswonger and Reed, describing the APG program. PX06; PX15.

Neiswonger and Reed’s “Special Free Report” purports to explain why purchasers of the APG program are likely to enjoy an “exceptional income” as APG consultants. PX06 at 1. First, Neiswonger recounts how he has been “absolutely overwhelmed” by demand for APG’s services. PX06 at 3. He then introduces Reed, who explains in writing how he abandoned his work as a collections attorney<sup>16</sup> and developed APG’s unique, successful “asset protection” program, which trains consumers from all walks of life to earn a substantial income as APG consultants:

I devised a unique business system to train independent asset protection consultants to interact with clients. . . . Your background matters less than your ambition. Everything you need to do very, very well financially is provided to you. . . . If all you did “part time” was place 15 full asset protection cases with us in a year – about one a month – you’d receive more than \$90,000.

PX06 at 8; PX15 at 8. Following Reed’s discussion, Neiswonger explains the advantages of Nevada and offshore corporations and states that consultants “EARN OUTSTANDING PROFITS”

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<sup>16</sup> Reed’s account does not disclose the fact that the Colorado Supreme Court suspended him from the practice of law. *Compare* PX06 at 6 with PX04, *Reed*, 942 P.2d at 1206. Rather, Reed states that he “saw the light” and “switch[ed] sides” after having lunch with a federal judge who purportedly told him, “If I can’t find any assets I will close the case.” PX06 at 6.

from selling those corporations, using APG as a “back office.” PX06 at 9 (emphasis in original), 10; *id.* at 3. The letter concludes by inviting consumers to call APG for more information.

When consumers call for more information, APG officers and agents reiterate the claims made in APG’s written promotional materials. They also provide consumers with the names of purportedly active consultants, or “APG references,” who corroborate those claims.<sup>17</sup> The references are paid to recommend APG, but that fact usually is not disclosed to consumers. The amount paid to references is not disclosed to consumers. *See infra* Section III.B.1.

These phone calls lead to a direct solicitation by Neiswonger, who personally urges consumers to purchase the APG program. *E.g.*, PX09; PX19. Neiswonger and Reed further solicit prospective purchasers of the APG program by sending more promotional letters or making phone calls. PX11; PX22; PX23; PX36A at 1-2. In promoting and selling the APG program, the contempt defendants do not disclose defendant Neiswonger’s previous convictions for wire fraud and money laundering, his forfeiture of allegedly hidden assets to the Justice Department, the state orders against him, or this Court’s Permanent Injunction. *See infra* Section III.B.2.

**3. Contempt Defendants Reed and Neiswonger Actively Promote and Sell the APG Program to Consumers.**

Both Reed and Neiswonger play central roles in promoting and selling the APG program. Contempt defendant Reed is President and Director of APG. PX02 at 1-9. His name, picture,

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<sup>17</sup> PX33, Dee Decl., at ¶6; PX36, Hammond Decl., at ¶4; PX37, Hinzman Decl., at ¶4; PX38 at ¶¶3,4; PX40, Pianga Decl., at ¶4; PX41, Rogers Decl., at ¶5; PX42, Young Decl., at ¶6. The FTC learned about these phone calls from APG consultants, and from FTC investigators posing as prospective purchasers of the APG program to record and document the contempt defendants’ verbal sales pitches. *See id.*; *see also* PX05, Stahl Decl., at ¶¶ 2-5, 6, 8, 10-11, 13 (describing taping procedure and calls); PX12, Ramage Decl., at ¶¶ 2-8, 10-16, 20 (same); PX07, PX09, PX11, PX14, PX16-PX20, PX23-PX24 (transcripts of recorded phone calls).

statements, and signature appear in APG's promotional materials. *See, e.g.*, PX06 at 6-8; PX15 at 6-8; *id.* at 41-45 (APG "Ultimate Asset Protection" Promotional Material with picture); PX36B at 13-18 (APG "Dear Entrepreneur" Promotional Letter); *id.* at 20-23 (APG "One Other Reason" Promotional Letter). APG's promotional materials describe Asset Protection Group as Reed's brainchild and dub him "the Henry Ford of asset protection." PX06 at 14; PX42C at 3; PX42D at 3. Reed personally promotes the APG program to prospective purchasers and other consumers. PX33 at 2 ¶ 8; PX38 at 1 ¶ 3; PX42C at 10; PX09 at 36-38; PX16 at 71-72. His signature appears on the contracts offered to prospective purchasers of the APG program. *Compare* PX36B at 20 (letter signed by Reed) *with id.* at 14; PX33D; PX34B; PX40C; PX41G; PX42E at 1 (contracts). Reed also joins Neiswonger in conducting training sessions for consumers who have purchased the APG program. *See* PX09 at 40; PX19 at 23-24; PX35 at 1 ¶ 5; PX40 at ¶10; PX42D at 7. Reed describes APG as an "asset protection services 'factory'" that he "personally supervise[s]." PX06 at 8 (statement of contempt defendant Reed); PX15 at 8 (same).

