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 8 Washington, DC 20580
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 10 202-326-3484 (Brooke)
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 13 202-326-3284 (Anguizola)
 14 Attorneys for Plaintiff Federal Trade Commission

15 UNITED STATES DISTRICT COURT
 16 FOR THE DISTRICT OF NEVADA

17 Case No. 2:10-cv-02203-MMD-GWF

18 FEDERAL TRADE COMMISSION,

19 Plaintiff,

20 v.

21 JEREMY JOHNSON, *et al.*,

22 Defendants.

23 **STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND**
 24 **MONETARY JUDGMENT AS TO DEFENDANT LOYD JOHNSTON**

25 On December 21, 2010, Plaintiff, the Federal Trade Commission ("FTC" or
 26 "Commission") filed a redacted Complaint for permanent injunction and other relief pursuant to
 27 Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section
 28 917(c) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693o(e), alleging that
 defendants Jeremy Johnson, Duane Fielding, Andy Johnson, Loyd Johnston, Scott Leavitt, Scott

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1 Muir, Bryce Payne, Kevin Pilon, Ryan Riddle, Terrason Spinks, I Works, Inc., Anthon Holdings
 2 Corp., Cloud Nine Marketing, Inc., CPA Upsell, Inc., Elite Debit, Inc., Employee Plus, Inc.,
 3 Internet Economy, Inc., Market Funding Solutions, Inc., Network Agenda, LLC, Success
 4 Marketing, Inc., Big Bucks Pro, Inc., Blue Net Progress, Inc., Blue Streak Processing, Inc., Bolt
 5 Marketing, Inc., Bottom Dollar, Inc., Bumble Marketing, Inc., Business First Inc., Business Loans
 6 Success, Inc., Cold Bay Media, Inc., Cosmet Discounts, Inc., CS Processing, Inc., Cutting Edge
 7 Processing, Inc., Diamond J Media, Inc., Ebusiness First, Inc., Ebusiness Success, Inc., Ecom
 8 Success, Inc., Excess Net Success, Inc., Fiscal Fidelity, Inc., Fitness Processing, Inc., Funding
 9 Search Success, Inc., Funding Success, Inc., GG Processing, Inc., GGI Rewards, Inc., Highlight
 10 Marketing, Inc., Hooper Processing, Inc., Internet Business Source, Inc., Internet Fitness, Inc.,
 11 Jet Processing, Inc., JRB Media, Inc., Lifestyles For Fitness, Inc., Mist Marketing, Inc., Money
 12 Harvest, Inc., Monroe Processing, Inc., Net Business Success, Inc., Net Commerce, Inc., Net
 13 Discounts, Inc., Net Fit Trends, Inc., Optimum Assistance, Inc., Power Processing, Inc., Premier
 14 Performance, Inc., Pro Internet Services, Inc., Razor Processing, Inc., Rebate Deals, Inc., Revive
 15 Marketing, Inc., Simcor Marketing, Inc., Summit Processing, Inc., The Net Success, Inc.,
 16 Tranfirst, Inc., Tran Voyage, Inc., Unlimited Processing, Inc., and xCel Processing, Inc., have
 17 engaged in violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 917(c) of
 18 EFTA, 15 U.S.C. § 1693o(c) ("EFTA"), and Section 205.10(h) of Regulation E ("Reg E"), 12
 19 C.F.R. § 205.10(b), in connection with the marketing and sale of Internet-based information
 20 products and services.
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24 The Commission and defendant Loyd Johnston ("Johnston") have agreed to the entry of,
 25 and request the Court to enter, this Stipulated Final Order for Permanent Injunction and
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1 Monetary Judgment as to Johnston ("Order"), to resolve all matters of dispute in this action
2 between them.

3 **THEREFORE, IT IS STIPULATED, AGREED, AND ORDERED**

4 as follows:

- 5
- 6 1. This Court has jurisdiction over the subject matter of this case and over the defendant
7 Johnston;
 - 8 2. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b);
 - 9 3. The activities alleged in the Complaint are in or affecting "commerce" as that term is
10 defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
 - 11 4. The Complaint states a claim upon which relief may be granted under Sections 5(a) and
12 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b); under Section 917(c) of EFTA, 15
13 U.S.C. § 1693o(c); and Reg E, 12 C.F.R. § 205.10(h);
 - 14 5. Defendant Johnston has entered into this Order freely and without coercion, and he
15 acknowledges that he has read the provisions of this Order and is prepared to abide by
16 them;
 - 17 6. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that
18 may be provided by law;
 - 19 7. Defendant Johnston waives all rights to seek appellate review or otherwise challenge or
20 contest the validity of this Order and waives and releases any claim he may have against
21 the Commission, its employees, representatives, or agents, and the Receiver and the
22 Receiver's employees, representatives, or agents;
 - 23 8. Defendant Johnston agrees that this Order does not entitle him to seek or to obtain
24 attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. §
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1 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and he further
2 waives any right to attorneys' fees that may arise under said provision of law;

3 9. Defendant Johnston neither admits nor denies any allegations in the Complaint. Only for
4 purposes of this action, Defendant Johnston admits the facts necessary to establish
5 jurisdiction and as otherwise specifically stated in this Order;

6
7 10. This Order is remedial in nature and no portion of any payments paid herein shall be
8 deemed or construed as payment of a fine, damages, penalty, or punitive assessment

