

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAPITAL ENTERPRISES, INC., formerly known as DAVID GATES, INC. and also doing business as GORDON JAMES ENTERPRISES, MAXWELL GATES ENTERPRISES, MAXWELL SCOTT ENTERPRISES, PRESTON LORD ENTERPRISES, and WARNER DANIEL ENTERPRSES, a former New Jersey corporation,

CARSON LORD ENTERPRISES, LLC, a Delaware limited liability company,

JAVA ENTERPRISES, LLC, a Delaware limited liability company,

MASON GRACE ENTERPRISES, LLC, also doing business as MASON GRACE VENTURES, a Delaware limited liability company,

PRESTON LORD ENTERPRISES OF NEW YORK, LLC, also doing business as PRESTON LORD ENTERPRISES, a Delaware limited liability company,

DAVID S. BROOKMAN, individually and as an officer and owner of CAPITAL ENTERPRISES, INC., CARSON LORD ENTERPRISES, LLC, JAVA ENTERPRISES, LLC, MASON GRACE ENTERPRISES, LLC, and PRESTON LORD ENTERPRISES, LLC,

Defendants.

Case No. 15 Civ. 8407 (ER) (KNF)

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT**

Plaintiff Federal Trade Commission (“Commission” or “FTC”) filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b), 57b, against defendants Capital Enterprises, Inc., Carson Lord Enterprises, LLC, Java Enterprises, LLC, Mason Grace Enterprises, LLC, Preston Lord Enterprises of New York, LLC, and David S. Brookman (collectively “Defendants”) in connection with the marketing and sale of work-at-home opportunities. The Commission and Defendants stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

IT THEREFORE IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Section 5 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”), 16 C.F.R. Part 437, in connection with the marketing and sale of work-at-home opportunities.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order,

and agree to bear their own costs and attorney fees.

5. Defendants waive and release any claims that they may have against the Commission that relate to this action.
6. Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

1. **“Business opportunity”** means a commercial arrangement in which:
 - (1) A seller solicits a prospective purchaser to enter into a new business; and
 - (2) The prospective purchaser makes a required payment; and
 - (3) The seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will:
 - i. Provide locations for the use or operation of equipment, displays, vending machines, or similar devices, owned, leased, controlled, or paid for by the purchaser; or
 - ii. Provide outlets, accounts, or customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser’s goods or services; or
 - iii. Buy back any or all of the goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides, including but not limited to providing payment for such services as, for example, stuffing envelopes from the purchaser’s home.

2. **“Corporate Defendants”** means Capital Enterprises, Inc., formerly known as David Gates, Inc. and also doing business as Gordon James Enterprises, Maxwell Gates Enterprises, Maxwell Scott Enterprises, Preston Lord Enterprises, and Warner Daniel Enterprises; Carson Lord Enterprises, LLC; Java Enterprises, LLC; Mason Grace Enterprises, LLC, also doing business as Mason Grace Ventures; and Preston Lord Enterprises of New York, LLC, also doing business as Preston Lord Enterprises; and any fictitious business entities or business names created or used by these entities; along with their successors and assigns.

3. **“Defendants”** means the Individual Defendant and the Corporate Defendants, individually, collectively, or in any combination.

4. **“Designated person”** means any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business.

5. **“FTC” or “Commission”** means the Federal Trade Commission.

6. **“Individual Defendant”** means David S. Brookman.

7. **“Person” or “Persons”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

8. **“Seller”** means a person who offers for sale or sells a business opportunity.

9. **“SPIO”** means the Stipulated Preliminary Injunction Order dated October 30, 2015, previously entered in this action.

10. “**TRO**” means the *Ex Parte* Temporary Restraining Order with Asset Freeze and Other Equitable Relief and Order To Show Cause Why a Preliminary Injunction Should Not Issue dated October 26, 2015, previously entered in this action.

11. “**Work-At-Home Opportunity**” means any good, service, plan, or program that is represented, expressly or by implication, to assist an individual in any manner to earn money while working from home or from locations other than the business premises of the Defendant, whether or not covered by the Business Opportunity Rule, 16 C.F.R. Part 437.

