

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

Case No. 1:12-CV-188-R

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAREER EXAMS, INC.,
a corporation, also
d/b/a Career Advancement Group;

O'BRIEN MARKETING, INC.,
a corporation, also
d/b/a O'Brien Consulting,
and O'Brien Answers;

JERYN B. LEE,
individually and as an officer of
Career Exams, Inc.; and

DEREK JACKSON,
individually and as an officer of
O'Brien Marketing, Inc.;

Defendants.

TEMPORARY RESTRAINING ORDER WITH 27 + (5
EQUITABLE RELIEF, AND ORDER 6 (7 7 , 1 * ' \$ 7 () 2 5
+ (\$ 5 , 1 * 2 0 2 7 , 2 1) 2 5 PRELIMINARY INJUNCTION

Plaintiff, the Federal Trade Commission ("FTC" or the "Commission"), pursuant to
Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), has filed a

Complaint for Permanent Injunction and Other Equitable Relief, and has moved for a temporary

2. “Corporate Defendants” means Career Exams, Inc., also d/b/a Career Advancement Group (“Career Advancement”), and O’Brien Marketing, Inc., also d/b/a O’Brien Consulting and O’Brien Answers (“O’Brien”), and any other d/b/a of Career Advancement and O’Brien and their successors, assigns, affiliates, or subsidiaries.

3. “Defendant” or “Defendants” means, individually, collectively or in any combination: (a) each Corporate Defendant; and (b) each Individual Defendant.

4. “Document” or “Documents” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence, including e-mail and instant messages, photographs, audio and video recordings, computer records, contracts, accounting data, advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, 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.

5. “Individual Defendants” means Jeryn B. Lee, individually and through any d/b/a, and Derek Jackson, individually and through any d/b/a.

6. “Material” means likely to affect a person’s choice of, or conduct regarding, goods or services.

7. "Plaintiff" means the Federal Trade Commission.

8. "Representative" means any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of any Defendant; and all persons or entities in active concert or participation with any of the foregoing, who receive notice of this Order by personal service or otherwise.

9. The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

PROHIBITED BUSINESS ACTIVITIES

I.

IT IS THEREFORE ORDERED that Defendants and their Representatives are temporarily restrained and enjoined from directly or indirectly, expressly or by implication:

- A. Marketing, advertising, or promoting the availability of employment with the United States Postal Service (the "Postal Service"), or selling any product or service in connection with such employment; and
- B. Making misrepresentations in the marketing, promotion, or offer for sale of any good or service regarding any fact material to a consumer's decision to purchase, including but not limited to representations concerning:
 - 1. the availability of jobs in consumers' geographic areas;
 - 2. the process of obtaining employment, including representations concerning any examination requirement;

3. the likelihood that consumers who purchase Defendants' goods or services will obtain jobs; and
4. The availability of refunds.

ASSET FREEZE

II.

IT IS FURTHER ORDERED that the Defendants and their Representatives are hereby temporarily restrained and enjoined from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, consumer lists, shares of stock, or other assets, or any interest therein, wherever located, that are: (1) owned or controlled by the Defendants, in whole or in part, for the benefit of the Defendants; (2) in the actual or constructive possession of the Defendants; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, including, but not limited to, any assets held by or for, or subject to access by, any of the Defendants, at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metals dealer, or other financial institution or depository of any kind, including without limitation the following account:

- a. XXXXXXXX7636 at US Bank

this Order, on the forms attached to this Order, Attachment A for each Individual Defendant and Attachment B for each Corporate Defendant. Defendants shall include in the financial statements a full listing of all funds and assets, whether located inside or outside of the United States, that are: (a) titled in the name of any Defendant, jointly, severally, or individually; (b) held by any person or entity for the benefit of Defendant; or (c) under the direct or indirect control of any Defendant.

DUTIES OF ASSET HOLDERS

IV.