9 11. The Court finds that there is no just reason for delay of entry of this Order and that the
10 Order should therefore be entered; and

11 12. Entry of this Order is in the public interest.
12

13 **ORDER**

14 **DEFINITIONS**

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

- 16 1. "Affiliate Network" means any Person who provides Defendant Johnston with
17 Marketing Affiliates for an Affiliate Program or whom Defendant Johnston contracts
18 with as a Marketing Affiliate to promote any Product.
19
20 2. "Affiliate Program(s)" means any arrangement under which Defendant Johnston pays,
21 offers to pay, or provides or offers to provide any form of consideration to any third party
22 to: (1) provide Defendant Johnston or his Clients with, or refer to Defendant Johnston or
23 his Clients, potential or actual customers; or (2) otherwise market, advertise, or offer for
24 sale any Product on behalf of Defendant Johnston or his Clients.
25
26 3. "Assists others" or "Assisting others" means providing assistance or support to any
27 person or entity, including, but not limited to, providing any of the following services:

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1 (1) performing customer service functions, including, but not limited to, receiving or
2 responding to consumer complaints; (2) formulating or providing, or arranging for the
3 formulation or provision of, any promotional material; (3) providing names of, or
4 assisting in the generation of, potential customers; (4) verifying, processing, fulfilling, or
5 arranging for the fulfillment of orders; (5) hiring, recruiting, or training personnel; (6)
6 performing promotional or marketing services of any kind; or (7) processing or arranging
7 for processing of credit cards, debit cards, Automated Clearinghouse ("ACH") debits,
8 remotely-created checks, or payments through any other system.

9
10 4. **"Clear(ly) and Conspicuous(ly)"** or **"Clear and Conspicuous"** means that a required
11 disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by
12 ordinary consumers, including in all of the following ways:

13
14 a. In any communication that is solely visual or solely audible, the disclosure must
15 be made through the same means through which the communication is presented. In any
16 communication made through both visual and audible means, such as a television
17 advertisement, the disclosure must be presented simultaneously in both the visual and
18 audible portions of the communication even if the representation requiring the disclosure
19 is made in only one means.

20
21 b. A visual disclosure, by its size, contrast, location, the length of time it appears,
22 and other characteristics, must stand out from any accompanying text or other visual
23 elements so that it is easily noticed, read, and understood.

24
25 c. An audible disclosure, including by telephone or streaming video, must be
26 delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily
27 hear and understand it.

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

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

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

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

10 h. When the representation or sales practice targets a specific audience, such as
11 children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable
12 members of that group.

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14
15 5. "Client" means any third party to which Defendant Johnston provides any of the services
16 listed in the definition of Assisting others.

17 6. "Continuity Program" means any plan, arrangement, or system under which a
18 consumer is periodically charged to maintain a service or periodically receive any
19 Product, including, but not limited to, access to a "member only" website.

20
21 7. "Corporate Defendants" means I Works, Inc., Anthon Holdings Corp., Cloud Nine
22 Marketing, Inc., CPA Upsell, Inc., Elite Debit, Inc., Employee Plus, Inc., Internet
23 Economy, Inc., Market Funding Solutions, Inc., Network Agenda, LLC, Success
24 Marketing, Inc., Big Bucks Pro, Inc., Blue Net Progress, Inc., Blue Streak Processing,
25 Inc., Bolt Marketing, Inc., Bottom Dollar, Inc., Bumble Marketing, Inc., Business First
26 Inc., Business Loan Success, Inc., Cold Bay Media, Inc., Costnet Discounts, Inc., CS

1 Processing, Inc., Cutting Edge Processing, Inc., Diamond J Media, Inc., Ebusiness First,
 2 Inc., Ebusiness Success, Inc., Ecom Success, Inc., Excess Net Success, Inc., Fiscal
 3 Fidelity, Inc., Fitness Processing, Inc., Funding Search Success, Inc., Funding Success,
 4 Inc., GG Processing, Inc., GGL Rewards, Inc., Highlight Marketing, Inc., Hooper
 5 Processing, Inc., Internet Business Source, Inc., Internet Fitness, Inc., Jet Processing,
 6 Inc., JRB Media, Inc., LifeStyles for Fitness, Inc., Mist Marketing, Inc., Money Harvest,
 7 Inc., Monroc Processing, Inc., Net Business Success, Inc., Net Commerce, Inc., Net
 8 Discounts, Inc., Net Fit Trends, Inc., Optimum Assistance, Inc., Power Processing, Inc.,
 9 Premier Performance, Inc., Pro Internet Services, Inc., Razor Processing, Inc., Rebate
 10 Deals, Inc., Revive Marketing, Inc., Simcor Marketing, Inc., Summit Processing, Inc.,
 11 The Net Success, Inc., Tranfirst, Inc., Tran Voyage, Inc., Unlimited Processing, Inc., and
 12 xCel Processing, Inc., and by whatever other names each may be known, and any
 13 subsidiaries, affiliates, any fictitious business entities or business names created or used
 14 by these entities, or any of them, and their successors and assigns.