Defendant Neiswonger serves as Marketing Director for APG. PX10 at 1; PX36B at 18; PX41 at 1 ¶4; PX09 at 39; PX16 at 18, 21, 49. His name, statements, and signature appear in promotional materials for APG. *See, e.g.*, PX06 at 1-16 (APG "Special Free Report"); PX10 at 2-11 (New Consultant Authorization Letter). Neiswonger also personally promotes the APG program to prospective purchasers by sending them signed letters with additional materials and by speaking with them over the phone. PX21; PX33E; PX41H; PX41I; PX42C; PX42D (letters); PX33-42 (consumer declarations); PX09 (phone transcript); PX19 (same). In short, Reed and Neiswonger both actively promote and sell the APG program as partners. *See* PX07 at 39, Tr., D. Lemay; PX09 at 7, Tr., R. Neiswonger ("I've been here for 10 years as Bill's partner.").

### III. VIOLATIONS OF THE COURT'S PERMANENT INJUNCTION

The Commission has moved to institute contempt proceedings to secure interim relief and final coercive and compensatory relief for the contempt defendants' numerous order violations. As discussed below and evidenced in the submitted exhibits, including the contempt defendants' corporate records, their writings and promotional materials, the sworn declarations of numerous consumers, the sworn statements of several FTC investigators, and the recorded statements of the contempt defendants and their agents, the contempt defendants have repeatedly: (1) misrepresented that prospective purchasers are likely to earn a substantial or "six-figure" income from client fees generated using the APG program, in violation of Permanent Injunction ¶ I and I.A.; (2) failed to disclose, in advance of purchase, the amount of remuneration received by "references" whose names were given to prospective purchasers, in violation of Permanent Injunction ¶ II.A; and (3) failed to disclose the material facts to consumers concerning defendant Neiswonger's record of dishonest practices, in violation of Permanent Injunction ¶ II. The evidence further shows that defendant Neiswonger has violated this Court's Order by: (4) failing to provide proof of a current performance bond while marketing the APG program, in violation of Permanent Injunction ¶ V; and (5) failing to report his business affiliation with APG in violation of Permanent Injunction ¶ XI. All of the contempt defendants have notice of the Court's Order. *See infra* Section IV.A. As detailed below, the FTC has presented substantial evidence that the contempt defendants are acting in contempt of this Court.

#### **A. The Contempt Defendants Have Misrepresented Material Facts Concerning Prospective Purchasers' Likely Income from the APG Program in Violation of Permanent Injunction ¶¶ I and I.A.**

Paragraph I of the stipulated Permanent Injunction prohibits defendant Neiswonger and



all others in participation with him, who receive actual notice of the Order, from misrepresenting any material fact—either directly or by implication—in connection with advertising, promoting, marketing, selling, or otherwise inducing participation in any program. See PX01 at 3-4, ¶ I, I.A. Prohibited misrepresentations include, but are not expressly limited to, any claim that consumers will earn a six-figure income, \$150,000 income, or words of similar import, from client fees generated using any program. *Id.* at 3-4, ¶ I, I.A. The contempt defendants have violated the injunction against misrepresenting material facts by representing that prospective purchasers will likely earn a substantial or “six-figure” income from fees generated using the APG program.

As discussed below, the contempt defendants have made these income claims in writing, and verbally, to consumers. APG’s written promotional materials contain many statements from contempt defendants Neiswonger and Reed, emphasizing that consumers who buy and use the APG program will likely earn a substantial or “six-figure” income as APG consultants:

In our business, you are really in charge. You set your own hours, you have no territory restrictions, you can choose to generate your own clients or use our recommended appointment-setting service to obtain clients for you. . . . You do **not** sacrifice your life for your business.

**But make no mistake: the financial rewards are here!** This is a “high transaction business,” meaning that each client represents significant dollars – on average, from \$1,700 to \$6,400 to you per client! Obviously it takes only a couple of clients each week to produce a very substantial six-figure income — and the full-time potential is unlimited!

**It doesn’t take much imagination to see that getting just six or eight clients in an entire month’s time is a VERY reasonable, very achievable goal.**

Of course, 20 would be better! – providing as much as \$128,000 income to you. Whatever your first year income goal, it will require only a small number of clients. Actually just ONE satisfied client has the ability to refer several, so a \$64,000 to \$128,000 income your very first year can be “triggered” by just three or four clients.

PX10 at 3-4, New Consultant Authorization Letter (statement of defendant Neiswonger) (all emphasis in original); PX33B at 2-3 (same); PX34A at 2-3 (same); PX38A at 2-3 (same); PX41F at 2-3 (same). Similar statements pervade APG's other promotional materials. *See* PX06 at 1, APG "Special Free Report" Letter (touting "6 figure income potential, from less than full-time schedule") (statement of defendant Neiswonger); PX42C at 1, APG "Second Notice" Letter (same); PX42D at 1, APG "Third and Final Notice" Letter (same); PX21 at 2 (same); *see also* PX06 at 8 ("Everything you need to do very, very well financially . . . is provided to you.") (statement of contempt defendant Reed); PX42C at 6 (same); PX06 at 11 ("You will also be making very substantial profits") (emphasis in original) (statement of defendant Neiswonger); PX42C at 8 (same); PX42D at 4 (same).<sup>18</sup> As these examples illustrate, the contempt defendants have repeatedly conveyed to prospective purchasers, in writing, that they are likely to earn a substantial or "six-figure" income as APG consultants.

