

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

EMPIRE HOLDINGS GROUP LLC, also d/b/a  
ECOMMERCE EMPIRE BUILDERS and  
STOREFUNNELS.NET, a limited liability  
company, and

PETER PRUSINOWSKI, aka PETER PRU,  
individually and as an officer of Empire Holdings  
Group LLC,

Defendants.

Case No. 2:24-CV-4949

**JOINT REPORT OF RULE 26(F) MEETING AND PROPOSED DISCOVERY PLAN**

In accordance with Federal Rule of Civil Procedure 26(f), counsel for the parties conferred on December 31, 2024, and submit to Chambers the following report of their meeting for the Court's consideration:

**1. Discussion of Claims, Defenses, and Relevant Issues**

**Plaintiff's Claims:** Plaintiff FTC alleges that Defendants made deceptive earnings claims, used illegal contract provisions, and failed to provide required disclosures in the marketing and sale of their online ecommerce business opportunities and self-study programs, in violation of the FTC Act, the Business Opportunity Rule, and the Consumer Review Fairness Act ("CRFA"). Plaintiff intends to conduct discovery on whether Defendants' possessed substantiation for the earnings claims used in their marketing at the time the claims were made, Defendants' formulation and use of illegal form contracts, and Defendants' failure to provide any

of the disclosures required under the Business Opportunity Rule. Plaintiff intends to seek all responsive documents and information related to Plaintiff's claims and issues.

The FTC contemplates filing motions for summary judgment in this case. The FTC's summary judgment motions will request that the Court decide whether the Defendants' conduct constitutes deceptive acts or practices in violation of the FTC Act, the Business Opportunity Rule, and the CRFA. The FTC may seek to amend its complaint to add additional parties, should information obtained in discovery provide an appropriate basis for it to do so.

**Defendants' Position:** Defendants deny Plaintiff's allegations. Corporate Defendant Empire Holdings Group LLC is currently under receivership and is no longer conducting business operations. Defendants have withdrawn their motion to dismiss in the contemplation of potential settlement in this case, but will refile their motion should the parties fail to come to a mutual resolution on this matter.

The parties have agreed on the timing of motions in their discovery plan set forth in Section 3 herein.

## 2. Initial and Informal Disclosures

The parties do not propose any changes to the disclosures that must be made under Rule 26(f). The parties agree to exchange initial disclosures on or before **January 22, 2024**.

## 3. Formal Discovery

The parties jointly propose the deadlines set forth in the table below.

### **DISCOVERY DEADLINES**

**\*\*ALL DEADLINES ARE 4:30 PM EASTERN TIME \*\***

<b>Event</b>	<b>Deadline</b>
Initial Disclosures Due	January 22, 2025
Close of Fact Discovery	June 4, 2025
Initial Expert Disclosures & Reports Due	July 2, 2025
Rebuttal Expert Disclosures & Reports Due	July 30, 2025

Close of Expert/All Discovery Daubert Motions Due	August 27, 2025
Dispositive Motions Due	September 24, 2025
Responses to Dispositive Motions Due	3 weeks after Dispositive Motions filed
Replies to Dispositive Motions Due	2 weeks after responses to dispositive motions filed
Parties Ready for Trial	October 27, 2025 (or 60 days after dispositive motions decided, whichever is later)

During the status conference held on December 17, 2024, the Court directed the parties to include a note in their Joint Discovery Plan that the Court was inclined to show flexibility on discovery dates given the parties efforts at settlement.

At present, the parties believe the primary categories and topics for discovery include: (1) facts relevant to whether the representations at issue were false, deceptive, or unsubstantiated when made; (2) facts relevant to whether Defendants violated the Business Opportunity Rule's disclosure requirements; (3) facts relevant to whether Defendants violated the CRFA; and (4) consumer injury.

The parties anticipate that discovery will include the exchange of written discovery, production of documents, and oral or videotaped depositions of Defendant Peter Prusinowski, several fact witnesses, and witnesses pursuant to Fed. R. Civ. P. 30(b)(6). Plaintiff FTC may amend its complaint should information obtained during discovery warrant such amendment. The parties agree to exchange written discovery and conduct depositions pursuant to the Federal Rules of Civil Procedure. The parties do not anticipate a need to conduct discovery in phases or exceed the limitations set forth in the Federal Rules.

#### **4. Electronic Discovery**

The parties agree that the production of electronically stored information shall comply with the attached Bureau of Consumer Protection Production Requirements. The parties have

taken steps to preserve potentially relevant ESI. Each party will bear its own costs of production. Productions will be served via email and/or using a secure file transfer protocol (FTP) site.