- 17 8. "Document" is synonymous in meaning and equal in scope to the usage of the term in
 18 Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,
 19 Internet sites, Webpages, Websites, electronic correspondence, including e-mail and
 20 instant messages, photographs, audio and video recordings, contracts, accounting data,
 21 advertisements (including, but not limited to, advertisements placed on the World Wide
 22 Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web
 23 pages, books, written or printed records, handwritten notes, telephone logs, telephone
 24 scripts, receipt books, ledgers, personal and business canceled checks and check
 25 registers, bank statements, appointment books, computer records, and other data

1 compilations from which information can be obtained and translated. A draft or
2 non-identical copy is a separate document within the meaning of the term.

3 9. "Endorsement" means any advertising message (including verbal statements,
4 demonstrations, or depictions of the name, signature, likeness or other identifying
5 personal characteristics of an individual or the name or seal of an organization), which
6 message consumers are likely to believe reflects the opinions, beliefs, findings, or
7 experience of a party other than the sponsoring advertiser.

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9 10. "Endorser" means the party whose opinions, beliefs, findings, or experience the
10 message appears to reflect, and may be an individual, group or institution.

11 11. "Express Verifiable Authorization" means:

12 a. Express written authorization by the customer, which includes the customer's
13 signature, and shall include an electronic or digital form of signature, to the extent
14 that such form of signature is recognized as a valid signature under applicable federal
15 law or state contract law;

16
17 b. Express oral authorization which is audio-recorded and made available upon request
18 to the customer, and the customer's bank or other billing entity, and which evidences
19 clearly both the customer's authorization of payment for the goods or services that
20 are the subject of the transaction and the customer's receipt of all of the following
21 information:

22
23 (i) An accurate description, clearly and conspicuously stated, of the goods or
24 services for which payment authorization is sought;

25 (ii) The number of debits, charges, or payments (if more than one);

26 (iii) The date(s) the debit(s), charge(s), or payment(s) will be submitted for
27

1 payment;

2 (iv) The amount(s) of the debit(s), charge(s), or payment(s);

3 (v) The customer's name;

4 (vi) The customer's billing information, identified with sufficient specificity such
5 that the customer understands what account will be used to collect payment
6 for the goods or services that are the subject of the transaction;

7 (vii) A telephone number for customer inquiry that is answered during normal
8 business hours; and

9 (viii) The date of the customer's oral authorization; or

10 c. Written confirmation of the transaction, identified in a Clear and Conspicuous
11 manner as such on the outside of the envelope, sent to the customer via first class
12 mail prior to the submission for payment of the customer's billing information, and
13 that includes all of the information contained in b(i)-(vii) above and a Clear and
14 Conspicuous statement of the procedures by which the customer can obtain a refund
15 in the event the confirmation is inaccurate; *provided however*, that this means of
16 authorization shall not be deemed verifiable in instances in which goods or services
17 are offered in a transaction involving a free-to-pay conversion and preacquired
18 account information.

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22 12. **"Financial Institution"** means any institution the business of which is engaging in
23 financial activities as described in section 4(k) of the Bank Holding Company Act of
24 1956 (12 U.S.C. § 1843(k)). An institution that is significantly engaged in financial
25 activities is a Financial Institution.

26 13. **"Forced Upsell"** means the automatic bundling of any additional Product with the
27

1 purchase of a Primary Product. For purposes of this Order, a Forced Upsell shall include,
2 but not be limited to, any bundled additional Product from which consumers cannot
3 optout, as well as any Upsell that uses a pre-checked checkbox.

4 14. "In Close Proximity" shall mean for any communication presented solely through visual
5 means: on the same webpage, online service page, mobile device screen, or other
6 electronic page, and immediately adjacent to the cost-related claim and viewable in
7 conjunction with the cost-related claim in such a manner that the communication is
8 viewable without requiring the consumer to scroll up, down, or sideways, or otherwise
9 adjust their browser window or mobile device window in any way. Representations or
10 disclosures in response to cost-related claims that are accessed or displayed through
11 hyperlinks, pop-ups, interstitials, or other means are NOT "In Close Proximity."

12 15. "Individual Defendants" means Jeremy Johnson, Duane Fielding, Andy Johnson, Loyd
13 Johnston, Scott Leavitt, Scott Muir, Bryce Payne, Kevin Pilon, Ryan Riddle, and
14 Terrason Spinks.

15 16. "Investment Opportunity" means anything, tangible or intangible, including a program
16 or plan, that is offered for sale, sold, or traded based wholly or in part on representations,
17 either express or implied, about past, present, or future income, earnings, profit, or
18 appreciation.

19 17. "I Works Defendant(s)" means the Corporate Defendants and the Individual
20 Defendants, individually, collectively, or in any combination.

21 18. "Marketing Affiliate" means any person or entity, including third-party marketers and
22 Affiliate Networks, who participates in an Affiliate Program.

23 19. "Material" means likely to affect a person's choice of, or conduct regarding, a Product.