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<sup>18</sup> The contempt defendants occasionally purport to disclaim their income claims in inconspicuous statements that are often immediately undercut by more income claims. For example, near the end of the sixteen-page Special Free Report, Neiswonger states that APG "do[es] not guarantee any specific or certain income, nor should you consider any of the examples used . . . as projections of your income. Individual results vary." PX06 at 14. He asserts that "your income will depend on your initiative, time and effort invested . . . and other factors over which we have no control." *Id.* Neiswonger then immediately undercuts these statements by stating: "You can certainly see, however, at a profit of \$1,700 to \$6,400 per client served, it takes only a small number of clients each year to create a very substantial income." *Id.* Similarly, Reed states in another APG promotional letter that a first-year consultant, working part time, can earn \$114,000 selling a certain ratio of Nevada and Bahamas corporations to clients. PX36B at 24. He purports to disclaim this six-figure income claim "as a mathematical example only," *id.* (emphasis in original), but then immediately states: "Our current experience is that the ratio is actually much more favorable than our example." *Id.*

The contempt defendants' inconspicuous, equivocal disclaimers are patently ineffective. *See Removatron, Int'l Corp. v. FTC*, 884 F.2d 1489, 1497 (1<sup>st</sup> Cir. 1989) ("Disclaimers or qualifications in any particular ad are not adequate to avoid liability unless they are sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression.").

The contempt defendants also verbally represent to prospective purchasers that they are likely to earn a substantial or six-figure income from fees generated using the APG program. In phone calls, APG personnel and agents, including defendant Neiswonger and APG references, represent that consultants readily find clients and are likely to build a substantial or six-figure income as consultants. *See* PX09 at 11, Tr., R. Neiswonger (Dec. 29, 2005) (“The front end money is great. You know, you make anywhere from a minimum of \$1,700 up to as much as \$6,400 off each client. So, even a couple clients a week, which is nothing, you’re talking about a lot of money.”) (statements of defendant Neiswonger). As defendant Neiswonger told one FTC investigator, posing as a prospective APG consultant:

MR. NEISWONGER: . . . Give me a ballpark as to the kind of income that you're accustomed to, just approximately.

MS. WILKE: Approximately \$60,000 a year.

MR. NEISWONGER: Okay. So, that’s good money.

MS. WILKE: Right.

MR. NEISWONGER: That’s good money, certainly, for a salaried position, you know.

MS. WILKE: Right. It’s --

MR. NEISWONGER: But if we could put you well over 100, then you would consider the possibility of going full-time?

MS. WILKE: Right.

MR. NEISWONGER: Okay.

*Id.* at 15. Neiswonger repeatedly refers to a \$100,000 or “six-figure” income to entice consumers to purchase the APG program. *See id.*; *see also* PX19 at 10, Tr., R. Nicewonger [sic] (Mar. 3, 2005) (“Our goal with every new consultant is to get you up to 100 clients quick. . . . Whether it takes three months or six months or nine months, once we get you up to 100 clients, now you’ve got six figures coming in just on residuals.”) (statement of defendant Neiswonger). APG references make similar “six-figure” income claims. *See, e.g.*, PX17 at 7, Tr., B. Black (Mar. 2, 2005) (“I’ve

done at least \$100,000 every year. Last year, I grossed close to \$200,000. So, however much you want to work is as well as you'll do.") (statement of APG reference). APG agents occasionally say that they "cannot make a specific income claim," *e.g.*, PX16 at 31, but often do so anyway.

Consumer declarations confirm that the contempt defendants have told consumers that they are likely to earn a substantial or six-figure income from working as APG consultants. *See* PX35, Greaves Decl., at 1 ¶2; PX37, Hinzman Decl., at 1 ¶3; PX40, M. Pianga Decl., at 1 ¶3, 2 ¶6; PX41, Rogers Decl., at 4 ¶14; PX42, Young Decl., at 1 ¶3, 2 ¶6, 7 ¶19; *see also* PX34A at 3. The evidence is clear that the contempt defendants conveyed claims of substantial or "six-figure" income to prospective purchasers of the APG program.

The contempt defendants' claims of a substantial or "six-figure" income are false and misleading. Consumers are not likely to earn a substantial or six-figure income doing business as APG consultants. As the attached declarations attest, many people who have worked as APG consultants have suffered financial losses or made meager earnings far below those touted by the contempt defendants. *See, e.g.*, PX33 at 2 ¶ 9-10, 3 ¶11 ("I believed APG's promise of significant income and a ready and willing customer base. I quickly learned that these claims are not true."); PX34, Falcone Decl., at 2 ¶9 ("My investments are total losses."); PX36 at 2 ¶7 ("I spent thousands of dollars in advertising costs and attempted to do the business for at least a year. . . . I never sold anything."); PX37 at 2 ¶ 6-8 ("I had been . . . ripped-off royally by APG."); PX40 at 3 ¶11, 4 ¶15, 5, ¶19 ("In addition to the \$9800 I paid to start the APG business, I lost money . . . on marketing materials."); PX42 at 5-6 ("I quickly learned there was no client base . . . . I lost a good sum of other money attempting to run the APG business . . . ."); *see also* PX41 at 4 ¶14 ("I believed APG's claims of significant income . . . . Neiswonger and the references made APG



sound like a great investment opportunity. Nothing could be further from the truth.”).

