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FEDERAL TRADE COMMISSION

8
9 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 BEAM FINANCIAL INC., and

15 YINAN DU,

16 Defendants.
17

Case Number: 3:20-cv-08119-AGT

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

18
19 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its
20 Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”), for
21 a permanent injunction and other equitable relief in this matter, pursuant to
22 Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C.
23 § 53(b). The Commission and Defendants stipulate to the entry of this Stipulated
24

1 Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all
2 matters in dispute in this action between them.

3 THEREFORE, IT IS ORDERED as follows:

4 **FINDINGS**

5 1. This Court has jurisdiction over this matter.

6 2. The Complaint charges that Defendants participated in deceptive acts
7 or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, by
8 advertising a mobile banking application (the “Beam app”) with representations
9 that consumers will have “24/7” access to their money, will have access to their
10 money with “NO LOCKUP,” will have their withdrawn money returned to them in
11 five or fewer business days, and will receive substantial interest rates, including
12 base interest rates on their deposits of at least 0.2% or 1.0%.

13 3. Defendants neither admit nor deny any of the allegations in the
14 Complaint, except as specifically stated in this Order. Only for purposes of this
15 action, Defendants admit the facts necessary to establish jurisdiction.

16 4. Defendants waive any claim that they may have under the Equal
17 Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action
18 through the date of this Order, and agree to bear their own costs and attorney fees.
19 Defendants waive and release any claims that they may have against the
20 Commission that relate to this action.

21 5. Defendants and the Commission waive all rights to appeal or
22 otherwise challenge or contest the validity of this Order.

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DEFINITIONS

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

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

B. **“Corporate Defendant”** means Beam Financial Inc. and its successors and assigns.

C. **“Covered Consumers”** means all consumers with Beam mobile banking application accounts, whether such accounts are open or closed.

D. **“Individual Defendant”** means Yinan Du, a/k/a Aaron Du.

ORDER

I. BAN

IT IS ORDERED that Defendants are permanently restrained and enjoined from advertising, marketing, promoting, offering, or distributing, or assisting in the advertising, marketing, promoting, offering, or distributing of any product or service that can be used to deposit, store, or withdraw funds.

II. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, 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 advertising, marketing, promoting, offering, or distributing any financial product or service are permanently restrained and enjoined from:

- A. making any misrepresentation, expressly or by implication, about
 - 1. consumers’ access to funds, including that:

- 1 i. consumers will have access to, or be able to withdraw, their
- 2 funds “24/7” or “any time”;
- 3 ii. consumers will have access to their funds with “no lockup”;
- 4 ii. consumers will be able to “easily” have funds returned to them;
- 5 and
- 6 iv. funds that consumers request for withdrawal will be or are
- 7 likely to be returned to the consumer within a specified time period.

8 2. any interest rate, rate or return, or compensation, including any
 9 minimum interest rate, rate of return, or compensation; or

10 3. any fact material to consumers concerning such financial product or
 11 service, such as: the total costs; any material restrictions, limitations, or
 12 conditions; or any material aspect of its performance, efficacy, nature, or
 13 central characteristics.

14 B. making any representation, expressly or by implication, about the
 15 performance, efficacy, nature, or central characteristics of such financial product or
 16 service, unless the representation is non-misleading, and, at the time such
 17 representation is made, Defendants possess and rely upon competent and reliable
 18 evidence that is sufficient in quality and quantity to substantiate that the
 19 representation is true.

20 **III. MONETARY PROVISIONS**

21 IT IS FURTHER ORDERED that:

22 A. Defendants relinquish dominion and all legal and equitable right, title, and
 23 interest in all assets transferred pursuant to this Order and may not seek the return
 24 of any assets.

1 B. The facts alleged in the Complaint will be taken as true, without further
2 proof, in any subsequent civil litigation by or on behalf of the Commission,
3 including in a proceeding to enforce its rights to any payment or monetary
4 judgment pursuant to this Order, such as a nondischargeability complaint in any
5 bankruptcy case.

6 C. The facts alleged in the Complaint establish all elements necessary to sustain
7 an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy
8 Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect
9 for such purposes.

10 D. Defendants acknowledge that their Taxpayer Identification Numbers (Social
11 Security Numbers or Employer Identification Numbers), which Defendants must
12 submit to the Commission, may be used for collecting and reporting on any
13 delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

14 **IV. MONETARY RELIEF**

15 IT IS FURTHER ORDERED that Defendants must provide full refunds of
16 the amounts held by or on behalf of Defendants for Covered Consumers (the “Full
17 Refund Amount”), which consisted of at least \$2.6 million on November 15, 2020,
18 as follows:

19 A. Defendants must, within 20 days after the date of this Order, identify and
20 fully refund, by transfer of funds or by check, all amounts due to Covered
21 Consumers not fully refunded prior to the date of this Order.