- 1 20. **“Material Connection”** means any relationship that materially affects the weight or
2 credibility of any Endorsement and that would not be reasonably expected by consumers.
- 3 21. **“Material Fact”** means any statement that is likely to affect a person’s choice of, or
4 conduct regarding, a Product.
- 5 22. **“Merchant Account”** means any account with an acquiring bank or other Financial
6 Institution, service provider, payment processor, independent sales organization, or other
7 entity that enables an individual, a business, or other organization to accept payments of
8 any kind.
- 9 23. **“Negative Option Feature”** means, in an offer or agreement to sell or provide any
10 Product, a provision under which the customer’s silence or failure to take an affirmative
11 action to reject a Product or to cancel the agreement is interpreted by the seller or
12 provider as acceptance of the offer.
- 13 24. **“Plaintiff”** or **“Commission”** or **“FTC”** means the Federal Trade Commission.
- 14 25. **“Primary Product”** means the chief or principal Product that is the subject of the
15 marketing materials or sales offers.
- 16 26. **“Product”** means products, goods, and services, and includes online memberships.
- 17 27. **“Representatives”** means Defendant Johnston’s agents, employees, salespersons,
18 independent contractors, attorneys, corporations, subsidiaries, affiliates, and those
19 persons in active concert or participation with Defendant Johnston, who receive actual
20 notice of this Order by personal service or otherwise.
- 21 28. **“Sensitive Personal Information”** means nonpublic information concerning an
22 individual consumer, including, but not limited to: Social Security number, in whole or
23 in part; credit and/or debit card information, in whole or in part, including credit and/or
24

1 debit card number, expiration date, and transaction detail records; Financial Institution
2 account information or transaction records, in whole or in part, including the ABA
3 routing number, account number, check number, and transaction detail records; and
4 account information or transaction records relating to nontraditional payment systems,
5 such as any telecommunications billing system, PayPal, and BillMeLater.

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7 29. "Upsell" shall mean any Product that is offered to the consumer at the time the consumer
8 purchases the Primary Product.

9 I.

10 **CONDUCT PROHIBITIONS**

11 **IT IS THEREFORE ORDERED** that Defendant Johnston, whether acting directly or
12 through any officer, agent, employee, sole proprietorship, partnership, limited liability
13 company, corporation, subsidiary, branch, division, or other entity, is hereby permanently
14 restrained and enjoined from:
15

16 A. Advertising, marketing, promoting, offering for sale, or selling any Product as a
17 Forced Upsell, or Assisting others engaged in advertising, marketing, promoting, offering
18 for sale, or selling any Product as a Forced Upsell;

19 B. Holding any ownership or other financial interest in any business entity that engages
20 in or Assists others in the advertising, marketing, promoting, offering for sale, or selling
21 any Product as a Forced Upsell;

22 C. Serving as an officer, director, or manager of any business entity, unless Defendant
23 Johnston actually controls, participates in, or has knowledge of the daily operations of
24 that entity;
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1 D. Acting as a signatory on any account for any business entity unless Defendant
2 Johnston controls, participates in, or has knowledge of the daily operations of that entity;
3 and

4 E. Applying for any Merchant Account for any business entity unless Defendant Johnston
5 controls, participates in, or has knowledge of the daily operations of that business entity.

6 *Provided further, nothing in this Order shall be construed as an exception to this Section*

7 I.

8
9 **II.**

10 **PROHIBITED PRACTICES**

11 **IT IS FURTHER ORDERED** that:

12 A. In connection with the advertising, marketing, promotion, offering for sale, or sale of
13 any Product, Defendant Johnston and his Representatives, whether acting directly or
14 through any entity, corporation, subsidiary, division, affiliate, or other device are hereby
15 restrained and enjoined from:

16
17 1. Making or Assisting others in making, either directly or indirectly, expressly or by
18 implication, any false or misleading statement or representation of Material Fact;

19 2. Misrepresenting or Assisting others in misrepresenting, either directly or
20 indirectly, expressly or by implication:

21 a. That government grants are generally available to individuals to pay
22 personal expenses;

23 b. That consumers will be able to find government grants to pay personal
24 expenses using materials provided by, marketed by, or advertised by
25 Defendant Johnston;
26

- c. That consumers who purchase an Investment Opportunity provided by, marketed by, or advertised by Defendant Johnston are likely to make money;
- d. The income, earnings, profits, or sales volume likely to be achieved from an Investment Opportunity;
- e. Any Material aspect of a Continuity Program or of a Negative Option Feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s);
- f. The total cost to purchase, receive, or use, and the quantity of, any Product that is the subject of the sales offer;
- g. The risks associated with a Product, including that a Product is Risk-Free, Low Risk, or otherwise results in no obligation to the consumer;
- h. Any Material restrictions, limitations, or conditions to purchase, receive, or use any Product that is the subject of the sales offer;
- i. Any Material aspect of the performance, efficacy, nature, or central characteristics of any Product that is the subject of the sales offer;
- j. Any Material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;
- k. The status of any user or Endorser of a Product, including, but not limited to, misrepresenting that the user or Endorser is an independent user or ordinary, unbiased consumer of the Product; or

TO

1 I. That consumer Endorsements reflect typical consumer experiences with a
2 Product:

3 3. Failing to disclose Clearly and Conspicuously:

4 a. The total cost to purchase, receive, or use any Product that is the subject of
5 the sales offer;

6 b. The total cost to purchase, receive, or use any Product in equal or greater
7 size and prominence, and In Close Proximity to any request that
8 consumers provide their name, address, telephone number, email address,
9 or any Sensitive Personal Information;

10 c. The total cost to purchase, receive, or use any Product subject to the sales
11 offer, in equal or greater size and prominence, and In Close Proximity to,
12 any cost-related claim including, but not limited to, any claim that the
13 Product is "free," has a minimal cost, or is being offered on a trial basis or
14 at an introductory or limited-time reduced cost;

