

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

Case No. 11-61072-Civ. Zloch

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMERICAN PRECIOUS METALS, LLC,
a Florida limited liability company,

and

HARRY R. TANNER, JR., individually and as an
owner, officer, and managing member of
AMERICAN PRECIOUS METALS, LLC,

and

ANDREA TANNER, individually and as an owner,
officer, and managing member of AMERICAN
PRECIOUS METALS, LLC,

Defendants.

JOINT RULE 26(f) CASE MANAGEMENT AND SCHEDULING REPORT

Pursuant to Fed. R. Civ. P. 26(f), Local Rule 16.1(b)(2)-(3), and the court's Order for Pre-Trial Conference and Specially Setting Trial (Dkt. 69), and based on the Court's instructions provided in Court, counsel for Plaintiff, Federal Trade Commission, and counsel for Defendants, American Precious Metals, LLC, Harry R. Tanner, Jr., and Andrea Tanner, jointly submit this Report.

DATE AND TIME OF MEETING

A telephonic meeting was held on Thursday, June 9, 2011 at 2:00 p.m., and attended by:

Dama J. Brown	Attorney for Plaintiff
Sana Coleman Chriss	Attorney for Plaintiff
Harold Kirtz	Attorney for Plaintiff
Marc Wites	Attorney for Defendants

The parties subsequently conferred by email to complete the instant Report.

I. CASE MANAGEMENT REPORT PURSUANT TO L.R. 16.1(b)(2)

A. LIKELIHOOD OF SETTLEMENT

The likelihood of settlement is moderate and the parties are actively exploring their options.

B. LIKELIHOOD OF APPEARANCE OF ADDITIONAL PARTIES

There is a possibility that the FTC will seek to name Sammy J. Goldman, Rosalind Goldman, and/or their company, RJG Group, Inc., as defendant(s) or relief defendant(s) in this action. Defendants do not presently anticipate the need to amend their pleading to add additional parties, but reserve the right to move to do so.

C. PROPOSED TIME LIMITS

As set forth in the court's Order for Pre-Trial Conference (Dkt. 69), relevant time limits are as follow:

July 22, 2011	Cut-Off for Filing Amendments to the Complaint
August 12, 2011	Cut-Off for Exchanging Expert Witness CVs and Reports
September 6, 2011	Cut-Off for Filing Motions for Summary Judgment
October 1, 2011	Cut-Off for Discovery

October 4, 2011 Cut-Off for Pre-Trial Meeting of Counsel and Filing Disclosures
October 7, 2011 Cut-Off for Filing Pre-Trial Stipulations or Catalogues
October 13, 2011 Cut-Off for All Motions in Limine
October 14, 2011 Cut-Off for Request to Appear at Pre-Trial Conference by Phone

D. PROPOSALS FOR FORMULATION AND SIMPLIFICATION OF ISSUES, INCLUDING THE ELIMINATION OF FRIVOLOUS CLAIMS OR DEFENSES

At this time, the parties do not jointly agree to any proposals for the formulation and simplification of issues. However, the parties will work together in good faith toward such end as the case progresses.

E. NECESSITY OF AMENDMENT OF PLEADINGS

Plaintiff anticipates that it may be necessary to amend its complaint to name Sammy J. Goldman, Rosalind Goldman, and/or their company, RJG Group, Inc., as defendant(s) or relief defendant(s) in this action. Leave to file an amended complaint will be filed by July 22, 2011.

F. POSSIBILITY OF ADMISSIONS OF FACT AND DOCUMENTS TO AVOID UNNECESSARY PROOF

The parties will stipulate to the admission of facts and admissibility of documents, where possible, to avoid unnecessary trial time. However, at this time, the parties are unable to stipulate to any facts, despite efforts by all parties to do so.

G. SUGGESTIONS FOR AVOIDANCE OF UNNECESSARY PROOF AND CUMULATIVE EVIDENCE

The parties will attempt to avoid presenting unnecessary proof and/or cumulative evidence.

H. ADVISABILITY OF REFERRING MATTERS TO MAGISTRATE JUDGE

The parties do not recommend the referral of this matter to a magistrate judge.

I. PRELIMINARY ESTIMATES FOR TRIAL

Plaintiff estimates that the trial will require 5 full days of hearings.

Defendant estimates that the trial will require 7 full days of hearings.

J. DATES FOR PRE-TRIAL CONFERENCE AND TRIAL

This court has set the following dates:

Pre-Trial Conference October 21, 2011 at 9:30 a.m.