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a preliminary injunction, any financial or brokerage institution, business entity, or person served with a copy of this Order that (a) holds, controls, or maintains custody of any account or asset of any Defendant, or that has held, controlled or maintained custody of any such account or asset at any time since the date of entry of this Order; or (b) holds, controls, or maintains custody of any asset associated with credit or debit card charges, including but not limited to reserve funds held by payment processors, made on behalf of any Defendant or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, or of which any Defendant is an officer, director, member, or manager; shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of the Court;
- B. Deny any person access to any safe deposit box that is:

1. titled in the name of any Defendant, individually or jointly; or
2. otherwise subject to access by any Defendant;

C. Provide the Commission's counsel, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of any Defendant;
2. the balance of each such account, or a description of the nature and value of each such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
3. the identification of any safe deposit box that is titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant; and

D. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to each such account or asset, including but not limited to originals or copies of account applications, account statements, loan applications, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, 1099 forms, and safe deposit box logs.

INTERFERENCE WITH REPATRIATION

VI.

IT IS FURTHER ORDERED that Defendants and their Representatives are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by Section V of this Order, including but not limited to

A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms of a foreign trust agreement until such time that all assets have been fully repatriated pursuant to Section V of this Order; or

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a court order, until such time that all assets ~~have~~ fully repatriated pursuant to Section V of this Order.

IMMEDIATE PRODUCTION OF BUSINESS RECORDS

VII.

IT IS FURTHER ORDERED that Defendants shall, within five (5) business days of the entry of this Order, produce to Plaintiff for inspection, inventory, and/or copying, at a location designated by Plaintiff, the following materials:

A. All sales scripts and any other scripts used by Defendants or on behalf of

Defendants;

B. All customer information, including, but not limited to, names, phone numbers, addresses, e-mail addresses, and payment and refund information for all consumers who have purchased from Defendants;

C. All success stories or testimonials from customers;

D. All complaints or refund requests from customers, whether sent directly to Defendants or received through any law enforcement agency or third-party organizations such as the Better Business Bureau, and any responses from Defendants;

E. All documents related to advertising Defendants' products or services in any form (*e.g.*, print, internet, direct mail, billboards, etc.), including but not limited to copies of such

limited to hard drives, cd-roms, zip disks, USB flash drives, and any other electronic storage media on which information has been saved, and all access codes, passwords, log-in information, and equipment needed to access such material. Within one (1) business day of the entry of this Order, Defendants shall (1) notify counsel for the Commission of the name and location of any person or entity that is hosting, storing, or otherwise maintaining electronic data ("Electronic Data Host") related to Defendants' operations; and (2) serve this Order on any such person or entity. Defendants shall provide such Electronic Data Host with their consent for the Federal Trade Commission and its agents to receive access to Defendants' data for the purpose of forensic imaging, and Defendants shall execute any documents and otherwise cooperate as necessary to facilitate such access.

The Commission shall return material produced pursuant to this Section within five (5) business days of Defendants' production.

APPOINTMENT OF TEMPORARY MONITOR

VIII.

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TEMPORARY MONITOR'S DUTIES

IX.

IT IS FURTHER ORDERED that the Monitor is authorized and directed to monitor the

Corporate Defendants' compliance with this Order. The Monitor may accomplish this by:

- A. Identifying and reviewing marketing materials, advertisements, sales scripts, training materials, call logs, call detail records, or other documents that reflect marketing, advertising, promotion, distribution, offer for sale or sale of goods or services;
- B. Contacting or communicating with any affiliate, sales entity, employee, independent contractor, client company, agent, banks or other financial institution, payment processor or attorney of the Corporate Defendants;
- C. Ensuring Corporate Defendants provide actual notice of this Order to their employees and affiliates as required by Section XIX below;
- D. Identifying and reviewing the Corporate Defendants' financial records and financial transactions to ensure that all such documents are preserved and that Corporate Defendants provide the financial reports as required by Section III above;
- E. Reviewing Corporate Defendants' responses to requests for any expedited discovery provided in Section XV below;
- F. Identifying customer information held by the Corporate Defendants and reviewing or proposing policies and procedures designed to ensure that all such documents are preserved;
- G. Identifying and inventorying assets of the Corporate Defendants to ensure that all such assets are preserved;
- H. Identifying and inventorying business records of the Corporate Defendants to ensure that all such records are preserved;
- I. Cooperating with reasonable requests for information or assistance from any state or federal law enforcement agency;
- J. Interviewing any current or former employee of the Corporate Defendants and

other Representatives of the Corporate Defendants to obtain and copy pertinent information;