15 d. All Material terms and conditions of any Negative Option Feature
16 including, but not limited to, the fact that the customer's account will be
17 charged unless the customer takes an affirmative action to avoid the
18 charge(s), the date(s) the charge(s) will be submitted for payment, and the
19 specific steps the customer must take to avoid the charge(s);

20 e. All Material terms and conditions of any Negative Option Feature
21 including, but not limited to, the fact that the customer's account will be
22 charged unless the customer takes an affirmative action to avoid the
23 charge(s), the date(s) the charge(s) will be submitted for payment, and the
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1 specific steps the customer must take to avoid the charge(s) in equal or
2 greater size and prominence, and In Close Proximity to, any request that
3 consumers provide their name, address, telephone number, email address,
4 or any Sensitive Personal Information;

5 f. All Material terms and conditions of any Continuity Plan;

6 g. All Material terms and conditions of any Continuity Plan in equal or
7 greater size and prominence, and In Close Proximity to, any request that
8 consumers provide their name, address, telephone number, email address,
9 or any Sensitive Personal Information;

10 h. All Material terms and conditions of any Continuity Plan or Negative
11 Option Feature in equal or greater size and prominence, and In Close
12 Proximity to, any cost-related claim including, but not limited to, any
13 claim that a product is "free" or "no cost," if a cost-related claim is made
14 in the course of advertising, offering for sale, or otherwise marketing any
15 Product; and

16 i. All Material terms and conditions of any Continuity Program or Negative
17 Option Feature in equal or greater size and prominence, and In Close
18 Proximity to, any claim about risks associated with a Product, including
19 claims that a Product is Risk-Free, Low Risk, or otherwise results in no
20 obligation to the consumer, if

21 such claim is made in the course of advertising, offering for sale, or otherwise
22 marketing any Product;

- 1 4. Failing to disclose Clearly and Conspicuously any other Material information,
2 including, but not limited to:
- 3 a. The quantity of any Product that is the subject of the sales offer;
- 4 b. Any Material term or condition including, but not limited to, any
5 restrictions, limitations, or conditions to purchase, receive, or use any
6 Product that is the subject of the sales offer;
- 7 c. Any Material aspect of the nature or terms of a refund, cancellation,
8 exchange, or repurchase policy for any Product including, but not limited
9 to, if there is a policy of not making refunds, cancellations, exchanges, or
10 repurchases;
- 11 d. That Endorsers received funds or some other benefit, directly or indirectly,
12 from any individual or entity manufacturing, advertising, labeling,
13 promoting, offering for sale, selling, or distributing a Product that is the
14 subject of an Endorsement including, but not limited to, if Endorsers
15 received funds or some other benefit from a non-profit charitable fund that
16 is directly or indirectly associated with any individual or entity
17 manufacturing, advertising, labeling, promoting, offering for sale, selling,
18 or distributing a Product that is the subject of an Endorsement, *provided*
19 *that*, this provision shall not apply where (1) the Endorser is an expert or
20 Person known to a significant portion of the viewing public, and (2) the
21 endorsement appears in an advertisement where payment would be
22 ordinarily expected by viewers; and
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1 e. Any Material Connection, when one exists, between any user or Endorser
2 and any other individual or entity manufacturing, advertising, labeling,
3 promoting, offering for sale, selling, or distributing a Product;

4 B. Defendant Johnston and his Representatives, whether acting directly or through
5 any entity, corporation, subsidiary, division, affiliate, or other device are hereby
6 restrained and enjoined from charging or debiting a consumer's bank, credit, or
7 other financial account, or otherwise assessing charges to a consumer, without
8 first obtaining the consumer's Express Verifiable Authorization; and

9 C. In connection with applying for or maintaining Merchant Accounts, Defendant
10 Johnston and his Representatives, whether acting directly or through any entity,
11 corporation, subsidiary, division, affiliate, or other device are hereby permanently
12 restrained and enjoined from:

13 1. Making or Assisting others in making, expressly or by implication, any false or
14 misleading statement or representation including, but not limited to, any statement
15 or representation concerning the identity of the owner, manager, director, or
16 officer of the applicant for or holder of a Merchant Account, to an acquiring bank
17 or other Financial Institution, service provider, payment processor, independent
18 sales organization, or other entity that enables an individual, a business, or other
19 organization to accept payments of any kind; or

20 2. Failing to disclose to an acquiring bank or other Financial Institution, service
21 provider, payment processor, independent sales organization, or other entity that
22 enables an individual, a business, or other organization to accept payments of any
23 kind any Material information related to a Merchant Account including, but not
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1 limited to, the identity of the owner, manager, director, or officer of the applicant for
2 or holder of a Merchant Account, and any connection between the owner, manager,
3 director, or officer of the applicant for or holder of a Merchant Account and any third
4 person who has been or is placed in a Merchant Account monitoring program, had a
5 Merchant Account terminated by a payment processor or a Financial Institution, or
6 has been fined or otherwise disciplined in connection with a Merchant Account by a
7 payment processor or a Financial Institution.
8

9 **III.**

10 **PROHIBITION AGAINST VIOLATION OF THE**
11 **ELECTRONIC FUND TRANSFER ACT**

12 **IT IS FURTHER ORDERED** that, in connection with the advertising, marketing,
13 promotion, offering for sale, or sale of any Product, Defendant Johnston and his Representatives,
14 whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other
15 device, are hereby permanently restrained and enjoined from:

