

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAREER EXAMS, INC., *et al.*,

Defendants.

**STIPULATED FINAL JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF
AS TO O'BRIEN MARKETING, INC., AND DEREK JACKSON**

THIS MATTER comes before the Court upon the stipulation of Plaintiff Federal Trade Commission ("FTC" or the "Commission") and Defendants O'Brien Marketing, Inc., also d/b/a O'Brien Consulting and O'Brien Answers; and Derek Jackson (collectively the "Jackson Defendants"). On November 1, 2012, the Commission filed a Complaint for Permanent Injunction and Other Equitable Relief ("Complaint") in this matter, alleging violations of Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a).

The Commission and the Jackson Defendants, having agreed to entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Order"), hereby request that the Court enter this Order to resolve all matters in dispute between them in this action.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as

follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and over the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).
2. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).
3. A substantial part of the events or omissions giving rise to this claim occurred in the Bowling Green jury division of this district.
4. The activities of the Jackson Defendants, as alleged in the Complaint, were in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The Complaint states a claim upon which relief may be granted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
6. The Jackson Defendants enter into this Order freely and without coercion. The Jackson Defendants acknowledge that they have read and are prepared to abide by the provisions of this Order.
7. The Jackson Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. The Jackson Defendants further waive and release any claims they may have against the Commission, its employees, representatives, or agents.
8. Each party shall bear its own costs and attorney fees. The Jackson Defendants agree that this Order does not entitle them to seek or to obtain attorney fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. No. 104-121,

110 Stat. 847, 863–64 (1996), and they further waive any rights to attorney fees concerning the prosecution of this action through the date of the entry of this Order that may arise under said provision of law.

9. The Jackson Defendants, in consenting to the entry of this Order, do not admit the allegations of the Complaint other than the jurisdictional facts.

10. The parties agree, for purposes of facilitating resolution of this matter, that entry of this Order is in the public interest.

DEFINITIONS

For the purpose of this order, the following definitions shall apply:

1. **“Asset”** means any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property of any Defendant (as defined below) or held for the benefit of any Defendant wherever located, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, list of customer names, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), funds, cash, and trusts, including but not limited to any other trust held for the benefit of any Defendant, any Defendant’s minor children, or any Defendant’s spouse.

2. **“Assisting Others”** means providing to any person or entity any of the following goods or services: (a) disseminating or publishing, or arranging for the dissemination or publication of, any advertising or marketing content; (b) providing or revising any advertising or marketing content; (c) performing customer service functions, including but not limited to

receiving or responding to consumer complaints; (d) providing customer leads; (e) providing or arranging for the provision of credit card merchant accounts or otherwise arranging for the receipt of payments; (f) performing billing or collection services of any kind; (g) verifying, processing, fulfilling, or arranging for the fulfillment of orders; (h) hiring, recruiting, or training personnel; (i) advising or consulting on the commencement or management of a business venture; or (j) acting or serving as an officer, director, manager, or principal of any entity.

3. **“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.

4. **“Employment Product or Service”** means any product or service that is represented, expressly or by implication, to assist in any manner an individual to obtain employment and includes but is not limited to the following: (a) employment listings; (b) study guides or test preparation materials; (c) job application preparation or processing services; (d) resume

preparation; (e) certifications or licenses or assistance in obtaining certifications or licenses; (f) job matching or career counseling services; or (g) facilitating resume distribution and interviews.

5. **“Jackson”** means Derek Jackson, individually and through any d/b/a.

6. **“Jackson Defendants”** means, individually, collectively or in any combination: (a) Jackson; and (b) O’Brien.

7. **“Material”** means likely to affect a person’s choice of, or conduct regarding, products or services.

8. **“O’Brien”** means O’Brien Marketing, Inc., also d/b/a O’Brien Consulting and O’Brien Answers, and its successors and assigns.

9. **“Plaintiff”** means the Federal Trade Commission.

