

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

LURN, INC., a corporation,

ANIK SINGAL, individually and as an officer of  
LURN, INC.,

TYRONE COHEN, individually, and

DAVID KETTNER, individually,

Defendants.

**Case No. 8:23-cv-02622-AAQ**

**STIPULATED ORDER FOR  
PERMANENT INJUNCTION AND  
OTHER RELIEF**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction, Monetary Relief, and Other Relief (“Complaint”), for a permanent injunction, monetary relief, and other relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108. The Commission and Defendant David Kettner (“Defendant Kettner”) stipulate to the entry of this Stipulated Order for Permanent Injunction and Other Relief (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

**FINDINGS**

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendant Kettner participated in deceptive and

unfair acts or practices that violate Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the advertising, marketing, distribution, and selling of ecommerce programs and courses to consumers throughout the United States.

3. Defendant Kettner neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant Kettner admits the facts necessary to establish jurisdiction.

4. Defendant Kettner waives any claim that he 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 agrees to bear his own costs and attorney fees.

5. Defendant Kettner and the Commission 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:

A. **“Clear(ly) and Conspicuous(ly)”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. This disclosure must not be presented to the consumer through a hyperlink.

9. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

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

1. “**Corporate Defendant**” means Lurn, Inc., and its successors and assigns.

2. **“Individual Defendants”** means Anik Singal, Tyrone Cohen, and David Kettner.

B. **“Earnings Claim”** means any representation, specific or general, about income, revenues, financial gains, percentage gains, profit, net profit, gross profit, or return on investment. Earnings Claims include, but are not limited to: (a) any chart, table, or mathematical calculation that demonstrates possible results based upon a combination of variables; and (b) any statements from which a prospective purchaser can reasonably infer that he or she will earn a minimum level of income (e.g., “earn enough money to buy a Porsche,” “earn a six-figure income,” or “earn your investment back within one year”); and (c) any statements, claims, success stories, endorsements, or testimonials about the performance or profitability of representatives, endorsers, instructors, or customers.

C. **“Investment Opportunity”** includes anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

D. **“Telemarketing”** means any plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule.

## **ORDER**

### **I. PROHIBITION CONCERNING EARNINGS CLAIMS**

IT IS ORDERED that Defendant Kettner, his agents, 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, in connection with promoting or offering for

sale any good or service, are permanently restrained and enjoined from making any Earnings Claims or assisting others in making any Earnings Claims, expressly or by implication, unless:

- A. The Earnings Claims are non-misleading;
- B. At the time the Earnings Claims are made, Defendant Kettner has a reasonable basis for the claims and has in his possession written materials that substantiate them;
- C. To the extent that the Earnings Claims concern the performance or profitability of specific representatives, endorsers, instructors, or customers:
  - 1. Defendant Kettner must Clearly and Conspicuously disclose typical customer results, and have written substantiation for such typical results; and
  - 2. If Defendant Kettner makes any statements characterizing or qualifying the typical results (by saying, for example, “most students do not earn income because they do not complete the program”), Defendant Kettner must have written substantiation for those statements as well;
- D. Defendant Kettner makes the written substantiation for Earnings Claims available upon request to the consumer, potential purchaser, and the FTC; and
- E. Any earnings of Defendant Kettner that forms the basis for the Earnings Claims were achieved in compliance with the law.

## **II. PROHIBITION AGAINST MISREPRESENTATIONS**

IT IS FURTHER ORDERED that Defendant Kettner, his agents, 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, in connection with the advertising, marketing, promoting, offering for sale, or selling of any good or service, are

permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

- A. The description of the good or service;
- B. That any past performance referenced in Defendant Kettner's advertising, marketing, promoting, offering for sale, or selling of any good or service is indicative of future results;
- C. That any testimonials Defendant Kettner uses in the advertising, marketing, promoting, offering for sale, or selling of any good or service reflect the experience that consumers are likely to have using such products or services;
- D. That purchasers or users of Defendant Kettner's products or services will or are likely to achieve substantial profits or earnings;
- E. The risk, earnings potential, or profitability of goods or services that are the subject of a sales offer;
- F. The background, expertise, or other information about the skills or accomplishments of any person whose name or likeness is used in promoting Defendant Kettner's goods or services to prospective purchasers;
- G. The level of experience required for consumers to effectively use Defendant Kettner's goods or services;
- H. The time or effort required for consumers to effectively use Defendant Kettner's goods or services;
- I. That Defendant Kettner's goods or services will be sold to only a limited number of prospective participants;
- J. Any material aspect of the nature or terms of a refund, cancellation, or exchange policy for the good or service; or

- K. Any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions; limitations; or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

### **III. PROHIBITIONS REGARDING TELEMARKETING**

IT IS FURTHER ORDERED that Defendant Kettner, his agents, 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, in connection with Telemarketing of any goods or services are permanently restrained and enjoined from:

- A. Misrepresenting earnings potential or profitability;
- B. Misrepresenting material aspects of an Investment Opportunity;
- C. Misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;
- D. Making a false or misleading statement to induce any person to pay for goods or services; or
- E. Violating any provision of the TSR, 16 C.F.R. Part 310, attached as Attachment A.

### **IV. CUSTOMER INFORMATION**

IT IS FURTHER ORDERED that Defendant Kettner, his agents, employees, 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 directly or indirectly 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, Defendant Kettner must provide it, in the form prescribed by the Commission, within 14 days.

## V. COOPERATION

IT IS FURTHER ORDERED that Defendant Kettner 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. Defendant Kettner must provide truthful and complete information, evidence, and testimony. Defendant Kettner must 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.

## VI. ORDER ACKNOWLEDGMENTS

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

- A. Defendant Kettner, within 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 10 years after entry of this Order, Defendant Kettner, for any business that he, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all 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 Defendant Kettner delivered a copy of



this Order, Defendant Kettner must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

## VII. COMPLIANCE REPORTING

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

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

1. Defendant Kettner 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 Defendant Kettner; (b) identify all of Defendant Kettner'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 Defendant Kettner must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how Defendant Kettner 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, Defendant Kettner 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 Defendant Kettner performs services whether as an employee or otherwise and any entity in which Defendant Kettner has any ownership interest; and (c) describe in detail Defendant

Kettner's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 10 years after entry of this Order, Defendant Kettner must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Defendant Kettner must report any change in: (a) any designated point of contact; or (b) the structure of any entity that Defendant Kettner 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, Defendant Kettner 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 Defendant Kettner performs services whether as an employee or otherwise and any entity in which Defendant Kettner has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Defendant Kettner must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Defendant Kettner 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. Lurn, Inc., Matter No. 2223056.

### **VIII. RECORDKEEPING**

IT IS FURTHER ORDERED that Defendant Kettner must create certain records for 10 years after entry of the Order and retain each such record for 5 years. Specifically, Defendant Kettner for any business that Defendant Kettner, 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; and
- E. a copy of each unique advertisement or other marketing material.

## IX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant Kettner's compliance with this Order 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, Defendant Kettner 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 Defendant Kettner. Defendant Kettner must permit representatives of the Commission to interview any employee or other person affiliated with Defendant Kettner 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 Defendant Kettner or any individual or entity affiliated with Defendant Kettner, 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 Defendant Kettner, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

**X. 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** this \_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**SO STIPULATED AND AGREED:**

**FEDERAL TRADE COMMISSION**



Date: 9/27/03

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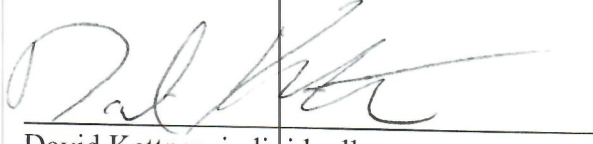
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**DEFENDANT: David Kettner**

  
\_\_\_\_\_  
David Kettner, individually

Date: 8/8/23