- 16
- 17 A. Engaging in any recurring debiting of a consumer's account without first
18 obtaining a valid written pre-authorization for preauthorized electronic fund
19 transfers from the consumer's account, which pre-authorization is clear and
20 readily understandable, identifiable as a pre-authorization, and reflects the
21 consumer's assent, as required by Section 907(a) of EFTA, 15 U.S.C. § 1693e(a),
22 and Section 205.10(b) of Regulation E, as more fully set out in Section 205.10 of
23 the Federal Reserve Board's Official Staff Commentary to Regulation E, 12
24 C.F.R. § 205.10(b) (5) and (6), Supp. I;
- 25
- 26 B. Engaging in any recurring debiting of a consumer's account without first
27 providing a copy of a valid written pre-authorization to the consumer for

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1 Processing, Inc., Net Commerce, Inc., Premier Performance, Inc., Pro Internet
2 Services, Inc., Revive Marketing, Inc., Summit Processing, Inc., Tran First, Inc.,
3 Tran Voyage, Inc., and Unlimited Processing, Inc.

4
5 B. The Commission's agreement to this Order is expressly premised upon the
6 truthfulness, accuracy, and completeness of Defendant Johnston's sworn financial
7 statements and related documents submitted to the Commission, namely the
8 Financial Statement of Defendant Johnston signed on December 26, 2015,
9 including the attachments.

10 Defendant Johnston and the Commission stipulate that Defendant Johnston's
11 financial representations and testimony, if any, provide the basis for the assets
12 turned over to the FTC in this Order and include material information upon which
13 the Commission relied in negotiating and agreeing to this Order. Defendant
14 Johnston and the Commission stipulate that the Commission has relied on the
15 truthfulness, accuracy, and completeness of Defendant Johnston's financial
16 representations and any testimony in agreeing to the terms of this Order and that
17 the Commission would not have entered into this Order but for the truthfulness,
18 accuracy, and completeness of Defendant Johnston's financial representations and
19 any testimony.
20
21

22 C. The suspension of the judgment will be lifted as to Defendant Loyd Johnston if,
23 upon motion by the Commission, the Court finds that Defendant Johnston failed
24 to disclose any material asset, materially misstated the value of any asset, or made
25 any other material misstatement or omission in the financial representations
26 identified above.

78

- 1 D. If the suspension of the judgment is lifted, the judgment becomes immediately
2 due as to Defendant Johnston in the amount of Seven Million Two Thousand
3 Nine Hundred Sixty Dollars (\$7,002,960.00), plus interest computed from the
4 date of entry of this Order.
- 5
6 E. Defendant Johnston relinquishes dominion and all legal and equitable right, title,
7 and interest in all assets transferred pursuant to the Order and may not seek the
8 return of any assets.
- 9
10 F. The facts alleged in the Complaint will be taken as true, without further proof, in
11 any subsequent civil litigation by or on behalf of the Commission, including in a
12 proceeding to enforce its rights to any payment or monetary judgment pursuant to
13 this Order, such as a nondischargeability complaint in any bankruptcy case.
- 14
15 G. The facts alleged in the Complaint establish all elements necessary to sustain an
16 action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy
17 Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect
18 for such purposes.
- 19
20 H. Defendant Johnston acknowledges that his Social Security Number, which
21 Defendant previously submitted to the Commission, may be used for collecting
22 and reporting on any delinquent amount arising out of the Order, in accordance
23 with 31 U.S.C. § 7701.
- 24
25 I. Proceedings instituted under this Section are in addition to, and not in lieu of, any
26 other civil or criminal remedies that may be provided by law, including any other
27 proceedings the Commission may initiate to enforce this Order.

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

13
14 V.

15 **BAN ON USE OF CONSUMER INFORMATION**

16 **IT IS FURTHER ORDERED** that Defendant Johnston and his Representatives are
17 permanently restrained and enjoined from:

18 A. Disclosing to any third party, using, or benefitting from consumer information,
19 including the name, address, telephone number, email address, Social Security
20 number, other identifying information, or any data that enables access to a
21 consumer's account (including a credit card, bank account, or other financial
22 account), or would otherwise allow the assessing of a charge against a consumer's
23 account, of any person which the I Works Defendants obtained prior to entry of
24 this Order in connection with the advertising, marketing, promotion, or offering of
25 any Product;
26

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1 B. Failing to provide to the Receiver such consumer information in all forms that is
2 in Defendant Johnston's possession, custody, or control within five (5) business
3 days after entry of this Order; and

4 C. Failing to dispose of such consumer information in all forms that is in Defendant
5 Johnston's possession, custody, or control within fifteen (15) days after entry of
6 this Order. Disposal shall be by means that protect against unauthorized access to
7 the consumer information, such as by burning, pulverizing, or shredding any
8 papers, and by erasing or destroying any electronic media, to ensure that the
9 consumer information cannot practicably be read or reconstructed.

