

1 2011, the Court issued a Statement of Decision (Docket No. 431) finding by a
2 preponderance of evidence that BurnLounge, Inc., Juan Alexander Arnold, John
3 Taylor, and Rob DeBoer had violated Section 5 of the FTC Act, and that
4 permanent injunctive and equitable monetary relief was warranted pursuant to 15
5 U.S.C. §§ 45 and 53. The Court directed Plaintiff to resubmit an amended
6 proposed order conforming to the Court's Statement of Decision.

7 Based on the record established in this matter and for reasons set forth in the
8 Court's Statement of Decision, it is hereby **ORDERED, ADJUDGED AND**
9 **DECREED:**

10 **DEFINITIONS**

11 For purposes of this Final Judgment and Order for Permanent Injunction and
12 Other Equitable Relief (hereinafter "Final Order"), the following definitions shall
13 apply:

14 1. "Business opportunity" means:

- 15 (a) A commercial arrangement in which the seller solicits a
16 prospective purchaser to enter into a new business;
- 17 (b) The prospective purchaser makes a required payment; and
- 18 (c) The seller, expressly or by implication, orally or in writing,
19 represents that the seller or one or more designated persons
20 will:
- 21 (i) Provide locations for the use or operation of equipment,
22 displays, vending machines, or similar devices, owned,
23 leased, controlled or paid for by the purchaser;
- 24 (ii) Provide outlets, accounts, or customers, including, but
25 not limited to, Internet outlets, accounts, or customers,
26 for the purchaser's goods or services; or
- 27 (iii) Buy back any or all of the goods or services that the
28 purchaser makes, produces, fabricates, grows, breeds,

1 modifies, or provides, including but not limited to
2 providing payment for such services as, for example,
3 stuffing envelopes from the purchaser's home.

- 4 2. "Business Venture" means any written or oral business arrangement,
5 however denominated, that is a business opportunity, franchise, or that
6 consists of the payment of any consideration in exchange for: (a) the
7 right or means to offer, sell, or distribute goods or services (regardless
8 of whether identified by a trademark, service mark, trade name,
9 advertising or other commercial symbol); and (b) more than nominal
10 assistance to any person or entity in connection with or incident to the
11 establishment, maintenance, or operation of a new business, or the
12 entry by an existing business into a new line or type of business.
- 13 3. "Consumer" means an actual or potential purchaser, customer,
14 subscriber, or natural person.
- 15 4. "Defendant BurnLounge" means Defendant BurnLounge, Inc., and its
16 successors and assigns.
- 17 5. "Defendant Arnold" means Defendant Juan Alexander Arnold.
- 18 6. "Defendant Taylor" means Defendant John Taylor, whose legal name
19 is John Marcus Taylor.
- 20 7. "Defendant DeBoer" means Defendant Rob DeBoer, whose legal
21 name is Robert Edwards DeBoer.
- 22 8. "Defendants" means Defendants BurnLounge, Inc., Juan Alexander
23 Arnold, John Taylor and Rob DeBoer.
- 24 9. "Individual Defendants" means Defendants Arnold, Taylor and
25 DeBoer.
- 26 10. The term "document" is synonymous in meaning and equal in scope to
27 the usage of the term in Federal Rule of Civil Procedure 34(a), and
28 includes writings, drawings, graphs, charts, photographs, audio and

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video recordings, electronically stored information, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

1 participants, or have additional participants placed by the promoter or
2 any other person into the program participant's downline, tree,
3 cooperative, income center, or other similar program grouping; (b) sell
4 goods or services; and (c) receive payment or other compensation, in
5 whole or in part, based upon the sales of those in the participants
6 downline, tree, cooperative, income center or similar program
7 grouping.

8 17. "New business" means a business in which the prospective purchaser
9 is not currently engaged, or a new line or type of business.

10 18. "Participating in any prohibited marketing scheme" includes, but is
11 not limited to, promoting, marketing, advertising, offering for sale, or
12 selling, or assisting others in the offering for sale or selling the right to
13 participate in, the prohibited marketing scheme, as well as acting or
14 serving as an officer, director, employee, salesperson, agent,
15 shareholder, advisor, consultant, independent contractor, or
16 distributor, or acting as a speaker or spokesperson on behalf of, any
17 prohibited marketing scheme.

