UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
                  Julie Brill
                  Maureen K. Ohlhausen
                  Joshua D. Wright
                  Terrell McSweeny

In the Matter of	)
	)
	)
Jerk, LLC, a limited liability company,	)
also d/b/a JERK.COM, and	) DOCKET NO. 9361
	)
John Fanning,	)
individually and as a member of	)
Jerk, LLC.	)
	)
	)

EXHIBITS TO COMPLAINT COUNSEL'S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE FOR TRIAL

VOLUME 8

CX0402

EXHIBIT A

NEW ACCOUNT PROCEDURES
Dedicated Server

APPROVAL:
- ✓ Approved by Management ████
- ___ Approved by Accounting _____
- ___ Verify Identity _____
- ___ Government ID _____
- ___ Credit Card _____

PAYMENT AND ACCOUNT SET-UP:
- ___ Create Account _____
- ___ Create Invoice _____
- ___ Set Agent to Sales Rep or Partner _____
- ___ Memorize Transaction for Next Billing
- ___ Receive Payment
- ___ Add Account to CRM
- ___ Log Agent Commissions (if Applicable)

PROVISIONING
- ✓ Assign Datacenter *AVL*
- ✓ Order Hardware *JOCK*
- ✓ Assign Hardware (Mach Name) *AVL 1020*
- ___ Allocate Server IP Addresses _____
  - *208.69.231.6*
- ✓ Allocate Switch Port(s) *SW1 - P3*
- ✓ Rack Location _____
- ___ Test Hardware
- ___ Monitoring _____
- ___ Send Email/Welcome Kit

ACCOUNT FINALIZATION
- ___ Send Thank You Letter
- ___ Scan and File Paperwor *t3mp!*

ch@ng3m3

portslV

CX0402-002

netriplex

SERVICE ORDER FORM

International Headquarters

Representative: ███████

CUSTOMER INFORMATION

Company Name: Netcapital.com LLC.
Phone:
FAX:
New Customer [X]
Existing Customer [ ]
Order Date: 11/1/2006
Requested Install Date: 11/4/2006

Service Address: ███████
City: ███████
State: ███ Zip: ███

Billing Address: ███████
City: ███
State: ███ Zip: ███

Administrative Contact: John W Fanning
Phone: ███████

Technical Contact: John W Fanning
Phone: ███████
Email:

Billing Contact: John W Fanning
Phone: ███████ .com

Emergency Contact: John W Fanning
Phone: ███████
Pager: ███████

User Name:
Password:
How many IP addresses are needed:
Domain Name:

SERVICES ORDERED

[ ] Shared	[ ] Custom Dedicated
[ ] Virtual Ded.	[ ] Application Hosting
[X] Dedicated	[ ] Co-Location
[ ] Other	

Space:	NA	
Monthly Service Fee:	$	99.00
One-time set-up Fee:	$	99.00
Total cost for first month:	$	198.00

Hardware Specifications / Service Inclusions
Promo Package, 2000GB/Month PE SC420, 2Gig SDRAM, P3.0, 100Mbps Burst, 3 IP, Support, 10GB Backup , 5 Tests

Length of Service Agreement: Month to Month

Federal Tax ID# or Social Security# of responsible party:
███████

Credit Card Info (Visa, Mastercard, American Express or Discover)

Card Number: ███████
Expiration:
Name On Card: ███
Billing Address: ███████

Bill Credit Card each month:	[X] YES	[ ] NO
Invoice Quarterly (in advance)	[ ] YES	[X] NO
Invoice Annually (in advance)	[ ] YES	[X] NO
(10% discount extended for annual pre-pay)		

CLIENT APPROVAL

John W Fann
Printed Name
John W Fan
Signature
Chairman
Title/Position
11/1/2006
Date

NETRIPLEX APPROVAL

Printed ███████
Signature
CTO
Title/Position
~~Oct~~ Nov 1, 2006
Date

CX0402-003

Service Agreement

EBUSINESS HOSTING SOLUTIONS SERVICE SUBSCRIPTION AGREEMENT

1. HOSTING SERVICES. Host will provide connection to all organizations and individuals who agree to abide by Host's access terms, conditions, and fee schedules.

User is responsible for providing any equipment and/or software necessary to access Host's system and Internet facilities, unless otherwise provided for in this Agreement.

User is entitled to use any Internet services and time-share computer software provided by Host. User is responsible for any licensing fees for any "shareware" products provided by Host to User.

Host will provide the Hosting services provided in the service package chosen by User, and set forth on page one of the Service Order Form, including a server or space on a shared server, connection of the server to Host's high-speed Internet connection, backup of the server's hard disk and other maintenance on the server, domain name, e-mail, and file transfer services as provided in the chosen service package, automated server monitoring and limited log file generation and access. All equipment provided by Host shall remain Host's property.

The services and software offered are subject to change and limitation at Host's discretion, as is any pricing schedule. Host will notify User of any changes by electronic or postal mail to the agent named in this Agreement or other User officer a minimum of 14 days in advance, unless the change is judged by Host to be necessary to preserve proper security or functioning of Host's system. If User objects to any change in service, unless the change is one Host has determined is necessary for security purposes or to maintain proper operation of Host's system, User will be entitled to cancel its account.

User's continued use of the Hosting services after the effective date of such modified general terms and conditions, policies, or changes in services or software will constitute User's acceptance of such modified terms.

This Agreement covers only Internet services and any time-share software related to the provision of Internet services, Dedicated Hosting services, and any ancillary services such as domain name service and electronic mail.

2. FEES. User will pay (a) subscription fees in advance, (b) fees for other goods or services as invoiced, and (c) any security deposit, in each case per the applicable price schedule set forth on page one of the Service Order Form.

3. TERMINATION AND REINSTATEMENT. This Agreement may be terminated by either party on not less than 30-days prior written notice.

If User (a) becomes bankrupt or otherwise insolvent or (b) fails to pay for services rendered in accordance with the terms hereof or (c) commits any other breach of this Agreement, Host may, at its sole discretion and without notice or judicial intervention, discontinue performance and terminate this Agreement for default and pursue any other remedies available at law or in equity.

If User's account is suspended due to lack of payment, User will pay the then current reinstatement fee, in addition to all other charges then due and payable, prior to restoration of service.

4. CUSTOMER SUPPORT. Host will provide to User reasonable amounts of consultation via telephone and/or electronic mail in the use of the system, but cannot promise to assist with any services that are not maintained or controlled by Host.

5. DISCLAIMER AND LIMITATION OF LIABILITY. With the exception of any express warranty herein, neither Host, nor its affiliates (hereinafter "Host"), nor its suppliers make any warranty, and each of them disclaims any liability, with respect to:

(a) the accuracy, completeness, currentness, error-free nature, or fitness for any particular purpose of any data or services accessed on or through the Host system, or

(b) system performance levels, including but not limited to resource utilization, response time or overhead, unless such a performance guarantee is part of the chosen Hosting services package represented by a SLA, or

(c) any loss or inconvenience associated with Host's suspension, termination, or deletion of User's account, or

Client Initials:

CX0402-004

(d) ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

NO ORAL ADVICE OR WRITTEN ADVICE GIVEN BY HOST OR ITS STAFF OR AGENTS SHALL CREATE A WARRANTY.

Host will not be liable for delay in delivery or performance of hosting or design services, and is excused from any failure to deliver or perform, due to causes beyond its reasonable control unless a specific level of service is guaranteed via a SLA.

Host will not be liable for any damage or inconvenience caused by any necessary or scheduled maintenance to Host's system, or for any service lapses or loss of customer data caused by forces beyond Host's reasonable control. Host recommends that User make archival copies or otherwise download any important information stored on Host's system, in addition to any backups Host may perform.

THE SOLE AND ENTIRE MAXIMUM LIABILITY OF HOST TO ANY USER FOR ANY AND ALL PROVEN LOSS, CLAIM, DAMAGE OR LIABILITY OF ANY KIND (INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT) WITH RESPECT TO ALL SERVICES PROVIDED BY HOST AND ANY ACT OR OMISSION OF HOST WILL CONSIST OF A DUTY TO REFUND NOT MORE THAN THE AMOUNTS PAID BY THE USER TO HOST DURING THE YEAR PRECEDING SUCH LOSS, CLAIM, DAMAGE OR LIABILITY. IN NO EVENT WILL HOST BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

User, by signing this Agreement or connecting to the Host system, (a) accepts the use of the system/interconnection (including any programs, data, or services) "AS IS"; and (b) waives any and all claims relating thereto, whether such claims are against Host or any of its suppliers or affiliates.

Should any legal action or threat of legal action result as a result of User's use, or of any of Host's system, interconnection facilities, or services, User agrees to indemnify Host, its staff, or Host's other Users, for any costs incurred in defending against any such threat or action, including reasonable attorneys' fees and any equipment replacement costs, even if User is no longer a customer of Host when such expenses arise. This clause also applies to third party claims as well as any legal action taken by Host against User for breach of this Agreement, damage caused by User to Host's system, or for failure to pay expenses User is obligated to pay Host.

G. USE RESTRICTIONS AND INDEMNIFICATION. User agrees to adhere to Host's "Acceptable Use Policy", a copy of which is attached to this Agreement, and which policy may be changed from time to time - User agrees to adhere to all such changes it has notice of.

User will indemnify and hold Host harmless from any costs, expenses (including reasonable attorneys fees) or liability resulting from any claim based on User's use of the system. Such indemnification will not be applicable with respect to claims of gross negligence, willful misconduct or infringement by Host. Such indemnity will survive the termination or expiration of this Agreement.

7. GENERAL. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of this Agreement or any provision thereof. If any provision of the Agreement is or becomes illegal or otherwise unenforceable, such provision will not invalidate the other provisions hereof, provided if Host determines that any such unenforceable provision is essential, it may terminate this Agreement upon notice.

User grants any permissions or licenses (including but not limited to copyright licenses), as may be required, and within User's power to grant, to Host in order to provide Internet and related services to User, or as may be required for Host to operate for User's benefit.

This Agreement is governed by the laws of the State of New Hampshire. The parties agree that the courts (state and federal) located in New Hampshire, will have non-exclusive jurisdiction to determine the validity, construction and performance of this Agreement and the legal relations between the parties.