The parties agree to explore the implementation of agreements or stipulated protective orders to handle the production and use of personal identifying information, sensitive personally identifiable information, and sensitive health information. The parties also agree that any party asserting a claim of privilege or other protection in response to a discovery request shall provide a log that includes a description of each withheld or partially withheld document that is consistent with Rule 26(b)(5)(A). Notwithstanding this requirement, the parties agree that there shall be no need to provide a privilege log for the following categories of documents: (1) communications between the parties and their outside counsel that relate to matters at issues in this case; and (2) documents containing and relating to communications between and among FTC staff. The parties further agree, consistent with Rule 502(b), that the inadvertent production of privileged and protected information shall not operate as a waiver of the privilege provided that: (1) the disclosure is inadvertent; (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following the procedures provided by Rule 26(b)(5)(B).

The parties do not believe that an additional e-discovery order is necessary in this case because the FTC obtained a significant majority of potentially responsive documents from Defendants through the immediate access provision of the Temporary Restraining Order and the Stipulated Preliminary Injunction.

#### **5. Expert Witness Disclosures**

Plaintiff FTC has identified its expert and submitted an expert report. The FTC may supplement with additional reports or disclose additional experts if appropriate, and in

accordance with the approved scheduling order. Defendants have not identified an expert but may do so in the future. The parties have agreed on the timing of expert discovery in their discovery plan set forth in Section 3 herein.

#### **6. Early Settlement or Resolution**

On November 7, 2024, the parties agreed to the entry of a Stipulated Preliminary Injunction (Dkt 46), which was entered by the Court on November 8, 2024 (Dkt. 49). Since then, the parties have engaged in ongoing settlement discussions, including at their 26(f) conference. Due to the ongoing settlement discussions, the parties do not believe that mediation or a settlement conference before a Magistrate Judge is appropriate currently. However, the parties agree that mediation or a settlement conference may be appropriate if settlement discussions do not advance. The parties agree that this matter is not appropriate for voluntary arbitration, as it is a consumer protection action brought by a federal agency alleging violations of federal consumer protection laws.

#### **7. Trial Date**

The parties estimate that the trial will take approximately seven days and that this case will be ready for trial approximately sixty (60) days following the Court's ruling on any dispositive motions, and not before October 27, 2025. Once dispositive motions have been decided, the parties request that the Court issue a date certain for the start of trial in accordance the court's calendar and sixty (60) days following the Court's ruling on any dispositive motions.

#### **8. Other**

The parties do not believe that there are any other issues affecting the status or management of the case.

Dated: December 31, 2024

Respectfully Submitted,

**COUNSEL FOR PLAINTIFF:**

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 31, 2024, I caused a copy of the foregoing **JOINT REPORT OF RULE 26(F) MEETING AND PROPOSED DISCOVERY PLAN** to be served on all counsel of record by Operation of the Court's electronic filing system.

/s/Ryan McAuliffe

In producing information to the FTC, comply with the following requirements, unless the FTC agrees otherwise. If you have questions about these requirements, please contact FTC counsel.

### **Production Format**

1. **General Format:** Provide load-ready electronic productions with:

- a. A delimited data load file (.DAT) containing a line for every document, unique id number for every document (DocID), metadata fields, and native file links where applicable; and
- b. A document level text file, named for the DocID, containing the text of each produced document.

Do not produce corresponding image renderings (e.g., TIFF or JPEG) for files in native format unless the FTC requests them. If the FTC requests corresponding image renderings, provide an Opticon image load file (.OPT) containing a line for every image file.

2. **Electronically Stored Information (ESI):** Documents stored in electronic format in the ordinary course of business must be produced in the following format:

- a. For ESI other than the categories below, submit in native format with all metadata and either document level extracted text or Optical Character Recognition (OCR). Do not produce corresponding image renderings (e.g., TIFF or JPEG) for files in native format unless the FTC requests them. If the FTC requests corresponding image renderings, they should be converted to Group IV, 300 DPI, single-page TIFF (or color JPEG images when necessary to interpret the contents or render them intelligible.)
- b. For Microsoft Excel, Access, or PowerPoint files, submit in native format with extracted text and metadata. Data compilations in Excel spreadsheets or delimited text formats must contain all underlying data, formulas, and algorithms without redaction.
- c. For other spreadsheet, database, presentation, or multimedia formats; messaging applications and platforms (e.g., Microsoft Teams, Slack); or proprietary applications, discuss the production format with FTC counsel.

3. **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business must be scanned and submitted as either one multi-page pdf per document or as 300 DPI single page TIFFs (or color JPEGs when necessary to interpret the contents or render them intelligible), with corresponding document-level OCR text and logical document determination in an accompanying load file.

