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9 FEDERAL TRADE COMMISSION

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**JUBILEE FINANCIAL SERVICES,
INC., et al**

Defendants

CIVIL NO. 02-6468 ABC(Ex)

**STIPULATION AND
[Proposed] FINAL ORDER OF
PERMANENT INJUNCTION
AS TO DEFENDANT
JOHN E. GUSTAVSEN**

17 Plaintiff Federal Trade Commission ("FTC" or "Commission"), pursuant to
18 Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §
19 53(b), filed a complaint against Defendants **JUBILEE FINANCIAL SERVICES,**
20 **INC.** ("Jubilee"), **JOHN E. GUSTAVSEN** ("Gustavsen"), **JABEZ FINANCIAL**
21 **GROUP, INC.** ("Jabez"), and **CURTIS COBB** ("Cobb") for an injunction and
22 other equitable relief and an *ex parte* application for a Temporary Restraining Order
23 ("TRO") with Asset Freeze, Appointment of a Temporary Receiver, Expedited
24 Discovery, and Order to Show Cause Why a Preliminary Injunction Should Not
25 Issue. A First Amended Complaint was filed which added a fourth count and added
26 **GUSTAVSEN LEARNING CENTERS, INC.** ("GLC"), **JEMUEL APELAR**
27 a.k.a. **JIM APELAR** ("Apelar"), **DEBT RELIEF COUNSELORS OF**
28 **AMERICA, P.C.** ("DRCOA"), and **JOHN K. MITCHELL** ("Mitchell") as

1 defendants in this action.

2 Now Plaintiff Commission, negotiating through its counsel, and Defendant
3 Gustavsen, pro se, have agreed to a settlement of this action. Accordingly, the
4 Commission and Defendant Gustavsen consent to entry of this Stipulated Final
5 Judgment and Order ("Order") without trial or adjudication of any issue of law or
6 fact herein.

7
8 **FINDINGS OF FACT**

9 1. Defendant Gustavsen was properly served with the Complaint,
10 Summons and TRO in this matter.

11 2. Defendant Gustavsen was properly served with the First Amended
12 Complaint and Summons in this matter.

13 3. This Court has jurisdiction over the subject matter of the case and
14 personal jurisdiction over Defendant Gustavsen. Venue in the Central District of
15 California is proper.

16 4. The alleged actions of Defendant Gustavsen are in or affecting
17 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

18 5. The Complaint states a claim upon which relief can be granted against
19 the Defendants under Sections 5(a) and 13 (b) of the FTC Act, 15 U.S. C. § 45(a)
20 and 53(b).

21 6. Plaintiff has the authority under Section 13(b) of the FTC Act, 15
22 U.S.C. § 53(b), to seek the relief it has requested.

23 7. Defendant Gustavsen has not admitted to liability as to the charges in
24 the Complaint, and his consent to entry of this permanent injunction shall not be
25 interpreted to constitute an admission by him that he has engaged in any violations
26 of any law or regulations.

27 8. Defendant Gustavsen waives all rights to seek judicial review or
28 otherwise challenge or contest the validity of this Order. Defendant Gustavsen also

1 waives any claim that he may hold under the Equal Access to Justice Act, 28 U.S.C.
2 § 2412 (as amended), concerning the prosecution of this action to the date of this
3 Order. Defendant Gustavsen shall bear his own costs and attorneys' fees.

4 9. This Order is remedial in nature and shall not be construed as the
5 payment of a fine, penalty, punitive assessment, or forfeiture.

6 10. Defendant Gustavsen enters into this Order freely and without
7 coercion, and acknowledges that he understands the provisions of this Order and is
8 prepared to abide by its terms.

9 11. Entry of this Order is in the public interest.

11 ORDER

12 For purposes of this Final Judgment and Order for Permanent Injunction, the
13 following definitions shall apply:

14 Definitions

15 1. "**Document**" is synonymous in meaning and equal in scope to the
16 usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings,
17 drawings, graphs, charts, photographs, audio and video recordings, computer
18 records, and other data compilations from which information can be obtained and
19 translated, if necessary, through detection devices into reasonably usable form. A
20 draft or non-identical copy is a separate document within the meaning of the term
21 "document."

