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Federal Trade Commission

11 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

13 FEDERAL TRADE COMMISSION,

14 Plaintiff,

15 v.

16 COMMERCE PLANET, INC., a
corporation, and MICHAEL Hill,
17 CHARLES GUGLIUZZA, and AARON
GRAVITZ, individually and as
18 Officers of COMMERCE PLANET,

19 Defendants.

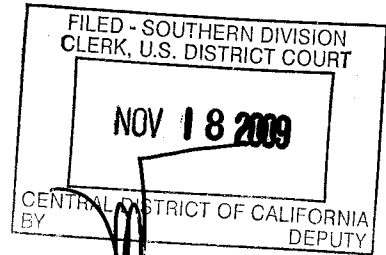
) Case No.

) SACV-09-01324 CJC (RNBx)

) ~~PROPOSED~~
) **FINAL JUDGMENT AND ORDER**
) **FOR PERMANENT INJUNCTION**
) **AND SETTLEMENT OF CLAIMS**
) **FOR MONETARY RELIEF**
) **AGAINST DEFENDANT**
) **MICHAEL HILL**

21 The parties, Plaintiff the Federal Trade Commission
22 ("Commission") and Defendant Michael Hill, having agreed in the
23 Stipulation for Final Judgment and Order for Permanent
24 Injunction and Settlement of Claims for Monetary Relief Against
25 Defendant Michael Hill to the entry of this Order hereby request
26 that the Court enter the same to resolve all matters in dispute
27 in this action. Defendant Michael Hill has waived service of
28 the Summons and Complaint.

FINAL ORDER re MICHAEL HILL



BY FAX

Page 1
ORIGINAL

1 The Court, being advised of the premises, finds

2 **FINDINGS**

3 1. This Court has jurisdiction over the subject matter of
4 this case and jurisdiction over Defendant Hill. Venue in the
5 Central District of California is proper.

6 2. The Complaint states a claim upon which relief may be
7 granted against Defendant Hill, and the Commission has the
8 authority to seek the relief it has requested against Defendant
9 Hill.

10 3. The activities of Defendant Hill were and are in or
11 affecting commerce, as defined in Section 4 of the FTC Act, 15
12 U.S.C. § 44.

13 4. Defendant Hill waives

14 a. all rights to seek review or otherwise challenge or
15 contest the validity of this Order;

16 b. any claim Defendant Hill may have against the
17 Commission, its employees, representatives, or agents;

18 c. all claims under the Equal Access to Justice Act, 28
19 U.S.C. § 2412, as amended by Pub. L. 104-121, 110
20 Stat. 847, 863-64, as of the date of this Order; and

21 d. any rights to attorneys' fees that may have arisen
22 under said provision of law.

23 5. Defendant Hill stipulates and agrees to this Order,
24 without trial or adjudication of any issue of fact or law, to
25 settle and resolve all matters in dispute arising from the
26 Complaint to the date of entry of this Order. Defendant Hill
27 does not admit any of the allegations set forth in the
28 Complaint, other than jurisdictional facts, and denies any and

1 all wrongdoing.

2 6. This action and the relief awarded herein are in
3 addition to, and not in lieu of, other remedies as may be
4 provided by law, including both civil and criminal remedies.

5 7. Entry of this Order is in the public interest.

6 **DEFINITIONS**

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

9 1. **"Billing information"** means any data that enables any
10 person to access a consumer's account, including but
11 not limited to a credit card, checking, savings, share
12 or similar account, utility bill, mortgage loan
13 account, or debit card.

14 2. **"Clear and conspicuous statement"** or statement
15 presented **"clearly and conspicuously"** means

16 a. in print communications, the message shall be in a
17 type size and location sufficiently noticeable for an
18 ordinary consumer to read and comprehend it, in print
19 that contrasts with the background against which it
20 appears;

21 b. in oral communications, the message shall be delivered
22 in a volume and cadence sufficient for an ordinary
23 consumer to hear and comprehend it;

24 c. in communications made through an electronic medium
25 (including but not limited to television, video,
26 radio, and interactive media including but not limited
27 to the Internet, online services and software), the
28 message shall be presented simultaneously in both the