4. **Document Identification:** Provide a unique DocID for each hard copy or electronic document, consisting of a prefix and a consistent number of numerals using leading zeros. Do not use a space to separate the prefix from numbers.

5. **Attachments:** Preserve the parent/child relationship by producing attachments as separate documents, numbering them consecutively to the parent email, and including a reference to all attachments.
6. **Metadata Production:** For each document submitted electronically, include the standard metadata fields listed below in a standard delimited data load file. The first line of the data load file shall include the field names. Submit date and time data in separate fields. Use these standard Concordance delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	¶	20
Quote Character	␣	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

7. **De-duplication:** Do not use de-duplication or email threading software without FTC approval.
8. **Password-Protected Files:** Remove passwords prior to production. If password removal is not possible, provide the original and production filenames and the passwords, under separate cover.

### **Producing Data to the FTC**

1. Prior to production, scan all data and media for viruses and confirm they are virus-free.
2. For productions smaller than 50 GB, submit data electronically using the FTC's secure file transfer protocol. Contact FTC counsel for instructions. **The FTC cannot accept files via Dropbox, Google Drive, OneDrive, or other third-party file transfer sites.**
3. If you submit data using physical media:
  - a. Use only CDs, DVDs, flash drives, or hard drives. Format the media for use with Windows;
  - b. Use data encryption to protect any Sensitive Personally Identifiable Information or Sensitive Health Information (as defined in the instructions), and provide passwords in advance of delivery, under separate cover; and
  - c. Use a courier service (e.g., Federal Express, UPS) because heightened security measures delay postal delivery.
4. Provide a transmittal letter with each production that includes:
  - a. Production volume name (e.g., Volume 1) and date of production;
  - b. Numeric DocID range of all documents in the production, and any gaps in the DocID range; and
  - c. List of custodians and the DocID range for each custodian.

DAT FILE FIELDS	DEFINITIONS	POPULATE FIELD FOR:
DocID	Unique ID number for each document	All Documents
FamilyID	Unique ID for all documents in a family including parent and all child documents	All Documents
ParentID	Document ID of the parent document. This field will only be populated on child items	All Documents
File Path	Path to produced native file	All Documents
TextPath	Path to document level text or OCR file	All Documents
Custodian	Name of the record owner/holder	All Documents
AllCustodians	Names of all custodians that had copy of this record (populate if data was deduplicated or email threading was used)	All Documents
Source	Source of documents: CID, Subpoena, Third Party Data, etc.	All Documents
Filename	Original file name	All Documents
File Size	Size of documents	All Documents
File Extensions	Extension of file type	All Documents
MD5 Hash	Unique identifier for electronic data used in de-duplication	All Documents
PRODUCTION_VOLUME	Production Volume	All Documents
HASREDACTIONS	Redacted document	All Documents
Exception Reason	Reason for exception encountered during processing (e.g., empty file, source file, password-protected file, virus)	All Documents
PRODBEG	Beginning production bates number	Documents with Produced Images
PRODEND	Ending production bates number	Documents with Produced Images
PRODBEG_ATTACH	Beginning production family bates number	Documents with Produced Images
PRODEND_ATTACH	Ending production family bates number	Documents with Produced Images
Page Count	The number of pages the document contains	Documents with Produced Images
From	Names retrieved from the FROM field in a message	Emails
To	Names retrieved from the TO field in a message; the recipient(s)	Emails
CC	Names retrieved from the CC field in a message; the copied recipient(s)	Emails
BCC	Names retrieved from the BCC field in a message; the blind copied recipient(s)	Emails
EmailSubject	Email subject line	Emails
Date Sent	The date an email message was sent	Emails
Time Sent	The time an email message was sent	Emails
Date Received	The date an email message was received	Emails
Time Received	The time an email message was received	Emails
Author	File Author	Loose Native Files and Email Attachments
Title	File Title	Loose Native Files and Email Attachments
Subject	File Subject	Loose Native Files and Email Attachments
Date Created	Date a document was created by the file system	Loose Native Files and Email Attachments
Time Created	Time a document was created by the file system	Loose Native Files and Email Attachments
Date Modified	Last date a document was modified and recorded by the file system	Loose Native Files and Email Attachments
Time Modified	Last time a document was modified and recorded by the file system	Loose Native Files and Email Attachments
Date Printed	Last date a document was printed and recorded by the file system	Loose Native Files and Email Attachments
Time Printed	Last time a document was printed and recorded by the file system	Loose Native Files and Email Attachments