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

25 3. "**Corporate Defendants**" means Jubilee Financial Services, Inc.,
26 Jabez Financial Group, Inc., Gustavsen Learning Centers, Inc. and Debt Relief
27 Counselors of America, Inc., collectively.

28 4. "**Consumer**" means any person, including any individual, group,

1 unincorporated association, limited or general partnership, corporation or other
2 business entity.

3 5. **“Debtor”** means any consumer indebted to a creditor or creditors.

4 6. **“Debt negotiation”** means

5 a. the business or practice of receiving, in return for consideration, the
6 scheduled receipt of a debtor’s monies, or evidences thereof, for the
7 purpose of distribution among certain specified creditors in payment,
8 or partial payment, of the debtor’s obligations; or

9 b. the business or practice of acting or offering or attempting to act as an
10 intermediary between a debtor and his creditors for the purpose of
11 settling, negotiating, or in any way altering the terms of payment of
12 any debt of a debtor.

13 7. **“Assisting others”** means knowingly providing any of the following
14 goods or services to another person or entity:

15 a. performing customer service functions, including, but not limited to,
16 receiving or responding to consumer complaints; or

17 b. formulating or providing, or arranging for the formulation or provision
18 of, any telephone sales script or any other marketing material; or

19 c. providing names of, or assisting in the generation of, potential
20 customers; or

21 d. performing marketing services of any kind.

22
23 **I.**

24 **PERMANENT BAN.**

25 **IT IS THEREFORE ORDERED** that Defendant Gustavsen, whether acting
26 directly or through any corporation, limited liability company, subsidiary, division
27 or other device, is hereby permanently restrained and enjoined from engaging in, or
28 receiving any remuneration of any kind whatsoever from, or holding a majority

1 ownership interest, share, or stock in, or serving as an officer, director, trustee, or
2 general manager of, any business entity engaged in whole or in part in the
3 advertising, marketing, promoting, offering for sale, or sale of debt negotiation
4 services.

5
6 **II.**

7 **PROHIBITED MISREPRESENTATIONS**

8 **IT IS FURTHER ORDERED** that Defendant Gustavsen and his assignees,
9 agents, attorneys, servants, employees and all persons or entities directly or
10 indirectly under his control, and all other persons or entities in active concert or
11 participation with them who receive actual notice of this Order by personal service
12 or otherwise, whether acting directly or through any corporation, subsidiary,
13 division or other device, in connection with the advertising, marketing, promoting,
14 offering for sale, or sale of any good or service, are hereby restrained and enjoined
15 from misrepresenting, or assisting others in misrepresenting, expressly or by
16 implication, orally or in writing, any fact material to a consumer's decision to buy
17 or accept the good or service, including but not limited to the ability to reduce the
18 amount owed by a debtor to the creditor or their ability to have a positive effect on
19 the debtor's credit report.

20
21 **III.**

22 **SUSPENDED JUDGMENT**

23 **IT IS FURTHER ORDERED** that judgment is hereby entered against
24 Defendant Gustavsen in the amount of \$2,628,535.00 (two million six hundred
25 twenty-eight thousand five hundred thirty-five dollars), *provided*, however, that all
26 of this amount except for the value of the assets described in Paragraph IV. A., IV.
27 B. and IV. C. below, shall be suspended subject to the conditions set forth in
28 Paragraph V. of this Order.