As the consumer declarations explain, APG’s claims of substantial income are false and misleading for many reasons. Notably, many consultants have lost money trying to obtain clients from APG. The contempt defendants claim that they provide APG consultants with clients. *E.g.*, PX40A at 2 (“Yes, we will even provide your clientele for you!”). Specifically, the contempt defendants trumpet APG’s “proprietary strategic alliance” with a telemarketing firm, which supposedly uses a successful prospecting script devised by APG to provide consultants with appointments with carefully-screened, “qualified prospective clients.” *Id.*; PX06 at 12-13. APG consultants have paid thousands of dollars for these appointments to a succession of telemarketing firms recommended by APG, only to find that their appointments are actually based on cold-calls, in which persons have only granted permission to have someone stop by with free information. PX40 at 2 ¶ 5, 3-4 ¶¶ 11-14; *see also* PX37 at 2 ¶ 6; PX38 at 2-3 ¶¶ 6-10; PX41 at 2 ¶ 8, 3 ¶ 12; PX42 at 3-5 ¶¶ 10-15. APG consultants report that APG’s custom-made telemarketing script often leads to “appointments” with persons who often have no idea what APG is about or why the consultant is visiting them. *See id.*; PX34 at 2 ¶¶ 6-8; PX39, H. Pianga Decl., at ¶ 5. As the leads vanish, so do potential earnings. Many former APG consultants have reported little to no success selling APG’s services, whether through telemarketing, print advertising, personal meetings, or other means.<sup>19</sup>

Nevada corporate records further confirm that it is extraordinarily unlikely that APG consultants will ever earn a substantial or six-figure income selling APG’s services. Nevada

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<sup>19</sup> *See* PX33 at 2-3 ¶¶ 9-11; PX34 at 1 ¶ 6; PX35 at 2 ¶ 7; PX36 at 2 ¶ 7; PX37 at 2 ¶ 6-8; PX38, Langley Decl., at 3; PX39, at 2 ¶ 6; PX40 at 3 ¶ 11, 4 ¶ 15, 5, ¶ 19; PX41 at 4 ¶ 14; PX42 at 4-8 *passim*.

records contain relevant information because APG's "asset protection" services involve the sale of Nevada corporations, with APG providing services as the resident agent of the corporation.<sup>20</sup> Nevada records show that APG has provided resident agent services for nearly 3,200 Nevada corporations since 1998. PX26 at 3-4 ¶ 12. Although this number might seem large at first blush, contempt defendant Reed admitted in a phone call recorded last year that APG has nearly 400 consultants.<sup>21</sup> A comparison of these two numbers is revealing: Even if all 3,200 corporations had been sold by APG consultants, with 400 consultants doing business, a typical APG consultant would have sold only 8 corporations in his or her entire history with the company. *Id.* at 4 ¶ 13. Even if one incorrectly assumes, for purposes of argument, that all of the firms that APG serves as a resident agent had been formed in the past three years alone, a typical APG consultant would have sold just 2 or 3 corporations each year—yielding, at a profit of \$1,700 each, income far below the substantial or "six-figure" income touted in APG's promotional materials.<sup>22</sup>

Nevada records and the foregoing calculations further confirm what consumers have

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<sup>20</sup> PX06 at 8 (APG "Special Free Report"), 24 (APG "Asset Protection Without Leaving the Country" Promotional Material) ("This is what you will receive . . . One full year of resident agent and registered office service for your corporation."). Nevada records indicate that APG serves as a resident agent through a similarly-named Nevada firm, "APG, Inc.," located at the contempt defendants' offices. PX26, Burton Decl., at 3 ¶ 10 & n.1.

<sup>21</sup> PX18 at 42, 56; *see also* PX42 at 3 ¶ 9. The current number of APG consultants may be even higher. The website for *Entrepreneur* magazine, [entrepreneur.com](http://entrepreneur.com), contains a promotional listing for APG, noting that APG has 427 "licensees." PX26 at 5 ¶ 16 & Attach. A.

<sup>22</sup> *See* PX26 at 4 ¶ 14. Nevada records also show that consultants cannot earn a substantial income from fees generated by the annual renewal of Nevada corporations. The renewal fees paid to consultants are relatively low (\$450 to \$600), PX06 at 11, and consultants do not sell enough corporations to earn large residuals in the first place. PX26 at 4. Moreover, APG clients often do not renew their corporations. Nearly 50% of the 3,200 companies that list APG as their resident agent are now defunct. *Id.* at 4 ¶ 15.

learned from bitter experience: The contempt defendants' income claims are false and misleading, and violate Paragraphs I and I.A of this Court's Permanent Injunction.

**B. The Contempt Defendants Have Repeatedly Failed to Disclose Material Facts to Consumers In Violation of Permanent Injunction ¶¶ II and II.A.**

Paragraph II of the Permanent Injunction requires defendant Neiswonger, and all others in active concert or participation with him who receive actual notice of the Order, to "disclose to all purchasers in advance of any purchase all material facts" in advertising, promoting, selling, or otherwise inducing participation in any program. Material facts include, but are not expressly limited to, "the amount of remuneration or any other benefit received by each reference whose name is provided to the prospective purchaser." PX01 at 4-5, ¶ II, II.A. Despite this injunction, the contempt defendants have hidden material facts from consumers.