1 audio and visual portions of the communication. In
2 any communication presented solely through visual or
3 audio means, the message may be made through the same
4 means in which the communication is presented. In any
5 communication disseminated by means of an interactive
6 electronic medium, including but not limited to the
7 Internet, online services or software, a disclosure
8 must be unavoidable and presented prior to the
9 consumer incurring any financial obligation. Any
10 audio message shall be delivered in a volume and
11 cadence sufficient for an ordinary consumer to hear
12 and comprehend it. Any visual message shall be of a
13 size and shade, with a degree of contrast to the
14 background against which it appears and shall appear
15 on the screen for a duration and in a location
16 sufficiently noticeable for an ordinary consumer to
17 read and comprehend it; and

18 d. regardless of the medium used to disseminate it, the
19 message shall be in understandable language and
20 syntax. Nothing contrary to, inconsistent with, or in
21 mitigation of the message shall be used in any
22 communication.

23 3. **"Defendant,"** unless otherwise specified, means
24 Defendant Michael J. Hill.

25 4. **"Negative Option Feature"** means, in an offer or
26 agreement to sell or provide any product, program or
27 service, a provision under which the consumer's
28 silence or failure to take an affirmative action to

1 reject products or services or to cancel the agreement
2 is interpreted by the seller or provider as acceptance
3 of the offer. Offers or agreements with negative
4 option features include, but are not limited to

5 a. free or introductory price trial offers in which the
6 consumer receives a product, program or service for
7 free or at a nominal or introductory price for an
8 initial period and will incur an obligation to pay or
9 pay a greater amount for the product, program or
10 service if he or she does not take affirmative action
11 to cancel, reject, or return the product, program or
12 service before the end of that period;

13 b. continuity plans in which, subsequent to the
14 consumer's agreement to the plan, the seller or
15 provider automatically ships products to a consumer
16 unless the consumer notifies the seller or provider
17 within a certain time not to ship the products; and

18 c. automatic renewal plans in which the seller or
19 provider automatically renews the agreement and
20 charges the consumer unless the consumer cancels
21 before the renewal.

22 **I. PROHIBITION ON MISREPRESENTATIONS**

23 **IT IS HEREBY ORDERED** that Defendant Hill, directly or
24 through any partnership, corporation, subsidiary, division or
25 other device, and his officers, agents, servants, employees, and
26 all persons or entities in active concert or participation with
27 him who receive actual notice of this Order by personal service
28 or otherwise, in connection with the advertising, promoting,

1 offering for sale, or sale of any product, program or service,
2 are hereby permanently restrained and enjoined from
3 misrepresenting, or assisting others in misrepresenting,
4 expressly or by implication, any material fact, including but
5 not limited to

- 6 A. That a product, program or service is offered on a
7 "free," "trial," or "no obligation" basis, or words of
8 similar import, denoting or implying the absence of
9 any obligation on the part of the recipient of the
10 offer to affirmatively act in order to avoid charges
11 if, in fact, a charge will be assessed pursuant to the
12 offer unless the consumer takes affirmative action to
13 cancel;
- 14 B. The amount that a consumer will be charged or billed;
- 15 C. That a consumer will not be charged or billed;
- 16 D. The timing or manner of any charge or bill (including
17 but not limited to the date of the charge and whether
18 it will be a credit card charge or a checking account
19 debit);
- 20 E. The length of any trial period that consumers receive
21 before being charged or billed; and
- 22 F. That a consumer purchased or agreed to purchase a
23 product, program or service, or that a transaction has
24 been authorized by a consumer, including but not
25 limited to through mailings, email, billings, credit
26 card charges, and checking account debits.