ORDER

I. BAN ON WORK-AT-HOME AND BUSINESS OPPORTUNITIES

IT IS ORDERED that Defendants, whether acting directly or through an intermediary, are permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any Work-At-Home Opportunity or Business Opportunity; and
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any Work-At-Home Opportunity or Business Opportunity.

II. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, and employees, 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, in connection with promoting or offering for sale any good or service other than Work-At-Home Opportunities or Business Opportunities, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:

A. That consumers are likely to earn substantial income;

B. How any payments to consumers are calculated or determined; or

C. Any other fact material to consumers concerning any such good or service, such as: the total cost to purchase, use, or participate in the good or service; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

III. MONETARY JUDGMENT AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of One Million Two Hundred Thousand Dollars (\$1,200,000.00) is entered in favor of the Commission against the Defendants, jointly and severally, as equitable monetary relief.
- B. The Individual Defendant is ordered to pay to the Commission the total amount held in the JPMorgan Chase bank account in the name of MG Enterprises & Industries, Inc., ending in account number x8016, which amounts to approximately Forty-One Thousand Two Hundred Dollars (\$41,200.00). Such payment must be made within 14 days of entry of this Order by the Court by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.
- C. The Individual Defendant is further ordered to pay to the Commission the sum of Three Thousand Dollars (\$3,000.00). Such payment must be made within 120 days of entry of this Order by the Court by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.
- D. Prepaid Ventures, Ltd. is ordered, within 10 days of receiving notice of this Order

by any means, including, but not limited to, facsimile, electronic mail, or overnight courier, to transfer the funds held in Nexis Visa Card account number ending 6792, with card number ending 6907 under cardholder name “David Brookman,” to the Commission by wire transfer pursuant to instructions provided by counsel for the Commission, or as otherwise agreed to in writing by counsel for the Commission.

E. Upon completion of the payments and transfer set forth above, Nine Hundred Seventy-Five Thousand Seven Hundred Six dollars (\$975,706.00) of the remaining judgment is suspended, subject to the Subsections below.

F. The Commission’s agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants’ sworn financial statements and related documents (collectively, “financial representations”) submitted to the Commission, namely:

1. the Financial Statement of Individual Defendant David S. Brookman signed on November 1, 2015;
2. the Financial Statement of Mason Grace Enterprises signed by David S. Brookman on November 1, 2015;
3. the supplemental Financial Statement of Individual Defendant David S. Brookman signed on May 16, 2016, including the attachments;
4. the supplemental Financial Statement of Corporate Defendant Mason Grace Enterprises, LLC signed by David S. Brookman on May 16, 2016, including the attachments;
5. the Financial Statement of Corporate Defendant Capital Enterprises, Inc.

- signed by David S. Brookman on May 16, 2016, including the attachments;
6. the Financial Statement of Corporate Defendant Carson Lord Enterprises, LLC signed by David S. Brookman on May 16, 2016, including the attachments;
 7. the Financial Statement of Corporate Defendant Preston Lord Enterprises of New York, LLC signed by David S. Brookman on May 16, 2016, including the attachments;
 8. the Financial Statement of Corporate Defendant Java Enterprises, LLC signed by David S. Brookman on May 16, 2016, including the attachments;
 9. additional documentation submitted by email dated August 31, 2016 from Defendants' counsel Rebekah Conroy to Commission counsel Savvas Diacosavvas.

G. The suspension of the judgment will be lifted as to any Defendant if, upon motion by the Commission, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

H. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

IV. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

- A. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- D. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants must submit to a Commission representative within 10 days of entry of this Order if they have not done so already, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.
- E. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it

determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

V. LIFTING OF THE ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the assets of the Defendants set forth in the TRO and SPIO is dissolved; *provided, however,* that the freeze on any vehicle registered to the Individual Defendant (to include VIN no. ending 1409) shall remain in place and dissolve only upon completion of the payments set forth in Section III(B) and (C) above.

