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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

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CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

Case No. 12 -cv- 2500-T-27MAP

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THE ONLINE ENTREPRENEUR, INC.,
a corporation, also d/b/a THE SIX FIGURE
PROGRAM and BEN AND DAVE'S
PROGRAM;

**BEN AND DAVE'S CONSULTING
ASSOCIATES, INC.,** a corporation;

BENJAMIN MOSKEL, individually and as
an officer or owner of THE ONLINE
ENTREPRENEUR, INC.; and BEN AND
DAVE'S CONSULTING ASSOCIATES,
INC.; and

DAVID CLABEAUX, individually and as
an officer or owner of THE ONLINE
ENTREPRENEUR, INC., and BEN AND
DAVE'S CONSULTING ASSOCIATES,
INC.,

Defendants.

**PLAINTIFF FEDERAL TRADE COMMISSION'S COMPLAINT
FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), for its Complaint alleges:

1. Plaintiff FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b), and 57b, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, appointment of a receiver, and other equitable relief for the Defendants’ violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Business Opportunities” (“Business Opportunity Rule” or “Rule”), 16 C.F.R. Part 437, as amended. The amended Business Opportunity Rule became effective on March 1, 2012, and has since that date remained in full force and effect.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1345, and 15 U.S.C. §§ 53(b) and 57b. This action arises under 15 U.S.C. § 45(a)(1).

3. Venue is proper in the United States District Court for the Middle District of Florida pursuant to 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41– 58. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Business

Opportunity Rule, 16 C.F.R. Part 437, as amended, which requires specific disclosures and prohibits certain misrepresentations in connection with the sale of a business opportunity.

5. The Commission is authorized to initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of the FTC Act and the Business Opportunity Rule and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(B) and 57b, and 16 C.F.R. Part 437, as amended.

DEFENDANTS

6. Defendant The Online Entrepreneur, Inc., also d/b/a The Six Figure Program and Ben and Dave's Program ("The Online Entrepreneur"), is a New York corporation with offices in New York and Florida. Defendant The Online Entrepreneur is a seller who offers for sale, sells, and promotes business opportunities to consumers. Defendant The Online Entrepreneur transacts or has transacted business in the Middle District of Florida and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Defendant The Online Entrepreneur has advertised, marketed, distributed, or sold business opportunities to consumers throughout the United States.

7. Defendant Ben and Dave's Consulting Associates, Inc. ("Ben and Dave's Consulting Associates"), is a New York corporation with its offices in New York. Defendant Ben and Dave's Consulting Associates is a seller who offers for sale, sells, and promotes business opportunities to consumers. Defendant Ben and Dave's Consulting Associates transacts or has transacted business in the Middle District of Florida and throughout the

United States. At all times material to this Complaint, acting alone or in concert with others, Defendant Ben and Dave's Consulting Associates has advertised, marketed, distributed, or sold business opportunities to consumers throughout the United States.

8. Defendant Benjamin Moskel is an officer or owner of Defendants The Online Entrepreneur and Ben and Dave's Consulting Associates. At all times material to this Complaint, acting alone or in concert with others, Defendant Moskel has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Defendants The Online Entrepreneur and Ben and Dave's Consulting Associates, including the acts and practices set forth in this Complaint. Defendant Moskel, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Defendant David Clabeaux is an officer or owner of Defendants The Online Entrepreneur and Ben and Dave's Consulting Associates. At all times material to this Complaint, acting alone or in concert with others, Defendant Clabeaux has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Defendants The Online Entrepreneur and Ben and Dave's Consulting Associates, including the acts and practices set forth in this Complaint. Defendant Clabeaux resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMON ENTERPRISE

10. Defendant The Online Entrepreneur and Defendant Ben and Dave's Consulting Associates (hereinafter the "Corporate Defendants") have operated and

functioned as a common enterprise while engaging in the unfair and deceptive acts and practices and other violations of law alleged in this Complaint. The Corporate Defendants have conducted the business practices through an interrelated network of companies that have common control, ownership, officers, managers, business functions, and office locations. The Corporate Defendants share officers, owners, or managers, have common business functions, such as shared products and mirror-image Internet advertising, as well as shared telephone numbers, email addresses, and office locations. Because the Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices described in this Complaint. Defendants Moskel and Clabeaux have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

COMMERCE

11. At all times material to this complaint, the Defendants have maintained a substantial course of trade in the offering for sale and sale of business opportunities, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

THE DEFENDANTS’ BUSINESS PRACTICES

The Business Opportunity

12. Since 2007, and continuing thereafter, Defendants have offered for sale and sold home-based Internet business opportunities to consumers throughout the United States. These business opportunities offer consumers the opportunity to operate their own websites which Defendants represent will earn commission-based income for the consumers.