This Agreement constitutes the entire Agreement between Host and User, and supersedes all prior agreements, proposals, representations, or other communications, relative to the subject matter hereof. Paragraph headings are included for convenience and are not to be used to interpret this Agreement.

Client Initials: _____

This Agreement may not be assigned by User with the written consent of Host.

8. CHANGES IN LEGISLATION. Should any changes in legislation require any changes to this Agreement or any services provided by Host, Host reserves the right to make any such changes, as are determined necessary or prudent, at Host's sole discretion, without giving User advanced notice. If such changes are made, Host promises to send by electronic or postal mail notice of any changes in a reasonable time period. In event of such changes, User may terminate service without the required 30 day notice, but is not entitled to a refund of any payments already made for services.

Client Initials: _____

Form Rev. 03.10.p

CX0402-006

Service Level Agreement (SLA)

30 Day Satisfaction Guarantee: Netriplex guarantees all services and rented hardware with a 30 day satisfaction guarantee. If you are not completely satisfied with the level of service or rented hardware within the first 30 days from contract execution, you may cancel the remainder of the contract without any further recourse or amounts due. To satisfy the 30 day satisfaction guarantee, you must present a written statement of dissatisfaction to our accounting department prior to the expiration of 30 days from the date of contract execution. Setup fees and first month recurring fees are non-refundable.

Service Credits: service credits are available for services contracted for, but not delivered according to the service level agreement. Service credits are not available to customers more than 30 days in arrears on their billing cycle. Valid approved service credits will appear as a credit for services on the next billable invoice. Service credits shall not result in monies paid by Netriplex directly to the customer. All service credit requests must be in writing and emailed directly to billing@netriplex.com within 10 days from the date of the service level failure. Failure to request a service credit within 10 days of the service failure will result in an automatic waiver of any rights under the Master Service Level Agreement. Normal scheduled maintenance and upgrades are not covered in the uptime guarantee.

100% Network Guarantee: Netriplex offers a 100% uptime guarantee on all network related services (i.e. bandwidth, routers, switches, servers and cabling,). The 100% uptime guarantee is applicable to all network services delivered to customer. Customer generated outages created by failed equipment (if collocated), exploited/hacked servers, misconfigurations or traffic in excess of the maximum allowed by contract are not subject to the SLA. Service credits are based directly on all equipment and/or services affected by a network outage. Services or hardware not related to the network outage will not qualify for a service credit.

Performance: Netriplex guarantees a maximum average 40ms (milliseconds) network route from the input connection to the customer equipment through the internal network and out to the first BGP peer calculated over a 24 hour period.

Availability: Netriplex guarantees 100% uptime on all redundant internet connectivity. Connectivity is measured as traffic routing into and out of rented customer equipment through the internal network out to internet carriers. Netriplex does not guarantee third party carrier latency or peering problems not utilized by Netriplex.

Power Guarantee: Netriplex guarantees a 100% uptime on all power located in the datacenter area for customer use. Power is defined as TXU supplied power and alternate power via UPS battery backup power and generator supplied power.

Hardware Guarantee: Netriplex guarantees all rented hardware components and will replace any failed component at no cost to the customer. Hardware replacement will begin immediately upon identification of the hardware failure and is guaranteed to be complete within 2 hours of problem identification. Hardware is defined as the routers, switches, disk arrays, tape backup systems, processors, RAM, hard disks, motherboards, NIC cards, power supplies, raid controllers, and any other hardware rented through Netriplex.

Scheduled Maintenance: The scheduled maintenance and upgrade window for all customers are limited to Sunday(s) only and will be performed from 2:00am to 4:00am eastern standard time. Notification from Netriplex administrative staff will occur at least 3 days prior to work performed. Notification failure of normal (non-emergency) maintenance by Netriplex staff will result an application of the uptime guarantee.

Netriplex shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to external circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of interruption or delay in telecommunications, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services. Netriplex agrees to exercise reasonable care to prevent such occurrences; however, under no circumstances will Netriplex be held liable for any financial or other damages due to such interruptions. In no event shall Netriplex be liable to Customer or any other person for any special, incidental, consequential or punitive damages of any kind, including, without limitation, refunds of fees, loss of profits, cost of cover, loss of income or cost of replacement services.

Acceptable Use Policy

1. LEGAL USES. Host's system and services may not be used in any way which violates Federal, State, Local, or International law. This prohibits, but is not limited to, any actions which are threatening, obscene, defamatory, or which violate trade secret, copyright or patent protection, or rights of privacy or publicity, or which result in the spread of computer viruses or other damaging programs or data files, or which violate any export restrictions (including making non-exportable information or software available to foreign nationals as may be prohibited by law). In the event User is suspected of any such violation, Host reserves the right to immediately suspend or terminate User's account.

2. NETWORK TRANSMISSIONS. User is responsible for any materials passed via Host's system to other networks, and agrees to comply with any restrictions posed by the other network's terms of service or acceptable use policies.

3. PROHIBITED MATERIALS. User is strictly forbidden from hosting websites that contain pornographic materials or that send Unsolicited Commercial Email (UCE) otherwise known as SPAM.

4. CONFIDENTIALITY. Host will protect to the best of its ability the confidentiality of any files and electronic mail stored on or exchanged over the system, except as may be necessary to provide the requested Internet services, or as may be necessary to preserve the security and proper operation of Host's system, or to protect Host's rights or property.

Host, except as otherwise provided for in this Agreement or as required by law, will use its best efforts to avoid disclosing the contents of private electronic mail to anyone other than addressees, authorized recipients, or those to whom such disclosure is necessary to assure forwarding or delivery.

User acknowledges that no system on the Internet can be guaranteed safe from unauthorized intrusion, and therefore any confidential information stored on or transmitted through Host's system is stored or transmitted at User's own risk.

5. SECURITY CONCERNS. User is responsible for choosing a secure password and for keeping it secret.

User may not attempt to bypass any security mechanisms in place on Host's system, or use any of Host's systems or services to attempt to bypass any security mechanisms in place on any remote system. This includes, but is not limited to, port scanning, running any password cracking software, or attempting to access a system which any user knows or reasonably should know he or she is not authorized to access in the manner or to the extent attempted.

6. COPYRIGHT ISSUES. User agrees not to upload to, download from, make available for public access on, or transmit through Host's system any copyrighted material in violation of the copyright owner's rights in that material. By uploading, downloading, making available for public access, or transmitting any copyright-protected material, User warrants that User has the proper authorization to make or authorize the making of any copies involved with such uploading, downloading, making available for public access, or transmission. Unauthorized copying, or authorizing the copying of protected works in excess of any legal right through Host's system is a violation of federal law and international treaties, and may result in not only termination of User's account, but also may result in civil and/or criminal fines and prison sentences.

User agrees not to remove any copyright ownership information, or falsify such information, on any files uploaded, downloaded, made publicly available through, or transmitted via Host's system.

User explicitly licenses Host to make any copies of copyright protected materials necessary to provide Internet and related services to User, as well as make any necessary copies necessary to preserve and maintain Host's system and User's files and electronic mail.

User explicitly licenses Host to make any copies, without limitation, of any copyrighted materials submitted to a public forum maintained on Host's system, or submitted to any forum to which Host provides access. This clause cannot be modified by either party unless any modification is in writing and signed by both parties.

NEW ACCOUNT PROCEDURES
Dedicated Server

APPROVAL:
- ✓ Approved by Management ███████████
- ___ Approved by Accounting _____
- ___ Verify Identity _____
- ___ Government ID _____
- ___ Credit Card _____

PAYMENT AND ACCOUNT SET-UP:
- ___ Create Account _____
- ___ Create Invoice _____
- ___ Set Agent to Sales Rep or Partner _____
- ___ Memorize Transaction for Next Billing
- ___ Receive Payment
- ___ Add Account to CRM
- ___ Log Agent Commissions (if Applicable)

PROVISIONING
- ✓ Assign Datacenter AVL
- ___ Order Hardware _____
- ✓ Assign Hardware (Mach Name) AVL 1021, AVL1022
- ✓ Allocate Server IP Addresses _____
  108.69.220.8/29
- ✓ Allocate Switch Port(s) 5, 6
- ✓ Rack Location RACK 1
- ___ Test Hardware
- ___ Monitoring _____
- ✓ Send Email/Welcome Kit

ACCOUNT FINALIZATION
- ___ Send Thank You Letter
- ___ Scan and File Paperwork

portal✓

netzplex

International Headquarters

▮▮▮▮▮▮

Representative: ▮▮▮▮

CUSTOMER INFORMATION

Company Name: Netwire Inc.
Phone: ▮▮▮▮
FAX:

New Customer ☐
Existing Customer ☒

Order Date: 11/9/2006
Requested Install Date: 11/11/2006

Service Address: ▮▮▮▮
City: ▮▮▮▮
State: ▮▮ Zip: ▮▮▮

Billing Address: ▮▮▮▮
City: ▮▮▮▮
State: ▮▮ Zip: ▮▮▮

Administrative Contact: John W Fanning
Phone: ▮▮▮▮
Email: ▮▮▮▮

Technical Contact: ▮▮▮▮▮
Phone: ▮▮▮▮
Email: ▮▮▮▮

Billing Contact: John W Fanning
Phone: ▮▮▮▮
Email: ▮▮▮▮

Emergency Contact: John W Fanning
Phone: ▮▮▮▮
Email: ▮▮▮▮
Pager: ▮▮▮▮

User Name:
Password:
How many IP addresses are needed:
Domain Name:

SERVICES ORDERED

☐ Shared   ☐ Custom Dedicated
☐ Virtual Ded.   ☐ Application Hosting
☒ Dedicated   ☐ Co-Location
☐ Other

Space: NA
Monthly Service Fee: $ 198.00
One-time set-up Fee: $ -
Total cost for first month: $ 198.00

Hardware Specifications / Service Inclusions

Two servers under Promo Package, 300GB/Month PE SC420, 2Gig SDRAM, P3.0, 250 GB SATA HDD 100Mbps Burst, 3 IP, Support, 10GB Backup , 5 Tests.