**1. The Contempt Defendants Have Repeatedly Failed to Disclose the Amount of Remuneration Received by APG References.**

Although the Court's Permanent Injunction expressly requires the contempt defendants to disclose the amount of remuneration paid to their "references" to recommend a program, PX01 at 5 ¶ II.A, the contempt defendants have consistently failed to disclose to consumers the amount paid to APG references. *E.g.*, PX36 at 2 ¶4 (consumer declaration attesting that APG references did not disclose remuneration); PX40 at 5 ¶ 17 (same); PX42 at 2 ¶4, 6-7 ¶18 (same); PX06 (no disclosure in written promotional material); PX10 (same); PX21 at 17, 22, 29 (no disclosure in sales pitch by defendant Neiswonger); PX22 at 12, 38-44, Tr., D. Lemay (no disclosure in sales pitch by APG employee); PX23 at 30-31 (no disclosure in sales pitch by defendant Neiswonger); PX20 at 4-19, Tr., B. Hutchinson (no disclosure in sales pitch by APG reference); PX24 at 3-16, Tr., J. Hutchinson

(same); PX25 at 4-14 (same). APG's Vice-President of Marketing admitted, in a taped phone call, that APG references are paid to serve as references. PX08; PX20 at 26-27, Tr., D. Lemay (admitting fact of payment). APG's Vice-President of Marketing did not disclose the amount of compensation, however, stating only that references receive "nominal" compensation. *Id.* at 14, 26-27. More often, the contempt defendants fail to disclose that references are compensated at all. The contempt defendants' failure to disclose the amount of remuneration paid to APG references plainly violates Paragraph II.A of the Court's Permanent Injunction.

**2. The Contempt Defendants Have Repeatedly Failed to Disclose Material Facts Concerning Defendant Neiswonger.**

The contempt defendants also have repeatedly failed to disclose material facts to consumers regarding defendant Neiswonger, particularly his federal convictions for wire fraud and money laundering related to the marketing and sale of business opportunity programs, his forfeiture of hundreds of thousands of dollars to the U.S. Department of Justice, this Court's Permanent Injunction, and the many orders entered by state agencies to enjoin deceptive business practices. *See* PX03-PX03J (records evidencing criminal convictions, civil forfeiture, and state orders); *see also* PX36 at 2-3, ¶8 (consumer declaration affirming that no disclosure of these material facts was made); PX40 at 3, ¶8, 5, ¶18 (same); PX42 at 6, ¶17 (same); PX06 (no disclosure in APG promotional material); PX10 (same); PX21 at 17, 22, 29 (no disclosure in recorded sales pitch by defendant Neiswonger); PX23 at 30-31 (same).

Defendant Neiswonger's past history of dishonest practices would be material to consumers weighing whether to spend \$9,800 for the APG program, as demonstrated by those consumers who discovered the undisclosed facts for themselves. For example, a consumer residing in the Eighth



Circuit who bought the APG program and worked as an APG consultant later discovered on the Internet that Neiswonger was a convicted felon, and that his business partner, Reed, has had his law license suspended for dishonest practices. He described his reaction: “I couldn’t believe my eyes. Not only did I feel duped, I knew that I could not in good conscience recommend that anyone ‘protect’ their assets by giving it to an ex-con and a lawyer who had lost his license to practice law for safe-keeping.” PX36 at 2-3 ¶8; *see* PX36B at 6 (“I would never have invested with the APG program had either of these gentlemen’s past[s] been fully disclosed. It’s extremely unlikely that anyone would invest, having this information.”); PX42 at 6 ¶ 17.

The materiality of these disclosures is further highlighted by the fact that they are required by law. The Franchise Rule, 16 C.F.R. Part 436.1, independently requires the contempt defendants to disclose the criminal history of defendant Neiswonger, among other material facts, to prospective purchasers of the APG program. *See* 16 C.F.R. § 436.1(a)(2), (4).<sup>23</sup> This

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<sup>23</sup> The Franchise Rule requires persons or entities selling certain types of business opportunities to provide prospective purchasers with a complete and accurate disclosure statement. This statement contains approximately twenty basic categories of information, as set forth at 16 C.F.R. § 436.1(a), including information about the litigation history of the franchisor and its principals and marketing officers—specifically including felony convictions involving fraud, deceptive practices, or misappropriation of property, and federal and state injunctions relating to such fraudulent conduct. 16 C.F.R. § 436.1(a)(4)(i), (iii). The advance disclosure of this information enables prospective purchasers to weigh risks involved in a business venture.

APG is subject to the Franchise Rule because it offers a business opportunity in which the franchisor sells its services through others, PX06 at 2, promises assistance in locating clients, *id.* at 12-13, and requires payment of over \$500 to commence the business opportunity. *Id.* at 13; 16 C.F.R. § 436.2(a)(1)(ii)(A) & (B), 436.2(a)(2) (defining business opportunities subject to Rule). The contempt defendants claim that they are not a franchise, PX15 at 17, and refer to the \$9,800 cost of their business opportunity as a “performance deposit” that is refunded to purchasers over time, in the form of \$100 and \$250 bonuses for each Nevada or offshore corporation sold by a consultant. PX06 at 13. This strategem does not change the fact that the contempt defendants generally require the payment of over \$500 to become an APG consultant. Nor does it excuse the defendants from complying with the Franchise Rule.

It is readily apparent why the contempt defendants would elect not to provide a disclosure

disclosure requirement provides additional grounds for finding that the withheld facts would have been material to consumers, because consumers were entitled by law to know these facts.