10. 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.

BAN ON MARKETING OR SALE OF EMPLOYMENT PRODUCTS OR SERVICES

I.

IT IS HEREBY ORDERED that the Jackson Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from

- A. Marketing, advertising, promoting, offering for sale, or selling any Employment Product or Service; and
- B. Assisting Others engaged in marketing, advertising, promoting, offering for sale, or selling any Employment Product or Service.

Nothing in this Order shall be read as an exception to this Section I.

PROHIBITED REPRESENTATIONS

II.

IT IS HEREBY ORDERED that, in connection with the marketing, advertising, promotion, offering for sale, or sale of any product or service, the Jackson Defendants and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any Material fact, including but not limited to

- A.** The total cost to purchase, receive, or use, and the quantity of, the product or service;
- B.** Any Material restriction, limitation, or condition to purchase, receive, or use the product or service;
- C.** Any Material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy applicable to such product or service, including but not limited to the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- D.** Any Material aspect of the performance, efficacy, nature, or characteristics of the product or service; and

- E. Affiliation with, endorsement or approval by, or other connection to any other person, business, government entity, or program, including but not limited to the United States Postal Service.

MONETARY RELIEF

III.

IT IS FURTHER ORDERED that judgment is hereby entered in favor of the Commission and against the Jackson Defendants, jointly and severally, in the amount of Four Million, Eight Hundred Sixty-Five Thousand, Seven Hundred Thirty-Four Dollars (\$4,865,734), as equitable monetary relief for consumer injury; *provided, however*, that subject to the provisions of Section IV, this judgment shall be suspended upon the Jackson Defendants' completion of the requirements stated in Section III.A–B.

A. Effective upon the entry of this Order, the Jackson Defendants surrender to the FTC all control, title, dominion, and interest in the following assets:

1. All funds of any of the Defendants in the possession of the Court-appointed Monitor, Jerry A. Burns, P.S.C.;
2. All funds of any of the Defendants in the possession of the Defendants' counsel, Greg N. Stivers;
3. All funds held by U.S. Bank in the name of Derek Jackson in the accounts ending in 1734 and 7583;
4. All funds held by First Southern National Bank in the name of Derek Jackson in the account ending in 4910;

5. All funds held by First Southern National Bank in the name of O'Brien Marketing, Inc., in the account ending in 6651;

6. All assets held in Edward D. Jones & Co., L.P., investment accounts in the name of Derek Jackson, including but not limited to the account ending in 6583; and

7. All assets held in Levine Group, Inc., investment accounts in the name of Derek Jackson, including but not limited to the accounts ending in 5689 and 5119.

B. To effect the surrender of the funds identified in Section III.A.2, the Court directs that the Jackson Defendants' counsel, Greg N. Stivers, shall, within seven (7) calendar days of the entry of this Order, remit the funds to the Court-appointed Monitor, Jerry A. Burns, P.S.C.

C. To effect the surrender of the funds identified in Section III.A.3–5, the Court directs that the entities holding the funds or their successors shall, within fourteen (14) calendar days of receiving this Order, remit the funds to the Commission by certified check(s) or other guaranteed funds payable to the Federal Trade Commission, Financial Management Office, or by wire transfer in accordance with directions provided by counsel for the Commission. To the extent any identified nonparty cannot comply with this Subsection without the assistance of the Jackson Defendants, such nonparty must, within five (5) calendar of receiving this Order, notify such Defendant(s) and counsel for the Commission of its inability to comply. Such notification shall specify the actions by such Defendant(s) that are necessary to comply with this Order. The Jackson Defendants shall immediately complete any action necessary to facilitate the identified nonparty's ability to timely comply with this Subsection.