Length of Service Agreement: Month to Month

Federal Tax ID# or Social Security# of responsible party:
▮▮▮▮

Credit Card Info (Visa, Mastercard, American Express or Discover)

Card Number: ▮▮▮▮
Expiration: 11/09
Name On Card: John Fanning
Billing Address: ▮▮▮▮

Bill Credit Card each month: ☒ YES   ☐ NO

Invoice Quarterly (in advance) ☐ YES   ☒ NO

Invoice Annually (in advance) ☐ YES   ☒ NO
(10% discount extended for annual pre-pay)

CLIENT APPROVAL

John W Fanning
Printed Name

John W Fanning
Signature

Chairman
Title/Position

10/14/2006
Date

NETZPLEX APPROVAL

▮▮▮▮
Printed

Signature

CTO
Title/Position

Nov 15, 2006
Date

CX0402-010

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Host will provide the Hosting services provided in the service package chosen by User, and set forth on page one of the Service Order Form, including a server or space on a shared server, connection of the server to Host's high-speed Internet connection, backup of the server's hard disk and other maintenance on the server, domain name, e-mail, and file transfer services as provided in the chosen service package, automated server monitoring and limited log file generation and access. All equipment provided by Host shall remain Host's property.

The services and software offered are subject to change and limitation at Host's discretion, as is any pricing schedule. Host will notify User of any changes by electronic or postal mail to the agent named in this Agreement or other User officer a minimum of 14 days in advance, unless the change is judged by Host to be necessary to preserve proper security or functioning of Host's system. If User objects to any change in service, unless the change is one Host has determined is necessary for security purposes or to maintain proper operation of Host's system, User will be entitled to cancel its account.

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5. DISCLAIMER AND LIMITATION OF LIABILITY. With the exception of any express warranty herein, neither Host, nor its affiliates (hereinafter "Host"), nor its suppliers make any warranty, and each of them disclaims any liability, with respect to:

(a) the accuracy, completeness, currentness, error-free nature, or fitness for any particular purpose of any data or services accessed on or through the Host system, or

(b) system performance levels, including but not limited to resource utilization, response time or overhead, unless such a performance guarantee is part of the chosen Hosting services package represented by a SLA, or

(c) any loss or inconvenience associated with Host's suspension, termination, or deletion of User's account, or

Client Initials:

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

NO ORAL ADVICE OR WRITTEN ADVICE GIVEN BY HOST OR ITS STAFF OR AGENTS SHALL CREATE A WARRANTY.

Host will not be liable for delay in delivery or performance of hosting or design services, and is excused from any failure to deliver or perform, due to causes beyond its reasonable control unless a specific level of service is guaranteed via a SLA.

Host will not be liable for any damage or inconvenience caused by any necessary or scheduled maintenance to Host's system, or for any service lapses or loss of customer data caused by forces beyond Host's reasonable control. Host recommends that User make archival copies or otherwise download any important information stored on Host's system, in addition to any backups Host may perform.

THE SOLE AND ENTIRE MAXIMUM LIABILITY OF HOST TO ANY USER FOR ANY AND ALL PROVEN LOSS, CLAIM, DAMAGE OR LIABILITY OF ANY KIND (INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT) WITH RESPECT TO ALL SERVICES PROVIDED BY HOST AND ANY ACT OR OMISSION OF HOST WILL CONSIST OF A DUTY TO REFUND NOT MORE THAN THE AMOUNTS PAID BY THE USER TO HOST DURING THE YEAR PRECEDING SUCH LOSS, CLAIM, DAMAGE OR LIABILITY. IN NO EVENT WILL HOST BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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Should any legal action or threat of legal action result as a result of User's use, or of any of Host's system, interconnection facilities, or services, User agrees to indemnify Host, its staff, or Host's other Users, for any costs incurred in defending against any such threat or action, including its reasonable attorneys' fees and any equipment replacement costs, even if User is no longer a customer of Host when such expenses arise. This clause also applies to third party claims as well as any legal action taken by Host against User for breach of this Agreement, damage caused by User to Host's system, or for failure to pay expenses User is obligated to pay Host.

6. USE RESTRICTIONS AND INDEMNIFICATION. User agrees to adhere to Host's "Acceptable Use Policy", a copy of which is attached to this Agreement, and which policy may be changed from time to time - User agrees to adhere to all such changes it has notice of.

User will indemnify and hold Host harmless from any costs, expenses (including reasonable attorneys fees) or liability resulting from any claim based on User's use of the system. Such indemnification will not be applicable with respect to claims of gross negligence, willful misconduct or infringement by Host. Such indemnity will survive the termination or expiration of this Agreement.

7. GENERAL. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of this Agreement or any provision thereof. If any provision of the Agreement is or becomes illegal or otherwise unenforceable, such provision will not invalidate the other provisions hereof; provided if Host determines that any such unenforceable provision is essential, it may terminate this Agreement upon notice.

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This Agreement is governed by the laws of the State of New Hampshire. The parties agree that the courts (state and federal) located in New Hampshire, will have non-exclusive jurisdiction to determine the validity, construction and performance of this Agreement and the legal relations between the parties.

This Agreement constitutes the entire Agreement between Host and User, and supersedes all prior agreements, proposals, representations, or other communications, relative to the subject matter hereof. Paragraph headings are included for convenience and are not to be used to interpret this Agreement.

Client Initials:

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Client Initials: _____

Service Level Agreement (SLA)

30 Day Satisfaction Guarantee: Netriplex guarantees all services and rented hardware with a 30 day satisfaction guarantee. If you are not completely satisfied with the level of service or rented hardware within the first 30 days from contract execution, you may cancel the remainder of the contract without any further recourse or amounts due. To satisfy the 30 day satisfaction guarantee, you must present a written statement of dissatisfaction to our accounting department prior to the expiration of 30 days from the date of contract execution. Setup fees and first month recurring fees are non-refundable.

Service Credits: service credits are available for services contracted for, but not delivered according to the service level agreement. Service credits are not available to customers more than 30 days in arrears on their billing cycle. Valid approved service credits will appear as a credit for services on the next billable invoice. Service credits shall not result in monies paid by Netriplex directly to the customer. All service credit requests must be in writing and emailed directly to billing@netriplex.com within 10 days from the date of the service level failure. Failure to request a service credit within 10 days of the service failure will result in an automatic waiver of any rights under the Master Service Level Agreement. Normal scheduled maintenance and upgrades are not covered in the uptime guarantee.

100% Network Guarantee: Netriplex offers a 100% uptime guarantee on all network related services (i.e. bandwidth, routers, switches, servers and cabling,). The 100% uptime guarantee is applicable to all network services delivered to customer. Customer generated outages created by failed equipment (if collocated), exploited/hacked servers, misconfigurations or traffic in excess of the maximum allowed by contract are not subject to the SLA. Service credits are based directly on all equipment and/or services affected by a network outage. Services or hardware not related to the network outage will not qualify for a service credit.

Performance: Netriplex guarantees a maximum average 40ms (milliseconds) network route from the input connection to the customer equipment through the internal network and out to the first BGP peer calculated over a 24 hour period.

Availability: Netriplex guarantees 100% uptime on all redundant internet connectivity. Connectivity is measured as traffic routing into and out of rented customer equipment through the internal network out to Internet carriers. Netriplex does not guarantee third party carrier latency or peering problems not utilized by Netriplex.

Power Guarantee: Netriplex guarantees a 100% uptime on all power located in the datacenter area for customer use. Power is defined as TXU supplied power and alternate power via UPS battery backup power and generator supplied power.

Hardware Guarantee: Netriplex guarantees all rented hardware components and will replace any failed component at no cost to the customer. Hardware replacement will begin immediately upon identification of the hardware failure and is guaranteed to be complete within 2 hours of problem identification. Hardware is defined as the routers, switches, disk arrays, tape backup systems, processors, RAM, hard disks, motherboards, NIC cards, power supplies, raid controllers, and any other hardware rented through Netriplex.

Scheduled Maintenance: The scheduled maintenance and upgrade window for all customers are limited to Sunday(s) only and will be performed from 2:00am to 4:00am eastern standard time. Notification from Netriplex administrative staff will occur at least 3 days prior to work performed. Notification failure of normal (non-emergency) maintenance by Netriplex staff will result an application of the uptime guarantee.

Netriplex shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to external circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of interruption or delay in telecommunications, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services. Netriplex agrees to exercise reasonable care to prevent such occurrences; however, under no circumstances will Netriplex be held liable for any financial or other damages due to such interruptions. In no event shall Netriplex be liable to Customer or any other person for any special, incidental, consequential or punitive damages of any kind, including, without limitation, refunds of fees, loss of profits, cost of cover, loss of income or cost of replacement services.

Acceptable Use Policy

1. **LEGAL USES.** Host's system and services may not be used in any way which violates Federal, State, Local, or International law. This prohibits, but is not limited to, any actions which are threatening, obscene, defamatory, or which violate trade secret, copyright or patent protection, or rights of privacy or publicity, or which result in the spread of computer viruses or other damaging programs or data files, or which violate any export restrictions (including making non-exportable information or software available to foreign nationals as may be prohibited by law). In the event User is suspected of any such violation, Host reserves the right to immediately suspend or terminate User's account.

2. **NETWORK TRANSMISSIONS.** User is responsible for any materials passed via Host's system to other networks, and agrees to comply with any restrictions posed by the other network's terms of service or acceptable use policies.

3. **PROHIBITED MATERIALS.** User is strictly forbidden from hosting websites that contain pornographic materials or that send Unsolicited Commercial Email (UCE) otherwise known as SPAM.

4. **CONFIDENTIALITY.** Host will protect to the best of its ability the confidentiality of any files and electronic mail stored on or exchanged over the system, except as may be necessary to provide the requested Internet services, or as may be necessary to preserve the security and proper operation of Host's system, or to protect Host's rights or property.

Host, except as otherwise provided for in this Agreement or as required by law, will use its best efforts to avoid disclosing the contents of private electronic mail to anyone other than addressees, authorized recipients, or those to whom such disclosure is necessary to assure forwarding or delivery.

User acknowledges that no system on the Internet can be guaranteed safe from unauthorized intrusion, and therefore any confidential information stored on or transmitted through Host's system is stored or transmitted at User's own risk.