Trial October 31, 2011 at 9:30 a.m.

K. OTHER RELEVANT INFORMATION

i. The parties also agreed to serve by mail all disclosures required by Rule 26(a)(1)(A), Fed.R.Civ.P., so that they are received by all parties on June 30, 2011.

ii. The parties agree to provide the names and addresses of additional witnesses as they become available.

iii. Defendants contend this matter is a jury trial. Plaintiff disagrees.

iv. Plaintiff anticipates that there will be significant overlap in the trials of the instant case and *CFTC v. American Precious Metals, LLC*, Case No. 0:11-cv-61075. Both actions involve allegations that Defendants deceived consumers while telemarketing precious metals, and the testimony of consumers, investigators, and other witnesses is likely to be substantially similar in both cases. Defendants disagree with the Plaintiff's position as to "other relevant information," as Defendants contend that the CFTC lacks jurisdiction to assert any claims against Defendants and, therefore, that the action will not reach a trial.

C. Privilege Agreements and Agreements Regarding ESI

The parties will handle claims of privilege or of protection as trial-preparation materials asserted after product production, as follows:

1. When a claim of privilege or work product protection is asserted, the party asserting the privilege or protection shall provide the following information with respect to each such item in the form of a privilege log: the type of item; the date of the item; the author of the item; whether or not the author is a lawyer; each recipient of the item; and the privilege asserted. If information called for during discovery is itself privileged, it need not be disclosed. However, the existence of the information and any non-privileged information called for must be disclosed in a privilege log. A privilege log shall be prepared with respect to all items withheld on the basis of a claim of privilege or work product protection, except the following: written communications between a party and its trial counsel after commencement of the action.

2. If information is inadvertently produced in discovery that is subject to a claim of privilege or protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

Plaintiff's preference for the exchange of information containing ESI:

Before submitting any ESI, Defendant must confirm with the FTC that the proposed formats and media types that contain such ESI will be acceptable to the government. Generally, the following will be accepted:

- (1) Magnetic and other electronic media types accepted
 - (a) CD-R CD-ROMs formatted to ISO 9660 specifications.
 - (b) DVD-ROM for Windows-compatible personal computers.
 - (c) IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data.

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

- (2) File and record formats
 - (a) E-mail: The FTC accepts MS Outlook PST files, MS Outlook MSG files, and Lotus Notes NSF files. Any other electronic submission of email accepted only with prior approval.
 - (b) Scanned Documents: Image submissions accepted with the understanding that unreadable images will be resubmitted in original, hard copy format in a timely manner. Scanned Documents must adhere to the following specifications:
 - (i) All images must be multi-page, 300 DPI - Group IV TIFF files named for the beginning bates number.
 - (ii) If the full text of the Document is available, that should be provided as well. The text should be provided in one file for the entire

Document or email, named the same as the first TIFF file of the Document with a *.TXT extension.

Note: Single-page, 300 DPI – Group IV TIFF files may be submitted with prior approval if accompanied by an acceptable load file such as a Summation or Concordance image load file which denotes the appropriate information to allow the loading of the images into a Document management system with all Document breaks (document delimitation) preserved. OCR accompanying single-page TIFF submissions should be located in the same folder and named the same as the corresponding TIFF page it was extracted from, with a *.TXT extension.

(c) Other ESI files: The FTC accepts word processing Documents in ASCII text, WordPerfect version X3 or earlier, or Microsoft Word 2003 version or earlier. Spreadsheets should be in MS Excel 2003 (*.xls) version or earlier. Database files should be in MS Access 2003 or earlier. PowerPoint presentations may be submitted in MS PowerPoint 2003 or earlier. Other proprietary formats for PC files should not be submitted without prior approval. Files may be submitted using the compressed ZIP format to reduce size and ease portability. Adobe Acrobat PDF (*.pdf) may be submitted where the normal business practice storage method is PDF.

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

(3) Security

(a) All submissions of ESI to the FTC must be free of computer viruses. In addition, any passwords protecting Documents or files must be removed or provided to the FTC.

(b) Magnetic media shall be carefully packed to avoid damage and must be clearly marked on the outside of the shipping container:

MAGNETIC MEDIA – DO NOT X-RAY

MAY BE OPENED FOR POSTAL INSPECTION.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on June __, 2011, I electronically filed the foregoing document with the Clerk of the Southern District of Florida using the CM/ECF system, which will send notice of electronic filing to the following:

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Dated: June __, 2011

Respectfully submitted,

/s/ Dama J. Brown
DAMA J. BROWN