1 IV.

2 **MONETARY RELIEF AND CONSUMER REDRESS**

3 **IT IS FURTHER ORDERED** that:

4 A. As partial satisfaction of the monetary judgment ordered in Paragraph
5 III, Defendant Gustavsen has delivered to the Receiver title to
6 Gustavsen's entire interest in the real property which is located at 9540
7 La Serna Drive, Whittier, CA 90605 and whose legal description is Lot
8 3 of Tract 20082 in the city of Whittier, County of Los Angeles, State
9 of California as per map recorded in book 526, pages 19 - 22 inclusive
10 of maps, in the office of the County recorder of said county ("La Serna
11 Property"), by way of quitclaim deed. Pursuant to a Stipulation
12 between the parties and signed by the Court on February 5, 2003, the
13 Receiver has been authorized:

- 14 1. to liquidate the La Serna Property, in any reasonable manner
15 with notice to the Commission and approval of the Court, and
16 2. to deposit the net proceeds from the liquidation of the La Serna
17 Property (after payment of any fees or taxes) in an interest-
18 bearing account.

19 The amount of the net proceeds from the liquidation less any fees and
20 taxes shall be considered redress and shall be credited against the
21 amount of the suspended judgment owed by Defendant Gustavsen.

22 B. Defendant Gustavsen has previously delivered to the Receiver title to
23 Gustavsen's entire interest in a 2001 BMW 325CIC ("BMW") which
24 was subsequently sold. The amount of the proceeds from the
25 liquidation of the BMW, less the amount of \$10,000 (ten thousand
26 dollars) which the Court provided to Defendant Gustavsen for use as
27 attorney's fees, shall be considered redress and shall be credited
28 against the amount of the suspended judgment owed by Defendant

1 Gustavsen.

2 C. Upon the final disposition of this action (or sooner, upon motion by
3 the Commission or the Receiver and further Order by this Court), said
4 assets shall be either distributed as redress to consumers, or paid to the
5 U.S. Treasury, if such distribution is deemed impractical.

6 D. Defendant Gustavsen's remaining assets, frozen pursuant to the
7 Temporary Restraining Order entered in this proceeding on August 20,
8 2002 and the Stipulated Preliminary Injunction entered in this
9 proceeding on September 3, 2002, shall be transferred to the Receiver
10 upon the entry of this Final Judgment;

11 E. All funds paid pursuant to this Paragraph shall be deposited into a fund
12 administered by the Commission or its agent to be used for equitable
13 relief, including but not limited to consumer redress and any attendant
14 expenses for the administration of any redress fund. In the event that
15 direct redress to consumers is wholly or partially impracticable or
16 funds remain after redress is completed, the Commission may apply
17 any remaining funds for such other equitable relief (including
18 consumer information remedies) as it determines to be reasonably
19 related to the practices alleged in the Complaint. Any funds not used
20 for such equitable relief shall be deposited to the Treasury as
21 disgorgement. Defendant Gustavsen shall have no right to challenge
22 the Commission's choice of remedies under this paragraph.

23 F. The Commission and the Receiver shall have full and sole discretion
24 to:

25 1. Determine the criteria for participation by individual claimants
26 in any consumer redress program implemented pursuant to this
27 Order;

28 2. Determine the manner and timing of any notices to be given to

1 consumers regarding the existence and terms of such programs;
2 and

3 3. Delegate any and all tasks connected with such redress program
4 to any individual, partnerships, or corporations; and pay
5 reasonable fees, salaries, and expenses incurred thereby from the
6 payments made pursuant to this Order;

7 G. Defendant Gustavsen expressly waives his right to litigate the issue of
8 disgorgement. Defendant Gustavsen acknowledges and agrees that all
9 money paid pursuant to this Order is irrevocably paid to the
10 Commission for purposes of settlement between Plaintiff and
11 Defendant Gustavsen; and