27 **II. REQUIRED DISCLOSURES**

28 **IT IS FURTHER ORDERED** that Defendant Hill, directly or

1 through any partnership, corporation, subsidiary, division or
2 other device, and his officers, agents, servants, employees, and
3 all persons or entities in active concert or participation with
4 him who receive actual notice of this Order by personal service
5 or otherwise, in connection with the advertising, promoting,
6 offering for sale, or sale of any product, program or service,
7 shall

8 A. Clearly and conspicuously disclose, before consumers
9 are asked to pay money, submit consideration, or
10 reveal billing information

11 1. all fees and costs;

12 2. all material restrictions, limitations, or
13 conditions applicable to the purchase, receipt,
14 or use of the product, program or service that is
15 the subject of the offer (including any promotion
16 associated with free products or services, or
17 products or services available on a trial basis);
18 and

19 3. all material terms and conditions of any offer
20 with a negative option feature, including but not
21 limited to

22 a. the dollar amount of the first payment and
23 when it will be charged, withdrawn, or
24 become due; the dates or frequency (e.g.,
25 monthly, quarterly) of all subsequent
26 charges or payments; and the dollar amount
27 or range of costs of all subsequent charges
28 or payments;

- 1 b. when any trial period begins; the length of
2 any trial period; the specific steps and
3 means by which a cancellation request must
4 be submitted; and the date by or period
5 within which a cancellation request must be
6 received to avoid a charge;
- 7 c. the length of any renewal period; the manner
8 in which a notice not to ship or renew must
9 be submitted; the date by or time period
10 within which a notice not to ship or renew
11 must be received to avoid shipment or
12 renewal (e.g., two weeks after the consumer
13 is advised of an upcoming shipment); and the
14 telephone number, email address, or street
15 address to which such a notice must be
16 directed; and
- 17 d. all material conditions, limitations and
18 restrictions on the ability of the consumer
19 to use any product, program or service that
20 is offered "free," "risk-free," with "no
21 obligation," or "discounted," or words of
22 similar import denoting or implying the
23 absence of any obligation.

24 B. For any transaction involving a service, within the
25 lesser of ten (10) days after the date of the
26 transaction or half the time of any trial period, send
27 the consumer written confirmation of the transaction,
28 either by email or first class mail, clearly and

1 conspicuously identified as such in the email subject
2 line or on the outside of the envelope; such written
3 confirmation shall include clear and conspicuous
4 disclosure of all the information required by
5 Subsection A of this Section and of the procedures by
6 which the consumer can cancel or obtain a refund;

7 C. For any transaction involving a product, provide
8 written confirmation of the transaction with the first
9 product shipment that includes all of the information
10 required by Subsection A of this Section and a clear
11 and conspicuous statement of the procedures by which
12 the consumer can cancel or obtain a refund;

13 D. At least thirty (30) days prior to renewing a
14 consumer's membership, subscription or agreement to
15 purchase for any service (in the case of a membership,
16 subscription or agreement whose term is six (6) months
17 or longer) and prior to the submission for payment of
18 a consumer's billing information for such services,
19 send the consumer written confirmation of such
20 renewal, either by email or first class mail, clearly
21 and conspicuously identified as such in the email
22 subject line or on the outside of the envelope; such
23 written confirmation shall include clear and
24 conspicuous disclosure of all the information required
25 by Subsection A of this Section and of the procedures
26 by which the consumer can cancel or obtain a refund.
27
28

1 recognized as a valid signature under applicable
2 federal law or state contract law); or

3 B. The consumer's express oral authorization to purchase
4 the product, program or service that is the subject of
5 the transaction and the consumer's authorization to
6 assess a charge against a specified account for
7 payment for that product, program or service that is
8 audio-recorded, as follows

- 9 1. the recording must evidence that the consumer,
10 during that transaction, at a minimum, has
11 provided the last four (4) digits of the account
12 number to be charged;
- 13 2. the recording must evidence that the disclosure
14 requirements of the Section entitled "Required
15 Disclosures" have been complied with;
- 16 3. the recording must include the entirety of the
17 transaction;
- 18 4. the recording can be identified and located by
19 either the consumer's name or telephone number;
20 and
- 21 5. a copy of the recording is provided upon request
22 to the consumer, the consumer's bank, credit or
23 debit card company or other billing entity, state
24 attorney general or consumer protection agency,
25 and the Commission.

26 **IV. PROHIBITIONS RELATING TO REFUNDS AND CANCELLATIONS**

27 **IT IS FURTHER ORDERED** that Defendant Hill, directly or
28 through any partnership, corporation, subsidiary, division or

1 be suspended upon the satisfaction of the obligations imposed by
2 Subsections A through D, and subject to the conditions set forth
3 in Section VI of this Order.