5. **SECURITY CONCERNS.** User is responsible for choosing a secure password and for keeping it secret.

User may not attempt to bypass any security mechanisms in place on Host's system, or use any of Host's systems or services to attempt to bypass any security mechanisms in place on any remote system. This includes, but is not limited to, port scanning, running any password cracking software, or attempting to access a system which any user knows or reasonably should know he or she is not authorized to access in the manner or to the extent attempted.

6. **COPYRIGHT ISSUES.** User agrees not to upload to, download from, make available for public access on, or transmit through Host's system any copyrighted material in violation of the copyright owner's rights in that material. By uploading, downloading, making available for public access, or transmitting any copyright-protected material, User warrants that User has the proper authorization to make or authorize the making of any copies involved with such uploading, downloading, making available for public access, or transmission. Unauthorized copying, or authorizing the copying of protected works in excess of any legal right through Host's system is a violation of federal law and international treaties, and may result in not only termination of User's account, but also may result in civil and/or criminal fines and prison sentences.

User agrees not to remove any copyright ownership information, or falsify such information, on any files uploaded, downloaded, made publicly available through, or transmitted via Host's system.

User explicitly licenses Host to make any copies of copyright protected materials necessary to provide Internet and related services to User, as well as make any necessary copies necessary to preserve and maintain Host's system and User's files and electronic mail.

User explicitly licenses Host to make any copies, without limitation, of any copyrighted materials submitted to a public forum maintained on Host's system, or submitted to any forum to which Host provides access. This clause cannot be modified by either party unless any modification is in writing and signed by both parties.

SERVER PROVISIONING WORKSHEET

COMPANY: Netwire Inc.

Machine(s) to configure:

Name:	**AVL1028**
Purpose:	Database Server
Components:	Intel Dual Processor Board
	Dual 2.8GHz XEON processor
	4 GB RAM
	SCSI RAID card
	3 x 73GB Drives, RAID 5
	Unbreakable Oracle (Linux) or Centos
	Partitions: root 30GB; /u01 100GB; /tmp 10GB

IP Address(es):   208.69.230.32/29
                  208.69.230.34-38 – useable IP range   .34
                  208.69.230.33 – gateway
                  255.255.255.248 – subnet
                  208.69.230.39 - broadcast

Tech notes: *HAS 3 004*

老板ERS.

Technician name:

Completed date:

Completed time:

Rack Location: *Row 3 Rack 8*

Power Bar & Port(s):

Switch Port(s):

portal✓

netг/plex

International Headquarters

Representative: ▮▮▮▮▮

CUSTOMER INFORMATION

Company Name: Netwire Inc.
Phone: ▮▮▮▮
FAX: ▮▮▮▮

New Customer ☐
Existing Customer [X]

Order Date: 11/27/2006
Requested Install Date: 11/28/2006

Service Address: ▮▮▮▮
City: ▮▮▮▮
State: ▮ Zip: ▮▮▮

Billing Address: ▮▮
City: ▮▮▮
State: ▮▮ Zip: ▮▮

Administrative Contact: John W Fanning
Phone: ▮▮▮▮
Email: ▮▮▮▮

Technical Contact: ▮▮▮▮
Phone: ▮▮▮▮
Email: ▮▮▮▮

Billing Contact: John W Fanning
Phone: ▮▮▮▮
Email: ▮▮▮▮

Emergency Contact: John W Fanning
Phone: ▮▮▮▮
Email: ▮▮▮▮
Pager: ▮▮▮▮

User Name: _____
Password: _____
How many IP addresses are needed: _____
Domain Name: _____

SERVICES ORDERED

☐ Shared	☐ Custom Dedicated
☐ Virtual Ded.	☐ Application Hosting
[X] Dedicated	☐ Co-Location
☐ Other	

Space: NA
Monthly Service Fee: $ 165.00
One-time set-up Fee: $ -
Total cost for first month: $ 165.00

Hardware Specifications / Service Inclusions

PE 2550 Dual 1.4GHz CPU, 2 GigDRAM, 2x73SCSI Raid1. 100Mbps port, 336 monthly transfer, the other has dual 1.1GHz processors. 3 IP, Support, 10GB Backup , 5 Tests.

Length of Service Agreement: Month to Month

Federal Tax ID# or Social Security# of responsible party:
▮▮▮▮

Credit Card Info (Visa, Mastercard, American Express or Discover)

Card Number: _____
Expiration: _____
Name On Card: _____
Billing Address: _____

Bill Credit Card each month: [X] YES   ☐ NO

Invoice Quarterly (in advance)   ☐ YES   [X] NO

Invoice Annually (in advance)   ☐ YES   [X] NO
(10% discount extended for annual pre-pay)

CLIENT APPROVAL

John W Fanning
Printed Name

John W Fanning
Signature

Chairman
Title/Position

Nov 27 th
Date

NETR/PLEX APPROVAL

Printed Name ▮▮▮▮

Signature ▮▮▮▮

CTO
Title/Position

NOV 28 2006
Date

CX0402-017

EBUSINESS HOSTING SOLUTIONS SERVICE SUBSCRIPTION AGREEMENT

1. HOSTING SERVICES. Host will provide connection to all organizations and individuals who agree to abide by Host's access terms, conditions, and fee schedules.

User is responsible for providing any equipment and/or software necessary to access Host's system and Internet facilities, unless otherwise provided for in this Agreement.

User is entitled to use any Internet services and time-share computer software provided by Host. User is responsible for any licensing fees for any "shareware" products provided by Host to User.

Host will provide the Hosting services provided in the service package chosen by User, and set forth on page one of the Service Order Form, including a server or space on a shared server, connection of the server to Host's high-speed Internet connection, backup of the server's hard disk and other maintenance on the server, domain name, e-mail, and file transfer services as provided in the chosen service package, automated server monitoring and limited log file generation and access. All equipment provided by Host shall remain Host's property.

The services and software offered are subject to change and limitation at Host's discretion, as is any pricing schedule. Host will notify User of any changes by electronic or postal mail to the agent named in this Agreement or other User officer a minimum of 14 days in advance, unless the change is judged by Host to be necessary to preserve proper security or functioning of Host's system. If User objects to any change in service, unless the change is one Host has determined is necessary for security purposes or to maintain proper operation of Host's system, User will be entitled to cancel its account.

User's continued use of the Hosting services after the effective date of such modified general terms and conditions, policies, or changes in services or software will constitute User's acceptance of such modified terms.

This Agreement covers only Internet services and any time-share software related to the provision of Internet services, Dedicated Hosting services, and any ancillary services such as domain name service and electronic mail.

2. FEES. User will pay (a) subscription fees in advance, (b) fees for other goods or services as invoiced, and (c) any security deposit, in each case per the applicable price schedule set forth on page one of the Service Order Form.

3. TERMINATION AND REINSTATEMENT. This Agreement may be terminated by either party on not less than 30-days prior written notice.

If User (a) becomes bankrupt or otherwise insolvent or (b) fails to pay for services rendered in accordance with the terms hereof or (c) commits any other breach of this Agreement, Host may, at its sole discretion and without notice or judicial intervention, discontinue performance and terminate this Agreement for default and pursue any other remedies available at law or in equity.

If User's account is suspended due to lack of payment, User will pay the then current reinstatement fee, in addition to all other charges then due and payable, prior to restoration of service.

4. CUSTOMER SUPPORT. Host will provide to User reasonable amounts of consultation via telephone and/or electronic mail in the use of the system, but cannot promise to assist with any services that are not maintained or controlled by Host.

5. DISCLAIMER AND LIMITATION OF LIABILITY. With the exception of any express warranty herein, neither Host, nor its affiliates (hereinafter "Host"), nor its suppliers make any warranty, and each of them disclaims any liability, with respect to:

(a) the accuracy, completeness, currentness, error-free nature, or fitness for any particular purpose of any data or services accessed on or through the Host system, or

(b) system performance levels, including but not limited to resource utilization, response time or overhead, unless such a performance guarantee is part of the chosen Hosting services package represented by a SLA, or

(c) any loss or inconvenience associated with Host's suspension, termination, or deletion of User's account, or

Client Initials:

Form Rev. 03.10.a

cc

2006-11-27 18:30

CX0402-018

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

NO ORAL ADVICE OR WRITTEN ADVICE GIVEN BY HOST OR ITS STAFF OR AGENTS SHALL CREATE A WARRANTY.

Host will not be liable for delay in delivery or performance of hosting or design services, and is excused from any failure to deliver or perform, due to causes beyond its reasonable control unless a specific level of service is guaranteed via a SLA.

Host will not be liable for any damage or inconvenience caused by any necessary or scheduled maintenance to Host's system, or for any service lapses or loss of customer data caused by forces beyond Host's reasonable control. Host recommends that User make archival copies or otherwise download any important information stored on Host's system, in addition to any backups Host may perform.

THE SOLE AND ENTIRE MAXIMUM LIABILITY OF HOST TO ANY USER FOR ANY AND ALL PROVEN LOSS, CLAIM, DAMAGE OR LIABILITY OF ANY KIND (INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT) WITH RESPECT TO ALL SERVICES PROVIDED BY HOST AND ANY ACT OR OMISSION OF HOST WILL CONSIST OF A DUTY TO REFUND NOT MORE THAN THE AMOUNTS PAID BY THE USER TO HOST DURING THE YEAR PRECEDING SUCH LOSS, CLAIM, DAMAGE OR LIABILITY. IN NO EVENT WILL HOST BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

User, by signing this Agreement or connecting to the Host system, (a) accepts the use of the system/interconnection (including any programs, data, or services) "AS IS"; and (b) waives any and all claims relating thereto, whether such claims are against Host or any of its suppliers or affiliates.

Should any legal action or threat of legal action result as a result of User's use, or of any of Host's system, interconnection facilities, or services, User agrees to indemnify Host, its staff, or Host's other Users, for any costs incurred in defending against any such threat or action, including reasonable attorneys' fees and any equipment replacement costs, even if User is no longer a customer of Host when such expenses arise. This clause also applies to third party claims as well as any legal action taken by Host against User for breach of this Agreement, damage caused by User to Host's system, or for failure to pay expenses User is obligated to pay Host.