**C. Defendant Neiswonger Has Committed Other Order Violations.**

**1. Defendant Neiswonger Has Failed to Provide Proof of a Current \$100,000 Performance Bond Before Continuing to Promote the APG Program, Violating Permanent Injunction ¶ V.**

Paragraph V of the Permanent Injunction prohibits defendant Neiswonger from marketing or selling any program without first obtaining a \$100,000 performance bond, and providing the FTC with written proof of the bond before commencing marketing activities. PX01 at 8-9, ¶ V, V.E. This bond must “be in favor of the Federal Trade Commission for the benefit of any party injured as a result of any deceptive misrepresentation or violation of th[e] Order.” *Id.* at 9, ¶ V.D. The bond must remain in effect as long as defendant Neiswonger engages in the sale of any program, and for at least 3 years thereafter. *Id.* at 9, ¶ V.B.

Defendant Neiswonger has violated this provision of the Permanent Injunction, and continues to do so, by failing to provide the FTC with proof of a current \$100,000 performance bond while marketing the APG program. Neiswonger obtained a performance bond in 1997 in connection with another business enterprise, but the surety of that bond cancelled the bond in 2004. *E.g.*, PX27, Monteiro Decl., at 2 ¶¶ 7-9, 3 ¶¶ 10-11; PX30, Notice of Cancellation; PX31, FTC File Copy of Letter from Int’l Fid. Ins. Co. (Jan. 14, 2004). Following the cancellation of his bond, Neiswonger failed to provide the FTC with proof of a new, current performance bond.

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statement and comply with the Franchise Rule. Their statement would have to disclose defendant Neiswonger’s criminal convictions, his state orders, and this Court’s Permanent Injunction.

PX27 at 1 ¶¶ 2-4; *id.* at 2 ¶ 7 & 3 ¶ 12.<sup>24</sup> Nevertheless, Neiswonger has continued to promote the APG program with his business partner, Reed, in violation of Paragraph V of the Court's Permanent Injunction. *See, e.g.*, PX06; PX10; PX21; PX23.

**2. Defendant Neiswonger Failed to Promptly Report His Business Affiliation with APG, Violating Permanent Injunction ¶ XI.**

Additionally, defendant Neiswonger has further violated the Court's Permanent Injunction, and has apparently sought to avoid the scrutiny of federal law enforcement authorities, by failing to report his business affiliation with APG to the Commission. Paragraph XI of the Court's Order required Neiswonger to report to the FTC, in writing, any new business affiliation with any program for a period of three years, commencing in 1997. PX01 at 12, ¶ XI. While this provision of the Court's Order was in effect, Neiswonger entered into a new business affiliation by forming APG's first Board of Directors with Reed in late 1998. PX02 at 1. Neiswonger did not report this new business affiliation to the FTC in violation of the Order. PX27 at 1 ¶ 2-5; *id.* at 2 ¶ 6.<sup>25</sup>

**D. Consumer Injury from the Contempt Defendants' Violations of the Court's Permanent Injunction**

The contempt defendants have profited handsomely from their violations of the Court's Permanent Injunction. They have reaped approximately four million dollars, and possibly more, from the deceptive promotion and sale of the APG program. APG generally requires consumers

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<sup>24</sup> Neiswonger's failure to provide the FTC with proof a current bond suggests that he has no such bond and is depriving this Court of a \$100,000 security for use in this action.

<sup>25</sup> The Commission does not seek contempt sanctions for defendant Neiswonger's violation of Paragraph XI of the Permanent Injunction because that provision has elapsed. These facts are presented as part of the circumstances surrounding the contempt defendants' scheme. Before the close of the contempt proceedings, however, the Commission intends to file a motion to modify the Permanent Injunction in view of Neiswonger's order violations, including his violation of Paragraph XI, to ensure that Neiswonger does not violate the Order again in the future.

to pay \$9,800 for the APG program. PX06 at 13; PX15 at 13; PX42C at 11; PX42D at 7. A current commercial listing for APG on the website for *Entrepreneur* magazine indicates that APG has 427 “licensees.” PX26 at 5 ¶ 16 & Attach. A.<sup>26</sup> 427 persons paying \$9,800 would mean that the contempt defendants have taken \$4,184,600 from consumers. The total number of injured consumers and the total amount of consumer injury is likely to increase if the contempt defendants’ contumacious behavior continues unabated.<sup>27</sup>

#### IV. LEGAL ARGUMENT

District courts have the inherent power to enforce their orders. *Shillitani v. United States*, 384 U.S. 364, 370 (1966). As a party to the original action, the plaintiff may invoke the court’s power by initiating a proceeding for civil contempt in the same action. *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 444-45 (1911). To establish the defendants’ liability for civil contempt, the plaintiff bears the initial burden of showing, with clear and convincing evidence, that the defendants have violated a specific and definite order of the court. *Chicago Truck Drivers v. Brotherhood Labor Leasing Corp.*, 207 F.3d 500, 505 (8<sup>th</sup> Cir. 2000); *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9<sup>th</sup> Cir. 1999). Once the plaintiff makes this showing, the burden then shifts to the defendants to demonstrate why they were unable to comply with the court’s order. *Chicago Truck Drivers*, 207 F.3d at 505 (citing *United States v. Rylander*,

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<sup>26</sup> Reed, APG’s President, stated in 2005 that APG had approximately 400 consultants. PX18 at 42, 56.

<sup>27</sup> Mindful of this fact, the Commission has moved for a Temporary Restraining Order, with a temporary asset freeze and the appointment of a temporary receiver, to halt the contempt defendants’ contemptuous acts, to preserve the status quo, to allow for the discovery of hidden evidence and defrauded victims, and to prohibit the destruction or movement of evidence and the dissipation or movement of assets beyond the jurisdiction of the Court.