12 H. No portion of this payment shall be deemed a fine, penalty or punitive
13 assessment, or forfeiture.

14
15 **V.**

16 **RIGHT TO REOPEN AND TERMINATE SUSPENSION**

17 **IT IS FURTHER ORDERED** that the Commission's agreement to, and the
18 Court's approval of, this Order is expressly premised upon the truthfulness,
19 accuracy, and completeness of the sworn financial statements provided by
20 Defendant Gustavsen to counsel for the Commission on or about August 27, 2002,
21 and the sworn testimony given by Defendant Gustavsen on August 27, 2002, on
22 January 9, 2003, and on January 23, 2003, which contain material information
23 relied upon by the Commission in negotiating and agreeing to the terms of this
24 Order. If, upon motion by the Commission to the Court, the Court finds that
25 Defendant Gustavsen failed to disclose any asset with a value exceeding \$1,000, or
26 materially misrepresented the value of any asset, or made any other material
27 misrepresentation in or omission from the above-referenced financial statements
28 and information, the suspension of the monetary judgment will be terminated and

1 the entire judgment amount of \$2,628,535.00 (two million six hundred twenty eight
2 thousand five hundred thirty five dollars), less any amounts Defendant Gustavsen
3 has previously paid to the Commission including any money obtained by the sale of
4 the La Serna Property as described in paragraph IV. A. or the sale of the BMW, will
5 be immediately due and payable. Should this judgment be modified as to the
6 monetary liability of Defendant Gustavsen, this Order, in all other respects, shall
7 remain in full force. Any proceedings instituted under this Paragraph shall be in
8 addition to, and not in lieu of, any other proceedings the Commission may initiate
9 to enforce this Order. Solely for the purposes of reopening this judgment or
10 enforcing this Paragraph, Defendant Gustavsen waives any right to contest any of
11 the allegations set forth in the Complaint filed in this matter or the monetary
12 judgment referenced above.

13
14 **VI.**
15 **CUSTOMER LISTS**

16 **IT IS FURTHER ORDERED** that Defendant Gustavsen, and his assigns,
17 agents, servants, attorneys, employees, and all other persons or entities in active
18 concert or participation with them who receive actual notice of this Order by
19 personal service or otherwise, whether acting directly or through any corporation,
20 subsidiary, division, or other device, are permanently restrained and enjoined from
21 selling, renting, leasing, transferring, or otherwise disclosing the name, address,
22 telephone number, credit card number, bank account number, e-mail address, or
23 other identifying information of any person who paid any money to the Corporate
24 Defendants at any time; *provided* that such identifying information may be
25 disclosed to a law enforcement agency or as required by any law, regulation, or
26 court order.

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1 **VII.**

2 **CEASE COLLECTIONS NOTICES TO CONSUMERS**

3 **IT IS FURTHER ORDERED** that Defendant Gustavsen, and his assigns,
4 agents, servants, employees, attorneys, and all other persons or entities in active
5 concert or participation with them who receive actual notice of this Order by
6 personal service or otherwise, whether acting directly or through any corporation,
7 subsidiary, division, or other device engaged in debt negotiation services, shall:

- 8 A. Cease all collection efforts on accounts arising from contracts,
9 agreements, or understandings between the Corporate Defendants and
10 consumers, including but not limited to directing all third parties
11 engaged in collection efforts regarding such accounts to cease all such
12 collection activities and to cease furnishing any negative information
13 to any consumer credit reporting agencies;
- 14 B. Within twenty (20) days after the date this Order is entered, return to
15 consumers all uncashed checks or other negotiable instruments, if any,
16 in Defendant Gustavsen's possession that have been received, directly
17 or indirectly, on accounts arising from contracts, agreements, or
18 understandings between the Corporate Defendants and consumers,
19 including with each such returned check or other negotiable instrument
20 a notice to the consumer stating that, as a result of an agreement
21 between Defendant Gustavsen and the Federal Trade Commission
22 settling allegations regarding Defendant Gustavsen's offer for sale and
23 sale of debt negotiation services, those consumers' contracts are
24 rescinded; and
- 25 C. Within sixty (60) days after the date this Order is entered, provide the
26 names and addresses of those consumers to whom checks or other
27 negotiable instruments were returned pursuant to Subsection B above
28 to: Assistant Regional Director, WR-LA, Federal Trade Commission,

1 10877 Wilshire Blvd., Suite 700, Los Angeles, California 90024.