6. USE RESTRICTIONS AND INDEMNIFICATION. User agrees to adhere to Host's "Acceptable Use Policy", a copy of which is attached to this Agreement, and which policy may be changed from time to time - User agrees to adhere to all such changes it has notice of.

User will indemnify and hold Host harmless from any costs, expenses (including reasonable attorneys fees) or liability resulting from any claim based on User's use of the system. Such indemnification will not be applicable with respect to claims of gross negligence, willful misconduct or infringement by Host. Such indemnity will survive the termination or expiration of this Agreement.

7. GENERAL. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of this Agreement or any provision thereof. If any provision of the Agreement is or becomes illegal or otherwise unenforceable, such provision will not invalidate the other provisions hereof, provided if Host determines that any such unenforceable provision is essential, it may terminate this Agreement upon notice.

User grants any permissions or licenses (including but not limited to copyright licenses), as may be required, and within User's power to grant, to Host in order to provide Internet and related services to User, or as may be required for Host to operate for User's benefit.

This Agreement is governed by the laws of the State of New Hampshire. The parties agree that the courts (state and federal) located in New Hampshire, will have non-exclusive jurisdiction to determine the validity, construction and performance of this Agreement and the legal relations between the parties.

This Agreement constitutes the entire Agreement between Host and User, and supersedes all prior agreements, proposals, representations, or other communications, relative to the subject matter hereof. Paragraph headings are included for convenience and are not to be used to interpret this Agreement.

Client Initials:

Acceptable Use Policy

1. LEGAL USES. Host's system and services may not be used in any way which violates Federal, State, Local, or International law. This prohibits, but is not limited to, any actions which are threatening, obscene, defamatory, or which violate trade secret, copyright or patent protection, or rights of privacy or publicity, or which result in the spread of computer viruses or other damaging programs or data files, or which violate any export restrictions (including making non-exportable information or software available to foreign nationals as may be prohibited by law). In the event User is suspected of any such violation, Host reserves the right to

This Agreement may not be assigned by User with the written consent of Host.

8. CHANGES IN LEGISLATION. Should any changes in legislation require any changes to this Agreement or any services provided by Host, Host reserves the right to make any such changes, as are determined necessary or prudent, at Host's sole discretion, without giving User advanced notice. If such changes are made, Host promises to send by electronic or postal mail notice of any changes in a reasonable time period. In event of such changes, User may terminate service without the required 30 day notice, but is not entitled to a refund of any payments already made for services.

Client Initials:

netriplex

International Headquarters

Acct #

SERVICE ORDER FORM

Representative:

CUSTOMER INFORMATION

Company Name: Netwire Inc.
Phone:
FAX:
New Customer
Existing Customer [X]
Order Date: 12/13/2006
Requested Install Date: 12/21/2006

Service Address:
City:
State: Zip:

Billing Address:
City:
State: Zip:

Administrative Contact: John W Fanning
Phone:
                              al.com

Technical Contact:
Phone:
Email:

Billing Contact: John W Fanning
Phone:
Email:

Emergency Contact:
Phone:
Email:
Pager:

User Name:
Password:
How many IP addresses are needed:
Domain Name:

SERVICES ORDERED

☐ Shared	☐ Custom Dedicated
☐ Virtual Ded.	☐ Application Hosting
X Dedicated	☐ Co-Location
☐ Other	

Space: NA
Monthly Service Fee: $308.00
One-time set-up Fee: $ -
Total cost for first month: $308.00

Hardware Specifications / Service Inclusions

PE 2850 Dual 2.8GHz CPU, 4 GigDRAM, 3x73SCSI Raid5.
100Mbps port, , 10 Tests. Private IP addresses. Please do use
Credit Card # on file for this account.

Length of Service Agreement: 36 month term

Federal Tax ID# or Social Security# of responsible party:
#

Credit Card Info (Visa, Mastercard, American Express or Discover)

Card Number:
Expiration:
Name On Card:
Billing Address:

Bill Credit Card each month: [X] YES   ☐ NO

Invoice Quarterly (in advance)   ☐ YES   [X] NO

Invoice Annually (in advance)   ☐ YES   [X] NO
(10% discount extended for annual pre-pay)

CLIENT APPROVAL

Printed Name
Signature
CDO
Title/Position
12/14/06
Date

NETRIPLEX APPROVAL

Printed N
Signature
CTO
Title/Position
DEC 18 2006
Date

NetCapital Hosting_Order_Form 121306

Form Rev. 03.10.a

CX0402-021

Service Agreement

EBUSINESS HOSTING SOLUTIONS SERVICE SUBSCRIPTION AGREEMENT

1. HOSTING SERVICES. Host will provide connection to all organizations and individuals who agree to abide by Host's access terms, conditions, and fee schedules.

User is responsible for providing any equipment and/or software necessary to access Host's system and Internet facilities, unless otherwise provided for in this Agreement.

User is entitled to use any Internet services and time-share computer software provided by Host. User is responsible for any licensing fees for any "shareware" products provided by Host to User.

Host will provide the Hosting services provided in the service package chosen by User, and set forth on page one of the Service Order Form, including a server or space on a shared server, connection of the server to Host's high-speed Internet connection, backup of the server's hard disk and other maintenance on the server, domain name, e-mail, and file transfer services as provided in the chosen service package, automated server monitoring and limited log file generation and access. All equipment provided by Host shall remain Host's property.

The services and software offered are subject to change and limitation at Host's discretion, as is any pricing schedule. Host will notify User of any changes by electronic or postal mail to the agent named in this Agreement or other User officer a minimum of 14 days in advance, unless the change is judged by Host to be necessary to preserve proper security or functioning of Host's system. If User objects to any change in service, unless the change is one Host has determined is necessary for security purposes or to maintain proper operation of Host's system, User will be entitled to cancel its account.

User's continued use of the Hosting services after the effective date of such modified general terms and conditions, policies, or changes in services or software will constitute User's acceptance of such modified terms.

This Agreement covers only Internet services and any time-share software related to the provision of Internet services, Dedicated Hosting services, and any ancillary services such as domain name service and electronic mail.

2. FEES. User will pay (a) subscription fees in advance, (b) fees for other goods or services as invoiced, and (c) any security deposit, in each case per the applicable price schedule set forth on page one of the Service Order Form.

3. TERMINATION AND REINSTATEMENT. This Agreement may be terminated by either party on not less than 30-days prior written notice.

If User (a) becomes bankrupt or otherwise insolvent or (b) fails to pay for services rendered in accordance with the terms hereof or (c) commits any other breach of this Agreement, Host may, at its sole discretion and without notice or judicial intervention, discontinue performance and terminate this Agreement for default and pursue any other remedies available at law or in equity.

If User's account is suspended due to lack of payment, User will pay the then current reinstatement fee, in addition to all other charges then due and payable, prior to restoration of service.

4. CUSTOMER SUPPORT. Host will provide to User reasonable amounts of consultation via telephone and/or electronic mail in the use of the system, but cannot promise to assist with any services that are not maintained or controlled by Host.

5. DISCLAIMER AND LIMITATION OF LIABILITY. With the exception of any express warranty herein, neither Host, nor its affiliates (hereinafter "Host"), nor its suppliers make any warranty, and each of them disclaims any liability, with respect to:

(a) the accuracy, completeness, currentness, error-free nature, or fitness for any particular purpose of any data or services accessed on or through the Host system, or

(b) system performance levels, including but not limited to resource utilization, response time or overhead, unless such a performance guarantee is part of the chosen Hosting services package represented by a SLA, or

(c) any loss or inconvenience associated with Host's suspension, termination, or deletion of User's account, or

Client Initials: ▆▆▆▆

(d) ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

NO ORAL ADVICE OR WRITTEN ADVICE GIVEN BY HOST OR ITS STAFF OR AGENTS SHALL CREATE A WARRANTY.

Host will not be liable for delay in delivery or performance of hosting or design services, and is excused from any failure to deliver or perform, due to causes beyond its reasonable control unless a specific level of service is guaranteed via a SLA.
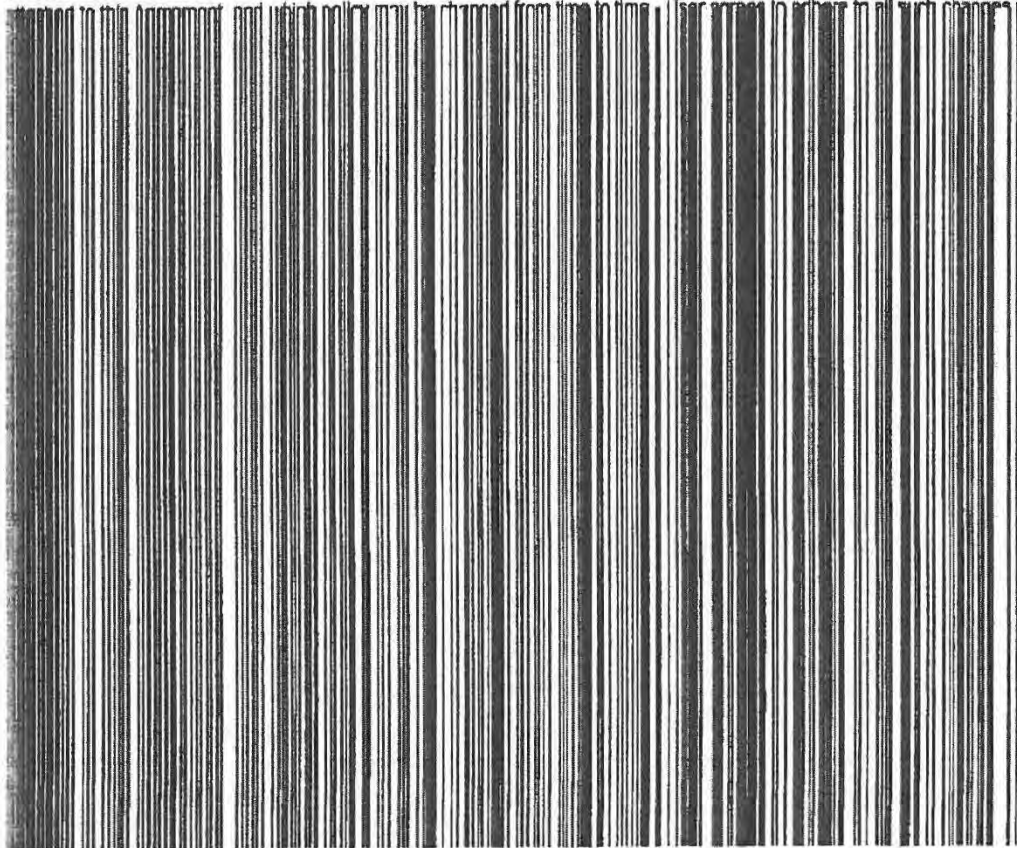
Host will not be liable for any damage or inconvenience caused by any necessary or scheduled maintenance to Host's system, or for any service lapses or loss of customer data caused by forces beyond Host's reasonable control. Host recommends that User make archival copies or otherwise download any important information stored on Host's system, in addition to any backups Host may perform.