460 U.S. 752, 757 (1983)); *Affordable Media, LLC*, 179 F.3d at 1239.<sup>28</sup> The defendants may not raise a defense that they did not intentionally violate the order. “It matters not with what intent the defendant did the prohibited act.” *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949); see *NLRB v. Ralph Printing & Lithographing Co.*, 433 F.2d 1058, 1062 (8<sup>th</sup> Cir. 1970).

**A. The Court Has Grounds to Hold All of the Contempt Defendants in Civil Contempt and Should Enter the Proposed Order to Show Cause.**

Contempt defendants Neiswonger, Reed, and APG are subject to this Court’s Permanent Injunction, and the evidence summarized above clearly demonstrates that they are engaged in multiple, serious violations of that Order. Consequently, the Court should order the contempt defendants to show cause why they should not be held in civil contempt.

“It is well-settled that a court’s contempt power extends to non-parties who have notice of the court’s order and the responsibility to comply with it.” *Chicago Truck Drivers*, 207 F.3d at 507. Federal Rule of Civil Procedure 65(d) provides that injunctions are binding on the parties to the action, as well as “those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.” FED. R. CIV. P. 65(d). As the Court of Appeals for the Eighth Circuit has recognized, “a nonparty may be held in contempt where the nonparty aids or abets a named party in a concerted violation of a court order.” *Chicago Truck Drivers*, 207 F.3d at 507 (citing *Cooper*, 134 F.3d at 920). This rule ensures that “defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although

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<sup>28</sup> “[A]lleged contemnors defending on the ground of inability must establish (1) that they were unable to comply, explaining why ‘categorically and in detail’; (2) that their inability to comply was not ‘self-induced’; and (3) that they made ‘in good faith all reasonable efforts to comply.’” *Chicago Truck Drivers*, 207 F.3d at 506 (citing *Affordable Media, LLC*, 179 F.3d at 1239, *In re Power Recovery Sys., Inc.*, 950 F.2d 798, 803 (1<sup>st</sup> Cir. 1991), and *CFTC v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1529 (11<sup>th</sup> Cir. 1992)).

they were not parties to the original proceeding.” *Id.* (quoting *Cooper*, 134 F.3d at 920).

The Permanent Injunction is binding on contempt defendants Neiswonger, Reed, and APG, because they have actual notice of the Permanent Injunction relating to the promotion and sale of business opportunity programs and they have jointly promoted and sold the APG program.

Actual notice is notice of an order’s existence, not of its precise terms. *See Perfect Fit Indus., Inc. v. Acme Quilting Co.*, 646 F.2d 800, 808 (2d Cir. 1981). Personal service of an order is not required for actual notice. FED. R. CIV. P. 65(d). With respect to notice, the evidence is clear: Defendant Neiswonger signed the Court’s Permanent Injunction as a named defendant. PX01 at 14. Contempt defendant APG has actual notice of the Permanent Injunction as a matter of law, because its agent and marketing director, Neiswonger, has notice.<sup>29</sup> Contempt defendant Reed also has notice of the Court’s Order. Reed is APG’s President, and Neiswonger’s superior. PX02 at 1; PX10. As APG’s President, Reed received a letter of complaint from an aggrieved APG consultant in January 2005, specifically citing the FTC’s case against Neiswonger by its case number. PX36B at 5-7. Reed, a former attorney, acknowledged receiving the letter citing the present case, and replied in writing. His reply expressly references Neiswonger’s “problems with the FTC” and court orders. PX36B at 8-10. Moreover, Reed likely was aware of the Court’s Order long before this correspondence, because he and Neiswonger have worked closely with

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<sup>29</sup> *See United States v. One Parcel of Land Located at 7326 Highway 45 North, Three Lakes, Oneida County, Wisconsin*, 965 F.2d 311, 316 (7<sup>th</sup> Cir. 1992) (“a corporation ‘knows’ through its agents”); *see also Cablevision Sys. Corp. v. Muneyyirci*, No. 90-2997, 1995 WL 362541 at \*3 n.1 (E.D.N.Y. Aug. 24, 1990) (holding that firm “had actual notice of the orders by virtue of the fact that the people controlling the corporation had actual knowledge of those orders”).

each other for many years in the marketing and sale of the APG program.<sup>30</sup> Additionally, Paragraph XII of the Permanent Injunction required Neiswonger to provide a copy of the Order to his fellow directors, which included Reed on October 23, 1998, when they both became directors of APG. PX01 at 12 ¶ XII.A; PX02 at 1. All of the contempt defendants have notice of the Court's Order. As discussed above, the contempt defendants have acted in concert with each other in the promotion of the APG program, see *supra* Section II.C.3, and they are bound by the Permanent Injunction. Neiswonger cannot nullify this Court's decree by carrying out prohibited acts through, and in concert with, other contempt defendants.