13. Defendants have promoted their business opportunities, The Six Figure Program and Ben and Dave's Program, through a variety of websites that are accessible to the general public including, but not limited to, sixfigureprogram.com, benanddavesprogram.com, benanddavesconsulting.com, benanddavesprogramcd.com, myworkathomedvd.com, website-income.net, and unimaxmedia.com. Two of these websites in particular, sixfigureprogram.com and benanddavesprogram.com, are virtually identical in content and provide details regarding Defendants' business opportunities.

Marketing and Earnings Claims

14. To induce consumers to purchase Defendants' business opportunities, Defendants represent, expressly or by implication, that, for a fee of \$27.00, they will provide consumers with a website – an Internet outlet – and training that will enable consumers to earn a significant commission-based income via the website.

15. On their websites, sixfigureprogram.com and benanddavesprogram.com, Defendants represent, expressly or by implication, that they offer a turn-key, no-risk, money-back guaranteed home-based Internet business opportunity that gives consumers the ability to immediately make money. For example, Defendants' website sixfigureprogram.com [or alternatively, benanddavesprogram.com], makes the following claims, among others:

Fact: Two Average Guys from Humble Beginnings Are Making 1.2 Million Per Year from Their Websites.

Fact: Their Students Are Making Up to \$15,000 Per Month from Their Home Computers.

Fact: More Than Half of the Students Receive Their First Check Within 7 – 10 Days.

Achieve 100% Financial and Personal Independence

The Six Figure Program [Ben and Dave’s Program] is not only a sure-fire money making system, it is a vehicle by which you can finally live the lifestyle you imagined for yourself.

Some of our top students are making between \$1,200 and \$15,000 per month. They work from their laptops and their home computers.

The typical person who joins and follows the simple steps laid out in the program has a check for at least \$20 sent to their house within 7-10 business days.

Let us show you how to get your first check in 7-10 business days. Just do what we tell you in the DVD and videos and you can prove to your family and friends that you can make money online.

The Six Figure Program [Ben and Dave’s Program] is the perfect step towards making an income from your home computer or your laptop. We know you’re anxious to make money online. Let us show you how!

Plus, the Six Figure Program [Ben and Dave’s Program] is a true no-risk, high reward method. There are no business start up fees, investment capital or infrastructure involved!

Once you receive the Six Figure Program [Ben and Dave’s Program], you will literally be able to sit down at your computer and start making money. You’ll receive your first check within 7-10 days!

The Six-Figure-Program [Ben and Dave’s Program] shows you exactly what to do to immediately start making money. If you follow the instructions you can realistically receive your first commission check within about 7-10 days. [*Emphasis in original*]

16. On their websites, Defendants, either expressly or by implication, represent to potential purchasers that, in exchange for a fee of \$27.00, Defendants will build a website and provide training to consumers so that consumers can be affiliated or connected with the websites of “big companies.” Defendants claim that consumers will earn commission income every time Internet users click through the consumers’ websites and make purchases

or sign up for services from one of those retailers. For example, Defendants' websites, *inter alia*, make the following claims:

Are You Willing to Do Whatever it Takes to Make Money from Your Home Computer or Laptop?

This is a program for serious, motivated, people who want the Internet Lifestyle. We share our exact secrets. You will need a website - which we can build for you. And you will need to dedicate at least a few hours of your time to the system.

Here's how the program works: Big companies pay you money on the Internet. You post a link and you get paid when people using the Internet and your link buy things and sign up for services.

You've heard of the companies that pay you online. There's more than 2,000 currently paying people like you online. Here's just a few of these companies:

Prada	Sony
Louis Vuitton	Verizon

The Six Figure Program [Ben and Dave's Program] is a **step-by-step guide** which teaches you exactly how to set up your very own successful Internet business. The program includes our book – “**The Online Entrepreneur**”[], the **Quick Start DVD**, an **audio coaching session with Ben and Dave**, **free customized professionally designed website**, and everything you need to get started in order to cash your first commission check!

90 Day, 100% Money-Back Guarantee

If you are unsatisfied with the Six Figure Program [Ben and Dave's program] for ANY reason, if you feel the 42+ training videos, the published book *The Online Entrepreneur*, and the website we build for you are not worth MORE than the one-time investment of \$27.00 you paid, simply shoot us an email at support@sixfigureprogram.com [support@benanddavesprogram.com] within 90 days (that's 3 full months!!) and we'll refund your money, no questions asked.
[*Emphasis in original*]

17. On their websites, Defendants, either expressly or by implication, represent that, as part of their program, Defendants will provide everything to get the consumers'

websites up and running so consumers can use their websites to make substantial profits with no additional monetary investment required.

18. On their websites, Defendants, either expressly or by implication, represent that they also offer a money-back guarantee and claim that, if purchasers are not satisfied, Defendants will refund their money.