18 19. "Prohibited Marketing Scheme" means an illegal pyramid sales
19 scheme (*see e.g., Webster v. Omnitrition Int'l*, 79 F.3d 776, 781 (9th
20 Cir. 1996), Ponzi scheme, chain marketing scheme, or other marketing
21 plan or program in which participants pay money or valuable
22 consideration in return for which they obtain the right to receive
23 rewards for recruiting other participants into the program, and those
24 rewards are unrelated to the sale of products or services to ultimate
25 users. For purposes of this definition, "sale of products or services to
26 ultimate users" does not include sales to other participants or recruits
27 or to the participants' own accounts.

28 20. "Trademark" means trademarks, service marks, names, logos, and

1 other commercial symbols.

2 **ORDER**

3 **I. Prohibited Marketing Schemes**

4 IT IS THEREFORE ORDERED that each Defendant and their officers,
5 agents, servants, and employees, and those persons in active concert or
6 participation with them who receive actual notice of this Final Order by personal
7 service or otherwise, whether acting directly or through any entity, corporation,
8 subsidiary, division, or other device, are permanently restrained and enjoined from
9 engaging, participating, or assisting in any manner or capacity whatsoever, in any
10 Prohibited Marketing Scheme.

11 **II. Prohibited Representations**

12 IT IS FURTHER ORDERED that, in connection with the advertising,
13 promotion, offering for sale, or sale, or assisting others in the advertising,
14 promotion, offering for sale, or sale of any Multi-level Marketing Program or
15 Business Venture, each Defendant and their officers, agents, servants, and
16 employees, and those persons in active concert or participation with them who
17 receive actual notice of this Final Order by personal service or otherwise, whether
18 acting directly or through any entity, corporation, subsidiary, division, or other
19 device, are permanently restrained and enjoined from making, expressly or by
20 implication, orally or in writing, any false or misleading statement or
21 misrepresentation of material fact including, but not limited to, the following:

22 A. Misrepresentations about the amount of sales, income, or profits that a
23 participant in such Multi-level Marketing Program or Business Venture can
24 reasonably expect to achieve;

25 B. Misrepresentations about the amount of sales, income, or profits that a
26 participant or participants in such Multi-level Marketing Program or Business
27 Venture have actually achieved;

28 C. Misrepresentations about the profitability of participating in such

1 Multi-level Marketing Program or Business Venture

2 D. Misrepresentations that a person who participates in such Multi-level
3 Marketing Program or Business Venture can reasonably expect to recoup his or her
4 investment;

5 E. Misrepresentations of any reward offered to or earned by participants
6 in such Multi-level Marketing Program or Business Venture;

7 F. Misrepresentations of the legality of such Multi-level Marketing
8 Program or Business Venture; and

9 G. Misrepresentations of any material aspect of the performance,
10 efficacy, nature, or central characteristic of any good or service offered for sale
11 through such Multi-level Marketing Program or Business Venture.

12 **III. Prohibition Against Material Omissions**

13 IT IS FURTHER ORDERED that (in connection with the advertising,
14 promotion, offering for sale, or sale, or assisting others in the advertising,
15 promotion, offering for sale, or sale of any Multi-level Marketing Program or
16 Business Venture) each Defendant and their officers, agents, servants, employees,
17 and attorneys, whether acting directly or through any entity, corporation,
18 subsidiary, division, or other device, are hereby permanently restrained and
19 enjoined from failing to disclose, clearly and conspicuously, to any participant or
20 prospective participant in any Multi-level Marketing Program or Business Venture
21 to whom any earnings, profits or sales volume claims have been made, the
22 following historical information to the extent that such information is reasonably
23 available to the business:

24 A. The number and percentage of participants in the Multi-level
25 Marketing Program or Business Venture who have earned, profited or sold at least
26 the amount represented; and

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1 B. Judgment is hereby entered in favor of the Commission and against
2 Defendant DeBoer in the amount of one hundred fifty thousand dollars
3 (\$150,000.00) as disgorgement. Defendant DeBoer shall disgorge that amount to
4 the Commission within sixty (60) days of entry of this Final Order. Full payment
5 of this sum shall fully satisfy all monetary claims asserted by the Commission
6 against Defendant DeBoer in this matter.