22 B. Defendants must report on all refunds to Covered Consumers, whether made
23 prior to or subsequent to the date of entry of this Order, under penalty of perjury:
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1 1. Defendants must submit a report after 30 days, after 90 days, and after
2 180 days of the entry of this Order summarizing their compliance to date,
3 including, for each Covered Consumer, the amount held by or on behalf of
4 Defendants for the Covered Consumer on November 15, 2020, the amount
5 and date of all refunds, and contact information. If Defendants were unable
6 to refund the full amount to any Covered Consumer, Defendants must state
7 the refund amount outstanding and the reason or reasons they were unable to
8 refund fully each such Covered Consumer. The report must also include any
9 complaints from Covered Consumers, including regarding refunds or
10 amounts owed.

11 2. Defendants’ report must include refunds to Covered Consumers made
12 prior to the entry of this Order, including the approximately \$2.49 million of
13 the Full Refund Amount represented by a third-party financial services
14 partner of Defendants to have been returned directly to Covered Consumers
15 by that third party, pursuant to a settlement in *Huntington National Bank, et*
16 *al., v. Beam Financial Inc.*, Case No. 20-cv-007172 (Court of Common
17 Pleas, Franklin County), and any refunds to Covered Consumers made
18 directly by Defendants.

19 3. If a representative of the Commission requests any information
20 regarding refunds, including any of the underlying customer data,
21 Defendants must submit it within 14 days of the request.

22 C. If Defendants refund less than the Full Refund Amount, they shall, two
23 hundred days after entry of this Order, remit the balance to the Commission. Such
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1 payment to the Commission must be by electronic fund transfer in accordance with
2 instructions previously provided by a representative of the Commission.

3 D. All money paid to the Commission pursuant to this Order may be deposited
4 into a fund administered by the Commission or its designee to be used for
5 equitable relief, including consumer redress and any attendant expenses for the
6 administration of any redress fund. If a representative of the Commission decides
7 that direct redress to consumers is wholly or partially impracticable or money
8 remains after redress is completed, the Commission may apply any remaining
9 money for such other equitable relief (including consumer information remedies)
10 as it determines to be reasonably related to Defendants' practices alleged in the
11 Complaint. Any money not used for such equitable relief is to be deposited to the
12 U.S. Treasury as disgorgement. Defendants have no right to challenge any actions
13 the Commission or its representatives may take pursuant to this Subsection.

14 **V. CUSTOMER INFORMATION**

15 IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents,
16 employees, and attorneys, and all other persons in active concert or participation
17 with any of them, who receive actual notice of this Order, are permanently
18 restrained and enjoined from directly or indirectly disclosing, using, or benefitting
19 from customer information, including the name, address, telephone number, email
20 address, social security number, other identifying information, or any data that
21 enables access to a customer's account (including a credit card, bank account, or
22 other financial account), that any Defendant obtained prior to entry of this Order in
23 connection with the advertising, marketing, promotion, offering, or distribution of
24 a mobile banking application.

1 **VI. ORDER ACKNOWLEDGMENTS**

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

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

7 B. For 10 years after entry of this Order, each Individual Defendant for any
8 business that such Defendant, individually or collectively with any other
9 Defendants, is the majority owner or controls directly or indirectly, and each
10 Corporate Defendant, must deliver a copy of this Order to: (1) all principals,
11 officers, directors, and LLC managers and members; (2) all employees, agents, and
12 representatives with managerial responsibilities for the conduct specified in
13 Section II; and (3) any business entity resulting from any change in structure as set
14 forth in the Section titled Compliance Reporting. Delivery must occur within 7
15 days of entry of this Order for current personnel. For all others, delivery must
16 occur before they assume their responsibilities.

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

20 **VII. COMPLIANCE REPORTING**

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

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

1 1. Each Defendant must: (a) identify the primary physical, postal, and
2 email address and telephone number, as designated points of contact, which
3 representatives of the Commission may use to communicate with Defendant;
4 (b) identify all of that Defendant’s businesses by all of their names,
5 telephone numbers, and physical, postal, email, and Internet addresses;
6 (c) describe the activities of each business, including the goods and services
7 offered, the means of advertising, marketing, and sales, and the involvement
8 of any other Defendant (which Individual Defendants must describe if they
9 know or should know due to their own involvement); (d) describe in detail
10 whether and how that Defendant is in compliance with each Section of this
11 Order; and (e) provide a copy of each Order Acknowledgment obtained
12 pursuant to this Order, unless previously submitted to the Commission.