D. To effect the surrender of the assets identified in Section III.A.6–7, the Court

directs that the financial institution identified or its successor shall, immediately upon receiving this Order, liquidate the assets held in each account and shall, within fourteen (14) calendar days of receiving this Order, remit the balance of the liquidated investment accounts, minus any penalties legally withheld, to the Court-appointed Monitor, Jerry A. Burns, P.S.C., by certified check(s) or other guaranteed funds payable to Jerry A. Burns, P.S.C., or by wire transfer in accordance with directions provided by the Monitor. To the extent that the financial institution cannot comply with this Subsection without the assistance of the Defendants, it must, within five (5) calendar of receiving this Order, notify such Defendant(s) and counsel for the Commission of its inability to comply. Such notification shall specify the actions by such Defendant(s) that are necessary to comply with this Order. The Defendants shall immediately complete any action necessary to facilitate the financial institution's ability to timely comply with this Subsection.

E. No portion of any payment under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

F. The Jackson Defendants relinquish all dominion, control, and title to the assets paid to the fullest extent permitted by law. The Jackson Defendants shall make no claim to or demand for return of the assets, directly or indirectly, through counsel or otherwise.

G. The Jackson Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. The Jackson Defendants further stipulate and agree that the facts alleged in the

Complaint establish all elements necessary to sustain an action pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such purposes.

H. In accordance with 31 U.S.C. § 7701, the Jackson Defendants are hereby required, unless they have done so already, to furnish to the Commission their taxpayer identifying numbers and/or social security numbers, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of the Jackson Defendants' relationship with the government.

RIGHT TO REOPEN

IV.

IT IS FURTHER ORDERED that

A. The Commission's agreement to, and the Court's approval of, this Order, including but not limited to the suspension of the monetary judgment against the Jackson Defendants, is expressly premised upon the truthfulness, accuracy, and completeness of the Jackson Defendants' financial condition, as represented in the sworn financial statements of the Jackson Defendants, dated November 7, 2012, including all attachments and supplemental materials (collectively, the "Jackson Financial Statements"), all of which the Commission relied upon in negotiating and agreeing to the terms of this Order.

B. If, upon motion by the Commission, the Court finds that the Jackson Financial Statements failed to disclose any material Asset, materially misrepresented the value of any Asset, or made any other material misrepresentation or omission, the suspension shall be lifted

on the monetary judgment in Section III, above, as to the Jackson Defendants and that judgment amount, less any payments already made by any Jackson Defendants to the Commission, shall be immediately due and payable. Upon such reinstatement of the monetary judgment, the Commission shall be entitled to interest at the rate prescribed under 28 U.S.C. § 1961, as amended, on the unpaid balance. The Commission shall be permitted to execute on the judgment immediately after the suspension is lifted and engage in discovery in aid of execution.

Provided, however, that in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court; and,

Provided, further, the proceedings initiated under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings that the Commission may initiate to enforce this Order.

LIFTING OF ASSET FREEZE

V.

IT IS FURTHER ORDERED that the freeze of the Jackson Defendants' assets set forth in the Stipulated Preliminary Injunction with Other Equitable Relief [D.E. 14] entered by this Court on November 15, 2012, ("Stipulated Preliminary Injunction") shall be lifted to the extent necessary to turn over the Jackson Defendants' assets as required by Section III, above, and upon completion of the turn-over, shall be lifted permanently with regard to the Jackson Defendants.

PROHIBITION AGAINST DISCLOSURE OF CUSTOMER INFORMATION

VI.

IT IS FURTHER ORDERED that the Jackson Defendants and their officers, agents,

servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from

A. disclosing, using, or benefitting from customer information, including the name, address, telephone number, e-mail address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person that any Defendant obtained prior to entry of this Order in connection with the marketing, advertising, promotion, offering for sale, or sale of Employment Products or Services; and

B. failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after the resolution of this action. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

COOPERATION

VII.

IT IS FURTHER ORDERED that the Jackson Defendants must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated

with the transactions or the occurrences that are the subject of the Complaint. The Jackson Defendants must provide truthful and complete information, evidence, and testimony. Jackson must appear and O'Brien must cause O'Brien's officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

ORDER ACKNOWLEDGMENTS

VIII.