THE SOLE AND ENTIRE MAXIMUM LIABILITY OF HOST TO ANY USER FOR ANY AND ALL PROVEN LOSS, CLAIM, DAMAGE OR LIABILITY OF ANY KIND (INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT) WITH RESPECT TO ALL SERVICES PROVIDED BY HOST AND ANY ACT OR OMISSION OF HOST WILL CONSIST OF A DUTY TO REFUND NOT MORE THAN THE AMOUNTS PAID BY THE USER TO HOST DURING THE YEAR PRECEDING SUCH LOSS, CLAIM, DAMAGE OR LIABILITY. IN NO EVENT WILL HOST BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

User, by signing this Agreement or connecting to the Host system, (a) accepts the use of the system/interconnection (including any programs, data, or services) "AS IS"; and (b) waives any and all claims relating thereto, whether such claims are against Host or any of its suppliers or affiliates.

Should any legal action or threat of legal action result as a result of User's use, or of any of Host's system, interconnection facilities, or services, User agrees to indemnify Host, its staff, or Host's other Users, for any costs incurred in defending against any such threat or action, including reasonable attorneys' fees and any equipment replacement costs, even if User is no longer a customer of Host when such expenses arise. This clause also applies to third party claims as well as any legal action taken by Host against User for breach of this Agreement, damage caused by User to Host's system, or for failure to pay expenses User is obligated to pay Host.

6. USE RESTRICTIONS AND INDEMNIFICATION. User agrees to adhere to Host's "Acceptable Use Policy", a copy of which is attached to this Agreement, and which policy may be changed from time to time. User agrees to adhere to all such changes if

CX0403
MARKED CONFIDENTIAL
REDACTED IN ITS ENTIRETY

CX0410

Bank of America
Legal Order Processing
CA9-705-05-19
P.O. Box 3609
Los Angeles, CA 90051

October 31, 2012

Federal Trade Commission
Sarah Schroeder
WESTERN REGION 901 MARKET STREET, SUITE 570
San Francisco, CA 94103

RE: Reference # ███████████
Case: Jerk
Name:

I, ██████████, declare that I am employed by Bank of America N. A. in the subpoena processing department and the Bank's designated duly authorized Custodian of Records for documents and/or information produced under the referenced legal order. The Bank reserves the right to designate another Custodian as it deems appropriate in the event an actual appearance is required concerning the records produced herein. I certify the authenticity of the records produced herewith and that they were:

   a) Made at or near the time of the occurrence, condition or event of the matters set forth by,
      or from information transmitted by, a person with knowledge of those matters.
   b) Kept in the course of regularly conducted activity.
   c) Made by the regularly conducted activity as a regular practice, by the personnel of the
      business.

The identity of the records produced is as follows.

   • Statements, Deposits, Offsets, Checks, Signature Card, Wires Transfers in the name of Jerk LLC
     for the time period of 4/29/09 to 9/30/12

The enclosed records are true copies of bank records in the custodian's possession as described in the referenced legal order. I am familiar with the mode of preparation of the enclosed records and they are prepared as follows:

CHECKS: the checks drawn on the customer's account were presented to the Bank. While processing the item, an image of the front and back of the item was taken in the sequence the item was processed. The Bank stored the image in a secure environment. In response to this subpoena/legal order, the Bank retrieved and produced an image of the check.

SIGNATURE CARDS: The customer whose name appears on the signature card submitted the form to the Bank to open deposit account(s). The customer provided information that was relied upon by the Bank. The customer signed the form. The signature card was stored at and retrieved from the Banking Center or the Bank's record center.

STATEMENTS: Each statement was prepared after the closing date of the account cycle as indicated on the statement. The statement reflects debits (from checks, point of sale, ATM and teller withdrawals, fees, etc.) and credits (deposits, etc) to the account during the period covered by the statement.

DEPOSITS: Deposits are processed by the Bank at a central processing center. When the transaction was processed, a microfilm image of the front and back of the item was taken in the sequence the transaction was processed. The Bank stored the microfilm in a secure facility. In response to this subpoena/legal order, the Bank retrieved the microfilm reel and produced an image of the item.

OTHER: Original records were prepared or received at or near the time of their creation and were stored by the Bank in the ordinary course of business. Upon receipt of this subpoena, the Bank searched and retrieved the original records and prepared a true and correct copy, using generally accepted photocopying techniques.

MISSING ITEMS: Copies of requested transactions may be missing for the following reasons: Item is not on film; item is fogged, blank, black, damaged, destroyed or not available; item is covered by another item; transaction relates to an electronic transaction; or there are other reasons that prevent the Bank from completing a thorough search of records or producing the record(s).

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 31 day of October, 2012, in the city of Los Angeles, in the State of CA

Should you need to forward any additional correspondence to us regarding this matter, please direct it to the address noted above. When contacting the Bank regarding this Subpoena, please use the Reference

SR; Operations Representative
CA -Legal Order Processing

State Of California   )
)
County Of Los Angeles)

On October 31, 2012 before me,   Notary Public
personally appeared   who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

COMM. #
RY PUBLIC • CALIFORNIA
JS ANGELES COUNTY
My Commission Expires
September 15, 2015
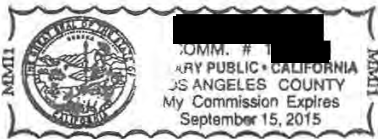
Place Notary Seal Above   Signature of Notary Public

CX0411
MARKED CONFIDENTIAL
REDACTED IN ITS ENTIRETY

CX0413
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CX0414
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CX0420

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY

Pursuant to 28 U.S.C. § 1746

I, ▮▮▮▮▮▮, have personal knowledge of the facts set forth below and am competent to testify as follows:

1. I have authority to certify the authenticity of the records produced by Stripe, Inc. ("Stripe") and attached to this certification.

2. The documents produced are true copies of records of regularly conducted activity that:

    a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

    b) Were kept in the course of the regularly conducted activity of Stripe; and

    c) Were created in the regular course of business by Stripe

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 5th day of September, 2012.

_____▮▮▮▮▮▮_____

Nam▮▮▮▮▮▮

Title: General Counsel & Corp. Secretary

CX0420-001

CX0421

MARKED CONFIDENTIAL

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CX0422
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CX0425

MARKED CONFIDENTIAL

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CX0426

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1.   I, _____, have personal knowledge of the facts set forth below

and am competent to testify as follows:

2.   I have authority to certify the authenticity of the records produced by Paypal, Inc. and

attached hereto.

3.   The documents produced and attached hereto by Paypal, Inc. are originals or true copies

of records of regularly conducted activity that:

   a)   Were made at or near the time of the occurrence of the matters set forth by, or

         from information transmitted by, a person with knowledge of those matters;

   b)   Were kept in the course of the regularly conducted activity of Paypal, Inc.; and

   c)   Were made by the regularly conducted activity as a regular practice of Paypal,

         Inc.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on __November 21_____, 2012.

Digitally signed by ████

Date: 2012.11.21 11:13:58 -07'00'

_____

Signature

CX0426-001

CX0427
MARKED CONFIDENTIAL
REDACTED IN ITS ENTIRETY

CX0428

MARKED CONFIDENTIAL
EXCEL SPREADSHEET

(SEE ATTACHED DVD)

REDACTED IN ITS ENTIRETY

CX0432

Guys,

We are still working with jerk.com, but I am trying to negotiate a better deal and because we have not made much progress lately on financing we might have to switch the brand. I have reper.com which I want to launch, we could use both brands, settle on one, and we could switch the company name to reper which might make it easier to finance.

john

John W Fanning
Chairman Netcapital

From: **John Fanning** ████████████████

Subject: RE: Jerk.com + Reper.com

Date: April 28, 2010 at 12:05 PM

To: ████████████████████████████████

Reper, if you're a leper there is an extra fee.

John W Fanning
Chairman Netcapital
████████████
████████████

From: ████████████████████████████

Sent: Wednesday, April 28, 2010 11:59 AM

To: ████████████

Cc: John Fanning

Subject: Re: Jerk.com + Reper.com

okay so ████ coming up with a cool "Reper" jingle? Awesome.

. . . .

████████████
████████
████████

On Apr 28, 2010, at 11:57 AM, ████████████ wrote:

If email was Facebook, and I could "Like" ████████ reply, I would. :)

To me, the main motivation of a Reper video, beyond a quick site tour, is just so we can pronounce "reper" and people don't confuse it with "reaper." :P

-████

On Apr 28, 2010, at 11:25 AM, ████████████ wrote:

NOOOOOOOOOOOOO!!!!!

John, 2001 wants its website back. There's not value added to watching someone talk. If we want

that we can all sign up for a dental convention in vegas and have more fun. I recommend we walk them through the site quickly in 1.5 - 3mins. That's how you do a quick demo in the web 2.0 world. Please don't ask me to grow a mullet next! :)

On Apr 28, 2010, at 11:21 AM, John Fanning wrote:

Here is my idea. Click the little black man circle in the lower right of this page.

john

http://www.iversondesign.com/clients_2006/netmovies/presentation/

<image001.png>

John W Fanning
Chairman Netcapital

█████████████
█████████

From: █████████████████████████
Sent: Wednesday, April 28, 2010 11:14 AM
To: █████████
Cc: John Fanning
Subject: Re: Jerk.com + Reper.com

Right, so I'm just slightly modifying the last designs to feel more like one of those linked in style apps - and something the Romanians can develop. I'm not going to do a full branding exercise for the logo - but can put something together quickly from what John has sent over. What video were you thinking of doing? A screen cast or something so that we have the search area, a list of the things you can do, and a video to play where you do a walkthrough?