13 2. Additionally, each Individual Defendant must: (a) identify all
14 telephone numbers and all physical, postal, email, and Internet addresses,
15 including all residences; (b) identify all business activities, including any
16 business for which such Defendant performs services whether as an
17 employee or otherwise and any entity in which such Defendant has any
18 ownership interest; and (c) describe in detail such Defendant’s involvement
19 in each such business, including title, role, responsibilities, participation,
20 authority, control, and any ownership.

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

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

7 2. Additionally, each Individual Defendant must report any change in:
8 (a) name, including aliases or fictitious name, or residence address; or
9 (b) title or role in any business activity, including any business for which
10 such Defendant performs services whether as an employee or otherwise and
11 any entity of which such Defendant has direct or indirect control, and
12 identify the name, physical address, and any Internet address of the business
13 or entity.

14 C. Each Defendant must submit to the Commission notice of the filing of any
15 bankruptcy petition, insolvency proceeding, or similar proceeding by or against
16 such Defendant within 14 days of its filing.

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

23 E. Unless otherwise directed by a Commission representative in writing, all
24 submissions to the Commission pursuant to this Order must be emailed to

1 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
2 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
3 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
4 subject line must begin: FTC v. Beam Financial Inc.

5 **VIII. RECORDKEEPING**

6 IT IS FURTHER ORDERED that Defendants must create certain records for
7 10 years after entry of the Order, and retain each such record for 5 years.

8 Specifically, Corporate Defendant and each Individual Defendant for any business
9 that such Defendant, individually or collectively with any other Defendants, is a
10 majority owner or controls directly or indirectly, must create and retain the
11 following records:

12 A. accounting records showing all revenues, the costs incurred in generating
13 those revenues, and resulting net profit or loss;

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

17 C. records of all consumer complaints and refund requests, whether received
18 directly or indirectly, such as through a third party, and any response;

19 D. a copy of each unique advertisement or other marketing material making a
20 representation subject to this Order;

21 E. for 5 years from the date of the last dissemination of any representation
22 covered by this Order:

23 1. all materials that were relied upon in making the representation; and
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1 2. all evidence in Defendants' possession, custody, or control that
2 contradicts, qualifies, or otherwise calls into question the representation, or
3 the basis relied upon for the representation, including complaints and other
4 communications with consumers or with governmental or consumer
5 protection organizations;

6 F. for 5 years from the date received, copies of all subpoenas and other
7 communications with law enforcement, if such communication relate to
8 Defendants' compliance with this Order; and

9 G. all records necessary to demonstrate full compliance with each provision of
10 this Order, including all submissions to the Commission.

11 **IX. COMPLIANCE MONITORING**

12 IT IS FURTHER ORDERED that, for the purpose of monitoring
13 Defendants' compliance with this Order:

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

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

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

9 D. Upon written request from a representative of the Commission, any
10 consumer reporting agency must furnish consumer reports concerning Individual
11 Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
12 §1681b(a)(1).

13 **X. RETENTION OF JURISDICTION**

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

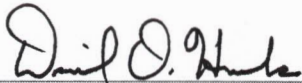
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17 **SO ORDERED this 30 day of March, 2021.**

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21 _____
22 UNITED STATES MAGISTRATE JUDGE
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1 **SO STIPULATED AND AGREED:**

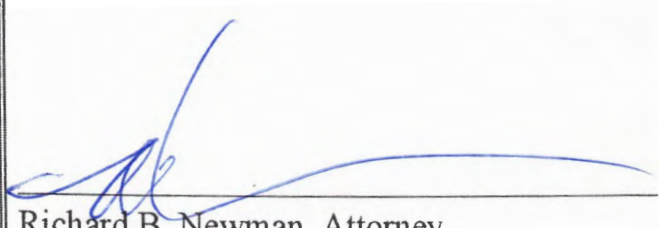
2
3 **FOR PLAINTIFF:**

4 **FEDERAL TRADE COMMISSION**

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1 **FOR DEFENDANTS:**

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Date: 2/1/21

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8 San Diego, CA 92101
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RNewman@HinchNewman.com

Counsel for Beam Financial Inc. and Yinan Du

10 **DEFENDANTS:**

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Date: 2/1/2021

14 Yinan Du, individually,
15 and as an officer of Beam Financial Inc.
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