19. Relying upon the Defendants' representations described above, many consumers purchase Defendants' business opportunity for \$27.00 on Defendants' websites by authorizing Defendants to charge their credit cards or debit cards.

20. Defendants' websites also provide a toll-free telephone number that consumers can call to obtain more information about the program and to order the program.

21. In numerous instances, consumers learn after purchasing the Defendants' business opportunities that the Defendants' prior representations and assurances concerning the Defendants' business opportunities were false and misleading.

22. After purchasing Defendants' programs, consumers learn that they can only use their website once they have spent additional money to purchase a domain name and hosting services for the website. Without such expenditures, consumers cannot operate their websites.

23. In addition, after purchasing the program, consumers are often solicited by Defendants and third parties upselling expensive additional coaching, affiliate marketing training materials, and website enhancement products.

24. Some consumers who pay the additional domain name and web hosting costs still encounter problems getting their website to function. Other consumers who get their websites up and running find that they do not earn the promised income from their websites.

25. Consumers also experience great difficulty reaching Defendants to inquire about the program materials, problems with their website, or to obtain other assistance. In addition, consumers find that they cannot reach Defendants to cancel the program and get their promised refund. Instead, consumers typically get an automated response to their email or voicemail to Defendants stating that a customer service representative will respond to their request within twenty-four hours.

26. Defendants often ignore consumers' requests for refunds and some consumers contact the Better Business Bureau ("BBB") for assistance. Even after assistance from the BBB, some consumers do not get a refund of their money.

27. Defendants' websites have represented, expressly or by implication, that consumers who buy Defendants' business opportunities will earn up to \$15,000 per month, or, at a minimum, \$10 to \$15 within 7 days through consumers' websites.

28. During consumers' transactions with Defendants for the purchase of Defendants' business opportunities, Defendants have failed to provide a written disclosure document to prospective purchasers, prior to the sale of the business opportunities, as required by the Business Opportunity Rule. Defendants have failed to disclose in writing any required information, such as identifying information, earnings claims, legal actions, cancellation or refund policies, or references.

29. Although Defendants' websites have made claims to prospective purchasers about their likely earnings, they have failed to provide prospective purchasers with an Earnings Claim statement, as required by the Business Opportunity Rule.

30. Defendants have failed to furnish additional information in immediate conjunction with the earnings claims on the websites, including the beginning and end dates when the represented earnings were achieved and the number and percentage of prior purchasers known by Defendants to have achieved the same or better results.

31. Defendants have engaged in the foregoing business practices since at least March 1, 2012, the date the amended Business Opportunity Rule became effective, and have engaged in the same or similar business practices related to the sale of business opportunities since 2007.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

32. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

33. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

34. As set forth below, Defendants have engaged and continue to engage in violations of Section 5(a) of the FTC Act in connection with the advertising, marketing and sale of their business opportunities.

COUNT ONE

Deceptive Substantial Income Claim

35. In numerous instances, in connection with the advertising, marketing,

promotion, offering for sale, or sale of Defendants' business opportunities, Defendants have represented, directly or indirectly, expressly or by implication, that purchasers of Defendants' business opportunities will earn substantial income.

36. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 35 of this Complaint, purchasers of Defendants' business opportunity have not earned substantial income.

37. Therefore, Defendants' representation as set forth in Paragraph 35 of this Complaint is false or misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

Misrepresentation of Costs

38. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of Defendants' business opportunities, Defendants have represented, directly or indirectly, expressly or by implication, that, for a fee of \$27.00, Defendants will provide "everything [consumers] need to get started in order to cash [the consumers'] first commission check!"

39. In truth and in fact, Defendants do not provide everything that consumers need to begin operating and making money from Defendants' business opportunities for the \$27.00 fee. Instead, consumers must pay substantial additional costs to begin operating or making money from Defendants' business opportunities.

40. Therefore, Defendants' representation as set forth in Paragraph 38 of this Complaint is false or misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE BUSINESS OPPORTUNITY RULE

41. Defendants are "sellers" who have sold or offered to sell "business opportunities" as defined by the Business Opportunity Rule, 16 C.F.R. § 437.1(c) and (q). Under the Business Opportunity Rule, a "seller" is a person who offers for sale or sells a business opportunity. 16 C.F.R. § 437.1(q). Under the Rule, a "business opportunity" means a "commercial arrangement" in which a "seller solicits a prospective purchaser to enter into a new business;" the "prospective purchaser makes a required payment;" and the "seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will provide outlets, accounts, or customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser's goods or services." 16 C.F.R. § 437.1(c).