4 A. Defendant Hill shall pay to the Commission the sum of
5 two hundred thirty thousand dollars (\$230,000) in
6 equitable monetary relief, including, but not limited
7 to, consumer redress or disgorgement, within 10
8 business days of the entry of this Order;

9 B. Defendant Hill shall pay to the FTC on or by March 10,
10 2010, all money paid to him by Lenco Mobile, Inc., in
11 satisfaction of the promissory note issued to
12 Defendant Hill by Lenco Mobile, a copy of which is
13 included as Attachment A to this Order. In the event
14 Lenco Mobile defaults on said promissory note,
15 Defendant Hill shall assign the promissory note to the
16 FTC;

17 C. Immediately upon entry of this order, Defendant Hill
18 shall assign to the FTC the proceeds of any recovery
19 in the lawsuit *Moser-Downum Investment Group, LLC v.*
20 *Kennedy Funding, Inc. et al*, to which he is entitled
21 pursuant to the Settlement and Mutual Release
22 Agreement described in Attachment B to this Order;

23 D. Immediately upon entry of this order, Defendant Hill
24 shall assign to the Commission the promissory note in
25 the amount of \$200,000 secured by the real property
26 described in Attachment C to this Order. The FTC
27 shall refrain from executing on its lien and security
28 interest in the aforementioned real property until

1 such time as the properties are sold or ownership is
2 otherwise transferred;

3 E. Defendant Hill shall pay to the FTC all money and the
4 fair market value of any goods or services that he
5 receives in satisfaction of any undocumented loan
6 extended by Hill to any individual or business between
7 June 1, 2005 and the date of this Order;

8 F. Any funds received by the Commission pursuant to this
9 Order shall be deposited into a fund administered by
10 the Commission or its agent to be used for equitable
11 relief, including but not limited to consumer redress
12 and any attendant expenses for the administration of
13 any redress funds. In the event that direct redress
14 to consumers is wholly or partially impracticable or
15 funds remain after redress is completed, the
16 Commission may apply any remaining funds for such
17 other equitable relief, including but not limited to
18 consumer information remedies, as the Commission
19 determines to be reasonably related to the practices
20 alleged in the Complaint. Any funds not used for such
21 equitable relief shall be deposited to the U.S.

22 Treasury as equitable disgorgement. Defendant Hill
23 shall have no right to challenge the Commission's
24 choice of remedies or the manner of distribution;

25 G. Defendant Hill agrees that the facts as alleged in the
26 Complaint filed in this action shall be taken as true
27 without further proof in any bankruptcy case or
28 subsequent civil litigation pursued by the Commission

1 to enforce its rights to any payment or money judgment
2 pursuant to this Order, including but not limited to a
3 nondischargeability complaint in any bankruptcy case;
4 Defendant further stipulates and agrees that the facts
5 alleged in the Complaint establish all elements
6 necessary to sustain an action pursuant to Section
7 523(a) (2) (A) of the Bankruptcy Code, 11 U.S.C.
8 § 523(a) (2) (A);

9 H. The judgment entered pursuant to this Section V is
10 equitable monetary relief, solely remedial in nature,
11 and not a fine, penalty, punitive assessment or
12 forfeiture;

13 I. Defendant Hill relinquishes all dominion, control and
14 title to the funds paid to the fullest extent
15 permitted by law. Defendant shall make no claim to or
16 demand return of the funds, directly or indirectly,
17 through counsel or otherwise;

18 J. Upon request, Defendant Hill is hereby required, in
19 accordance with 31 U.S.C. § 7701, to furnish to the
20 Commission his tax identification number, which shall
21 be used for purposes of collecting and reporting on
22 any delinquent amount arising out of this Order;

23 K. Pursuant to Section 604(1) of the Fair Credit
24 Reporting Act, 15 U.S.C. § 1681b(1), any consumer
25 reporting agency may furnish a consumer report
26 concerning Defendant Hill to the Commission, which
27 shall be used for purposes of collecting and reporting
28 on any delinquent amount arising out of this Order.