VI. LIFTING OF THE MAIL FREEZE

IT IS FURTHER ORDERED that the freeze on the mail of the Corporate Defendants shall be lifted as follows:

A. Any commercial mail receiving agency ("CMRA") that has withheld mail pursuant to the TRO or SPIO, including Regus Management Group, LLC and UPS Store #1243 located at 88 East Main St., Mendham, NJ 07945, within 10 days of receiving notice of this Order by any means, including, but not limited to, facsimile, electronic mail, or overnight courier, shall:

1. Terminate any contract for mail-related services with any Defendant;
2. Deliver any additional mail held pursuant to the TRO or SPIO to the Commission by overnight courier (with delivery signature and tracking) at an address to be provided by a representative of the Commission; and
3. Return to sender, unopened, any mail received thereafter.

B. The FTC shall return to the sender all funds recovered from the Defendants'

CMRA addresses pursuant to the TRO or SPIO and may dispose of any additional mail recovered therefrom as it, in its sole discretion, deems appropriate. In the event that the makers of the uncashed checks or negotiable instruments cannot be located, or the Commission, in its sole discretion, determines that the return of checks or negotiable instruments is impracticable, it may dispose of any such checks or negotiable instruments as it, in its sole discretion, deems appropriate. *Provided, however,* that any mail, including checks and negotiable instruments, held by the Commission pursuant to the TRO, SPIO, or this Order need not be disposed of, and may be shared or disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VII. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, and employees, 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 directly or indirectly:

A. Failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, the Defendants must provide it, in the form prescribed by the Commission, within 14 days.

B. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email 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), that any Defendant obtained prior to entry of this Order in connection with the advertising, marketing, promoting, offering for sale, or selling of any Work-At-Home

Opportunity or Business Opportunity; and

C. Failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

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 law, regulation, or court order.

VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

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

B. For 5 years after entry of this Order, the Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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

of this Order.

IX. COMPLIANCE REPORTING

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

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

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated 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, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which the Individual Defendant 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, the Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for

which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 20 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that the Defendant has any ownership interest in or controls directly or indirectly 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, the Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or 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. Capital Enterprises, Inc., *et al.*, Matter No. X160001.

X. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, each Corporate Defendant and the Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position;

dates of service; and (if applicable) the reason for termination;

- C. Records of all consumer 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;
- E. A copy of each unique advertisement or other marketing material; and
- F. Copies of any website used to market goods or services.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring 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 14 days of receipt of a written request from a representative of the Commission, each 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 Defendant. Each Defendant may have counsel present for any such communication. 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 Defendants or any individual or entity affiliated with the 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.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning the Individual Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

XII. RETENTION OF JURISDICTION

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

SO ORDERED.

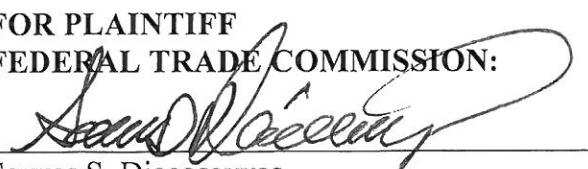
Dated: April 20, 2017


EDGARDO RAMOS
UNITED STATES DISTRICT JUDGE

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SO STIPULATED AND AGREED:

FOR PLAINTIFF
FEDERAL TRADE COMMISSION:


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Date: Feb 7, 2017

COUNSEL for Defendants Capital Enterprises,
Inc., Carson Lord Enterprises, LLC, Java
Enterprises, LLC, Mason Grace Enterprises,
LLC, Preston Lord Enterprises of New York,
LLC, and David S. Brookman

DEFENDANTS:


DAVID S. BROOKMAN, Individually

Date: 2-6-17


DAVID S. BROOKMAN, as an officer of
Capital Enterprises, Inc., Carson Lord
Enterprises, LLC, Java Enterprises, LLC, Mason
Grace Enterprises, LLC, and Preston Lord
Enterprises of New York, LLC

Date: 2-6-17