K. Interviewing any current or former officer, manager, independent contractor, subcontractor, financial institution, vendor, telecommunications provider, agent, service bureau, or other entity involved in the provision of any services from, to, or on behalf of the Corporate Defendants;

L. Copying or imaging documents that the Monitor deems necessary for purposes of preservation or otherwise carrying out the Monitor's duties pursuant to this Order; and

M. Engaging attorneys, investigators, paralegals or other specialists, as the Monitor deems necessary, to assist the Monitor. The Monitor is also authorized to obtain the assistance of the U.S. Marshal's office and other federal, state and local law enforcement officers as the Monitor deems necessary to fulfill the duties set forth in this Section. If requested by the Monitor, the United States Marshal will provide appropriate and necessary assistance to the Monitor to implement this Order and is authorized to use any necessary and reasonable force to do so.

PROVISION OF INFORMATION TO MONITOR

X.

IT IS FURTHER ORDERED that Defendants shall provide to the Monitor, immediately upon request, the following:

A. A list of all assets and property, including accounts, of the Corporate Defendants, including assets and property of the Corporate Defendants that are held in any name other than the name of a Corporate Defendant, or by any person or entity other than a Corporate Defendant;

B. A list of all assets and documents belonging to other persons or entities whose interests are under the direction, possession, custody, or control of the Corporate Defendants;

C. A list of all locations where documents of the Corporate Defendants are located, and the means to access such documents;

D. Access to all documents of the Corporate Defendants, including but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records, clients lists, and other papers;

E. Access to all computers, electronic devices and machines and data in whatever

COOPERATION WITH THE MONITOR

XI.

IT IS FURTHER ORDERED that Defendants, their Representatives, and any other person served with a copy of this Order shall fully cooperate with and assist the Monitor. This cooperation and assistance shall include, but not be limited to: providing information to the Monitor that the Monitor deems necessary in order to exercise the authority and discharge the responsibilities of the Monitor under this Order; providing any password required to access any computer, electronic file, or telephonic data in any medium; informing the Monitor of all persons

any documents of the Corporate Defendants;

B. Interfering with the Monitor's efforts to inventory or review the assets or documents subject to the duties of the Monitor;

C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Corporate Defendants; and

D. Refusing to cooperate with the Monitor or the Monitor's duly authorized agents in the exercise of their duties or authority under any order of this Court.

STAY OF ACTIONS AGAINST CORPORATE DEFENDANTS

XIII.

IT IS FURTHER ORDERED that, except by leave of this Court, during the pendency of this Order, Defendants, their Representatives, corporations, subsidiaries, divisions, or affiliates, and all investors, creditors, stockholders, lessors, customers and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of Defendants, and all others acting for or on behalf of such persons, are hereby enjoined from taking action that would interfere with the exclusive jur

process against the Corporate Defendants, except that such actions may be confirmed necessary to toll any applicable statute of limitations; or

C. Filing or enforcing any lien on any asset of the Corporate Defendants, taking or attempting to take possession, custody, or control of any asset of the Corporate Defendants; or attempting to foreclose, forfeit, alter, or terminate any interest in any asset of the Corporate Defendants, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise.

Provided that, this Order does not stay: (i) the commencement or continuation of a criminal action or proceeding; (ii) the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or (iii) the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power

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COMPENSATION OF MONITOR

XIV.

IT IS FURTHER ORDERED that the Monitor and all personnel hired by the Monitor as herein authorized, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets of the Corporate Defendants. The Monitor shall file with the Court and serve on the parties a request for the payment of such reasonable compensation following the Preliminary Injunction hearing in this case.

EXPEDITED DISCOVERY

XV.

