

ORIGINAL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States Courts  
Southern District of Texas  
ENTERED

JUN 09 2004

Michael N. Milby, Clerk of Court

FEDERAL TRADE COMMISSION,

Plaintiff,

versus

ESTEBAN BARRIOS VEGA,

Defendant.

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CIVIL ACTION H-04-1478

### Stipulated Final Order for Permanent Injunction and Settlement of Claims

Plaintiff, the Federal Trade Commission ("FTC"), commenced this action on April 14, 2004, by filing its Complaint against defendant Esteban Barrios Vega, individually and doing business as EBV Promotions, Paymentech Promotions, and Promotions of Service. The Complaint alleges that Defendant engaged in deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, and the Telemarketing Sales Rule, 16 C.F.R. Part 310, and seeks a permanent injunction and monetary relief pursuant to Sections 13(b) and 19 of the FTC Act. The FTC and Defendant hereby stipulate to the entry of this Final Order for Permanent Injunction and Settlement of Claims ("Order").

#### FINDINGS

By stipulation of the parties and being advised of the premises, the Court finds:

1. This is an action by the FTC instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b. The Complaint seeks both permanent injunctive relief and consumer redress for Defendant's alleged deceptive acts or practices in connection with the marketing and sale of work-at-home business opportunities.
2. The FTC has the authority under Sections 13(b) and 19 of the FTC Act to seek the relief it has requested, and the Complaint states a claim upon which relief can be granted against Defendant.
3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over Defendant. Venue in the Southern District of Texas is proper.

4. The activities of Defendant, as alleged in the Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The parties stipulate and agree to entry of this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint to the date of entry of this Order. This settlement does not settle and resolve any matters not alleged in the Complaint. Defendant does not admit any of the allegations set forth in the Complaint, other than the jurisdictional facts, merely by stipulating and agreeing to the entry of this Order.
6. Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant also waives any claim that he may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each settling party shall bear its own costs and attorneys fees.
7. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.
8. Entry of this Order is in the public interest.

#### **DEFINITIONS**

For the purposes of this Order, the following definitions shall apply:

- A. "Work-at-home business opportunity" means any plan, program, product or service represented to enable participants or purchasers to earn money while working from home.
- B. "Telemarketing" means any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing or contracting with others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, or service, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing.
- C. "Assisting others" means providing any of the following goods or services to any person or entity: (a) performing customer service functions, including but not limited to receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other written marketing material; (c) providing names of, or assisting in the generation of, potential customers; (d) performing marketing services of any kind; or (e) acting as an officer or director of a business entity.

### **BAN ON SELLING WORK-AT-HOME BUSINESS OPPORTUNITIES**

I. **IT IS THEREFORE ORDERED** that Defendant, whether acting directly or through any person or entity, is permanently restrained and enjoined from (A) advertising, marketing, promoting, offering for sale, distributing, or selling any work-at-home business opportunity, and (B) assisting others engaged in the advertising, marketing, promoting, offering for sale, distributing, or selling of any work-at-home business opportunity. Nothing in this Order shall be read as an exception to this paragraph.

### **BAN ON TELEMARKETING**

II. **IT IS FURTHER ORDERED** that Defendant, whether acting directly or through any person or entity, is permanently restrained and enjoined from (A) engaging in telemarketing, and (B) assisting others engaged in telemarketing. Nothing in this Order shall be read as an exception to this paragraph.

### **PROHIBITED BUSINESS ACTIVITIES**

III. **IT IS FURTHER ORDERED** that, in connection with the advertising, promotion, offer for sale, or sale of any good or service, Defendant and any person or entity through which he does business, and their successors, assigns, officers, agents, servants, employees, attorneys, and those other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

- A. Misrepresenting, directly or by implication, the total costs to purchase, receive or use any good or service;
- B. Misrepresenting, directly or by implication, any material restriction, limitation or condition to purchase, receive or use any good or service;
- C. Misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature or central characteristic of any good or service;
- D. Misrepresenting, directly or by implication, any material aspect of the nature or terms of any refund, cancellation, exchange or repurchase policies;
- E. Misrepresenting, directly or by implication, the income, earnings potential, profitability, or sales volume a consumer is likely to achieve through any good or service;
- F. Misrepresenting, directly or by implication, any fact material to a consumer's decision to purchase any good or service; and
- G. Assisting others in violating any provision of sub-sections A-F of this Section III.

### CONSUMER LISTS

IV. **IT IS FURTHER ORDERED** that Defendant and any person or entity through which he does business, and their successors, assigns, officers, agents, servants, employees, attorneys, and those other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

- A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, billing information (any data that enables any person to access another person's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card), e-mail address, or other identifying information of any person who submitted such information to Defendant, at any time prior to entry of this Order, in connection with the purchase of any work-at-home business opportunity.
- B. Using or benefiting from, for commercial purposes, the name, address, telephone number, billing information (any data that enables any person to access another person's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card), e-mail address, or other identifying information of any person who submitted such information to Defendant, at any time prior to entry of this Order, in connection with the purchase of any work-at-home business opportunity.
- C. Provided, however, that Defendant may disclose such identifying information (i) with the express written consent of the person whose information is disclosed, (ii) to a law enforcement agency, or (iii) as required or authorized by any law, regulation, or court order.