. . . .

████████████████
███████
████████

On Apr 22, 2010, at 2:50 PM, ████████████ wrote:

Hey ███████

So John was thinking that it might be a good idea to introduce the brand "reper.com" (like Flickr, not like Grim) alongside the Jerk.com brand as kind of a more professional backend to help secure more investors. The idea is that Jerk.com would function as the user front-end social networking site, while Reper.com would function as more of a backend service for businesses that wanted to use our reputation services and information (ie, Jerk.com powered by Reper). We just wanted to get your thoughts on the new branding idea, and the direction we might take from a UI standpoint for that.

Thanks!

███

CX0438

```
 1                 UNITED STATES OF AMERICA

 2                 FEDERAL TRADE COMMISSION

 3            Office of Administrative Law Judges

 4                       ---o0o---

 5   In the Matter of            )
                                 )
 6   Jerk, LLC, a limited liability )
     company, also d/b/a Jerk.Com,  )
 7   and                           ) Docket No. 9361
                                 )
 8   John Fanning, individually and )
     as a member of Jerk, LLC,    )
 9                                 )
            Respondents.           )
10                                 )

11

12                     DEPOSITION OF

13                   ███████████

14              Monday, August 11, 2014

15                    10:35 a.m.

16                  901 Market Street
                      Suite 570
17         San Francisco, California 94103

18              Pages 1 through 93

19

20        Reported By:  ███████████████,
              CCRR, CLR, RPR, CSR No. ████
21

22

23

24

25
```

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SOLUTIONS

```
 1                        APPEARANCES

 2
    For the Federal Trade Commission:
 3
          Federal Trade Commission
 4        Western Region/San Francisco
          901 Market Street, Suite 570
 5        San Francisco, California 94103
          By:  Kenneth Hatheway Abbe, Attorney at Law
 6             KAbbe@FTC.gov
               (415) 848-5182
 7
          By:  Boris Yankilovich, Attorney at Law
 8             BYankilovich@FTC.gov
               (415) 848-5120
 9
          By:  ███████████
10
                        ---o0o---
11

12

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15

16

17

18

19

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1               SAN FRANCISCO, CALIFORNIA

2          MONDAY, AUGUST 11, 2014, 10:35 A.M.

3                      ---o0o---

4              ████████████████

5       having been duly sworn, testified as follows:

6                     EXAMINATION

7  By MR. ABBE:

8       Q.   Good morning.  Could you please state and

9  spell your full name?

10      A.   Sure.  My name is ██████████.  ████████

11 ████████████████████.

12      Q.   Thank you.  And what city do you reside in,

13 ████████████████?

14      A.   I currently live in ██████████████████.

15      Q.   My name is Kenneth Abbe.  I am here

16 representing the Federal Trade Commission in the matter

17 of Jerk, LLC, and that's currently pending before the

18 Chief Administrative Law Judge of the Federal Trade

19 Commission.  I am here with my colleagues Boris

20 Yankilovich and ████████████  also of the Western Region

21 San Francisco office.

22           I would like to give you some preliminary

23 instructions about the deposition, and then I will ask

24 you some questions.

25      A.   Okay.
```

1   A.   Extend Mac, if I remember correctly.

2   Q.   Okay. Thank you.

3   So are you familiar with a website called

4   Jerk.com?

5   A.   I am.

6   Q.   And what is Jerk.com?

7   A.   Well, I have not seen it for quite some time,

8   but when I worked on it, it was a startup that we were

9   working on, to kind of bring a Wikipedia-like attention

10   to people. So it was the idea that other people would

11   create profiles about someone, and that they could

12   provide positive or negative feedback or experiences

13   that they have had with those people.

14   Q.   When did the Jerk.com website launch?

15   A.   I'm not entirely sure. When I started working

16   on it, it already existed, but to my understanding it

17   hadn't been running for all that long. Maybe a year or

18   so.

19   Q.   And so was that in 2009 that you are talking

20   about?

21   A.   Yes.

22   Q.   Okay. Um, and you mentioned that you were

23   working for somebody named John Fanning.

24   Is that correct?

25   A.   Yes.

```
1    But the way it would work, you would either register and

2    link to your Facebook account, or register with your

3    Facebook account and from there any of the publicly

4    accessible information we could use to get your friends

5    list, and start populating profiles based on your

6    friends.

7         Q.   Okay.  So if you populated profiles from the

8    friends, that meant if I have a friend on Facebook and

9    I'm signing into Jerk --

10        A.   Yes.

11        Q.   -- that meant that that person now has a

12   profile on Jerk?

13        A.   Correct.  That was one of the ways that some

14   of the profiles were populated.

15        Q.   Were there any other parts of the early

16   direction of the website that you worked on?

17        A.   Um, there were certainly some other ideas for

18   features.  I know there was the kind of the ever-present

19   question of how to monetize the website, because at that

20   point there was no idea of making money from it.

21             And one of the -- we talked a lot about that

22   and there were certainly the idea of making it somewhat

23   business-oriented as well, so that businesses could have

24   profiles and it would kind of serve like Yelp, in that

25   businesses could pay to have some control over what
```

1   Q.   Okay.

2   I want to talk about the profiles on Jerk.com

3 now. So how did Jerk.com populate its profiles?

4   A.   While I worked on it most of the profiles were

5 kind of scraped, I guess would be a term, from

6 Facebook -- from what was publicly available at that

7 point.

8   Q.   What does "scraping" mean?

9   A.   So Facebook exposes an API, which is an

10 application programming interface, which allows

11 third-party developers to use the information on

12 Facebook when developing their own applications and

13 websites. A part of that is the ability to access any

14 information that Facebook users have made public on

15 Facebook, and to use that when populating content for

16 your own services.

17   Q.   And did Jerk.com use this scraping procedure

18 to populate its profiles?

19   A.   Yeah, a large number of the profiles at that

20 time were generated via that mechanism. I'm not exactly

21 sure how it worked. I believe at least some of it was

22 from people manually creating their own profiles on

23 Jerk.com, and then giving accompany access to their

24 friends list to create shell profiles for them on

25 Jerk.com.

ESQUIRE
SOLUTIONS

1   their Facebook profiles.

2   Q.   The information that came in through the

3   Facebook API, was that stored in Jerk.com?

4   A.   I don't remember exactly what information was

5   stored, but there was information stored by Facebook

6   API, which certainly included their Facebook user

7   identifier, so we could have a correlation between

8   Jerk.com and their Facebook account, and certainly

9   superficial information like first name, last name, and

10 potentially a profile picture.

11   Q.   Did Facebook -- did Facebook allow this

12 scraping procedure at the time it was done?

13   A.   I don't remember the exact Terms and

14 Conditions, but I do know that there are certain pieces

15 of information that Facebook would say you are allowed

16 to store this information indefinitely, and then there

17 were other categories of information where Facebook

18 would say you could store this for six months, ninety

19 days, and it would degrade in order of freshness, of

20 content that Facebook believed would frequently change.

21   So that they would want you to store that less

22 frequently, so that your users would have an accurate

23 depiction of what was on Facebook.

24   Q.   And do you know if Jerk.com was storing all of

25 that information?

1   A.   I do not know -- I don't remember what
2 information was being stored. But I do believe that at
3 that point there wasn't any kind of a data retention
4 policy in place that would evict old information as it
5 became stale.
6   Q.   So would that be a violation of the Facebook
7 guidelines to keep that information longer than Facebook
8 intended it to be kept?
9   A.   It certainly depends on what information was
10 being stored. Whether or not it would be a violation of
11 the guidelines, I seem to remember there were some
12 things that didn't look quite right, and I don't know
13 whether that was an oversight or whether it was an
14 intentional decision.
15   But there may have been a violation in terms
16 of how long content was being stored.
17   Q.   Okay. And do you know if John Fanning had any
18 role in determining how long that information was being
19 stored?
20   A.   I don't believe that he did actually, no.
21   Q.   I want to return to the connection between
22 Jerk.com and Facebook. Was there a Jerk.com application
23 on the Facebook platform?
24   A.   In a sense there was. We created kind of a
25 shell of an application, because we had at one point

```
1        Q.   Okay.   What year does this refer to?

2        A.   Good question.   I would say this is probably

3   2009.

4        Q.   Okay.   Now this slide deck here, this is the

5   one that you used to make pitches to investors?

6        A.   Yes.

7        Q.   And was this used at multiple pitches?

8        A.   Yes.

9        Q.   And did you write the text in this

10  presentation?

11       A.   It was written largely, kind of, by committee.

12  We certainly discussed it while it was being written.

13       Q.   And who was the committee?

14       A.   That was ███████████ and myself working with

15  John Fanning?

16       Q.   You mentioned that you traveled to San

17  Francisco to give a pitch.

18       A.   Yes.

19       Q.   Was this document used in that pitch in San

20  Francisco?

21       A.   Yes.

22       Q.   And how was Jerk.com presented at these

23  meetings?   How did John Fanning describe Jerk?

24       A.   He described it -- that's a good question.

25  I'm trying to remember.   He described it, I believe as a
```

1 startup that he was working on that he was still looking

2 for some kind of angel investing for it.

3   Q.   And you mentioned how you described the

4 Jerk.com website's purpose. How did John Fanning refer

5 to the Jerk.com website, when he was using these slides

6 for presentations?

7   A.   To the best of my recollection it was largely

8 in the same words that I would use when describing it.

9   That it was a site designed to -- well,

10 there's actually a slide here, which is page 4, that

11 said to call attention to the extremes of human

12 behavior.

13   And I think that was kind of the tag line that

14 we tried to use. But I know he would also sometimes

15 mention his ideas on online reputation management as

16 another direction to eventually evolve the site.