2
3 **VIII.**

4 **ACKNOWLEDGMENT OF RECEIPT**
5 **OF ORDER BY DEFENDANT GUSTAVSEN**

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

9
10 **IX.**

11 **DISTRIBUTION OF ORDER BY DEFENDANT GUSTAVSEN**

12 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the
13 date of entry of this Order, Defendant Gustavsen shall deliver a copy of this Order
14 to the principals, officers, directors, managers and employees under Defendant
15 Gustavsen's control for any business that (a) employs or contracts for personal
16 services from Defendant Gustavsen and (b) has responsibilities with respect to the
17 subject matter of this Order. Defendant Gustavsen shall secure from each such
18 person a signed and dated statement acknowledging receipt of the Order within
19 thirty (30) days after the date of service of the Order or the commencement of the
20 employment relationship.

21
22 **X.**

23 **RECORD KEEPING PROVISIONS**

24 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the
25 date of entry of this Order, in connection with any business where Defendant
26 Gustavsen is the majority owner of the business or directly or indirectly controls the
27

1 business, Defendant Gustavsen and his agents, attorneys, employees, and assigns,
2 and those persons in active concert or participation with them who receive actual
3 notice of this Order by personal service or otherwise, are hereby restrained and
4 enjoined from failing to create and the following records:

- 5 A. Accounting records that reflect the cost of goods or services sold,
6 revenues generated, and the disbursement of such revenues;
- 7 B. Personnel records accurately reflecting: the name, address, and
8 telephone number of each person employed in any capacity by such
9 business, including as an independent contractor; that person's job title
10 or position; the date upon which the person commenced work; and the
11 date and reason for the person's termination, if applicable;
- 12 C. Customer files containing the names, addresses, phone numbers, dollar
13 amounts paid, quantity of items or services purchased, to the extent
14 such information is obtained in the ordinary course of business;
- 15 D. Complaint and refund requests (whether received directly, indirectly or
16 through any third party) and any responses to those complaints or
17 requests; and
- 18 E. Copies of all sales scripts, training materials, advertisements, or other
19 marketing materials.
20

21
22 **XI.**

23 **COMPLIANCE MONITORING**

24 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
25 investigating compliance with any provision of this Order,
26

- 27 A. Within ten (10) days of receipt of written notice from a representative
28

1 of the Commission, Defendant Gustavsen shall submit additional
2 written reports, sworn to under penalty of perjury; produce documents
3 for inspection and copying; appear for deposition; and/or provide entry
4 during normal business hours to any business location in Defendant
5 Gustavsen's possession or direct or indirect control to inspect the
6 business operations;

7 B. In addition, the Commission is authorized to monitor compliance with
8 this Order by all other lawful means, including but not limited to the
9 following:

- 10 1. obtaining discovery from any person, without further leave of
11 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31,
12 33, 34, 36, and 45;
- 13 2. posing as consumers and suppliers to: Defendant Gustavsen's
14 employees, or any other entity managed or controlled in whole
15 or in part by Defendant Gustavsen, without the necessity of
16 identification or prior notice;

17
18 **Provided** that nothing in this Order shall limit the Commission's lawful use of
19 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.
20 §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or
21 information relevant to unfair or deceptive acts or practices in or affecting
22 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

23 C. Defendant Gustavsen shall permit representatives of the Commission
24 to interview any employer, consultant, independent contractor,
25 representative, agent, or employee who has agreed to such an
26 interview, relating in any way to any conduct subject to this Order.
27 The person interviewed may have counsel present.