IT IS FURTHER ORDERED that the Jackson Defendants obtain acknowledgments of receipt of this Order.

A. Each Jackson Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For five (5) years after entry of this Order, Jackson, for any business for which he is the majority owner or directly or indirectly controls, and O'Brien, must deliver a copy of this Order to (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in marketing, advertising, promotion, or sales; and (3) any business entity resulting from any change in structure as set forth in Section IX. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Jackson Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

COMPLIANCE REPORTING

IX.

IT IS FURTHER ORDERED that the Jackson Defendants make timely submissions to the Commission:

A. One (1) year after entry of this Order, each Jackson Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Jackson Defendant must (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with the Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, e-mail, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Jackson must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, Jackson must (a) identify all telephone numbers and all e-

mail, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which Jackson performs services whether as an employee or otherwise and any entity in which Jackson has any ownership interest; and (c) describe in detail Jackson's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For twelve (12) years following entry of this Order, each Jackson Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

1. Each Jackson Defendant must report any change in (a) any designated point of contact; or (b) the structure of O'Brien or any entity that Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, Jackson must report any change in (a) name, including aliases or fictitious names, or residence address; or (b) title or role in any business activity, including any business for which Jackson performs services whether as an employee or otherwise and any entity in which Jackson has direct or indirect control, and identify its name, physical address, and Internet address, if any.

C. Each Jackson Defendant must submit to the Commission notice of the filing of

any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to

Associate Director for Enforcement, Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

The subject line must begin FTC v. Career Exams, Inc., X130009.

RECORDKEEPING

X.

IT IS FURTHER ORDERED that the Jackson Defendants must create certain records for twelve (12) years after entry of the Order, and retain each such record for five (5) years. Specifically, O’Brien and Jackson, for any business for which Jackson is a majority owner or directly or indirectly controls, must maintain the following records:

A. Accounting records showing the revenues from all goods or services sold, all

costs incurred in generating those revenues, and the resulting net profit or loss;

B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

C. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. A copy of each advertisement or other marketing material.

COMPLIANCE MONITORING

XI.

IT IS FURTHER ORDERED that, for the purpose of monitoring the Jackson Defendants' compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order,

A. Within fourteen (14) days of receipt of a written request from a representative of the Commission, each Jackson Defendant must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce Documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Jackson Defendant. The Jackson Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to the Jackson Defendants or any individual or entity affiliated with the Jackson Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

RETENTION OF JURISDICTION

XII.

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO STIPULATED AND AGREED:

**For Defendant O'Brien Marketing, Inc., also d/b/a
O'Brien Consulting and O'Brien Answers**



Date: 4/24/13

Greg N. Stivers
Kerrick Stivers Coyle PLC
1025 State Street
P.O. Box 9547
Bowling Green, KY 42102-9547
(270) 782-8160 (phone)
(270) 782-5856 (facsimile)
GStivers@ksclawfirm.com

Counsel for O'Brien Marketing, Inc., also d/b/a
O'Brien Consulting and O'Brien Answers

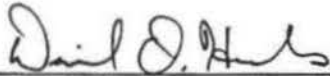
**For Defendants Derek Jackson and O'Brien Marketing, Inc.,
also d/b/a O'Brien Consulting and O'Brien Answers**



Date: 4/24/13

Derek Jackson, Individually and as an
Officer of O'Brien Marketing, Inc., also d/b/a
O'Brien Consulting and O'Brien Answers

**For the Plaintiff
Federal Trade Commission**



Date: 6/26/13

Daniel O. Hanks
Emily Cope Burton
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580
(202) 326-2472, -2728 (direct)
(202) 326-3395 (facsimile)
dhanks@ftc.gov; eburton@ftc.gov

**Attorneys for Plaintiff
Federal Trade Commission**