10
11 *Provided however*, that consumer information need not be disposed of, and may be
12 disclosed, to the extent requested by a government agency or required by a law, regulation, or
13 court order.
14

15 VI.

16 **MONITORING BY DEFENDANT JOHNSTON**

17 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry
18 of this Order, Defendant Johnston, and his Representatives, in connection with the advertising,
19 marketing, promoting, offering for sale, selling or provision of any Products on or through the
20 Internet, the World Wide Web, or any web page or website, are hereby restrained and enjoined
21 from failing to:
22

23 A. Obtain contact information from any prospective Marketing Affiliate or Client. In
24 the case of a natural person, Defendant Johnston shall obtain the prospective
25 Marketing Affiliate's or Client's first and last name, physical address, country,
26 telephone number, e-mail address, date of birth, and complete bank account
27

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1 information as to where payments are to be made. In the case of business entities,
2 Defendant Johnston shall obtain the first and last name, physical address, country,
3 telephone number, e-mail address, and date of birth for the natural person who
4 owns, manages, or controls the prospective Marketing Affiliate or Client, and
5 complete bank account information as to where payments are to be made;
6

7 B. Require each Affiliate Network to obtain from its Marketing Affiliates and
8 maintain the identifying information set forth in Subsection A of this Section prior
9 to the Marketing Affiliate's or Affiliate Network's participation in Defendant
10 Johnston's Affiliate Program;

11 C. Provide each prospective Marketing Affiliate or Client prior to such prospective
12 Marketing Affiliate's acceptance into Defendant Johnston's Affiliate Program or
13 prior to Defendant Johnston providing services to a prospective Client: (1) a copy
14 of this Order; and (2) a Clear and Conspicuous statement in writing that engaging
15 in acts or practices prohibited by this Order will result in immediate termination
16 of any Marketing Affiliate or Client and forfeiture of all monies received from or
17 owed to the Marketing Affiliate or Client;
18

19 D. Obtain from each prospective Marketing Affiliate or Client prior to such
20 prospective Marketing Affiliate's acceptance into Defendant Johnston's Affiliate
21 Program or prior to Defendant Johnston providing services to a prospective Client
22 a signed and dated statement acknowledging receipt of this Order and expressly
23 agreeing to comply with this Order;
24
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- 1 E. Routinely monitor any marketing materials, including websites, emails, and pop-
2 ups used by each Marketing Affiliate to advertise, promote, market, offer for sale,
3 or sell any Defendant Johnston Product(s);
- 4 F. Routinely monitor any marketing materials, including websites, emails, and pop-
5 ups used by each Client to advertise, promote, market, offer for sale, or sell any
6 Product(s) for which Defendant Johnston is providing services;
- 7 G. Promptly and completely investigate any complaints received by Defendant
8 Johnston through any source to determine whether any Marketing Affiliate or
9 Client is engaging in acts or practices prohibited by this Order;
- 10 H. Review the sales websites for each Marketing Affiliate advertising, promoting,
11 marketing, offering for sale, or selling any of Defendant Johnston's Product(s) at
12 least once every thirty (30) days to determine whether any Marketing Affiliate is
13 engaging in acts or practices prohibited by this Order;
- 14 I. Review the sales websites advertising, promoting, marketing, offering for sale, or
15 selling each Client's Product for which Defendant Johnston provides services, at
16 least once every thirty (30) days to determine whether any Client is engaging in
17 acts or practices prohibited by this Order;
- 18 J. Immediately halt the processing of any payments or charges generated by any
19 Marketing Affiliate or Client that has engaged in, or is engaging in, acts or
20 practices prohibited by this Order;
- 21 K. Fully refund, within five (5) business days of discovery, any consumer whose
22 account Defendant Johnston has processed a charge against whose sale originated
23 from any Marketing Affiliate or Client that is discovered to have engaged in, or is
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1 engaging in, acts or practices prohibited by this Order since the date of Defendant
2 Johnston's most recent review of the Marketing Affiliate's or Client's marketing
3 materials, including the Marketing Affiliate's or Client's websites; and

- 4 L. Terminate, immediately, any Marketing Affiliate or Client that has engaged in, or
5 is engaging in, acts or practices prohibited by this Order and cease payments to
6 any such person.
7

8 *Provided however*, that this Section does not authorize or require Defendant Johnston to
9 take any action that violates any federal, state, or local law.

10 **VII.**

11 **COOPERATION WITH FTC COUNSEL**

12 **IT IS FURTHER ORDERED** that, in connection with this action or any subsequent
13 investigations related to or associated with the transactions or the occurrences that are the subject
14 of the FTC's Complaint or related to the location of assets or business records of any IWorks
15 Defendant, Defendant Johnston shall cooperate in good faith with the FTC and appear at such
16 places and times as the FTC shall reasonably request, after three (3) business days written notice,
17 for interviews, conferences, pretrial discovery, review of documents, and for such other matters
18 as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant
19 Johnston shall appear and provide truthful testimony in any trial, deposition, or other proceeding,
20 or produce or authenticate, if possible, any documents, related to or associated with the
21 transactions or the occurrences that are the subject of the Complaint, without the service of a
22 subpoena.
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VIII.

ORDER ACKNOWLEDGMENTS

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

- A. Defendant Johnston, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For eight (8) years after entry of this Order, Defendant Johnston, for any business for which he individually or collectively with any other Works Defendant is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Defendant Johnston delivered a copy of this Order, Defendant Johnston must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

IX.