1 **XII.**

2 **COMPLIANCE REPORTING BY DEFENDANT GUSTAVSEN**

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

5 A. For a period of five (5) years from the date of entry of this Order,

6 1. Defendant Gustavsen shall notify the Commission of the
7 following:

8 a. Any changes in his residence, mailing addresses, and
9 telephone numbers, within ten (10) days of the date of
10 such change;

11 b. Any changes in his employment status (including self-
12 employment) within ten (10) days of the date of such
13 change. Such notice shall include the name and address
14 of each business that Defendant Gustavsen is affiliated
15 with, employed by, or performs services for; a statement
16 of the nature of the business; and a statement of his duties
17 and responsibilities in connection with the business;

18 c. Any changes in his name or use of any aliases or fictitious
19 names; and
20

21 2. Defendant Gustavsen shall notify the Commission of any
22 changes in corporate structure that may affect compliance
23 obligations arising under this Order, including but not limited to
24 a dissolution, assignment, sale, merger, or other action that
25 would result in the emergence of a successor corporation; the
26 creation or dissolution of a subsidiary, parent, or affiliate that
27 engages in any acts or practices subject to this Order; the filing
28

1 of a bankruptcy petition; or a change in the corporate name or
2 address, at least thirty (30) days prior to such change, *provided*
3 that, with respect to any proposed change in the corporation
4 about which Defendant Gustavsen learns less than thirty (30)
5 days prior to the date such action is to take place, he shall notify
6 the Commission as soon as is practicable after obtaining such
7 knowledge.

8 B. One hundred eighty (180) days after the date of entry of this Order,
9 Defendant Gustavsen shall provide a written report to the FTC, sworn
10 to under penalty of perjury, setting forth in detail the manner and form
11 in which he has complied and are complying with this Order. This
12 report shall include, but not be limited to:

- 13 1. Any changes required to be reported pursuant to subparagraph
14 (A) above;
- 15 2. A copy of each acknowledgment of receipt of this Order
16 obtained by Defendant Gustavsen pursuant to Paragraph VIII;

17 C. For the purposes of this Order, Defendant Gustavsen shall, unless
18 otherwise directed by the Commission's authorized representatives,
19 mail all written notifications to the Commission to:
20

21 Assistant Regional Director,
22 Western Region, Los Angeles
23 Federal Trade Commission
24 10877 Wilshire Blvd., Suite 700
Los Angeles, California 90024

25 Re: FTC v. JUBILEE FINANCIAL SERVICES, INC. ET AL,
26 CV NO. 02-6468 ABC (Ex)

27 D. For purposes of the compliance reporting required by this Paragraph,
28

1 the Commission is authorized to communicate directly with Defendant
2 Gustavsen.

3
4 **XIII.**

5 **INDEPENDENCE OF OBLIGATIONS**

6
7 **IT IS FURTHER ORDERED** that the expiration of any requirements
8 imposed by this Order shall not affect any other obligation under this Order.

9
10 **XIV.**

11 **COSTS AND ATTORNEYS' FEES**

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13 **IT IS FURTHER ORDERED** that each party to this Order bear its own
14 costs and attorneys' fees incurred in connection with this action.

15
16 **XV.**

17 **RETENTION OF JURISDICTION**

18
19 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
20 matter for purposes of construction, modification and enforcement of this Order.

21
22 **XVI.**

23 **WAIVER OF CLAIMS**

24
25 **IT IS FURTHER ORDERED** that Defendant Gustavsen waives all claims
26 under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended* by Pub. L.
27 104-121, 110 Stat. 847, 863-64 (1996), and all rights to seek appellate review or
28 otherwise challenge or contest the validity of this Order, or the temporary or

1 preliminary orders entered in this proceeding, and further waives and releases any
2 claim he may have against the FTC, its employees, agents or representatives.

3
4 **XVII.**

5 **ENTRY BY CLERK**

6
7 There being no just reason for delay, the Clerk of the Court is hereby directed
8 to enter this Order.

9 **SO STIPULATED:**

10 Dated: _____, 2003

FEDERAL TRADE COMMISSION

11 _____
12 Jennifer Larabee, Esq.
13 Kenneth H. Abbe, Esq.
14 Attorneys for Plaintiff

15 Dated: _____, 2003

16 _____
17 John Gustavsen, Defendant pro per

18 **IT IS SO ORDERED.**

19
20 Dated: _____

21 _____
22 United States District Judge