17   Q.   What were his ideas on online reputation

18 management?

19   A.   That it would be nice to have a one-stop shop,

20 so to speak, so you could see the collated view of all

21 the information about you written from other sources on

22 the internet.

23   Q.   Did the number of users come up in

24 conversation during the pitches to investors?

25   A.   Yes, it would occasionally come up.

1   A.   Yes.

2   Q.   Is that -- does that relate at all to what we

3 have been discussing about populating profiles through

4 Facebook?

5   A.   I believe so, yes.

6   Q.   Do you know which of the mechanisms we are

7 talking about are attributable to this Facebook growth?

8 Is it the scraping, or the users having their friends

9 input into Jerk.com?

10   A.   That, I do not know for sure. My intuition

11 just on the size of the growth would be that it was

12 largely the result of scraping of public profiles.

13   Though at the same time, because of the

14 characteristics of exponential growth, it is entirely

15 possible that if enough people started registering, you

16 could see a jump like that.

17   My thoughts is that it was probably related to

18 scraping.

19   Q.   Okay. At the time this chart was made, were

20 users able to upload photos to Jerk.com?

21   A.   I don't know, actually. I don't believe there

22 was much functionality in terms of that. I don't

23 believe so, no.

24   Q.   When we were talking about the Facebook

25 scraping mechanism, do you know who it was that

1 shirt, I think that's probably ███████. And then

2 John Fanning is leaning against the threshold in the

3 doorway.

4   Q.   Okay. Do you know where this photo was taken?

5   A.   No, I do not.

6   Q.   Do you recognize the other people there, other

7 than ████████?

8   A.   I can't say I do from behind, no.

9   MR. ABBE: Okay. Let's see. I don't have --

10   Can we go off the record for a moment?

11   Thanks.

12   (Discussion off the record.)

13   (Recess.)

14   MR. ABBE: So we are back on the record.

15   I want to hand you a document that has been

16 marked CX0437.

17   (Exhibit CX0437 is marked for identification.)

18   MR. ABBE: This is an email dated June 5th

19 2010.

20   Q.   Are you familiar with this document?

21   A.   Yes. I seem to remember something about this

22 email conversation, yeah.

23   Yeah.

24   Q.   So in the top email on the first page we have

25 John Fanning writing: Actually we can say we have over

```
1        Q.   In terms of the sign up process for Jerk.com,
2    how did users sign up to use Jerk.com?
3        A.   Again, this is an area that I am still a
4    little bit fuzzy on, because I don't know that I ever
5    saw the work flow itself.
6             But presumably when you arrived at the
7    website, there would be some form of a register button,
8    and whether that was via Facebook's log-in API or
9    whether you created an account on Jerk and then linked
10   it to your Facebook account, I'm not entirely sure.
11            MR. ABBE:  I am going to ask you about this
12   document, going slightly out of order.  This is CX-0436.
13            (Exhibit CX0436 is marked for identification.)
14            MR. ABBE:  This is an email dated
15   March 10, 2010.
16       Q.   Are you familiar with this email?
17       A.   Yes, I am.
18       Q.   And what's being discussed in this email?
19       A.   When I received my position at ████, for
20   confidentiality reasons they perform background checks,
21   and I listed John as a reference on my previous
22   employers sheet.
23       Q.   So John was serving as a reference here?
24       A.   Yes.
25       Q.   And would you say that John was the one that
```

1   hired you to work on Jerk.com?

2   A.   Yes, I think that's a fair characterization.

3   Q.   Going back to the Facebook scraping and

4   friends gathering techniques.

5   Would it be accurate or inaccurate for Jerk to

6   tell its users that all content, including the Jerk.com

7   profiles, were created by users.

8   A.   That sounds like an inaccurate statement to

9   me.

10   Q.   Okay. And that's because some of the profiles

11   were created through automated means?

12   A.   Correct.

13   Q.   And what are all the means, other than

14   Facebook, which could have resulted in a -- in a user

15   profile being created on Jerk.com?

16   A.   At the time I worked on it, it was either an

17   automated profile created through one of the Facebook

18   scraping mechanisms, or someone registering on the site.

19   Q.   Were there any other methods?

20   A.   Not that I knew about, no.

21   MR. ABBE: Okay.

22   (Exhibit CX0057 is marked for identification.)

23   MR. ABBE: I would like to ask you a couple of

24   questions about this document. This document has been

25   marked CX0057.

CX0439

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

Jerk, LLC, a limited liability company,
 also d/b/a JERK.COM, and

John Fanning,
 individually and as a member of
 Jerk, LLC.

DOCKET NO. 9361

CERTIFICATION OF COMPLIANCE AND RECORDS
Pursuant to 28 U.S.C. § 1746

1. I, _____ (name and title), have personal knowledge of the facts set forth below and am competent to testify as follows:

2. I have authority to certify the authenticity of the records produced by _____ (company name) ("the Company") and attached hereto.

3. On behalf of the Company, I hereby certify that the Company has used its best efforts to respond to the Federal Trade Commission Subpoena ("Subpoena"). The Company has conducted a reasonable search and has provided all documents and information in its possession, custody, or control that are responsive to the requests contained in the subpoena and has substantially complied with those requests.

4. The documents produced and attached hereto by the Company in response to the Subpoena are originals or true copies of records of regularly conducted activity that:

a. Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

b. Were kept in the course of the regularly conducted activity of the Company; and

c. Were made by the regularly conducted activity as a regular practice of the Company.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on ___July 16___, 2014

CX0439-002
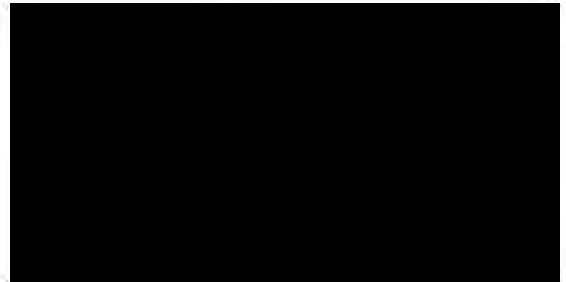
CX0440

From: **John Fanning** ██████████████

Subject: Re: Introduction from ██████████████ at ██████

Date: June 14, 2011 at 12:00 PM

To: ██████████████ ████████████████████████

██████ ,

Thats sounds great. Can you tell me what you typically do to help is similar circumstances? Have you looked at the site? The traffic doubled last month and the site does not even really work.

john

On Tue, Jun 14, 2011 at 10:37 AM, ██████████████ < ████████████████████████████████ wrote:

Dear John

██████████████ forwarded me your email about Jerk.com and suggested I drop you a line. I used to work with ██████ at ██████ before starting my own brand consultancy 10 years ago.

If you're still looking for some help with the positioning of Jerk.com, I'd be more than happy to join you for a short call where I could learn more about the business and what your goals are for the brand.

I look forward to hearing from you soon.

With best wishes,

██████

--
John Fanning
Chairman
Netcapital
████████████

CX0441

████ ,

I think you are right, but I think its more than the domain name that's driving the growth, which is surprising given the truth of the fact that there is little reason for people to stay once they get there. I understand the budget issue, its always the main issue with early stage companies. I am trying to get a sense for what you think a scope of work could be, based on how you think you could add the most value, in the shortest time. I have already found your perspective valuable.

john
--
John Fanning
Chairman
Netcapital
████████████

John

Good morning! Attached are some observations based on a quick analysis of your Google Analytics data.

I think the basic conclusion is that visitation to the website HAS increased in the past month or so...BUT, people are still not spending any significant amounts of time on the website and are unlikely to use it on a regular basis. In other words, you have a great domain name that attracts attention but little reason for people to stay on the site once they get there.

Look forward to hearing from you about how you'd like to proceed. As I mentioned, we really need to get a sense of project scope and budget before we can move forward from here.

Best,

████

CX0442

████ ,

Thats sounds good and I agree with your perspective on how we could use help. I think What you have listed as 1, 2, 3, I would view as 3 1, 2, In terms of priority, rather than grab large tasks with results that are hard to measure my preference is to build with small incremental improvements that can be measured.

john
--
John Fanning
Chairman
Netcapital
███████████████

John

We've given some thought as to how we could work together, and there are basically three areas where we could add value:

1. Brand Strategy

1.1) The most important thing is for us to understand the vision and business objectives for Jerk.com. I'm sure this step is as simple as a phone call/meeting with you, and interviews with any other stakeholders in the business.

1.2) With a clearer understanding of your business strategy, we can lay the foundation for your brand strategy. This work would include an audit of competitors/peers to understand best practices and opportunities for differentiating Jerk.com. The end result of this phase would be a document outlining Jerk.com's value proposition, personas that define the needs/attitudes of the different target audiences, and key messages broken down by target audience.

2. Brand Identity

2.1) If it's determined that the current visual identity does not align well with your value proposition, then we would need to develop a new logo for Jerk.com and a new look for the site.

2.2) We could also develop a strong verbal identity for Jerk.com that may include a tagline, and a Brand Voice document (guidelines for how the brand should express itself verbally in a consistent manner.

2.3) At the end of any Brand Identity program, we would leave you with all the artwork, templates, and guidelines you need to be able to manage the brand effectively.

3. Digital Strategy & Development

3.1) This is the phase where we would look at the current web site and determine which features and functionality need to be added/maintained/eliminated. We also have the capability to develop and implement any changes that need to be made to the site and any other apps associated with the site.

We understand how difficult it is to find resources in an early stage company, but I think the minimum fee we could charge for the Brand Strategy phase would be $30,000. This is a significant discount from our usual fee for this type of work.

When you add Phases 2 and 3 in to the equation, I think you're probably looking at an additional $65k, making a grand total of $95k (we've tried hard to keep this under six figures!).

This is a fraction of what you would expect to pay at a larger agency like ██████ But we appreciate it's still a significant investment. We are, of course, open to other suggestions, as we'd really like to work with you on this brand.

I look forward to hearing from you soon with your thoughts.

Best,

████

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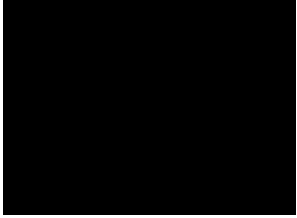
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