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VI. RIGHT TO REOPEN

IT IS FURTHER ORDERED that the Commission's agreement to, and the Court's approval of, this Order are expressly premised on the truthfulness, accuracy and completeness of the financial statements dated February 10 and March 20, 2009 that Defendant Hill has submitted to the Commission. If, upon motion by the Commission, the Court finds that his financial statement contains any material misrepresentation or omission, the suspended judgment entered in Section V, above, shall become immediately due and payable, less any amounts turned over to the Commission pursuant to Section V, above, plus interest from the date of entry of this Order as allowed by law; *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 Commission may initiate to enforce this Order. For purposes of this Section VI, Defendant Hill waives any right to contest any of the allegations in the Complaint.

1 **VII. MONITORING TO ENSURE COMPLIANCE WITH THE ORDER**

2 **IT IS FURTHER ORDERED** that Defendant Hill, directly or
3 through any partnership, corporation, subsidiary, division or
4 other device, and his officers, agents, servants, employees, and
5 all persons or entities in active concert or participation with
6 him who receive actual notice of this Order by personal service
7 or otherwise, in connection with the advertising, promoting,
8 offering for sale, or sale of any product, program or service,
9 are hereby permanently restrained and enjoined from failing to
10 take all reasonable steps sufficient to monitor and ensure that
11 all Defendant's agents, representatives, employees, independent
12 contractors, and contract telemarketers comply with the
13 requirements of this Order. Such reasonable steps shall
14 include, but are not limited to

- 15 A. Establishing and following a procedure for receiving
16 and responding to consumer complaints that allege
17 conduct that constitutes a violation of the FTC Act or
18 this Order;
- 19 B. Ascertaining the number and nature of consumer
20 complaints in which each employee or independent
21 contractor is involved;
- 22 C. Promptly and fully investigating any consumer
23 complaint; and
- 24 D. Creating and retaining records demonstrating
25 compliance with this Section, as required by Section
26 X, including but not limited to, copies of all
27 procedures for receiving and responding to consumer
28 complaints, all documents relating to investigations

1 of consumer complaints, and all documents
2 demonstrating how each consumer complaint is responded
3 to or addressed; *provided, however,* that this
4 subsection does not authorize or require any action
5 that violates any federal, state, or local law.

6
7 **VIII. PROHIBITION ON COLLECTION OF PAYMENTS AND
DISCLOSURE OF CUSTOMER INFORMATION**

8 **IT IS FURTHER ORDERED** that Defendant Hill, directly or
9 through any partnership, corporation, subsidiary, division or
10 other device, and his officers, agents, servants, employees, and
11 all persons or entities in active concert or participation with
12 him who receive actual notice of this Order by personal service
13 or otherwise, in connection with the advertising, promoting,
14 offering for sale, or sale of any product, program or service by
15 means of a negative option feature, are hereby permanently
16 restrained and enjoined from

17 A. Causing any withdrawal, assessment of a fee, or
18 payment to be made against any consumer account, or
19 otherwise causing collection of, or attempts to
20 collect, payment, directly or indirectly, from a
21 consumer, for any order for any such product, program
22 or service offered or provided to consumers, where the
23 purported authorization for such order occurred prior
24 to the effective date of this Order, without first
25 obtaining from the consumer express informed consent
26 for such order that complies with the requirements of
27 Section III of this Order; and

28 B. Selling, renting, leasing, transferring or otherwise

1 disclosing the name, address, birth date, telephone
2 number, email address, Social Security number, credit
3 or debit card number, bank account number, or other
4 financial or identifying personal information of any
5 person from whom or about whom such information was
6 obtained in connection with activities alleged in the
7 Complaint prior to April 1, 2008; *provided, however,*
8 that such financial or identifying personal
9 information may be disclosed to a law enforcement
10 agency or as required by any law, regulation, or court
11 order.