42. Among other things, the Business Opportunity Rule requires sellers to provide prospective purchasers with a disclosure document in the form and using the language set forth in the Business Opportunity Rule and its Appendix A, and any required attachments. In the disclosure document, the seller must disclose to prospective purchasers five categories of information, including basic identifying information about the seller, any earnings claims the seller makes, the seller's litigation history, any cancellation and refund policy the seller offers, and contact information of prior purchasers. 16 C.F.R. § 437.3(a)(1)-(5). Furthermore, this information must be disclosed at least seven (7) days before the prospective

purchaser signs a contract or makes a payment. 16 C.F.R. § 437.2. The pre-sale disclosure of this information enables a prospective purchaser to contact prior purchasers and take other steps to assess the potential risks involved in the purchase of the business opportunity.

43. Defendants have made earnings claims in connection with the sale of their business opportunities, as defined by the Business Opportunity Rule, 16 C.F.R. § 437.1(f). Under the Business Opportunity Rule, an “earnings claim” means “any oral, written, or visual representation to a prospective purchaser that conveys, expressly or by implication, a specific level or range of actual or potential sales, or gross or net income or profits.” 16 C.F.R. § 437.1(f).

44. The Business Opportunity Rule prohibits sellers from making earnings claims unless the seller: (1) has a reasonable basis for the claim at the time it is made; (2) has in its possession written materials to substantiate the claim at the time it is made; (3) furnishes an Earnings Claim statement to prospective purchasers in conjunction with the disclosure document, containing, among other things, information regarding the time frame captured by the earnings claim, the characteristics of the purchasers, and the number and percentage of all persons who purchased the business opportunity within the time frame who achieved at least the stated level of earnings; and (4) makes written substantiation of the earnings claim available to any prospective purchaser who requests it. 16 C.F.R. § 437.4(a).

45. Defendants have also made earnings claims in connection with the sale of their business opportunities in the general media, as defined by the Business Opportunity Rule, 16 C.F.R. § 437.1(h). Under the Business Opportunity Rule, “general media” means “any instrumentality through which a person may communicate with the public, including,

but not limited to, television, radio, print, Internet, billboard, Web site, commercial bulk email, and mobile communications.” 16 C.F.R. § 437.1(h).

46. The Business Opportunity Rule prohibits sellers from making earnings claims in the general media unless the seller has a reasonable basis for and written substantiation of any earnings claims and states in immediate conjunction with those claims the beginning and ending dates when the represented earnings were achieved, and the number and percentage of all persons who purchased Defendants’ business opportunity prior to that ending date who achieved at least the stated level of earnings. 16 C.F.R. § 437.4(b).

47. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Business Opportunity Rule constitutes an unfair or deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT THREE

Disclosure Document Violations

48. In numerous instances, in connection with the offer for sale, sale, or promotion of business opportunities, Defendants have failed to furnish prospective purchasers with a disclosure document and any required attachments, within the time period prescribed by the Business Opportunity Rule.

49. Defendants’ acts and practices, as described in Paragraph 48, above, violate the Business Opportunity Rule, 16 C.F.R. §§ 437.2 and 437.3(a), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FOUR

Earnings Disclosure Violations

50. In numerous instances, Defendants have made earnings claims to prospective purchasers in connection with the offering for sale, sale, or promotion of a business opportunity while, among other things, (1) lacking a reasonable basis for the earnings claim at the time it was made; (2) lacking written substantiation for the earnings claim at the time it was made; or (3) failing to provide an Earnings Claim statement to the prospective purchaser, as required by the Business Opportunity Rule.

51. Defendants acts and practices, as described in Paragraph 50, above, violate the Business Opportunity Rule, 16 C.F.R. § 437.4(a) and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FIVE

General Media Earnings Claims Violations

52. Defendants have made earnings claims in the general media in connection with the offering for sale, sale, or promotion of a business opportunity while failing to state in immediate conjunction with those claims the beginning and ending dates when the represented earnings were achieved, and the number and percentage of all persons who purchased Defendants' business opportunity prior to that ending date who achieved at least the stated level of earnings.

53. Defendants acts and practices, as described in Paragraph 52, above, violate the Business Opportunity Rule, 16 C.F.R. § 437.4(b)(3) and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

54. Consumers have suffered and will continue to suffer substantial monetary loss as a result of the Defendants' violations of Section 5(a) of the FTC Act and the Business Opportunity Rule. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

55. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

56. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the Business Opportunity Rule, including the rescission or reformation of contracts and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the Business Opportunity Rule, and the Court's own equitable powers, requests that the Court:

- A. Award Plaintiff FTC such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions, an order freezing assets, immediate access, and the appointment of a receiver;
- B. Enter a permanent injunction to prevent future violations of the Business Opportunity Rule and the FTC Act by Defendants;
- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from the Defendants' violations of the Business Opportunity Rule and the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- D. Award Plaintiff FTC the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

DAVID SHONKA
Acting General Counsel

Dated: November 4, 2012



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