The Commission respectfully submits that this Motion, and the accompanying Motion for a Temporary Restraining Order, make out a *prima facie* clear and convincing case of systematic and ongoing order violations in contempt of the Permanent Injunction. In such cases, the burden shifts to the contempt defendants to produce evidence at a show cause hearing to demonstrate their compliance with this Court's Order. See, e.g., *Chicago Truck Drivers*, 207 F.3d at 505 (citing *United States v. Rylander*, 460 U.S. 752, 757 (1983)); *Chairs v. Burgess*, 143 F.3d 1432, 1436 (11<sup>th</sup> Cir. 1998). Ordering the contempt defendants to brief whether the Show Cause Order

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<sup>30</sup> PX09 at 7, Tr., R. Neiswonger ("I've been here for 10 years as Bill's partner."). Reed and Neiswonger formed APG shortly before Neiswonger went to prison for crimes related to the business programs that prompted the FTC's original lawsuit, PX02 at 1, and resumed promoting and selling the APG program together after Neiswonger left prison. The Court's Order addresses the promotion and sale of programs, which is what Reed and Neiswonger have spent many years doing together. Actual notice is apparent from these circumstances just as well as Reed's correspondence. See *Hill v. United States*, 33 F.3d 489, 491 (8<sup>th</sup> Cir. 1929) ("The evidence establishes the relationship of these parties; indicates concert of action in the maintenance of the unlawful business; . . . and the obvious interest of the defendants in evading any interference with their unlawful business as long as possible. These and other circumstances indicated to the trial judge, and indicate to us, that it was so highly improbable that these defendants did not know of this injunction as to make a finding that they did know proper.").

should issue would waste judicial resources, and would likely result in the dissipation or loss of assets, property, and evidence in the intervening time, absent temporary injunctive relief. *See* Pl.'s Mem. for TRO. Based on the evidence presented, the Commission requests that the Court schedule a show cause hearing.<sup>31</sup>

**B. The Court Should Enter the Proposed Final Contempt Order Imposing Compensatory Sanctions.**

After appropriate contempt proceedings, the Court should enter the proposed Contempt Order submitted by the Commission, which imposes compensatory sanctions for the contempt defendants' violations of the Permanent Injunction. Civil contempt sanctions may be imposed to coerce compliance with a court order and to compensate for losses sustained as a result of contemptuous acts. *See In re Tetracycline Cases*, 927 F.2d 411, 413 (8<sup>th</sup> Cir. 1991) (citing *In re Chase & Sanborn Corp.*, 872 F.2d 397, 400-01 (11<sup>th</sup> Cir. 1989)).

The proposed Civil Contempt Order would require the contempt defendants to pay disgorgement for the harm caused as a result of their contemptuous acts. The district court has the equitable authority to order such disgorgement. *See Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 455-57 (1932); *Tom James Co. v. Morgan*, 141 Fed. App'x 894, 899 (11<sup>th</sup> Cir.

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<sup>31</sup> If the contempt defendants' response to the FTC's Motion for a Civil Contempt Order fails to adduce evidence raising genuine issues of material fact, the Court has the authority to render its final determination on the papers or on oral argument alone. Federal Rule 43 provides that when a motion is based on facts not in the record, as this one is, the court may "hear the matter on affidavits presented by the respective parties," or "may direct that the matter be heard wholly or partly on oral testimony or deposition." FED. R. CIV. P. 43(e). This choice "invests the district court with considerable discretion to tailor the proceedings to the practical realities surrounding the particular motion." *Stewart v. M.D.F., Inc.*, 83 F.3d 247, 251 (8<sup>th</sup> Cir. 1996). "[T]here is no automatic entitlement to an evidentiary hearing because the motion concerns a settlement agreement." *Id.* (citing *Vaughan v. Sexton*, 975 F.2d 498, 505 (8<sup>th</sup> Cir. 1992)).

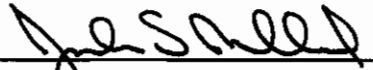


2005); *see also* *McGregor v. Chierico*, 206 F.3d 1378, 1387 (11<sup>th</sup> Cir. 2000). It is appropriate to disgorge all of the money that the contempt defendants received from deceptively promoting and selling the APG program. When the Commission seeks equitable relief in the form of monetary redress in cases brought under Section 13(b) of the FTC Act, evidence of widespread and credible misrepresentations creates a presumption that all customers of the defendants relied on the misrepresentations. *Chierico*, 206 F.3d at 1388 (“reliance by each purchasing customer is not a prerequisite to the provision of equitable relief needed to redress fraud”); *FTC v. Figgie Int’l Inc.*, 994 F.2d 595,605 (9<sup>th</sup> Cir. 1993). An order of disgorgement should be entered against the contempt defendants jointly and severally since each of them is responsible for repeated violations of the Court’s Order. *NLRB v. AFL-CIO*, 882 F.2d 949, 955 (5<sup>th</sup> Cir. 1989) (holding that, where parties join together to evade an order, they are jointly and severally liable for resulting damages).

## V. CONCLUSION

Defendant Neiswonger has worked closely and in concert with contempt defendants Reed and APG to deceptively promote and sell yet another business opportunity scheme, the APG program, to prospective small business owners nationwide. The contempt defendants have advertised and sold this program with repeated misrepresentations and omissions of material fact, and other serious violations of this Court’s Permanent Injunction, defrauding consumers nationwide and successfully enriching themselves. Consequently, the Commission respectfully requests that this Court order the contempt defendants to show cause why they should not be held in contempt. After appropriate contempt proceedings, the FTC requests that this Court enter the proposed Civil Contempt Order and issue all equitable relief appropriate in light of the contempt defendants’ violations of the Permanent Injunction.

Respectfully submitted,



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Date: July 17, 2006

\* Mr. Millard and Ms. Claybaugh are attorneys employed by the United States Federal Trade Commission. They are licensed to practice law in States other than Missouri, and appear in this matter consistent with E.D. Mo. L.R. 83-12.01(A).