IT IS FURTHER ORDERED that, in anticipation of the preliminary injunction hearing in this matter, the Commission and the Monitor are authorized to conduct expedited discovery concerning Defendants' assets, Defendants' whereabouts, and the location of business premises and records in accordance with the following provisions:

A. The Commission and the Monitor may take the depositions of parties and non-parties. Forty-eight (48) hours notice shall be sufficient notice for such depositions;

B. The Commission and the Monitor may serve upon parties requests for production of documents or inspection that require production or inspection within five (5) calendar days of service, and may serve subpoenas upon non-parties that direct production or inspection within five (5) calendar days of service;

C. The Commission and the Monitor may serve deposition notices and other discovery requests upon the parties to this action by facsimile or overnight courier, and depositions may be taken by telephone, Skype, or other remote electronic means; and

D. Any Discovery taken pursuant to this Order is in addition to, and is not subject to, the presumptive limits on discovery set forth in the Federal Rules of Civil Procedure and Local Rules of this Court.

CUSTOMER LISTS

XVI.

IT IS FURTHER ORDERED that the Defendants and their Representatives are hereby temporarily restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, credit card number, debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant, at any time prior to entry of this Order, in connection with the telemarketing, advertising, promoting, offering for sale, and selling of employment goods or services. *Provided, however, that* the Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

PRESERVATION OF RECORDS

XVII.

IT IS FURTHER ORDERED that the Defendants and their Representatives are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, writing over, or otherwise disposing of, in any manner, directly or indirectly, any documents or records of any kind that relate to the business practices or business or personal finances of any of the Corporate Defendants or Individual Defendants, including but not limited to, computerized files and storage media on which information has been saved (including, but not limited to, floppy disks, hard drives, CD-ROMS, zip disks, punch cards, magnetic tape, backup tapes, and computer chips), and any and all equipment needed to read any such material,

contracts, accounting data, correspondence, advertisements (including, but not limited to, advertisements placed on the World Wide Web or the Internet), FTP logs, Service Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the business practices or business or personal finances of any of the Corporate Defendants or Individual Defendants.

RECORD KEEPING AND BUSINESS OPERATIONS

XVIII.

IT IS FURTHER ORDERED that the Defendants and their Representatives are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their assets (including but not limited to income, loans, gifts, and revenue), disbursements, transactions, expenditures and any other use of money; and
- B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

DISTRIBUTION OF ORDER BY DEFENDANTS

XIX.

IT IS FURTHER ORDERED that the Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, hosting company, division, sales entity, successor, assign, officer, director, employee, independent contractor, client company, agent, attorney, and spouse of each Defendant, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that the Defendants have complied with this provision of the Order, which statement shall include the names, physical addresses, and e-mail addresses of each such person or entity who received a copy of the Order.

SERVICE OF ORDER

XX.

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents of any Individual Defendant or Corporate Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

CONSUMER CREDIT REPORTS

XXI.

IT IS FURTHER ORDERED that, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish consumer

reports on each Individual Defendant and any spouse of these Defendants to the Commission.

DURATION OF TEMPORARY RESTRAINING ORDER

XXII.

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on 1 R Y H P E H U , 2012 at S P & 6 7, unless E H I R U H such time good cause shown, extend V L W I R U an additional period not to exceed fourteen (14) days, or unless W K H ' H I H Q G D Q W V F R Q V H Q W W R D O R Q J H U H [W H Q V L R Q

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XXIII.

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that Defendants shall appear before this Court on the W K day of 1 R Y H P E H U , 2012, at D L Q 3 D G X F D K . H Q W X F N \ I R U D K H D U L Q J D V W R Zhy this Court should pending final ruling on the Complaint against the Defendants, enjoining them from W K H U violations of law alleged in the Complaint, continuing the freeze of their assets, and L P S R V L Q J such additional relief as may be appropriate.

BRIEFS AND AFFIDAVITS CONCERNING PRELIMINARY INJUNCTION

XXIV.

IT IS FURTHER ORDERED that Defendants shall file with the Court and serve on the Commission's counsel all memoranda, affidavits, declarations, and other evidence on which they intend to rely at the preliminary injunction hearing set in Section XXIII no later than

1 R Y H P E H U 2012 D W Q R R Q & 6 7. The Commission may file responsive or supple

600 Pennsylvania Avenue, NW, Room H-286, Washington, DC 20580 or by electronic mail to dhanks@ftc.gov and eburton@ftc.gov.

RETENTION OF JURISDICTION

XXVII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for

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Thomas B. Russell, Senior Judge

November 2, 2012