### MONETARY RELIEF

V. **IT IS FURTHER ORDERED** that:

- A. Judgment is hereby entered against Defendant in the amount of **TWO HUNDRED EIGHTY THOUSAND DOLLARS (\$280,000)**; *provided, however, that this judgment shall be suspended as long as the Court makes no finding, as provided in Section VII of this Order, that Defendant materially misrepresented or omitted the nature, existence, or value of any asset.*
- B. Any funds received by the FTC pursuant to this Section V of this Order shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress funds. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for such other equitable relief

(including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the U.S. Treasury as equitable disgorgement. Defendant shall have no right to challenge the FTC's choice of remedies or the manner of distribution.

- C. While Defendant does not admit any of the facts alleged in the Complaint other than jurisdictional facts, Defendant agrees that the facts as alleged in the Complaint shall be taken as true in the event of any subsequent litigation to collect amounts due pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy proceeding.
- D. The judgment entered pursuant to this Section V is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment or forfeiture.
- E. Defendant acknowledges and agrees that any money paid pursuant to this Order is irrevocably paid to the FTC for purposes of settlement between the FTC and Defendant, and Defendant relinquishes all rights, title, and interest to such money.
- F. Defendant is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC his tax identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

#### **ASSET FREEZE**

VI. **IT IS FURTHER ORDERED** that, upon entry of this Order and payment of the amount set forth in Section V.A, the freeze of Defendant's assets shall be dissolved.

#### **RIGHT TO REOPEN**

VII. **IT IS FURTHER ORDERED** that the FTC's agreement to this Order is expressly premised on the truthfulness, accuracy and completeness of financial statements submitted by Defendant on May 17, 2004. If, upon motion by the FTC, the Court finds that the financial statements contain any material misrepresentation or omission, the suspended judgment entered in Section V of this Order shall become immediately due and payable; *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*, that proceedings instituted 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 other proceedings that the FTC may initiate to enforce this Order. For purposes of this Section VII, Defendant waives any right to contest any of the allegations in the Complaint.

#### **RECORD KEEPING PROVISIONS**

VIII. **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, Defendant, in connection with any business where he is the majority owner or otherwise controls the business, and his agents, employees, officers, corporations, successors, and

assigns, and those persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. Copies of each acknowledgment of receipt of Order required to be obtained pursuant to Section XI of this Order.

#### **COMPLIANCE MONITORING**

**IX. IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order,

- A. Within ten (10) days of receipt of written notice from a representative of the FTC, Defendants each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operation, ;
- B. In addition, the FTC is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:
  - 1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. posing as consumers and suppliers to: Defendant, his employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice;
- C. Nothing in this Order shall limit the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).
- D. Defendant shall permit representatives of the FTC to interview any employer, consultant, independent contractor, representative, agent, or employee, who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

#### **COMPLIANCE REPORTING BY DEFENDANT**

**X. IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order,
  1. Defendant shall notify the FTC of the following:
    - a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
    - b. Any changes in his employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business;
    - c. Any changes in his name or use of any aliases or fictitious names; and
  2. Defendant shall notify the FTC of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to

such change, *provided* that, with respect to any proposed change in the corporation about which the defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the FTC as soon as is practicable after obtaining such knowledge.

- B. One hundred eighty (180) days after the date of entry of this Order, Defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to:
1. Any changes required to be reported pursuant to sub-section A above; and
  2. A copy of each acknowledgment of receipt of this Order obtained by the defendant pursuant to Section XI;
- C. For the purposes of this Order, Defendant shall, unless otherwise directed by the FTC's authorized representatives, mail all written notifications to the FTC to:

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room NJ-2122  
Washington, DC 20580  
Re: FTC v. Vega, Civil Action No. H-04-1478 (S.D. Tex.).

- D. For purposes of this Order, the FTC is authorized to communicate directly with Defendant.

#### **DISTRIBUTION OF ORDER BY DEFENDANT**

XI. **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order,

- A. For any business that Defendant controls, directly or indirectly, or in which he has a majority ownership interest, he must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- B. For any business where Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, he



must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

- C. Defendant must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Section XI.

**ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**


XII. **IT IS FURTHER ORDERED** that Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the FTC a truthful sworn statement acknowledging receipt of this Order

**RETENTION OF JURISDICTION**

XIII. **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

**SO STIPULATED:**

  
ESTEBAN BARRIOS VEGA, Defendant pro se

  
GREGORY A. ASHE  
Attorney in Charge  
Virginia Bar No. 39131

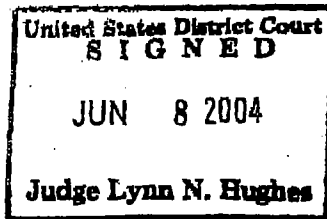
LAURA SCHNEIDER  
Of Counsel  
New York Bar No. 2715449

Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, DC 20580

Attorneys for Plaintiff

SIGNED

IT IS SO ORDERED, this 8<sup>th</sup> day of June, 2004.



  
LYNN N. HUGHES  
UNITED STATES DISTRICT JUDGE

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