12 **IX. COMPLIANCE MONITORING**

13 **IT IS FURTHER ORDERED** that, for the purpose of (1)
14 monitoring and investigating compliance with any provision of
15 this Order and (2) investigating the accuracy of Defendant's
16 financial statement upon which the Commission's agreement to
17 this Order is expressly premised:

18 A. Within ten (10) days of receipt of written notice from
19 a representative of the Commission, Defendant Hill
20 shall submit additional written reports, which are
21 true and accurate and sworn to under penalty of
22 perjury; produce documents for inspection and copying;
23 appear for deposition; and provide entry during normal
24 business hours to any business location in his
25 possession or direct or indirect control, to inspect
26 the business operation;

27 B. In addition, the Commission is authorized to use all
28 other lawful means, including but not limited to:

- 1 1. obtaining discovery from any person, without
2 further leave of court, using the procedures
3 prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,
4 45, and 69;
5 2. posing as consumers and suppliers to Defendant
6 Hill, or any other entity managed or controlled
7 in whole or in part by Defendant Hill, or their
8 employees, without the necessity of
9 identification or prior notice; and

10 C. Defendant Hill shall permit representatives of the
11 Commission to interview any employer, consultant,
12 independent contractor, representative, agent, or
13 employee who has agreed to such an interview, relating
14 in any way to any conduct subject to this Order. The
15 person interviewed may have counsel present;

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

23 **X. COMPLIANCE REPORTING BY DEFENDANT**

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

- 26 A. For a period of three (3) years from the date of entry
27 of this Order, Defendant Hill shall notify the
28 Commission of the following:

- 1 1. Any changes in his residence, mailing addresses,
2 and telephone numbers, within ten (10) days of
3 the date of such change;
- 4 2. Any changes in his employment status (including
5 self-employment), and any change in his ownership
6 in any business entity, within ten (10) days of
7 the date of such change. Such notice shall
8 include the name and address of each business
9 that he is affiliated with, employed by, creates
10 or forms, or performs services for; a detailed
11 description of the nature of the business; and a
12 detailed description of his duties and
13 responsibilities in connection with the business
14 or employment; and
- 15 3. Any changes in his name or use of any aliases or
16 fictitious names; and
- 17 4. Any changes in structure of any business entity
18 that Defendant Hill directly or indirectly
19 controls, or has an ownership interest in, that
20 may affect compliance obligations arising under
21 this Order, including but not limited to
22 incorporation or other organization; a
23 dissolution, assignment, sale, merger, or other
24 action that would result in the emergence of a
25 successor entity; the creation or dissolution of
26 a subsidiary, parent, or affiliate that engages
27 in any acts or practices subject to this Order;
28 or a change in the business name or address, at

1 least thirty (30) days prior to such change;
2 *provided, however,* that, with respect to any
3 proposed change in the business entity about
4 which Defendant Hill learns less than thirty (30)
5 days prior to the date such action is to take
6 place, Defendant Hill shall notify the Commission
7 as soon as is practicable after obtaining such
8 knowledge.

9 B. One hundred eighty (180) days after the date of entry
10 of this Order and annually thereafter for a period of
11 three (3) years, Defendant Hill shall provide a
12 written report to the Commission, which is true and
13 accurate and sworn to under penalty of perjury,
14 setting forth in detail the manner and form in which
15 he has complied and is complying with this Order.

16 This report shall include, but not be limited to

- 17 1. His then-current residence address, mailing
18 addresses, and telephone numbers;
- 19 2. His then-current employment status (including
20 self-employment), including the name, addresses,
21 and telephone numbers of each business that he is
22 affiliated with, employed by, or performs
23 services for; a detailed description of the
24 nature of the business; and a detailed
25 description of his duties and responsibilities in
26 connection with the business or employment;
- 27 3. a copy of each acknowledgment of receipt of this
28 Order obtained pursuant to Section XI; and

1 4. any other changes required to be reported under
2 subparagraph A of this Section IX;

3 C. Defendant Hill shall notify the Commission of the
4 filing of a bankruptcy petition within fifteen (15)
5 days of filing;

6 D. For the purposes of this Order, Defendant Hill shall,
7 unless otherwise directed by the Commission's
8 authorized representatives, send by overnight courier
9 all reports and notifications required by this Order
10 to the Commission to the following address:

11 Associate Director for Enforcement
12 Federal Trade Commission
13 600 Pennsylvania Avenue, N.W., Room NJ-2122
14 Washington, D.C. 20580
15 RE: FTC v. Commerce Planet, Inc.;

16 *Provided* that, in lieu of overnight courier, Defendant
17 Hill may send such reports or notifications by first-
18 class mail, but only if he contemporaneously sends an
19 electronic version of such report or notification to
20 the Commission at DEBrief@ftc.gov; and

21 E. For purposes of the compliance reporting and
22 monitoring required by this Order, the Commission is
23 authorized to communicate with Defendant Hill or, at
24 Defendant Hill's request, his counsel.