COMPLIANCE REPORTING

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

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

3 1. Defendant Johnston must: (a) identify the primary physical, postal, and
4 email address and telephone number, as designated points of contact, which
5 representatives of the Commission may use to communicate with him; (b) identify
6 all of his businesses by all of their names, telephone numbers, and physical,
7 postal, email, and Internet addresses; (c) describe the activities of each business,
8 including the goods and services offered, the means of advertising, marketing, and
9 sales, and the involvement of any other I Works Defendant (which Defendant
10 Johnston must describe if he knows or should know due to his own involvement);
11 (d) describe in detail whether and how he is in compliance with each Section of
12 this Order; and (e) provide a copy of each Order Acknowledgment obtained
13 pursuant to this Order, unless previously submitted to the Commission.
14

15 2. Additionally, Defendant Johnston must: (a) identify all telephone numbers
16 and all physical, postal, email and Internet addresses, including all residences; (b)
17 identify all business activities, including any business for which Defendant
18 Johnston performs services whether as an employee or otherwise and any entity in
19 which Defendant Johnston has any ownership interest; and (c) describe in detail
20 Defendant Johnston's involvement in each such business, including title, role,
21 responsibilities, participation, authority, control, and any ownership.
22

23 B. For eight (8) years after entry of this Order, Defendant Johnston must submit a
24 compliance notice, sworn under penalty of perjury, within fourteen (14) days of
25 any change in the following:
26

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

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

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

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

24
25 E. **Unless otherwise directed by a Commission representative in writing, all**
26 **submissions to the Commission pursuant to this Order must be emailed to**
27

1 DE:brief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
2 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
3 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
4 subject line must begin: FTC v. Jeremy Johnson, et al., X110011.
5

6 **X.**

7 **RECORDKEEPING**

8 **IT IS FURTHER ORDERED** that Defendant Johnston must create certain records for
9 eight (8) years after entry of the Order, and retain each such record for five (5) years.

10 Specifically, Defendant Johnston for any business that he, individually or collectively with any
11 other Works Defendant, is a majority owner or controls directly or indirectly, must create and
12 retain the following records:
13

- 14 A. Accounting records showing the revenues from all goods or services sold;
- 15 B. Personnel records showing, for each person providing services, whether as an
16 employee or otherwise, that person's: name; addresses; telephone numbers; job
17 title or position; dates of service; and (if applicable) the reason for termination;
- 18 C. Records of all consumer complaints and refund requests, whether received
19 directly or indirectly, such as through a third party, and any response;
- 20 D. All records necessary to demonstrate full compliance with each provision of this
21 Order, including all submissions to the Commission; and
- 22 E. Non-duplicative copies of any advertisement or other marketing material,
23 including web pages, pop ups, email advertisements, and any audio files related to
24 them.
25
26

1 Nothing in this Section shall relieve Defendant Johnston of any responsibility under the
2 Section entitled "Monitoring By Defendant Johnston."

3 **XI.**

4 **COMPLIANCE MONITORING**

5 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Defendant Johnston's
6 compliance with this Order, including the financial representations upon which the judgment was
7 suspended:

- 8
- 9 A. Within fourteen (14) days of receipt of a written request from a representative of
10 the Commission, Defendant Johnston must: submit additional compliance reports
11 or other requested information, which must be sworn under penalty of perjury;
12 appear for depositions; and produce documents for inspection and copying. The
13 Commission is also authorized to obtain discovery, without further leave of court,
14 using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30
15 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- 16
- 17 B. For matters concerning this Order, the Commission is authorized to communicate
18 directly with Defendant Johnston. Defendant Johnston must permit
19 representatives of the Commission to interview any employee or other person
20 affiliated with Defendant Johnston who has agreed to such an interview. The
21 person interviewed may have counsel present.
- 22
- 23 C. The Commission may use all other lawful means, including posing, through their
24 representatives as consumers, suppliers, or other individuals or entities, to
25 Defendant Johnston or any entity in which he has any ownership interest, or any
26 individual or entity affiliated with Defendant Johnston, without the necessity of
27

1 identification or prior notice. Nothing in this Order limits the Commission's
2 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,
3 15 U.S.C. §§ 49, 57b-1.

4 D. Upon written request from a representative of the Commission, any consumer
5 reporting agency must furnish consumer reports concerning Defendant Johnston,
6 pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
7 §1681b(a)(1).
8

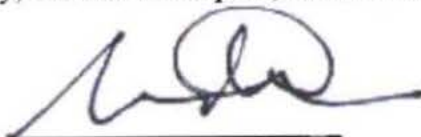
9 XII.

10 RETENTION OF JURISDICTION

11 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for
12 purposes of construction, modification, and enforcement of this Order.
13

14 The parties, and their respective counsel, hereby consent to the terms and conditions of
15 the Order as set forth above and consent to the immediate entry thereof.
16

17
18 **SO ORDERED**, this 22nd day of February, 2016 at 12:35 p.m., Pacific Standard Time.
19

20 

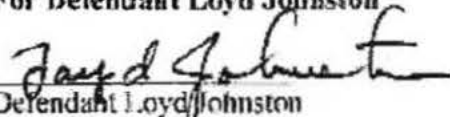
21 MIRANDA M. DU
22 United States District Judge
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STIPULATED AND AGREED TO BY:

For Defendant Loyd Johnston


Defendant Loyd Johnston

Date: 1 FEB 2016

For Plaintiff Federal Trade Commission:


Collet Guerard
J. Ronald Brooke, Jr.
Janice L. Kopec
Dotan Weinman
Attorneys for Plaintiff
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room 286
Washington, DC 20580

Date:
February 19, 2016

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