7 C. Judgment is hereby entered in favor of the Commission and against
8 Defendant Taylor, in the amount of six hundred twenty thousand one hundred
9 thirty-nine dollars and sixty-four cents (\$620,139.64) as disgorgement. Defendant
10 Taylor shall disgorge that amount to the Commission within sixty (60) days of
11 entry of this Final Order. Full payment of this sum shall fully satisfy all monetary
12 claims asserted by the Commission against Defendant Taylor in this matter.

13 D. The judgments entered pursuant to this Section are equitable monetary
14 relief, and are not fines, penalties, punitive assessments or forfeitures.

15 E. Defendants shall relinquish all dominion, control, and title to the
16 funds or assets paid or transferred pursuant to this Final Order to the fullest extent
17 permitted by law.

18 F. Pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
19 § 1681b(1), any consumer reporting agency may furnish consumer reports
20 concerning the Individual Defendants to th

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1 discretion may use a designated agent to administer consumer redress. If the
2 Commission determines in its sole discretion

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1 such Defendant is affiliated with, employed by, or
2 performs services for; a detailed description of the nature
3 of the business; and a detailed description of such
4 Defendant's duties and responsibilities in connection
5 with the business or employment; and

6 c. Any other changes required to be reported under
7 Subsection A of this Section.

8 2. For all Defendants:

9 a. A copy of each acknowledgment of receipt of this Final
10 Order, obtained pursuant to the Section titled
11 "Distribution of Order";

12 b. Any other changes required to be reported under
13 Subsection A of this Section.

14 C. Each Defendant shall notify the Commission of the filing of a
15 bankruptcy petition by such Defendant within fifteen (15) days of filing.

16 D. For the purposes of this Final Order, Defendants shall, unless
17 otherwise directed by the Commission's authorized representatives, send by
18 overnight courier all reports and notifications required by this Final Order to the
19 Commission, to the following address:

20 Associate Director for Enforcement
21 Federal Trade Commission
22 600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, D.C. 20580
RE: FTC v. BurnLounge, Inc.

23 Provided that, in lieu of overnight courier, Defendants may send such reports
24 or notifications by first-class mail, but only if Defendants contemporaneously send
25 an electronic version of such report or notification to the Commission at:
26 DEBrief@ftc.gov.

27 E. For purposes of the compliance reporting and monitoring required by
28 this Final Order, the Commission is authorized to communicate directly with each

1 but otherwise engages in conduct which is related to or involves multi-level
2 marketing, such Defendant must deliver a copy of this Final Order to all principals
3 and managers of such business before engaging in such conduct.

4 D. Defendants must secure a signed and dated statement acknowledging
5 receipt of the Final Order, within thirty (30) days of delivery, from all persons
6 receiving a copy of the Final Order pursuant to this Section.

7 **X. Acknowledgment of Receipt of Order**

8 IT IS FURTHER ORDERED that each Defendant, within five (5)
9 business days of receipt of this Final Order as entered by the Court, must submit to
10 the Commission a truthful sworn statement acknowledging receipt of this Final
11 Order.

12 **XI. Independence of Obligations**

13 IT IS FURTHER ORDERED that each of the obligations imposed by
14 this Final Order is independent of all other obligations under the Final Order, and
15 that the expiration of any requirements imposed by this Final Order shall not affect
16 any other obligation arising under this Final Order.

17 **XII. Costs and Attorneys Fees**

18 IT IS FURTHER ORDERED that, except as otherwise provided
19 above, each party to this Final Order bear his or its own costs and attorneys fees
20 incurred in connection with this action.

21 **XIII. Continued Jurisdiction**

22 IT IS FURTHER ORDERED that this Court shall retain jurisdiction

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25 of this matter for purposes of construction, modification, and enforcement of this
26 Final Order.

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28 Dated: 29th of February, 2012

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Hon. George H. Wu
United States District Judge