25 **XI. RECORD KEEPING PROVISIONS**

26 **IT IS FURTHER ORDERED** that, for a period of six (6) years
27 from the date of entry of this Order, in connection with any
28 business which is managed or controlled in whole or in part by
29 Defendant Hill and which is engaged in recurring billing of
30 consumers, Defendant Hill and his agents, servants, employees,

1 and those persons in active concert or participation with him,
2 whether acting directly or through any sole proprietorship,
3 partnership, limited liability company, corporation, subsidiary,
4 branch, division, or other entity, who receive actual notice of
5 this Order by personal service or otherwise, are hereby
6 restrained and enjoined from failing to create and retain the
7 following records:

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

1 full compliance with each provision of this Order,
2 including but not limited to, copies of all procedures
3 for receiving and responding to consumer complaints,
4 all documents relating to investigations of consumer
5 complaints, and all documents demonstrating how each
6 consumer complaint was responded to or addressed,
7 required by Section VII; acknowledgments of receipt of
8 this Order, required by Sections XI and XII; and all
9 reports submitted to the Commission pursuant to
10 Section X.

11 **XII. DISTRIBUTION OF ORDER BY DEFENDANT**

12 **IT IS FURTHER ORDERED** that, for a period of five (5) years
13 from the date of entry of this Order, Defendant Hill shall
14 deliver copies of this Order as directed below:

- 15 A. For any business that Defendant Hill controls,
16 directly or indirectly, or in which Defendant Hill has
17 a majority ownership interest, Defendant Hill must
18 deliver a copy of this Order to (1) all principals,
19 officers, directors, and managers of that business;
20 (2) all employees, agents, and representatives of that
21 business who engage in conduct related to the subject
22 matter of the Order; and (3) any business entity
23 resulting from any change in structure set forth in
24 Subsection A.4 of the Section entitled "Compliance
25 Reporting by Defendant." For current personnel,
26 delivery shall be within five (5) days of service of
27 this Order upon Defendant Hill. For new personnel,
28 delivery shall occur prior to them assuming their

1 responsibilities. For any business entity resulting
2 from any change in structure set forth in Subsection
3 A.4 of the Section entitled "Compliance Reporting by
4 Defendant," delivery shall be at least ten (10) days
5 prior to the change in structure.

6 B. For any business where Defendant Hill is not a
7 controlling person of a business but otherwise engages
8 in conduct related to the subject matter of this
9 Order, Defendant Hill must deliver a copy of this
10 Order to all principals and managers of such business
11 before engaging in such conduct.

12 C. Defendant Hill must secure a signed and dated
13 statement acknowledging receipt of the Order, within
14 thirty (30) days of delivery, from all persons
15 receiving a copy of the Order pursuant to this
16 Section.

17 XIII. COOPERATION WITH FTC COUNSEL

18 **IT IS FURTHER ORDERED** that Defendant Hill shall, in
19 connection with this action or any subsequent investigations
20 related to or associated with the transactions or the
21 occurrences that are the subject of the FTC's Complaint,
22 cooperate in good faith with the FTC and appear at such places
23 and times as the FTC shall reasonably request, after written
24 notice, for interviews, conferences, pretrial discovery, review
25 of documents, and for such other matters as may be reasonably
26 requested by the FTC. If requested in writing by the FTC,
27 Defendant Hill shall appear and provide truthful testimony in
28 any trial, deposition, or other proceeding related to or

1 associated with the transactions or the occurrences that are the
2 subject of the Complaint, without the service of a subpoena.

3 **XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

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

8 **XV. RETENTION OF JURISDICTION**

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

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13 **IT IS SO ORDERED**, this *17th* day of
14 *November*, 2009.

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17 Honorable Cormac J. Carney
18 United States District Judge
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Attachment A

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Pages 29 - 35 Redacted

Attachment B

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Pages 37 - 52 Redacted

Attachment C

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Pages 54 - 58 Redacted